

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

IN THE MATTER OF THE CLAIM OF

HERMAN COHEN

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-2915

Decision No. CU-901

AMENDED PROPOSED DECISION

By Proposed Decision issued January 10, 1968 the Commission denied this claim for claimant's failure to sustain the burden of proof of all elements of the claim. Subsequently, new evidence was submitted.

Based on the entire record the Commission now finds that claimant HERMAN COHEN, a national of the United States since birth, was the owner, by assignment, of three debt claims in the total amount of \$5,225.16.

All assignors were nationals of the United States at all pertinent times.

The claim is based on merchandise shipped to Cuba for which payment was never received. The evidence reflects that the Cuban customers paid the accounts to local Cuban banks and that the dollar reimbursement releases or authorizations were never granted by the Cuban governmental official.

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 customers in Cuba 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 in 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]; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

The Commission finds that the rights of claimant's predecessors to receive payment for the shipments were lost as a result of the intervention by the Government of Cuba. Claimant has submitted evidence to establish that the subject accounts were payable May 31, 1960 and it is attested that he has not received payment for the outstanding accounts.

Accordingly, the Commission finds that the accounts were due and payable on May 31, 1960, and concludes that claimant succeeded to and sustained a loss, within the meaning of the Act, in the amount of \$5,225.16.


The Commission has decided that in certifications of loss 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), and in the instant claim it is so ordered.

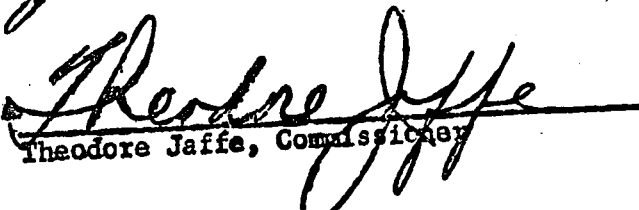
CERTIFICATION OF LOSS

The Commission certifies that HERMAN COHEN 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 Five Thousand Two Hundred Twenty-five Dollars and Sixteen Cents (\$5,225.16) with interest at 6% per annum from May 31, 1960 to the date of settlement.

Dated at Washington, D. C.,  
and entered as the Amended  
Proposed Decision of the  
Commission

JUL 21 1971

  
Lyle S. Garlock, Chairman

  
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 Amended 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, (1970).)

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HERMAN COHEN

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU- 2915

Decision No. CU **901**

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 \$5,225.16, was presented by HERMAN COHEN and is based upon the asserted loss of payment for merchandise shipped to Cuba by claimant's assignor. Claimant stated that he has been a national of the United States since birth.

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) 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).)

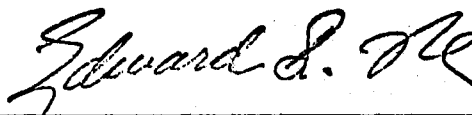
Claimant states that merchandise was shipped to three Cuban companies by International Photo Suppliers, Inc., and that claimant is the assignee of all rights, title, and interest in these debts, which assertedly were never paid. No evidence in support of the claim has been received by the Commission.

By Commission letter of October 2, 1967, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act. However, no evidence in response to this letter has been received to date. Thereafter, by letter of November 2, 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. No evidence has since been submitted.

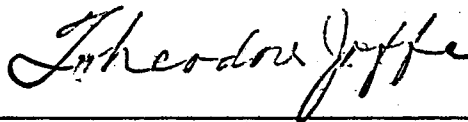
The Commission finds that claimant has not met the burden of proof in that he has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba, or that the debt upon which the claim is based has been continuously owned by United States nationals from the date of loss until the date on which the claim was filed. 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

JAN 10 1968



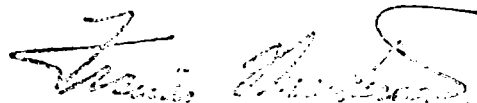
Edward D. Re, Chairman



Theodore Jaffe, Commissioner

CERTIFICATION

This is a true and correct copy of the decision  
of the Commission which was entered as the final  
decision on \_\_\_\_\_



Clerk of the Commission

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- 2915