

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES

In the Matter of the Claim of

FEDERAL INSURANCE COMPANY
90 John Street
New York 38, New York

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: Claim No. IT-10,370
:
:
: Decision No. IT- 456

Under Section 304 of the International
Claims Settlement Act of 1949, as amended

Attorneys for Claimant:

BIGHAM, ENGLAR, JONES & HOUSTON
Counsellors at Law
99 John Street
New York 38, New York

PROPOSED DECISION

This is a claim in the amount of \$3,401.01 by the Federal Insurance Company, a domestic corporation duly organized and existing under the laws of the State of New Jersey, occasioned by the loss of a shipment of 23,100 "EVEREADY" flashlights valued at \$3,048.60, loss of profits in the sum of \$311.40 and compensation for expenses incurred in the course of efforts to obtain release of the property in the amount of \$41.01---all of which were the result of seizure by the Italian Government at Massawa, Eritrea, as a consequence of the war in which Italy was engaged from June 10, 1940 to September 15, 1947.

The facts as established by the evidence of record, disclose that the National Carbon Co., Inc. was the owner of a shipment of 23,100 "EVEREADY" torches (flashlights) which was en route from Hamburg, Germany to Bombay, India en board the "S. S. LIEBENFELS", a German

owned vessel. More than fifty per cent of the ownership of the stock of the National Carbon Co., Inc. is owned by American nationals. The claimant's portion of the cargo was removed from said vessel without the consent of the owner and placed in a warehouse at the Italian port of Massawa, Eritrea, where, upon Italy's entry into the war, the said property was seized by Italian authorities.

The claimant in the ordinary course of its marine insurance business issued a policy of insurance, certificate number F-874609 dated August 4, 1939, insuring the value of the said shipment together with the profits of the assured in the amount of \$3,360.00. The certificate of insurance also provided that in case of loss the assured would undertake "to sue, labor and travel for" the defense and recovery of the insured property and in such case the insurers would contribute to the cost of such efforts by the assured. Thereafter, as stated, and as a consequence of war, the Italian Government seized the insured property.

It is established that more than fifty (50%) per cent of the outstanding stock of the Federal Insurance Company is owned by American nationals. The said company, by virtue of its payment in the sum of \$3,401.01 to the assured, pursuant to and under the provisions of its said contract of insurance and in accordance with a subrogation agreement between the said assured and the insurer dated March 10, 1941, became the real party in interest as a result of the loss.

By virtue of a familiar principle, recognized and applied alike by courts of law and of equity since time immemorial, an insurer who indemnified the person who has suffered loss through another's wrong-doing,

thereby acquires, to the extent of such indemnification, the assured's rights against the wrong-doer; and the insurer thus---by way of subrogation---becoming entitled to the assured's legal remedies, may enforce the same either "at law", by an action in the name of the assured, or "in equity", by suit in the insurer's own name. The Potomac, 105 U.S. 630. * * * U. S. v. So. Carolina State Highway Dept., 171 F(2d)893.

The Commission finds that the claimant is the real party in interest to recover for loss of the property for which claim is made and that the actual loss sustained is in the amount of \$3,401.01, the sum paid by the Federal Insurance Company to the National Carbon Company, the assured.

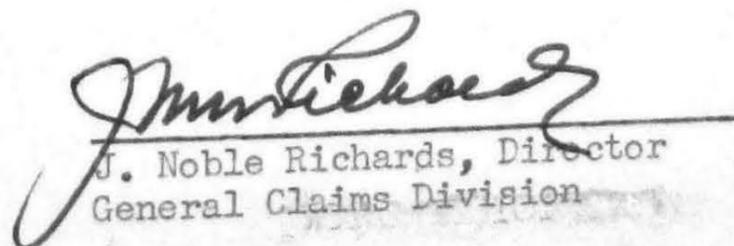
AWARD

On the above grounds and evidence, this claim is allowed and an award is hereby made to the Federal Insurance Company in the principal amount of \$3,401.01 plus interest thereon in the amount of \$1,442.22, being 6% per annum from March 10, 1941, the date of loss, to April 23, 1948, the date of payment by the Government of Italy of \$5,000,000 pursuant to the Memorandum of Understanding dated August 14, 1947.

Dated at Washington, D. C.

JAN 7 1958

FOR THE COMMISSION:


J. Noble Richards, Director
General Claims Division

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON 25, D. C.

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IN THE MATTER OF THE CLAIM OF

FEDERAL INSURANCE COMPANY
90 John Street
New York 38, New York

Claim No. IT-10,370

Decision No. IT-456

Under the International Claims Settlement
Act of 1949, as amended

GPO 16-72126-1

Attorneys for Claimant:

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99 John Street
New York 38, New York

FINAL DECISION

The Commission issued its Proposed Decision on this claim on January 7, 1958, a certified copy of which was duly served upon the claimant. No objections or request for a hearing having been filed within twenty days after such service and general notice of the Proposed Decision having been given by posting for thirty days, it is

ORDERED that such Proposed Decision be and the same is hereby entered as the Final Decision on this claim, and it is further

ORDERED that the award granted pursuant thereto be certified to the Secretary of the Treasury.

Washington 25, D. C.

MAR 6 1958

Whitney Gilliland

Paul Rice

Henry T. Clay

COMMISSIONERS

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