

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

IN THE MATTER OF THE CLAIM OF

D. BERNSTEIN & SON, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0190

Decision No. CU 1364

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 D. BERNSTEIN & SON, INC. in the amount of \$9,726.58 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."

An officer of the claimant corporation has certified that the claimant was organized in New York and that all times between May 1946 and the presentation of this claim on June 24, 1965, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. Claimant states that its two stockholders are both nationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record contains copies of various documents, including bills of lading, invoices, and Accounts Receivable ledger cards, which evidence the sale of merchandise, attendant freight charges, and credits to a number of consignees in Havana, and Holquin, Cuba. Information as to these various accounts is set out below:

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<u>Invoice No.</u>	<u>Date</u>	<u>Consignee</u>	<u>Amount</u>	<u>Nature of Transaction</u>
6727	June 29, 1959	Almacen Riviera	\$ 12.38	Freight
6890	August 14, 1959	Almacen Riviera	590.31	Merchandise
7337	December 2, 1959	American Clothing Co.	971.08	Merchandise
7357	December 8, 1959	American Clothing Co.	3.14	Freight
7334	December 1, 1959	Issac Berezdevin	1,023.38	Merchandise
7115	October 5, 1959	Chaim Feldman	543.67	Merchandise
	March, 1962	Chaim Feldman	(50.00)	Credit
	April, 1962	Chaim Feldman	(50.00)	Credit
	May, 1962	Chaim Feldman	(50.00)	Credit
6241	February 4, 1959	Finkelman & Co.	8.57	Freight
7070 7071 7072	September 24, 1959	Facundo Gutierrez	1,474.73	Merchandise
7073	September 24, 1959	Facundo Gutierrez	11.90	Freight
7077	September 25, 1959	Facundo Gutierrez	487.90	Merchandise
7203 7204	October 27, 1959	Lopez Paz & Co.	970.69	Merchandise
7202	October 27, 1959	Lopez Paz & Co.	9.96	Freight
7276	November 12, 1959	Lopez Paz & Co.	1,929.12	Merchandise
R1872	September 15, 1959	Necuze & Hijos	(154.21)	Credit
7076 7077	September 25, 1959	Necuze & Hijos	1,987.10	Merchandise
6423	May 23, 1959	Hnos Wasserstein	6.86	Freight

The total of the above transactions is \$9,726.58, the amount of this claim.

The terms of all the sales were "net 30 days." Claimant states that it has not received the funds.

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 claimant herein, 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 contractual rights of the claimant, 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 claimant's property 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 the following dates:

September 29, 1959	Effective date of Law 568	\$ 618.12
October 24, 1959	Date payment was due	1,486.63
October 25, 1959	"	2,320.79
November 5, 1959	"	393.67
November 27, 1959	"	980.65
December 12, 1959	"	1,929.12
January 1, 1960	"	1,023.38
January 2, 1960	"	971.08
January 8, 1960	"	3.14
	Total	<u>\$9,726.58</u>

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included 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.

CERTIFICATION OF LOSS

The Commission certifies that D. BERNSTEIN & SON, INC. 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 Nine Thousand Seven Hundred Twenty-Six Dollars and Fifty-Eight Cents (\$9,726.58) 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

FEB 28 1968

Edward D. Re

Edward D. Re, Chairman

Theodore Jaffe

CERTIFICATION

Theodore Jaffe, Commissioner

This is a true and correct copy of the decision of the Commission which was entered as the final decision on MAY 28 1968

Francis Thaddeus

Clerk of the Commission

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

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).)