

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

IN THE MATTER OF THE CLAIM OF

DODGE & SEYMOUR, LTD.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU - 0266

Decision No. CU 270

Counsel for claimant:

Harry Levine, Esq.

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 DODGE & SEYMOUR, LTD. in the amount of \$16,265.00 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 reflects that Markt & Hammacher, Inc. was organized on June 30, 1959 and that on the same day, the name of the corporation was changed to DODGE & SEYMOUR LTD. The record reflects further that between June 30, 1959 and the presentation of the claim to the Commission, more than 50% of the outstanding capital stock was owned by United States nationals. Claimant states that it presently has four shareholders and that all are 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 several letters addressed to claimant including a letter from the First National City Bank of New York, dated July 21, 1966, wherein it is stated that the amount of \$596.48 was collected by its Cuban branch bank in Havana from the consignee Aspuru Y Cia., S. A.; a letter from the Irving Trust Company of New York, dated July 21, 1961 advising that collection in the amount of \$542.00 was made by its Cuban branch in claimant's behalf from the Rachman Electric Company of Havana, Cuba; a letter from the Irving Trust Company of New York, dated July 21, 1961 advising that its Cuban branch collected in claimant's behalf from Herranz & Cia. the amount of \$3,172.48; a letter from the Irving Trust Company of New York, dated May 11, 1960, wherein it advised that its Havana branch bank collected \$851.24 from S. Tuna E. Hijos S.A., Cia.; a letter dated July 20, 1960 from the Irving Trust

Company of New York, wherein it advised that its Cuban branch bank collected \$1,726.16 from Sres. Arturo Perez & Cia.; a letter dated May 5, 1961 from the Irving Trust Company of New York advising that its Cuban branch bank collected \$1,164.66 from Mario Martinez Moya; a letter dated June 12, 1961 from the Irving Trust Company of New York advising that its Havana branch bank collected \$2,886.44 from Motor Auto Co. Ltd; a letter dated May 1, 1961 from the Irving Trust Company of New York, wherein it advised that its Cuban branch bank collected \$306.04 from Pascual & Gomez, S. En C.; a letter dated September 16, 1960 from the First National Bank of Boston, advising that its branch bank collected \$657.46 from Jose Rodriguez Ferreteria; a letter dated July 25, 1966, from the First National Bank of Boston advising that its branch bank collected \$1,990.76 from Ferreteria Orriols, S. A.; two letters dated July 21, 1960, from the First National Bank of Boston, advising that its Cuban branch bank collected \$950.03 and \$685.52 from Alvaro Fernandez Garcia and Mercantil Contramaestre, S. A., respectively; and a letter dated July 22, 1960 from the First National Bank of Boston advising that its Cuban branch bank collected \$735.73 from Telmo Chaves. These accounts amounted to a sale of goods totalling \$16,265.00. All of the letters advised further that the branch banks were awaiting a dollar reimbursement release from the appropriate Cuban exchange authorities. 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 transfers of funds, in this and similar cases, 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).)

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:

February 9, 1960 and October 2, 1959, as to \$596.48 and \$1,990.76, respectively, one day after the consignee paid the local Cuban bank;

July 11, 1961 as to \$542.00;  
July 11, 1961 as to \$3,172.48;  
May 7, 1960 as to \$851.24;  
July 16, 1960 as to \$1,726.16;  
April 18, 1961 as to \$1,164.66;  
June 8, 1961 as to \$2,886.44;  
April 18, 1961 as to \$306.04;  
April 1, 1960 as to \$657.46;  
July 15, 1960 as to \$950.03;  
July 14, 1960 as to \$685.52; and  
July 20, 1960 as to \$735.73;

one day after the collections were acknowledged by the several banks.

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 respective 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 DODGE & SEYMOUR, LTD. 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 Sixteen Thousand Two Hundred Sixty-Five Dollars (\$16,265.00) 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

SEP 20 1967

*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).)

~~This is a true and correct copy of the decision~~  
of the Commission which was entered as the final  
decision on 20 OCT 1967

*Francis Masterson*  
Member of the Commission