

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

IN THE MATTER OF THE CLAIM OF

GAF CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -1953

Decision No. CU- 6145

Counsel for claimant:

Mark Minkus, Esq.

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 \$27,178.16, was presented on April 24, 1967 by General Aniline & Film Corporation, now known as GAF CORPORATION, and is based upon the asserted loss of accounts receivable originating from shipments of merchandise 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.

Section 502(1) of the Act provides as follows:

The term 'national of the United States' means (A) a natural person who is a citizen of the United States, or (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 term does not include aliens.

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.

General Analine & Film Corporation was organized in Delaware. The claim arose in 1960 (as further discussed below) and at that time over 90% of all outstanding shares of stock of this corporation were held by the Attorney General of the United States, having been vested in the Alien Property Custodian in 1942. (See Vesting Order No. 5; Federal Register, April 1942, Volume 7, Page 3148.) On November 12, 1964, there was a reclassification of the corporation's stock, which was followed by a public sale of all shares held by the Attorney General on March 17, 1965. Further, the records of claimant establish that in 1967, after public sale of the shares, more than 99% of the outstanding shares of stock of General Analine & Film Corporation were held by persons with record addresses within the United States and who are presumed to be nationals of the United States. The name of the corporation was changed on April 24, 1968, to the GAF CORPORATION.

Accordingly, the Commission holds that the claimant herein, GAF CORPORATION, successor in interest to General Analine & Film Corporation, is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The Commission has held consistent with legislative intent that the Government of the United States is not eligible to assert a claim under Title V of the Act. (See Claim of the United States of America, Claim Nos. CU-2522 and CU-2618.)

However, the claim was not presented by the United States Government, which sold its interest in 1965. The question arises whether the claim was owned by a United States national on the date of loss, as required by Section 504(a) of the Act.

The Commission has considered this aspect of the record and holds that whereas the claim could not be considered had it been presented by the United States of America, the United States of America or its officers, Attorney General, or Alien Property Custodian nevertheless qualify as nationals of the United States (see Claim of George H. Earle III and United States of America, Claim No. BUL-1904, 10 FCSC Semiann. Rep. 24 [Jan.-June 1959]; Claim of United States of America, Claim No. W-20670; Claim of Silesian American Corp., PO-4174, 23 FCSC Semiann. Rep. 49 [Jul.-Dec. 1965]), and accordingly holds that the claim has been consistently held by nationals of the United States from the date of loss to date of filing with this Commission.

The record includes a "Summary of Unpaid Cuban Obligations" and other supporting evidence which was submitted by claimant at the time of loss to the State Department. Further, the claimant has submitted affidavits of employees and company records to supplement the record and establish the shipment of merchandise to customers in Cuba for which payment was not forthcoming. The claimant shipped film products to various customers in Cuba, either by draft sent to a collecting bank in Cuba, or by open account, as follows:

<u>Name of Customer</u>	<u>Transaction Date</u>	<u>Total Amount</u>
Crusellas y Cia S.A.	October 19, 1959 May 3, 1960 June 25, 1959	\$ 1,968.38
Fabrica Nacional de Pinturas S.A.	July 11, 1960 March 19, 1960	1,530.07
Industrias Consolidadas de Matanzas	March 14, 1960 June 2, 1960	5,501.53
La Caridad del Corbe	April 13, 1960	148.93
Dr. Alberico Martinez	July 6, 1960	1,147.28
Reynolds International de Cuba S.A.	February 15, 1960 April 1, 1960	626.60
Sherwin-Williams Co. of Cuba S.A.	May 24, 1960	13.75
Tejidos Soltex S.A.	October 2, 1959	81.25
Cribbean Photo Co.	1959 1960 1960	<u>16,160.37</u>
		<u>\$27,178.16</u>

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 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.)

The Commission finds that the claimant's right to receive payment for the aforesaid shipments was lost as a result of the intervention by the Government of Cuba. The evidence of record establishes that the shipments were made by invoices on open accounts or by drafts, some of which were paid in part to local Cuban banks, although the amount of local payments has not been established by the evidence of record. Claimant has submitted no evidence to establish the exact dates that each account was payable but asserts that it has not received payment for these outstanding accounts.

The Commission has determined that all accounts were due and payable on or before August 11, 1960, or 30 days after the date of the last shipment made by claimant to Cuba.

Accordingly, the Commission finds that General Aniline & Film Corporation suffered a loss on August 11, 1960 in the total amount of \$27,178.16 to which GAF CORPORATION has succeeded, all within the meaning of Title V of the Act, as a result of intervention by the Government of Cuba.

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.

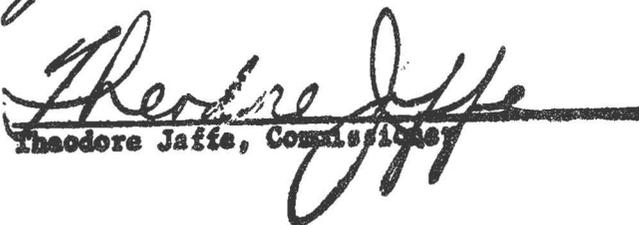
CERTIFICATION OF LOSS

The Commission certifies that GAF CORPORATION succeeded to and 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 Twenty-seven Thousand One Hundred Seventy-eight Dollars and Sixteen Cents (\$27,178.16) with interest at 6% per annum from August 11, 1960 to the date of settlement.

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

APR 7 1971


Lyle S. G. [unclear], 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).)