

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

IN THE MATTER OF THE CLAIM OF

WATSON-TRIANGLE COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 3735

Decision No. CU 6052

Counsel for claimant:

Sandler & Sandler
by Martin L. Sandler, Esq.

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 WATSON-TRIANGLE COMPANY in the amount of \$90,318.08 based upon the asserted ownership and loss of personalty and payment for merchandise shipped to customers in 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.

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) (1970).)

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.

The record shows that claimant was organized under the laws of Florida, and that at all pertinent times all of its outstanding stock was owned by two persons, namely Alvin W. Watson and J. G. Watson, nationals of the United States at all pertinent times. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant asserts the following losses:

Personalty: office furniture, office equipment, stationery, etc.	\$ 2,342.25
Debts of nationalized enterprises	<u>87,975.83</u>
	\$90,318.08

The record includes copy of a letter of October 20, 1959, to the Fondo de la Estabilizacion de la Moneda in Cuba, stating that an account 327 in Banco Pujol with a balance of \$21,214.62, had been frozen, pursuant to the provisions of Law 568; and this account was in the name of Jerome G. Watson and/or Alvin W. Watson, President and Vice President of WATSON-TRIANGLE
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COMPANY (toy distributors). The letter further asked that the account be released in order that claimant could continue doing business.

Additionally the record includes a document evidencing that claimant deposited with Cuban Electric a \$100 First Mortgage Bond of said company, as a guarantee.

Shipment to Cuban Customers

Further, the claimant submitted a quantity of invoices and the like reflecting shipments of merchandise to customers in Cuba.

The Commission suggested claimant submit a list indicating the Cuban debtors, value of merchandise shipped to them, the date payment was due, any amounts paid, and unpaid balances.

On June 1, 1970 counsel stated that this information was being obtained and that the assets of the claimant had been sold within the past two years, and that this claim is the only remaining asset. The Commission repeated its suggestion for a consolidated list of items of claim and a copy of the document evidencing the sale of the claimant's assets. This data has not been submitted despite several suggestions made to counsel thereafter. It appears however that the pertinent records are now scattered, and that some of the documentation submitted is original in nature, and copies may not be readily available to claimant.

Under these circumstances the Commission has examined the invoices submitted and ascertained that the goods shipped thereby to customers in Cuba totalled \$56,151.97.

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 Cuban debtors or customers 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.)

Accordingly, in the instant claim, the Commission finds that the sum of \$56,151.97 was lost as a result of intervention by the Government of Cuba, and with respect to the dates of loss as to those goods sold prior to September 29, 1959 totalling \$24,016.73, the Commission finds that the losses occurred on September 29, 1959, the effective date of Law 568. The Commission further finds that as to \$32,135.24, the amount of shipments made after September 29, 1959, loss occurred 30 days after the date the last shipment was made to a Cuban customer, or January 17, 1960.

Bank Account

Claimant contends that it has lost a bank account in Cuba having a balance of 21,214.62 pesos. The record establishes that claimant had a balance of 21,214.62 Cuban pesos on deposit with the National Bank of Cuba as of October 20, 1959.

A number of laws and resolutions were issued in Cuba affecting banks, bank accounts and currency. Not all of these enactments and resolutions affect the account of the claimant in Claim No. CU-3735.

Law 568, published in the Cuban Official Gazette on September 29, 1959, forbade the transfer of funds abroad, and effectively operated to block the funds of anyone who left the country. Law 930, published in the Cuban Official Gazette on February 23, 1961, gave the National Bank the power to effect centralization of liquid assets "temporarily" taken from the people. In effect this froze or continued the blocking of bank accounts.

By Law 963, published in the Cuban Official Gazette on August 4, 1961, a currency exchange was effected. Currency was turned in at centers provided

and a new currency was provided. There was no change in value. However, each person was to receive 200 pesos in new currency, and all over that amount was placed in a special account in his name. This did not affect bank accounts already in existence. By Law 964, published in the Cuban Official Gazette on August 9, 1961, it was provided that the owners of the deposits created under Law 963 could draw up to 1,000 pesos, the balance up to 10,000 remained in his special account, and all over 10,000 passed to the State Treasury. There were some minor exceptions. However, Laws 963 and 964 do not affect Claim No. CU-3735 in which the account did not arise from currency exchange.

Law 989, published in the Official Gazette on December 6, 1961, in its terms nationalized by confiscation all goods and chattels, rights, shares, stocks, bonds and other securities of persons who left the country of Cuba. This included such bank accounts as had not been established and confiscated by Laws 963 and 964, supra. From the foregoing, the Commission finds that claimant's above described bank account, totalling \$21,214.62 (the peso being on a par with the dollar), was taken by the Government of Cuba on December 6, 1961. (See Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966].)

Bond

The record discloses that claimant had placed on deposit with the Cuban Electric Company, as a service guarantee, a Cuban Electric Company 5% Mortgage bond in the face amount of \$100. The Commission has found that the properties of the Cuban Electric Company in Cuba, including the property securing this bond, were taken on August 6, 1960. (See Claim of Cuban Electric Company, Claim No. CU-2578, 1969 FCSC Ann. Rep. 74.) Accordingly, the Commission finds that claimant's loss in this respect was in the amount of \$100, as of August 6, 1960. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

Personalty

The Commission finds that claimant maintained an office in Cuba with certain office equipment, which was also taken on December 6, 1961, pursuant to Law 989. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FGSC Semiann. Rep. 53 [July-Dec. 1966].) The Commission further finds that the depreciated value of this personalty on the date of loss was \$1,171.13.

The losses of claimant, evidenced by the record, total \$78,637.72. So much of the claim as is in excess of that amount has not been established by claimant. Accordingly, the Commission is constrained to and does deny so much of the claim.

Recapitulation

The claimant's losses within the scope of Title V of the Act are summarized below:

<u>Item</u>	<u>Date of Loss</u>	<u>Amount</u>
Payment for shipments	September 29, 1959	\$24,016.73
Payment for shipments	January 17, 1960	32,135.24
Cuban Electric Mortgage Bond	August 6, 1960	100.00
Bank Account	December 6, 1961	21,214.62
Personalty	December 6, 1961	<u>1,171.13</u>
	Total	\$78,637.72

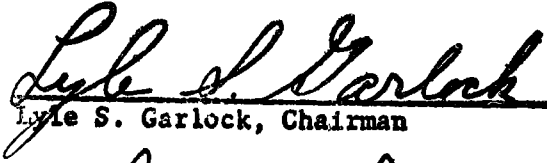
The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644) and in the instant case it is so ordered.

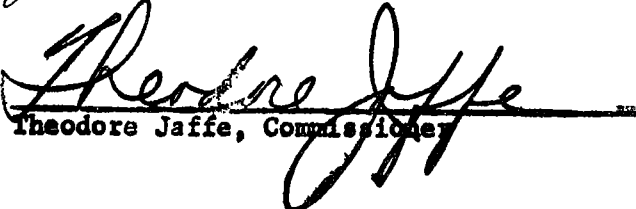
CERTIFICATION OF LOSS

The Commission certifies that WATSON-TRIANGLE 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 Seventy-Eight Thousand Six Hundred Thirty-Seven Dollars and Seventy-Two Cents (\$78,637.72) 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

FEB 3 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 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).)