

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

IN THE MATTER OF THE CLAIM OF

JOSEPH JAMES PLESSER

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0445

Decision No. CU 262

Counsel for claimant:

Miller & Zimet
Attorneys at Law

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$5,168.53, was presented by JOSEPH JAMES PLESSER based upon the asserted loss of payment for merchandise shipped to Cuba. Claimant has been a national of the United States since his birth on October 9, 1917.

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, any 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 a certified copy of the certificate of claimant doing business under the name of Hamos Company which was the name used by claimant in making shipments to Cuban enterprises. The record also includes evidence that shipments were made to enterprises in Cuba, for which drafts were forwarded and had been paid to the Cuban collecting banks as listed below:

<u>Debtor</u>	<u>Draft Amount</u>	<u>Date of Information of Payment</u>	<u>Collecting Bank</u>
Godoy and Cia.	\$528.07	January, 1960	First National Bank of Boston
Herranz y Cia.	1,071.70	March 17, 1960	Trust Company of Cuba
Rivas y Cia.	206.56	November 18, 1959	Banco Gelats, Havana
Miquel y Bacardi S.A.	137.54 974.38	February 16, 1960 November 23, 1960	Royal Bank of Canada
Justo Almodovar	386.40	December 2, 1959	Banco Gelats, Havana
Importadora Distr. "Idesa"	236.24	February 29, 1960	Banco Continental Cubano
Berenthal S.A.	764.68	August 22, 1960	Trust Company of Cuba
Cia Riera Toro & Van Twistern S.A.	862.96	September 13, 1960	Royal Bank of Canada
Total	<u>\$5,168.53</u>		

Claimant was further informed that the Cuban banks were awaiting authorization to effect reimbursement of the funds received. Claimant states that he 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 In the Matter of 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 losses occurred as follows:

on February 1, 1960 as to \$	528.07
March 18, 1960	1,071.70
November 19, 1959	206.56
February 17, 1960	137.54
November 24, 1960	974.38
December 3, 1959	386.40
March 1, 1960	236.24
August 23, 1960	764.68
September 14, 1960	862.96

the dates being the days after payments were received or the collections acknowledged by the collecting banks.

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 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,

CERTIFICATION OF LOSS

The Commission certifies that JOSEPH JAMES PLESSER 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 Five Thousand One Hundred Sixty-Eight Dollars and Fifty-Three Cents (\$5,168.53), 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

SEP 6 1967

Edward D. Re

Edward D. Re, 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, 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).)

CERTIFICATION

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on 1 OCT 1967

Francis M. ...
Clerk of the Commission