

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

IN THE MATTER OF THE CLAIM OF

GEORGE BIEDERMANN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. **CU**-0492

Decision No. **CU**

891

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by GEORGE BIEDERMANN in the amount of \$8,432.80 based upon the asserted loss of payment for merchandise shipped to Cuba. Claimant has been a national of the United States since his naturalization in New York, New York on January 16, 1933.

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."

This claim accrued to the Western Atlas Corporation, a New York corporation whose sole shareholders were the claimant, GEORGE BIEDERMANN and Emma S. Biedermann, a United States national since her naturalization on June 28, 1935, and remained the property of that corporation until its assets were sold on February 10, 1962, at which time the accounts receivable were retained by the shareholders and later assigned to the claimant. The name of the corporation was then changed to Acme International Corporation and subsequently dissolved.

The record contains copies of correspondence from collecting banks in Cuba to the Western Atlas Corporation indicating that drafts drawn to cover the following invoices were paid in local currency by the respective consignees on the indicated dates, and that the banks were awaiting a dollar reimbursement release from the Banco Nacional De Cuba, a Cuban Government agency:

<u>Invoice</u>	<u>Consignee</u>	<u>Amount</u>	<u>Date Paid</u>
10764-7944A	Guerra y Pinera	\$ 338.72	December 16, 1959
10764-7944B	Guerra y Pinera	338.71	June 7, 1960
10952-8072	Jose Saladrigas	2,625.35	January 14, 1960
10962-8057	Importadora Del Campo, S.A.	406.74	May 21, 1960
11076-8194	Otero y Hermano	472.64	February 12, 1960
11076-8192A	Otero y Hermano	472.64	March 23, 1960
11076-8194B	Otero y Hermano	472.64	April 29, 1960
11116-8189	Alonso y Cia.	680.01	April 10, 1961

Additionally, the record contains a copy of a letter from Banco Pujol to Western Atlas Corporation of October 9, 1959 indicating that an additional draft drawn on Jose Saladrigas to cover invoice 10952-8072 in the amount of \$2,625.35 would mature on January 6, 1960 and that the drawee promised to pay it in the course of a few days.

Claimant states that he has not received any of the above 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 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; and the Claim of Etna Pozzolana Corporation, FCSC Claim No. CU-0049).

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:

<u>On</u>	<u>As To</u>
December 17, 1959	\$ 338.72,
January 7, 1960	2,625.35,
January 15, 1960	2,625.35,
February 13, 1960	472.64,
March 24, 1960	472.64,
April 30, 1960	472.64,
May 22, 1960	406.74,
June 8, 1960	338.71,
April 11, 1961	680.01,

the days following acknowledgment by the collecting banks of payment in local currency, except for the \$2,625.35 item of January 7, 1960, which date is the day following maturity of the draft.

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

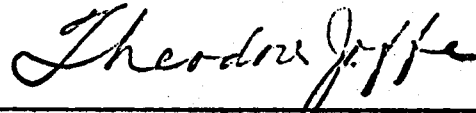
The Commission certifies that GEORGE BIEDERMANN suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Eight Thousand Four Hundred Thirty-Two Dollars and Eighty Cents (\$8,432.80) 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

JAN 10 1968



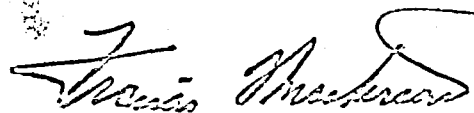
Edward D. Re, Chairman



Theodore Jaffe, Commissioner

UNITED STATES GOVERNMENT

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on FEB 12 1968



Clerk of the Commission

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).)

CU- 0492