

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

IN THE MATTER OF THE CLAIM OF

THE WARNER DANBY CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 0280

Decision No. CU

171

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 WARNER DANBY CORPORATION in the amount of \$2,009.60 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 the State of New York and that all times between 1951 and presentation of this claim on July 26, 1965, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. Claimant states that all of its stockholders are residents of the United States. Evidence was submitted to establish that the majority stockholder owning 60% of the corporate stock was naturalized at Albany, Oregon in 1943. 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 a copy of a letter from the W.M. Anderson Trading Co., S.A. to claimant dated September 29, 1960, wherein the purchase from claimant of three generators was acknowledged. Further, it was also stated therein that the purchase price in the amount of \$1,412.00 was due and owing but that the consignee was awaiting approval, by the Government of Cuba, of its application for dollar exchange. Also, the file contains a letter of the Chase Manhattan Bank of New York, dated January 29, 1960, advising claimant that it had received a letter from its correspondent in Cuba notifying them that it had received collection in the amount of \$597.60 from Maquinarias Lundi, S.A. of Havana, Cuba in behalf of claimant and that it was awaiting approval by the Government of Cuba of its application for dollar exchange. Claimant states that it has never received these 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 Pozzolena 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 January 21, 1960 as to \$597.60, the day after collection, and on September 29, 1959 as to \$1,412.00.

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, as follows:

September 29, 1959 as to \$1,412.00

January 21, 1960 as to \$597.60

CERTIFICATION OF LOSS

The Commission certifies that THE WARNER DANBY CORPORATION 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

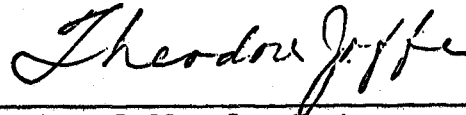
the amount Two Thousand Nine Dollars and Sixty Cents (\$2,009.60) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

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

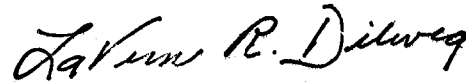
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Edward D. Re, Chairman



Theodore Jaffe, Commissioner

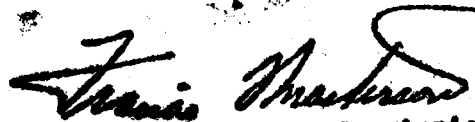


LaVern R. Dilweg, Commissioner

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).)

VERIFICATION

This is a true and correct copy of the decision of the Commission which was entered as the final decision on SEP 25 1967



Clerk of the Commission