

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

IN THE MATTER OF THE CLAIM OF

HARBISON-WALKER REFRACTORIES COMPANY

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -0269

Decision No. CU 78

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$65,739.46 was presented by HARBISON-WALKER REFRACTORIES COMPANY based upon the asserted loss of payment for merchandise shipped to Cuba.

Under Section 503 of the International Claims Settlement Act of 1949, as amended (64 Stat. 12; 69 Stat. 562; 72 Stat. 527; 78 Stat. 1110; 79 Stat. 988) the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. That section 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

(a) . . . 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 Pennsylvania, and that at all times between June 30, 1902 and presentation of this claim on July 22, 1965, 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 99.31% of its 7,690 stockholders were United States nationals, and that .69% of its stockholders were nationals of foreign countries.

The record contains a copy of claimant's invoice No. 185/115/9/6090 of September 15, 1959, reflecting the sale to Cemento Santa Teresa, S.A. of Habana, Cuba, of goods totalling \$4,055.56; freight increased the total to \$4,896.17.

The record also contains the following invoices, reflecting sales to Compania Antillana de Acero, S.A. of Habana, Cuba:

<u>Invoice No.</u>	<u>Date</u>	<u>Amount</u>	<u>Freight</u>	<u>Credit Allowance</u>
105/11/6209	11/25/59	\$6,576.69	\$1,051.65	\$145.36
105/11/6210	11/25/59	5,979.17	1,113.40	129.90
105/11/6211	11/25/59	8,410.39	1,072.03	190.84
120/11/6189	11/25/59	6,035.77	1,066.27	280.71
120/11/6201	11/25/59	4,700.30	1,094.39	213.45
120/11/6188	11/27/59	4,758.27	1,125.22	216.07
165/12/6055	12/8/59	431.16	92.79	14.28
105/12/6209	12/18/59	7,514.18	1,059.34	168.66
105/12/6211	12/18/59	7,831.35	1,083.06	175.83

Claimant states that it has received \$206.63 in dollars with respect to the above invoices. The record further discloses a balance due from Antillana for demurrage charges in the total amount of \$1,382.96.

Additionally, the record contains letters from Cemento Santa Teresa, S.A. and the Pittsburgh National Bank to claimant, in which it is stated that the collection of \$4,896.17 was paid by the consignee (Cemento Santa Teresa, S.A.), and that The First National Bank of Boston (Habana Branch) was still awaiting a dollar reimbursement release from the Exchange Board, a Cuban Government Agency. Other letters, from The Trust Company of Cuba and the Mellon National Bank and Trust Company to claimant, indicate that collections of \$18,780.22, \$24,203.33, \$17,143.44, and \$509.67, were paid by the consignee (Compania Antillana de Acero, S.A.), and that The Trust Company of Cuba was awaiting similar authorization from the Exchange Board. Claimant states that it has not received these 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 January 12, 1960, as to \$4,896.17, on February 17, 1960, as to \$18,780.22, on February 26, 1960, as to \$24,203.33, on March 25, 1960, as to \$17,143.44, and on March 29, 1960, as to \$509.67, the days after the collections were acknowledged by the collecting 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 American Cast Iron Pipe Company, FCSC Claim No. CU-0249.)

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 HARBISON-WALKER REFRACTORIES 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 Sixty-Five Thousand Five Hundred Thirty-Two Dollars and Eighty-Three Cents (\$65,532.83), 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

JUN 28 1967

*Edward D. Jaffe*

Edward D. Jaffe, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*LaVern R. Dilweg*

LaVern R. Dilweg, Commissioner

**CERTIFICATION**  
This is a true and correct copy of the decision of the Commission which was entered as the final decision on JUN 28 1967

*Thomas M. ...*  
Clerk of the Commission

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 upon the expiration of 30 days after such service or receipt of notice, the decision will be entered as the Final Decision of the Commission, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)