

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

IN THE MATTER OF THE CLAIM OF

JOSEPH H. KOLMAS D/B/A
GENERAL AUTOMOTIVE EXPORT CO.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0422

Decision No. CU 222

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 JOSEPH H. KOLMAS D/B/A GENERAL AUTOMOTIVE EXPORT CO. in the amount of \$1,114.40 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. 998 (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 provided:

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.

The record includes a copy of a Certificate issued by the County Court of Cook County; state of Illinois which indicates that the claimant, JOSEPH H. KOLMAS, is authorized to conduct an importing, exporting and sales company under the name of GENERAL AUTOMOTIVE EXPORT CO. JOSEPH H. KOLMAS has been a national of the United States since his birth in Milwaukee, Wisconsin on December 1, 1915.

The record contains a copy of claimant's invoice No. 7335 of November 9, 1959 reflecting the sale to Jose Saladrigas of Havana, Cuba, of goods totalling \$853.79 less freight allowance, bringing the total to \$837.91

The record further contains a letter to claimant dated June 8, 1960 from his collecting bank, The First National Bank of Chicago, stating that the above mentioned buyer, Jose Saladrigas, had paid \$837.91 to the Banco Continental Cubano, Havana and that this sum would be remitted to The First National Bank of Chicago as soon as permission was granted from the Cuban exchange control 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 June 3, 1960 as to \$837.91, the day after collection was made.

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 date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that JOSEPH H. KOLMAS D/B/A GENERAL AUTOMOTIVE EXPORT CO. 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 \$837.91 with interest thereon at 6% per annum from the date of loss to the date of settlement.

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

AUG 23 1967

Edward D. Re
Edward D. Re, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

LaVern R. Dilweg
LaVern R. Dilweg, Commissioner

This is a true and correct copy of the decision of the Commission entered as the final decision on 2-5 SEP 1967

Francis 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, 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. 412-13 (1967).)