

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

THE BORDEN COMPANY

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-0174

Decision No. CU **356**

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by THE BORDEN COMPANY in the amount of \$6,022.67 based upon the asserted loss of payment for merchandise shipped to Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right or interest including any leasehold interest, and

debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1) of the Act defines the term "national of the United States" as "(B) a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity."

The record discloses that the claimant corporation, THE BORDEN COMPANY, was organized in the State of New Jersey on April 24, 1899. An officer of the claimant corporation has certified that at all times since then and until presentation of this claim, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant states that 68,851 of its 69,894 stockholders are residents of the United States and assumes that substantially all of them are United States nationals; and that 1,043 stockholders are residents of foreign countries and assumed to be citizens of those countries.

The record further discloses that the Columbus Coated Fabrics Corporation was organized (under the name of Columbus-Union Oil Cloth Company) in the State of Ohio on March 27, 1917. A former officer of the Columbus Coated Fabrics Corporation has certified that at all times from January 14, 1952 until its dissolution following the acquisition of its assets and business by THE BORDEN COMPANY on January 1, 1961, more than 50% of the outstanding capital

stock of the Columbus Coated Fabrics Corporation has been owned by United States nationals. The Commission holds that the Columbus Coated Fabrics Corporation qualified as a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record reflects that the Columbus Coated Fabrics Corporation shipped certain merchandise to firms in Cuba and that drafts were forwarded, by the Bankers Trust Company of New York, to the consignees for payment. Further, the record contains letters from the Bankers Trust Company of New York to the Columbus Coated Fabrics Corporation, in which it is stated that the collection of \$4,027.45 was paid by the consignee, Hnos. Ferreiro y Cia.; that the collection of \$446.40 was paid by the consignee, Papeleria Suarez Gutierrez y Cia.; that the collection of \$707.10 was paid by the consignee, Herran Alonso y Cia.; that the collection of \$803.04 was paid by the consignee, Prieto y Cia.; and that the collecting banks were awaiting a dollar reimbursement release from the Government of Cuba. Claimant states that neither it nor the Columbus Coated Fabrics Corporation have received the funds.

The record additionally reflects a shipment of merchandise totalling \$38.68, sold on open account by the Columbus Coated Fabrics Corporation to El Arte, S.A., Havana, Cuba; the consignee's application for dollar exchange was never granted by the Cuban Government.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission

holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the Columbus Coated Fabrics Corporation, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba into the consignor's contractual rights, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See the Claim of The Schwarzenbach Huber Company, FCSC Claim No. CU-0019; and the Claim of Etna Pozzolana Corporation, FCSC Claim No. CU-0049).

Accordingly, in the instant claim the Commission finds that property of the Columbus Coated Fabrics Corporation was lost as a result of intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the loss occurred on February 16, 1960 as to \$4,027.45, on November 20, 1959 as to \$446.40, on March 9, 1960 as to \$707.10, on January 23, 1960 as to \$803.04, the days after the collections were acknowledged by the collecting banks; and on December 9, 1959 as to \$38.68, the day after the consignee's application for dollar exchange.

The record discloses, and the Commission finds, that the claimant, THE BORDEN COMPANY, is the legal successor in interest and invested with the claim which arose in favor of the former Columbus Coated Fabrics Corporation.

The Commission has decided that in payment of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be allowed at the rate of 6% per annum from the date of loss to the date of settlement (See the Claim of Lisle Corporation, FCSC Claim No. CU-0644).

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the dates on which the loss occurred, to the date on which provisions are made for the settlement thereof, as follows:

- \$4,027.45 from February 16, 1960;
- \$ 446.40 from November 20, 1959;
- \$ 707.10 from March 9, 1960;
- \$ 803.04 from January 23, 1960;
- \$ 38.68 from December 9, 1959.

CERTIFICATION OF LOSS

The Commission certifies that THE BORDEN COMPANY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Six Thousand Twenty-Two Dollars and Sixty-Seven Cents (\$6,022.67) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,  
and entered as the Proposed  
Decision of the Commission

OCT 4 1967

~~CONFIDENTIAL~~

This is a true and correct copy of the decision of the Commission which was entered as the final decision on 6 NOV 1967

*James M. ...*  
Member of the Commission

*Edward D. Re*  
Edward D. Re, Chairman

*Theodore Jaffe*  
Theodore Jaffe, Commissioner

*LaVern R. Dilweg*  
LaVern R. Dilweg, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)