

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

IN THE MATTER OF THE CLAIM OF

ESB INCORPORATED

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0770

Decision No. CU

437

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented originally by The Electric Storage Battery Company, which on July 1, 1967 was merged into ESB INCORPORATED, in the amount of \$33,102.37 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) 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."

An officer of The Electric Storage Battery Company has certified that it was organized in the State of New Jersey and that at all times between June 7, 1888 and presentation of this claim on June 29, 1966, more than 50% of its outstanding capital stock was owned by United States nationals. The Commission holds that The Electric Storage Battery Company was a national of the United States within the meaning of Section 502(1)(B) of the Act.

Approximately 97.8% of the outstanding shares of stock of The Electric Storage Battery Company were held by United States nationals.

The record indicates that in November 1957, The Electric Storage Battery acquired by merger the Ray-O-Vac Company, a Wisconsin corporation. The Ray-O-Vac Company became a division of The Electric Storage Battery Company. Although it was no longer a separate business entity, the Ray-O-Vac Company continued to do business under its long-established trade name. Hence, while the name Ray-O-Vac Company appears on the invoices and bank letters outlined below, it is The Electric Storage Battery Company which suffered the loss forming the basis of this claim.

The record contains copies of invoices Nos. 766 and 767 of October 20, 1959, reflecting the sale to General Distributors, Inc. of Havana, Cuba, of goods totalling \$24,000.00, as to which freight, shipping and other attendant fees increased the total to \$25,593.07; and a copy of invoice No. 781 of October 28, 1959, reflecting the sale to General Distributors, Inc. of Cuba, of goods totalling \$7,140.74, as to which freight, shipping and other fees increased the total to \$7,509.30.

Additionally, the record includes copies of three letters of July 5, 1960 from the Trust Company of Cuba, in which it is stated that the entire

collection of \$33,102.37 was paid by the consignee (General Distributors, Inc.) and that the Trust Company of Cuba was still awaiting a dollar reimbursement release from the Exchange Board, a Cuban Government agency. Claimant stated that it had not received the funds.

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 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 into the contractual rights of The Electric Storage Battery Company, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See the Claim of The Schwarzenbach Huber Company, FCSC Claim No. CU-0019; and the Claim of Etna Pozzolana Corporation, FCSC Claim No. CU-0049.)

Accordingly, in the instant claim the Commission finds that property of The Electric Storage Battery Company 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 July 6, 1960 as to \$33,102.37, the day after the collections were acknowledged by the Trust Company of Cuba.

At the time of the merger on July 1, 1967, all of the assets of The Electric Storage Battery Company were acquired by ESB INCORPORATED, which has been substituted as the claimant herein.

The Commission has decided that in payment of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be allowed at the rate of 6% per annum from the date of loss to the date of settlement. (See the Claim of Lisle Corporation, FCSC Claim No. CU-0644.)

Accordingly, the Commission concludes that the amount of the loss sustained 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.

CERTIFICATION OF LOSS

The Commission certifies that ESB INCORPORATED 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 Thirty-Three Thousand One Hundred Two Dollars and Thirty-Seven Cents (\$33,102.37) 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

OCT 18 1967

Edward D. Re
Edward D. Re, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

LaVern R. Dilweg
LaVern R. Dilweg, Commissioner

THIS IS A TRUE AND CORRECT COPY OF THE DECISION OF THE COMMISSION AS ENTERED AS THE FINAL DECISION ON 21 NOV 1967

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).)

NOTICE TO TREASURY DEPARTMENT: This claimant has been the subject of another Certification of Loss in CU-0846, Amended Proposed Decision entered as Final Decision on October 4, 1967.