

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

IN THE MATTER OF THE CLAIM OF

J. I. CASE COMPANY

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-2935

Decision No. CU - 4513

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 J. I. CASE COMPANY in the amount of \$405,039.84, 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.

Claimant corporation by an authorized officer has certified that the claimant corporation was organized in the State of Wisconsin on February 21, 1880 and that at all times between October 31, 1961 and the presentation of this claim on April 27, 1967, more than 50% of the outstanding capital stock of the corporation has been owned by United States nationals. He further certifies that approximately 32% of the capital stock was owned by persons who were not United States nationals. The Commission holds that the claimant corporation is a national of the United States within the meaning of Section 501(1)(B) of the Act.

The record contains voluminous documentation consisting of copies of statement of accounts, invoices, etc. concerning the sale of agricultural implements and spare parts to various consignees in Cuba reflecting numerous transactions and credits. The respective balances owed by consignees to claimant as of October 31, 1961 are as follows:

<u>CONSIGNEE</u>	<u>AMOUNT</u>
Equipos Tropicuba	59,268.39
Victor Mendoza	951.20
Importadora Metropolitana	<u>63,673.61</u>
Total	<u>\$123,893.20</u>

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

Accordingly, in the instant claim, the Commission finds that the subject sums due were lost as a result of intervention by the Government of Cuba, and that in the absence of evidence to the contrary, the losses, in the amount of \$123,893.20, occurred on October 31, 1961.

The Commission further finds that an agency of the Government of Cuba, Instituto Nacional De Reforma Agraria, was indebted to claimant in the amount of \$281,146.64 as of October 31, 1961. The Commission has found that the failure of the Government of Cuba to make an obligated payment after January 1, 1959 gave rise to a claim under Title V of the Act. (See Claim of Clemens R. Maise, Claim No. CU-3191, 1967 FCSC Ann. Rep. 68.) The Commission therefore also finds that claimant sustained a loss in the amount of \$281,146.64 within the meaning of Title V of the Act on October 31, 1961. Evidence in the record indicates that the Internal Revenue Service allowed this loss.

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

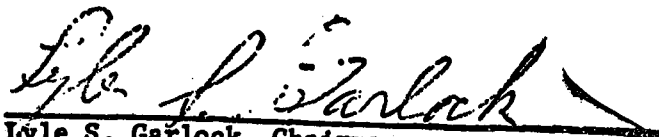
from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case, it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that J. I. CASE 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 Four Hundred Five Thousand Thirty-Nine Dollars and Eighty-Four Cents (\$405,039.84), with interest thereon at 6% per annum from October 31, 1961 to the date of settlement.

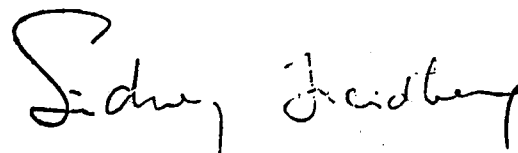
Dated at Washington, D. C.,  
and entered as the Proposed  
Decision of the Commission

MAR 4 1970

  
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Kyle S. Garlock, Chairman

  
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Theodore Jaffe, Commissioner

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Theodore Jaffe, Commissioner

  
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Sidney Freidberg, Commissioner

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Sidney Freidberg, 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).)