

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

IN THE MATTER OF THE CLAIM OF

BESSER COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0472

Decision No. CU - 235

Counsel for claimant:

Robert R. Ferguson, Esq.

AMENDED PROPOSED DECISION

By Proposed Decision dated September 6, 1967, the Commission denied this claim on the ground that claimant failed to meet the burden of proof in that it failed to establish ownership of rights and interests in property by a national of the United States which was lost as a result of the nationalization, expropriation, intervention or other taking by the Government of Cuba. Subsequently, claimant furnished additional evidence.

Full consideration having been given to the additional evidence, it is ORDERED that the Proposed Decision be and the same is hereby amended as follows:

An officer of the claimant corporation has certified that the claimant was organized under the laws of Michigan on October 29, 1897 and that at all times between 1928 and presentation of this claim on October 1, 1965, 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.

An officer of claimant also states that all of the present shareholders are residents of the United States.

The record contains a copy of a conditional sales agreement dated September 17, 1956, whereby claimant corporation sold a concrete block making machine with accessory equipment to Hormigon Prefundido, S.A., Havana, Cuba, for a total of \$74,585.00. Pursuant to the terms of the agreement, the purchaser paid \$2,585.00 upon signing the contract and it agreed to execute a promissory note, payable in monthly installments of \$1,500.00 each, commencing sixty days from the date of shipment. The record also contains a copy of the promissory note dated November 8, 1956, whereby Hormigon Prefundido, S.A. agreed to pay claimant corporation \$72,000.00 (balance outstanding after initial downpayment) in equal successive monthly payments of \$1,500.00 each plus interest on the eighth day of each month commencing on January 8, 1957. The promissory note also provided that upon non-payment of any installment at its maturity, the balance of the debt immediately became due and payable.

A copy of a statement of account dated October 12, 1961, reflects that the buyer had made thirty-five (35) payments and that a balance of \$19,500.00 was outstanding. The record also contains a copy of claimant corporation's ledger sheet pertaining to the subject promissory note, which reflects that the last payment was made in February 1960 and that the balance outstanding at that time was \$19,500.00. The next payment was due on March 8, 1960. Claimant asserts that it did not receive this payment or any other payments on the balance owing.

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, 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 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.)

Accordingly, in the instant claim the Commission finds that 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 March 8, 1960 as to \$19,500.00 the date the unpaid balance of the promissory note became due.

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.)

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 date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

In all other respects, the Proposed Decision is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that BESSER 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 Nineteen Thousand Five Hundred Dollars (\$19,500.00) with interest thereon at 6% per annum from the date of loss to the date of settlement.

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

APR 10 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

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 Règ., 45.C.F.R. 531.5(ë) and (g) as amended, 32 Fed. 412-13 (1967).)

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on 5-17-68 CU-0472

Francis M. ...
Clerk of the Commission

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

IN THE MATTER OF THE CLAIM OF

BESSER COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 0472

Decision No. CU 235

Counsel for claimant:

Robert R. Ferguson

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 \$19,500.00, was presented by the BESSER COMPANY and is based upon the asserted inability of claimant to obtain 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 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).)

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."

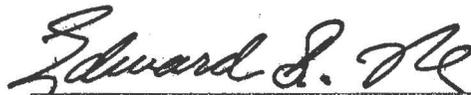
The claim arises out of the asserted failure of a Cuban corporation to complete payments on a conditional sales contract. Claimant states that the debtor corporation was nationalized by the Government of Cuba. The record in the claim includes correspondence between claimant and the Department of State, a statement of account, a promissory note, and a copy of the sales contract. By Commission letter of July 15, 1966, claimant was advised, through counsel, that it would be necessary to submit a certified copy of its articles of incorporation, together with evidence of the nationality of its shareholders. No evidence in response to this correspondence has been received to date. A reminder letter was sent on October 21, 1966.

On June 21, 1967, counsel was invited to submit the suggested evidence 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 it has failed to establish ownership of rights and interests in property by a national of the United States which was lost as a result of the nationalization, appropriation, intervention or other taking by the Government of Cuba. 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

SEP 6 1967


Edward D. Re, Chairman


Theodore Jaffe, Commissioner


LaVern R. Dilweg, Commissioner

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-0472