

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

IN THE MATTER OF THE CLAIM OF

LILY MILLS COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0295

Decision No. CU - 735

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 LILY MILLS COMPANY, a wholly owned subsidiary of Belding Heminway Company, in the amount of \$57,032.50, and is 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 discloses that claimant has at all times been wholly owned by Belding Heminway Company, Inc., a Delaware corporation. An officer of the parent Belding Heminway Company, Inc., has certified that at all times between August 25, 1960, and the presentation of this claim on July 29, 1965, more than 50% of the outstanding capital stock of the Belding Heminway Company, Inc., has been owned by 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 Belding Heminway Company, Inc., states that less than 1% of its stockholders are residents of foreign countries and assumed to be citizens of those countries.

The record contains copies of commercial letters of credit: No. 81833 of July 21, 1960, issued by the Havana Branch of the First National Bank of Boston, against "Distribuidora Besosa, S.A.," of Havana, Cuba, in the amount of \$12,501.00; and No. 15489 of July 22, 1960, issued by the Banco Continental Cubano and accepted by the Irving Trust Company of New York City, in the amount of \$897.00 against "Productos Textiles, S.A.", of Havana, Cuba. In consideration of such letters of credit, the record discloses that claimant shipped merchandise having a value of \$12,154.93, against letter of credit No. 81833, to Distribuidora Besosa, S.A.; and that merchandise having a value of \$791.77, was shipped to Productos Textiles, S.A. against letter of credit No. 15489. Claimant further states that it never received the United States dollar payment owed by the Cuban consignees.

Additionally, the evidence of record in this claim discloses that the firm of Distribuidora Besosa, S.A., of Havana, Cuba, received certain merchandise on consignment from claimant valued at \$44,085.80.

The record also contains a statement dated October 31, 1959, from claimant to Distribuidora Besosa, S.A., of Havana, Cuba, itemizing merchandise shipped on consignment in the amount of \$44,085.80, to the Cuban consignee. The record discloses that Distribuidora Besosa, S.A., under date of March 8, 1960, acknowledged this debt, initiated efforts to remit this amount to claimant, and filed an application for permission to do so with Banco Continental Cubano, of Havana, Cuba. Claimant states that it has never 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 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 the portion of the claimant's property, sold through the above-mentioned letters of credit, was lost as a result of intervention by the Government of Cuba, and that, in the absence of evidence to the contrary, the loss of payment for the merchandise sold under letters of credit occurred on September 29, 1959, the effective date of Cuban Law 568.

The Commission further finds that the portion of the claimant's merchandise shipped on consignment had a value of \$44,085.80, and that as a result of the Cuban Government's implementation of Law 568, the Cuban consignee, Distribuidora Besosa, S.A. was precluded from making payments to claimant. In the absence of evidence to the contrary, the Commission finds that the loss of payments for the merchandise shipped on consignment occurred on March 8, 1960, the date on which the indebtedness was acknowledged by the consignee.

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 losses occurred, to the date on which provisions are made for the settlement thereof, as follows:

On \$12,154.93 from September 29, 1959

On 791.77 from September 29, 1959

On 44,085.80 from March 8, 1960

CERTIFICATION OF LOSS

The Commission certifies that LILY MILLS 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 Fifty-Seven Thousand Thirty-Two Dollars and Fifty Cents (\$57,032.50), 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

30 NOV 1967

Edward D. Re

Edward D. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

LaVern R. Dilweg

LaVern R. Dilweg, Commissioner

Correct copy of the Decision
has been entered as the Final
Decision on 11/9/67

Travis
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).)