

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

IN THE MATTER OF THE CLAIM OF

MARVEL FLUORESCENT MANUFACTURING CO., INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1502

Decision No. CU +387

AMENDED PROPOSED DECISION

By Proposed Decision entered on October 4, 1967, this claim based upon the loss of payment for merchandise shipped to Cuba, was denied for claimant's failure to meet the burden of proof.

On October 11, 1962 claimant presented new evidence on this claim warranting reconsideration of the Commission's findings. Based upon the evidence now of record, the Commission finds that the Proposed Decision should be and 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 MARVEL FLUORESCENT MANUFACTURING CO., INC. in the amount of \$12,936.27 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 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."

An officer of the claimant corporation has certified that the claimant was organized in New Jersey and that at all times between January 1946 and presentation of this claim on April 14, 1967, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. The claimant corporation is presently owned by Martin Siegal and Arthur Siegal, United States nationals since their birth in the United States.

The record contains a copy of claimant's business records dated November 7, 1960, reflecting the sale of goods to various consignees in Cuba as follows:

<u>Consignee</u>	<u>Date of Shipment</u>	<u>Amount Owed By Consignee</u>
Cia Comercial Winston	September 9, 1959	\$2,457.50
Comercial Electrica Cubana	September 9, 1959 as to \$579.50 August 30, 1960 as to \$569.50	1,149.00
Independent Electric	September 2, 1959 as to \$1,289.17 November 10, 1959 as to \$1,228.50	2,517.67
B. Fernandez	October 26, 1959 as to \$1,159.00 June 8, 1960 as to \$1,159.00	2,318.00
Importadora Commercial De Cuba	August 3, 1960	447.10
Jose Martinez	February 8, 1960	736.95
Parces y Hno	November 2, 1960	409.70
Radio Azcue	August 3, 1960	894.20
Vincente Rivera	March 4, 1959 as to \$222.40 September 9, 1959 as to \$384.65	607.05
E. Sanchez	November 18, 1959	499.80
R. Neira	May 11, 1959	569.50
P. I. Zayas	August 3, 1959	329.80

Claimant states 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 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 claimants' 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 September 29, 1959 as to \$791.90, the date Cuban Law 568 became effective and

<u>ON</u>	<u>AS TO</u>
November 3, 1959	\$ 329.80
December 2, 1959	1,289.17
December 9, 1959	964.15
January 9, 1959	2,457.50
January 26, 1960	1,159.00
February 10, 1960	1,228.50
February 11, 1960	409.70
February 18, 1960	499.80
May 8, 1960	736.95
September 8, 1960	1,159.00
November 3, 1960	1,341.30
November 30, 1960	569.50

the dates that payment became due.

The Commission has decided that in certification on 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 date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that MARVEL FLUORESCENT MANUFACTURING CO. 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 Twelve Thousand Nine Hundred Thirty-Six Dollars and Twenty-Seven Cents (\$12,936.27) 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

NOV 15 1967

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).)

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

IN THE MATTER OF THE CLAIM OF

MARVEL FLUORESCENT MANUFACTURING CO., INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 1502

Decision No. CU 387

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 \$12,936.27, was presented by MARVEL FLUORESCENT MANUFACTURING CO., 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 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 on the alleged loss of payment for fluorescent starters shipped on sight drafts to various consignees in Cuba.

By Commission letter of June 3, 1967, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act. On July 13, 1967, claimant was invited to submit any evidence available to him within 45 days from that date, and he was informed, that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. In response to this letter claimant submitted a copy of a list dated November 7, 1960, showing claimant's open accounts and birth certificates of Arthur Siegal and Martin Siegal, the owners of the claimant corporation on the date of presentation of this claim.

By Commission letter dated August 25, 1967, claimant was again advised of the additional evidence necessary to establish this claim and was told that absent such evidence within 20 days from the date of the Commission's letter it might become necessary to determine the claim on the basis of the existing record. No evidence has since been submitted.

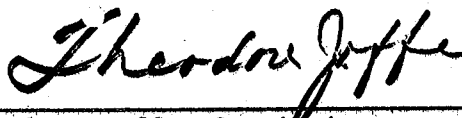
The Commission finds that claimant has not met the burden of proof in that it has failed to establish ownership of rights and interests in property which was nationalized, appropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby 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

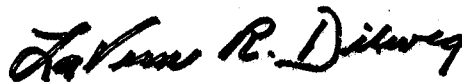
OCT 4 1967



Edward D. Re, Chairman



Theodore Jaffe, Commissioner



LaVern R. Dilweg, Commissioner

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