

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

IN THE MATTER OF THE CLAIM OF

NATIONAL LEAD COMPANY

Claim No. CU - 2743

Decision No. CU 816

Under the International Claims Settlement
Act of 1949, as amended

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 NATIONAL LEAD COMPANY in the amount of \$6,534.18 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 New Jersey and that at all times between December 8, 1892 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 on the date of presentation of this claim, 100% of its outstanding capital stock of all classes was held exclusively by United States nationals.

The record contains a copy of claimant's invoice No. E-630 of August 6, 1959, reflecting the sale to Pinturas Kli-Per, S.A. of Havana, Cuba, of goods totalling \$14.25. In addition, the record contains a copy of claimant's Accounts Receivable ledger sheet for Consolidated Railroads of Cuba, indicating sales to this Cuban entity on June 8, 1959, June 15, 1959, and October 13, 1959. The ledger shows an outstanding balance due as of March 28, 1960 of \$5,163.37.

Claimant has also submitted copies of invoices evidencing sales to Union Commercial de Cuba, S.A., of Havana, Cuba. Additionally, the record contains a copy of a letter from the Morgan Guaranty Trust Company of New York to the claimant, dated April 29, 1960, advising that a draft for \$673.33 on Union Commercial de Cuba, S.A. was collected on December 11, 1959, and that negotiations were continuing to obtain a monetary reimbursement permit from the Banco Nacional de Cuba, Currency Stabilization Fund to

forward said funds. Another letter dated April 6, 1960 from the Morgan Guaranty Trust Company of New York advises the claimant that their draft for \$682.23 drawn on the same consignee as above had also been collected and that a reimbursement authorization had been applied for. By letter dated May 24, 1960, the claimant was advised by Consolidated Railroads of Cuba that they had filed with the National Bank of Cuba on April 29, 1960 for an authorization to remit dollars in payment of outstanding invoices to the claimant. The 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 the 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 the following dates:

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October 7, 1959	(the day after the draft payment was due)	\$ 14.25
December 12, 1959	(the day after the item was collected)	673.33
December 29, 1959	(the day after the local Cuban bank informed the United States bank that a deposit in local currency had been made)	683.23
April 30, 1960	(the day after the consignee filed with the National Bank of Cuba a request for authorization to remit dollars to the claimant)	5,163.37

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.

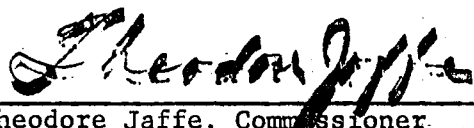
CERTIFICATION OF LOSS

The Commission certifies that NATIONAL LEAD COMPANY 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 Six Thousand Five Hundred Thirty-Four Dollars and Eighteen Cents (\$6,534.18) 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

14 DEC 1967

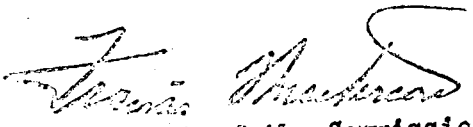

Edward D. Re, Chairman


Theodore Jaffe, Commissioner


LaVern R. Dilweg, Commissioner

QUALIFICATION

As a true and correct copy of the decision
of the Commission which was entered as the Final
Decision on _____ 15-1967


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).)