

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

IN THE MATTER OF THE CLAIM OF

HOBART LABORATORIES, INC.

Claim No. CU-0467

Decision No. CU 304

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

James F. Landgren, Esq.

PROPOSED DECISION

APD follows

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 \$1,937.10, was presented by HOBART LABORATORIES, INC. and is 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. 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.

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."

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).)

By Commission letter of June 19, 1967, it was suggested, inter alia, that claimant submit a sworn statement from one of its principal officers, identifying for the period January 22, 1960 to September 27, 1965, those stockholders and the number of shares held by them totalling 50% of the capital stock of claimant corporation. Although claimant subsequently submitted additional documentation in response to the aforementioned letter, the evidence herein considered has not been submitted.

By letter of July 26, 1967, claimant was again invited to submit the aforementioned sworn statement; and claimant was informed, that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. No evidence has since been submitted.

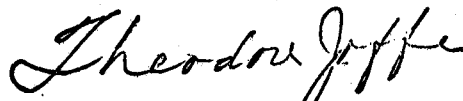
The Commission finds that claimant has not met the burden of proof in that it has failed to establish ownership by a national of the United States of rights and interests in property which was lost as a result of the intervention, nationalization, expropriation or other taking of such property by the 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

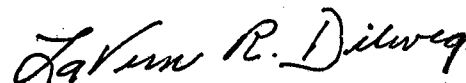
OCT 4 1967



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).)

CU-0467

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

IN THE MATTER OF THE CLAIM OF

HOBART LABORATORIES, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 0467

Decision No. CU 384

Counsel for claimant:

James F. Landgren, Esq.

AMENDED PROPOSED DECISION

By Proposed Decision dated October 4, 1967, the Commission denied this claim based on claimant's failure to meet the burden of proof in that it failed to establish ownership by a national of the United States of rights and interests in property which was lost as a result of the intervention, nationalization, expropriation or other taking of such property by the Government of Cuba.

The claimant having thereafter submitted additional evidence in support of the claim, and the matter having been duly considered, the Proposed Decision is hereby amended to read as follows:

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by HOBART LABORATORIES, INC. in the amount of \$1,937.10 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. 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 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."

The record discloses that claimant corporation was organized in the State of Oklahoma on February 4, 1905, and that all times between January 5, 1954 and presentation of this claim on September 27, 1965, more than 50% 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)(B) of the Act.

Claimant states that all of its stockholders are citizens of the United States.

The record contains a copy of claimant's invoice No. 5336 of October 21, 1959, reflecting the sale to Drogueria La Comercial of Havana, Cuba, of goods totalling \$1,112.70, and a copy of its invoice No. 10518 of October 5, 1960, reflecting the sale to Drogueria de Johnson of Havana, Cuba, of goods totalling \$824.40.

CU-0467

Additionally, the record includes a letter of January 22, 1960 from the Banco de los Detallistas, in which it is stated that the collection of \$1,112.70 was paid by the consignee, Drogueria La Comercial, and that the Bank was awaiting a dollar reimbursement release from the Currency Stabilization Fund, a Cuban Government agency; and another letter dated October 27, 1960 from the Banco Gelats, stating that the collection of \$824.40 was paid by the consignee, Drogueria de Johnson, and that the Bank was awaiting similar authorization from the National Bank of Cuba. 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 January 23, 1960 as to \$1,112.70, and on October 28, 1960 as to \$824.40, the days after the collections were acknowledged by the collecting banks.

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).

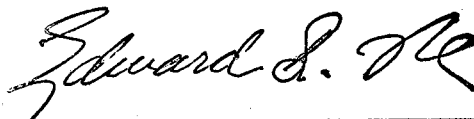
Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the dates on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

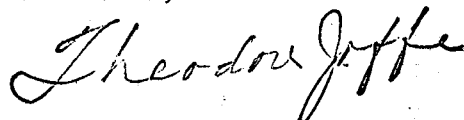
The Commission certifies that HOBART LABORATORIES, INC. suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Thousand Nine Hundred Thirty-Seven Dollars and Ten Cents (\$1,937.10), 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 Amended
Proposed Decision of the
Commission

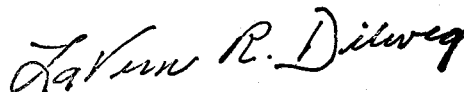
NOV 15 1967



Edward D. Re, Chairman



Theodore Jaffe, Commissioner



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).)