

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

IN THE MATTER OF THE CLAIM OF

ALMAC SHIPPING COMPANY, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2640

Decision No. CU

1960

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 the ALMAC SHIPPING COMPANY, INC. in the amount of \$12,153.78 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)(B) of the Act defines the term "national of the United States" as 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 on March 24, 1954, and that at all times between 1954 and 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.

All of claimant's stockholders are nationals of the United States.

The record includes copies of correspondence from banks, copies of invoices, and other data concerning shipments of merchandise to Cuban business firms, listed hereafter as the consignees. This evidence discloses that the purchase price of the goods and accompanying charges for such shipments were, in many instances, paid by the consignees to local Cuban banks; and that the dollar reimbursement releases or authorizations were never granted by the Cuban governmental officials. Other drafts for shipments made by claimant were not paid to the collecting banks by the consignees. Claimant states that it has not received any of the funds for such shipments.

There follows hereafter data concerning the shipments made to Cuban consignees, including due dates or date of payment to bank. The listed amounts are net after adjustment or credit:

<u>CONSIGNEE</u>	<u>AMOUNT</u>	<u>DUE DATE OR DATE OF ADVICE OF PAYMENT</u>
Ensambladora Refri-aire Cubana, S.A.	\$ 8,609.64	January 12, 1962
Ensambladora Refri-aire Cubana, S.A.	197.60	March 14, 1961
Gloria Jiminez	382.05	December 2, 1959
Gloria Jiminez	853.53	March 22, 1960
Gloria Jiminez	42.61	August 8, 1960
Drogueria Sarra	49.64	October 19, 1960
Drogueria Sarra	131.23	October 16, 1960
Drogueria Sarra	14.12	October 20, 1960
Drogueria Sarra	11.00	August 1, 1960
Drogueria Sarra	55.27	October 28, 1960
Drogueria Sarra	69.57	November 6, 1960
Drogueria Sarra	46.12	November 26, 1960
Cia Importadora Superior S.A.	726.14	December 8, 1960
Importadoro Nelmar S.A.	965.26	April 11, 1959
Total:	<u>\$12,153.78</u>	

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 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 Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966].)

Accordingly, in the instant claimant, the Commission finds that the subject accounts receivable were lost as a result of intervention by the Government of Cuba, and that in the absence of evidence to the contrary, such losses occurred:

<u>On</u>	<u>As to</u>
September 29, 1959	\$ 9,955.26
December 2, 1959	382.05
March 22, 1960	853.53
August 1, 1960	11.00
August 8, 1960	42.61
October 16, 1960	131.23
October 19, 1960	49.64
October 20, 1960	14.12
October 28, 1960	55.27
November 6, 1960	69.57
November 26, 1960	46.12
December 8, 1960	726.14
March 14, 1961	197.60
January 12, 1962	<u>8,609.64</u>
	\$12,153.78

The dates of loss are the date of publication of Law 568 for all accounts due prior to September 29, 1959 and the dates payments were due or advice of payment made.

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 Claim of Lisle Corporation, 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 ALMAC SHIPPING COMPANY, 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 One Hundred Fifty-Three Dollars and Seventy-Eight Cents (\$12,153.78) 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

JUN 13 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, 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).)