

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

IN THE MATTER OF THE CLAIM OF

EMERY INDUSTRIES, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1315

Decision No. CU 822

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 EMERY INDUSTRIES, INC. in the amount of \$3,176.53 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 claimant corporation has certified that the claimant was organized in the State of Ohio and that all times between June 29, 1935 and presentation of this claim on April 5, 1967 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.

Claimant states that seven of its 1209 stockholders were residents of foreign countries and assumed to be citizens of those countries.

The record contains copy of claimant's invoice No. 36251 of March 18, 1960 reflecting the sale to Agustin Reyes of Havana, Cuba, of goods totalling \$420.00, increased by freight, shipping and other attendant fees to \$496.69, but decreased by its agent's commission to \$479.89; and copy of his invoice No. 36253 of March 18, 1960 reflecting the sale to Sabates Industrial, S.A. of Cuba, of goods totalling \$2,362.50, increased by freight, shipping and other fees to \$2,679.84, but decreased by its agent's commission to \$2,585.34.

Additionally, the record contains a copy of a letter of April 25, 1960 from the First National City Bank of New York, to claimant, in which it is stated that the collection of \$2,679.84 had been paid by the Consignee (Sabates Industrial S.A.) as of April 18, 1960, the reimburse-

ment of which was subsequently stated to be pending exchange control authorization. Claimant states that it has 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 payment to creditors within Cuba, by numerous, unreasonable and costly 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 claimant, 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).

For each debt owed, claimant is making a claim for the entire amount of the corresponding invoice. However, the evidence submitted reflects that claimant authorized the First National City Bank of New York to instruct the Cuban collecting bank to pay to claimant's agent in Cuba his commission on each invoice (as stated above) before the proceeds of the anticipated collection were remitted to the claimant. The total amount of authorized commissions is \$111.30. The Commission finds, therefore, that claimant's loss resulting from the intervention of the Cuban government is the total amount of each invoice, less the amount claimant authorized the collecting bank in Cuba to pay its agent as commission.

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 25, 1960 as to \$479.89, the date by which the invoice in that amount should have been paid, and on April 19, 1960 as to \$2,585.34, the day following the date by which that collection was acknowledged as paid.

The Commission has decided that in the 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 the Claim of Lisle Corporation, FCSC Claim No. CU-0644).

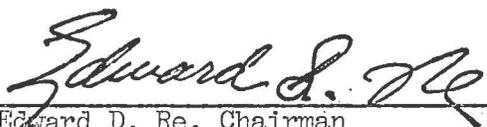
Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the dates on which the losses occurred, to the date on which provisions are made for the settlement thereof.

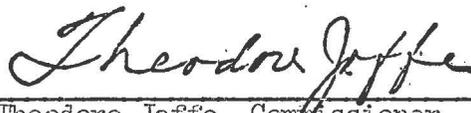
CERTIFICATION OF LOSS

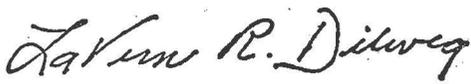
The Commission certifies that EMERY INDUSTRIES, INC. suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Three Thousand Sixty-Five Dollars and Twenty-Three Cents (\$3,065.23) with 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

14 DEC 1967


Edward D. Re, Chairman


Theodore Jaffe, Commissioner


Lavern R. Dilweg, 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).)

CLASSIFICATION

This is a true and correct copy of the decision
of the Commission which was entered on the final
decision on June 15, 1969.


[Signature]
Chairman of the Commission