

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

IN THE MATTER OF THE CLAIM OF

FRANK J. BITZ, JR. and
FRANK J. BITZ, III, DOING
BUSINESS AS FRANK BITZ
WHOLESALE MEATS

Claim No. CU-0466

Decision No. CU 727

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

Norman Somberg, Esq.

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 \$5,341.95, was presented by FRANK J. BITZ, JR. and FRANK J. BITZ, III, and is based upon the asserted loss of payment for merchandise shipped to Cuba. Claimants have been nationals of the United States since 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. 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

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.

The record contains copies of claimants' export invoices, purchase orders and air way bills reflecting the sale and shipment of goods to the Hotel Nacional de Cuba, Havana, Cuba. The invoices are by number, date, and amount as follows:

<u>Invoice No.</u>	<u>Date</u>	<u>Amount</u>
27519	February 26, 1959	\$1,459.03
27898	March 10, 1959	1,081.10
28180	March 23, 1959	1,223.33
28643	April 10, 1959	1,493.08
29005	April 28, 1959	606.45
29477	May 26, 1959	2,193.00
29953	June 26, 1959	2,861.40
30555	August 4, 1959	1,389.20
30556	August 4, 1959	1,091.35

The record also contains a copy of claimants' statement of account with Hotel Nacional de Cuba. This statement lists each of the above items by date, invoice number, and amount. The balance stated as of August 4, 1959, is \$7,534.95 and a subsequent payment of \$2,193.00 is credited against this amount. Accordingly, claimants have asserted their claim herein for \$5,341.95. They state that they have 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 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 claimants 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; and the Claim of Etna Pozzolana Corporation, FCSC Claim No. CU-0049).

Accordingly, in the instant claim the Commission finds that the property of claimants 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 September 29, 1959, the date when Cuban Law 568 was published, as to \$5,341.95.

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 the Claim of Lisle Corporation, FCSC Claim No. CU-0644).

Accordingly, the Commission concludes that the amount of the loss sustained by claimants shall be increased by interest thereon at the rate of 6% per annum from September 29, 1959, the date on which the loss occurred, to the date on which provisions are made for the settlement of the claim.

CERTIFICATION OF LOSS

The Commission certifies that FRANK J. BITZ, JR. and FRANK J. BITZ, III, DOING BUSINESS AS FRANK BITZ WHOLESALE MEATS, 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 Three Hundred Forty-One Dollars and Ninety-Five Cents (\$5,341.95) 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

30 NOV 1967

CERTIFICATION
THIS IS A TRUE AND CORRECT COPY OF THE
OF THE COMMISSION AS ENTERED IN THE
COMMISSION ON JULY 5 1967

Wanda M. ...
CLERK OF THE COMMISSION

Edward D. Re

Edward D. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

LaVern R. Dilweg

LaVern R. Dilweg, 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 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).)