

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

IN THE MATTER OF THE CLAIM OF

ANTIQUÉ AUTO COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0453

Decision No. CU -0628

Counsel for claimant:

Roy S. F. Angle, Esq.

AMENDED PROPOSED DECISION

This claim was originally filed by Alice Naomi Barnhart, and was denied for failure to sustain the burden of proof under date of November 15, 1967.

Subsequently, supporting evidence was submitted which established, among other things, that the proper party claimant was ANTIQUÉ AUTO COMPANY, of which corporation the original claimant is President. Accordingly, ANTIQUÉ AUTO COMPANY is substituted as claimant herein.

Upon consideration of the entire record, it is

ORDERED that the Proposed Decision be amended to read as follows:

Section 502(1)(B) of the Act defines the term "national of the United States" as 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 was incorporated under the laws of Pennsylvania and that all of its outstanding capital stock was owned by nationals of the United States at all pertinent times. The Commission holds that ANTIQUÉ AUTO COMPANY is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The evidence establishes that by invoice No. 102, dated December 19, 1959, claimant shipped certain merchandise amounting to \$2,631.37 to a Cuban customer. It further appears from the record that the merchandise was received in Cuba. Claimant states that it has not received payment on account of the foregoing transaction.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter, the Cuban Government effectively precluded not only transfer of funds to creditors abroad, but also payment to 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 in 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 Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

Accordingly, the Commission finds that the amount due from the Cuban consignee in this case 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 January 15, 1960.

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 Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

The following certification of loss will be entered and in all other respects the Proposed Decision is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that ANTIQUE AUTO 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 Two Thousand Six Hundred Thirty-One Dollars and Thirty-Seven Cents (\$2,631.37) with interest thereon at 6% per annum from January 15, 1960 to the date of settlement.

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

NOV 6 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

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 Amended 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).)

CU-0453

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

IN THE MATTER OF THE CLAIM OF

ALICE NAOMI BARNHART

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0453

Decision No. CU

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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 \$2,631.37, was presented by ALICE NAOMI BARNHART and is based upon the asserted loss of payment for merchandise shipped to Cuba. Claimant stated that she has been a national of the United States since her birth in the United States.

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 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.

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).)

This claim is based upon the loss of payment for three antique autos shipped to Cuba by the Antique Auto Company. No evidence has been submitted to establish this claim. By Commission letter of July 14, 1966, claimant was advised, as to the type of evidence proper for submission to establish this claim under the Act. However, no evidence in response to this correspondence has been received to date. On September 15, 1967 the Commission made additional suggestions to claimant concerning the submission of supporting evidence and she was also advised that absent such evidence within 45 days from that date it might become necessary to determine the claim on the basis of the existing record. No evidence has since been submitted.

The Commission finds that claimant has not met the burden of proof in that she has failed to establish ownership by a national of the United States of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission

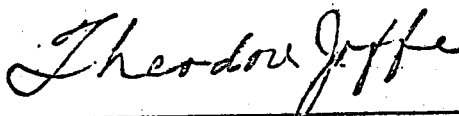
is constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

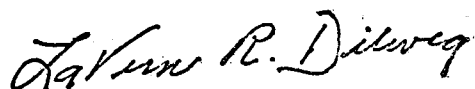
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Edward D. Re, Chairman



Theodore Jaffe, Commissioner



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).)

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