

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

IN THE MATTER OF THE CLAIM OF

HALE FIRE PUMP COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0430

Decision No. CU

00059

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$944.00, was presented by the HALE FIRE PUMP COMPANY based upon a debt assertedly due from an enterprise nationalized by the Government of 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 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."

Claimant corporation has submitted a copy of Letters Patent showing that the claimant was organized and incorporated in the Commonwealth of Pennsylvania on July 11, 1917. The Secretary of the claimant corporation has certified that at all times between July 11, 1917 and presentation of this claim on September 15, 1965, 100 percent 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)(A) of the Act.

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.

The record contains copy of claimant's invoice No. E-29244 of January 2, 1958 reflecting the shipment on consignment to Liquid Carbonic Corporation of Cuba, S.A. of Havana, Cuba, of one Model HPDW skid mounted fire pumping unit with 2 1/2 inch threaded suction tube and 1 1/2 inch discharge valve, both NST, Pump No. 26329, Engine No. 2451847, with a value of \$1,222.00; copy of invoice No. 61560 F from West Palm Beach Terminal Company in the amount of \$103.67 for Ocean Freight and Charges on the aforementioned unit, issued on January 18, 1958; and copy of invoice No. 29856 of April 10, 1958 in the amount of \$22.85 for shipment on

consignment of a 30 gallon tank with two straps for mounting to Liquid Carbonic Corporation of Cuba, S.A. The record also contains copies of Credit Memo No. ECM-415-2 of April 15, 1958 for \$20.50, Credit Memo No. ECM-415-3 of May 25, 1960 for \$22.85, and Credit Memo No. ECM-415-4 of May 25, 1960 for \$257.50, giving a Final adjusted Net FOB balance in claimant's favor of \$944.00. The transaction is summarized as follows:

Charges per invoice #E-29244 1/2/58	\$1,222.00
Charges per invoice #61560 - West Palm Beach Terminal Company, 1/18/58	<u>103.67</u>
Total C&F Habana, Cuba -	1,325.67
Less payment per Liquid Carbonic Corporation of Cuba, Habana, 2/17/58	<u>103.67</u>
Net FOB Conshohocken, Penna., U.S.A.	1,222.00
Charges per invoice #29856 4/10/58	<u>22.85</u>
Total Net FOB Conshohocken, Penna., U.S.A.	1,244.85
Less credit #ECM-415-2 4-15-58	<u>20.50</u>
Adjusted Net FOB Conshohocken, Penna., U.S.A.	1,224.35
Less credit #ECM-415-3 5/25/60	<u>22.85</u>
Re-adjusted Net FOB Conshohocken, Penna., U.S.A.	1,201.50
Less credit #ECM-415-4 5/25/60	<u>257.50</u>
Final adjusted Net FOB Conshohocken, Penna., U.S.A.	\$ 944.00

The consignee Liquid Carbonic Corporation of Cuba, S.A. was nationalized by the Government of Cuba before the invoices on the subject pumps, shipped to the consignee on open account and sight draft terms, had been paid to claimant, and claimant corporation asserts a claim for the outstanding invoice value of the merchandise, stating that the Cuban National Bank has refused to release dollar exchange in payment of the Cuban company's asserted debt to claimant, and that existing Cuban Government Regulations do not allow return of the merchandise to claimant in the United States. The record contains a letter of May 15, 1961 from the General Dynamics Corporation, parent company of the Liquid Carbonic Corporation of Cuba, S.A., in which it is stated that, while a purchase order for the merchandise was issued by the Cuban company in 1957, such equipment was never actually purchased from the claimant but was accepted merely on a consignment basis; that the order had not yet been paid for by the Cuban company in 1960 because the merchandise had not yet been sold in claimant's behalf. The record also contains a letter of May 18, 1961 from claimant corporation's Export Department in which that office stated that the

subject pumping unit was still in the stock of the Liquid Carbonic Corporation of Cuba, S.A., at the time that that organization was nationalized by the Cuban Government. Accordingly, it appears that claimant retained its ownership interest in this equipment at the time of its taking by the Cuban Government, and that its interest is greater than that of a mere creditor.

On October 24, 1960, the Government of Cuba published in its Official Gazette, Resolution 3, (pursuant to Public Law 851), which listed as nationalized the Liquid Carbonic Corporation of Cuba. (See the Claim of The Berwind-White Coal Mining Company, Claim No. CU-0538.) The Commission finds that the aforementioned Model HPDW skid mounted fire pumping unit with accessories was in the stock of the Liquid Carbonic Corporation of Cuba, S.A., at the time of the latter's nationalization, that the subject pumping unit with accessories was taken by the Government of Cuba at that time, and that such personal property was then owned by claimant HALE FIRE PUMP COMPANY.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value or cost of replacement.

Claimant has stated that it suffered a loss in the amount of \$944.00 and has submitted in corroboration of its statement the previously-mentioned copies of sales invoices and credit memorandums, which show a net unpaid value of \$944.00 for the property. Accordingly, it is concluded that claimant suffered a loss in the amount of \$944.00 within the meaning of Title V of the Act as a result of the taking of its property by the Government of Cuba as of October 24, 1960.

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 on the amount of \$944.00 from October 24, 1960 to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that HALE FIRE PUMP 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 Nine Hundred Forty-Four Dollars (\$944.00) with interest thereon at 6% per annum from October 24, 1960 to the date of settlement.

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

JUN 14 1967

CERTIFICATION

is a true and correct copy of the decision
of the Commission which was entered as the final
decision on JUL 14 1967

Francis Macdonald
Clerk of the Commission

Edward D. R. Chairman

Edward D. R. Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

LaVern R. Dilweg

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 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).)