

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

IN THE MATTER OF THE CLAIM OF

LUDWIG M. LINZ d/b/a
POLYCHROME INTERNATIONAL

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0206

Decision No. CU -231

AMENDED PROPOSED DECISION

By Proposed Decision dated September 6, 1967, the Commission denied this claim for claimant's failure to meet the burden of proof in that he failed to establish ownership of rights and interests in property which was lost as a result of nationalization, expropriation, intervention or other taking by the Government of Cuba.

The claimant having thereafter submitted additional evidence in support of the claim, and the matter having been duly considered, the Commission now finds that the Proposed Decision should be Amended to read as follows:

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$2,588.71, was presented by LUDWIG M. LINZ d/b/a POLYCHROME INTERNATIONAL and is based upon the asserted loss of payment for merchandise shipped to Cuba. Claimant, LUDWIG M. LINZ, has been a national of the United States since his naturalization on December 3, 1945.

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.

The record discloses that claimant, LUDWIG M. LINZ, was conducting or transacting business under the name or designation of POLYCHROME INTERNATIONAL.

The record contains copies of correspondence between POLYCHROME INTERNATIONAL and various banks as well as claimant's own statements, reflecting the following sales of goods by POLYCHROME INTERNATIONAL to consignees in Cuba:

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<u>Consignee</u>	<u>Sale Price</u>	<u>Commission</u>	<u>Balance</u>
Fernandez y Cia.	\$ 653.12	\$ 60.00	\$ 593.12
Gutierrez Noriega y Cia.	259.00	29.00	230.00
P. Fernandez y Cia.	570.00	57.00	513.00
Papelera Amistad, S. A.	411.22	50.85	360.37
Papeleria Kompostela, S. A.	695.47	76.00	619.47

Claimant states that he has not received the above-mentioned 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).

The Commission finds that claimant authorized the payment of various commissions from the above sales and collections in the amount of Two Hundred Seventy-Two Dollars and Eighty-Five Cents (\$272.85) and that these amounts should be deducted from the amount claimed.

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 September 29, 1960 (the day after acknowledgment of payment by the collecting bank) as to \$593.12; on June 4, 1960 (the day after acknowledgment of payment by the collecting bank) as to \$230.00; on January 13, 1960 (the day after payment became due) as to \$513.00; on April 5, 1960 (the day after acknowledgment of payment by the collecting bank) as to \$360.37; and on September 29, 1959 (the effective date of Law 568) as to \$619.47.

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 LUDWIG M. LINZ d/b/a POLYCHROME INTERNATIONAL 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 Two Thousand Three Hundred Fifteen Dollars and Ninety-Six Cents (\$2,315.96) 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 Amended
Proposed Decision of the
Commission

NOV 1 1967

CERTIFICATION

This is a true and correct
copy of the Commission
decision on

12-4-67

the decision
as the final

Edward D. Re

Edward D. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Francis Mascherano
Clerk of the Commission

LaVern R. Dilweg

LaVern R. Dilweg, Commissioner

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).)

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The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

Claimant asserts that he shipped certain merchandise to five consignees in Cuba, that the consignees paid their obligations in Cuban currency to a Cuban bank, that currency exchange was never authorized, and that claimant has been unable to obtain payment for his merchandise. However, except for evidence as to his naturalization, claimant has submitted no documentary evidence in support of his claim.

By Commission letter of July 6, 1966, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act. Thereafter, by letter of October 13, 1966, the Commission again suggested that claimant submit supporting evidence in this matter. However, no evidence in response to this correspondence has been received to date.

On June 6, 1967, claimant was invited to submit any evidence available to him within 45 days from that date, and he was informed, that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. No evidence has since been submitted.

The Commission finds that claimant has not met the burden of proof in that he has failed to establish ownership of rights and interests in property which was lost as a result of nationalization, expropriation, intervention or other taking by the Government of Cuba. Thus, the Commission

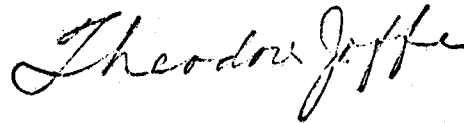
is constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

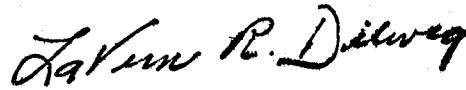
SEP 6 1967



Edward D. Re, Chairman



Theodore Jaffe, Commissioner



LaVern R. Dilweg, Commissioner

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