

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

IN THE MATTER OF THE CLAIM OF

EVANS CHEMETICS, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 2512

Decision No. CU

779

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 EVANS CHEMETICS, INC. in the amount of \$9,248.21 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."

An officer of the claimant corporation has certified that the claimant was organized in the State of New York and that at all times between February, 1940 and the presentation of this claim on April 27, 1967, 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 substantially 100% of the outstanding capital stock of all classes or of the other beneficial interest in the corporation is owned directly or indirectly by persons who are United States nationals.

The record contains a copy of claimant's invoices for merchandise sent to the following consignees:

<u>CONSIGNEE</u>	<u>INVOICE NO.</u>	<u>INVOICE DATE</u>	<u>AMOUNT</u>
Casa Turull	3204	September 15, 1959	\$ 540.00
Jose Luis Mendez	3614	November 2, 1959	717.60
Cia Interamericana De Cosmeticos S.A.	5908	August 19, 1960	1,414.40
Rubio Y. Mirandez	6159	September 19, 1960	3,598.00
Cia Thomas F. Turull S.A.	6169	September 20, 1960	2,664.05
Continental Beauty Supply Corp.	6412	October 18, 1960	1,764.00

The sum of the above invoices less various credits for commissions due and overcharges equals \$9,248.21, the amount of the claim. All of the above consignees are located in Havana, Cuba.

Additionally, the record includes letters from The First National City Bank of New York, to the claimant, advising that the local Cuban bank reported that the collections were paid by the consignees and that it was still awaiting a dollar reimbursement release. The letters are as follows:

<u>CONSIGNEE</u>	<u>DATE OF LETTER</u>	<u>AMOUNT</u>
Rubio Y Mirandez	October 10, 1960	\$3,950.91
Continental Beauty Supply Corp.	November 17, 1960	1,743.26

Also, the record includes a letter from Manufacturers Trust Company, dated June 29, 1961, advising the claimant that Jose Luis Mendez, the consignee, has deposited value in provisional settlement of the collection. Claimant states that it has not received any of 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 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 losses occurred as follows:

<u>DATE OF LOSS</u>		<u>AMOUNT OF LOSS</u>
October 15, 1959	(30 days after the merchandise was shipped)	\$ 311.63
September 19, 1960	(30 days after the merchandise was shipped)	1,414.40
October 5, 1960	(The day after the local Cuban bank acknowledged the collection)	3,598.00
October 20, 1960	(30 days after the merchandise was shipped)	1,537.08
November 10, 1960	(The day after the local Cuban bank acknowledged the collection)	1,764.00
June 30, 1961	(The day after the U.S. bank acknowledged that deposit had been made by the consignee)	623.10

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 losses occurred, to the date on which provisions are made for the settlement thereof, as follows:

<u>DATE OF LOSS</u>	<u>AMOUNT OF LOSS</u>
October 15, 1959	\$ 311.63
September 19, 1960	1,414.40
October 5, 1960	3,598.00
October 20, 1960	1,537.08
November 10, 1960	1,764.00
June 30, 1961	623.10

CERTIFICATION OF LOSS

The Commission certifies that EVANS CHEMETICS, 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 Nine Thousand Two Hundred Forty-Eight Dollars and Twenty-One Cents (\$9,248.21) 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

6 DEC 1967

Edward D. Re
Edward D. Re, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

LaVern R. Dilweg
LaVern R. Dilweg, Commissioner

Francis M. ...
CLERK OF THE COMMISSION

CERTIFICATION
I have read a true and correct copy of the
of the Commission which was submitted to the
Commission on 11/29/67

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).)