

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

IN THE MATTER OF THE CLAIM OF

HENRY STERN AND COMPANY, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0363

Decision No. CU- 397

AMENDED PROPOSED DECISION

On October 4, 1967, the Commission issued its Proposed Decision in this claim against the Government of Cuba, denying the claim for failure of proof. Claimant corporation objected to the Proposed Decision, and thereafter submitted additional evidence and information in support of this claim. The matter having been reconsidered, it is

ORDERED that the Proposed Decision of the Commission be, and the same is amended to read as follows:

This claim, against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$15,335.01, was presented by HENRY STERN AND COMPANY, INC., 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."

An officer of the claimant corporation has certified that the claimant was organized in New York in July 1953, and that all times between 1954 and presentation of this claim on August 18, 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.

The outstanding stock of claimant corporation is owned by three stockholders, all of whom are nationals of the United States.

The record includes copies of correspondence from banks and a copy of claimant's record of shipments to and collections paid by, various Cuban business firms, listed hereafter as the consignees. This evidence discloses that the purchase price of goods, and accompanying charges for such shipments were, in most instances, paid

by the consignees to local Cuban banks, and that the dollar reimbursement releases or authorization were never granted by Cuban government officials.

There follows hereafter data concerning the shipments made to the aforementioned Cuban consignees, together with the dates on which payments were acknowledged and the date when one unpaid draft was due and payable:

| <u>INVOICE NO. AND AMOUNT</u> | <u>CONSIGNEE</u> | <u>DUE DATE OF UNPAID DRAFTS</u> | <u>DATE OF PAYMENT OR ACKNOWLEDGMENT</u> |
|-----------------------------------|---|--------------------------------------|--|
| 192-26 \$2,496.94 | Pico y Cia. | — | Dec. 13, 1960 |
| 265-1 \$1,380.20 | Cia. Lamparas Futuramas, S.A. | — | June 7, 1960 |
| 97-7 \$1,025.27 | The Independent Electric Company of Cuba, S.A. | — | April 16, 1960 |
| 575-40 \$1,359.04 | Electro Sales Co., Inc. | February 2, 1960 | — |
| 245-28 \$1,509.00 | Marcelino Ponte | — | Jan. 29, 1960 |
| 254-31A \$483.36 | Marcelino Ponte | — | Nov. 27, 1959 |
| 215-82 \$1,450.29 | L. Sosa y Cia. | — | Nov. 11, 1959 |

Claimant states that it has not received any of the funds listed.

The record also includes a statement of accounts due claimant dated June 15, 1959:

| <u>CONSIGNEE</u> | <u>AMOUNT</u> |
|-------------------|---------------|
| Central Electrica | \$1,373.98 |
| Cia. Com. Winston | \$2,395.47 |
| Imp. Comercial | \$2,507.37 |

The above sums, totalling \$6,276.82, had been collected by Mr. Paul Rossell, claimant's agent in Havana. Subsequent advances and payment reduced the amount due to claimant to \$3,954.47, as of June 15, 1959. Claimant makes claim for this amount; states that reimbursement releases were never granted by Cuban authorities; and further 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 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 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 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 losses occurred on the day after payments were made by consignees to Cuban banks, or the day after notification of payment was made to claimant corporation as to the paid items. With respect to the date of loss of the unpaid draft maturing after September 29, 1959, the Commission finds that the loss occurred on the maturity date, February 2, 1960. The Commission further finds that, as to the items collected by claimant's agent in Cuba, the loss occurred on September 29, 1959, the effective date of Law 568.

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 dates 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, as follows:

On \$3,954.47 from September 29, 1959
On \$1,450.29 from November 12, 1959
On \$ 483.36 from November 28, 1959
On \$1,509.00 from January 30, 1960
On \$1,359.04 from February 2, 1960
On \$1,025.27 from April 17, 1960
On \$1,380.20 from June 8, 1960
On \$2,496.94 from December 14, 1960
\$13,658.57

CERTIFICATION OF LOSS

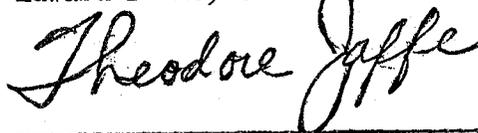
The Commission certifies that HENRY STERN & CO., INC. suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Thirteen Thousand Six Hundred Fifty-Eight Dollars and Fifty-Seven Cents (\$13,658.57) 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

JAN 31 1968



Edward D. Re, Chairman



Theodore Jaffe, 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).)

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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.

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PROPOSED DECISION

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 \$15,335.01, was presented by HENRY STERN & COMPANY, INCORPORATED and is based upon the asserted loss of payment for merchandise shipped to Cuba. Claimant stated that since 1954, more than 50% of its capital stock was held by nationals of the United States. No evidence has been submitted to establish the nationality of the three shareholders in claimant corporation.

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)]⁷, 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:

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Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

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 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 offered evidence in support of its claim for the loss of payment for merchandise shipped to Cuba. However, claimant failed to submit evidence of the U.S. nationality of the corporation, as required by Section 502(1)(B) of the International Claims Settlement Act of 1949, as amended. Accordingly, by Commission letter of July 12, 1966, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act. Thereafter, by letter of January 20, 1967, the Commission made additional suggestions to claimant concerning the submission of supporting evidence in this matter. However, no evidence in response to this correspondence has been received to date.

On June 21, 1967 claimant was invited to submit any evidence available to it within 45 days from that date, and claimant was informed that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. The president of claimant corporation has since advised the Commission that he will submit proof of citizenship "...if there is a prospect of payment of claims...."

The Commission finds that claimant has not met the burden of proof in that it has failed to establish ownership, by a national or nationals of the United States, in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this claim is 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

OCT 4 1967



Edward D. Re, Chairman



Theodore Jaffe, Commissioner



LaVern R. Dilweg, Commissioner

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