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

IN THE MATTER OF THE CLAIM OF

LISLE CORPORATION

Claim No. CU -0644

Decision No. CU 267

Under the International Claims Settlement Act of 1949, as amended

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 LISLE CORPORATION in the amount of $1,272.41 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 of 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 Iowa and that all times between 1931 and presentation of this claim on January 12, 1966, 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 100% of its stockholders are nationals of the United States.

The record contains a copy of claimant's invoice No. 2563 of September 22, 1959 reflecting the sale to Trans-America, S.A. of Havana, Cuba, of goods totalling $1,272.41. 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 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 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).

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 November 22, 1959, as to $1,272.41, the due date specified under the terms of payment for the merchandise.

An important question is whether interest should be included in losses in claims determined pursuant to Title V of the International Claims Settlement Act for the nationalization or other taking of property.

Title V of the International Claims Settlement Act of 1949, as amended, makes no provision concerning whether or not interest shall be included as a part of the amount of loss resulting from the nationalization or other taking of property by the Government of Cuba. However, the Commission is directed to determine the amount of loss in accordance with applicable substantive law, including international law. Therefore, this title must be construed in connection with other titles of the International Claims Settlement Act of 1949, as amended, which contain provisions for allowance of interest and which relate to claims based upon the nationalization or other taking of American-owned property by foreign governments.

The International Claims Settlement Act of 1949, as amended, (64 Stat. 12 (1950), 22 U.S.C. §§ 1621-42 (1958)), contains only general terms with reference to interest. Section 7(a) of that Act authorizes and directs the Secretary of the Treasury to pay, as prescribed by Section 8, "an amount not exceeding the principal of each award, plus accrued interest on such awards as bear interest . . ." (64 Stat. 16 (1950), 22 U.S.C. §1626(a) (1958) (Emphasis added)). And Section 8 of the Act, after providing for certain initial and additional payments on the principal of each award, directs the

Secretary of the Treasury, "after payment has been made of the principal amounts of all such awards, to make pro rata payments on account of accrued interest on such awards as bear interest." (64 Stat. 17 (1950), 22 U.S.C. § 1627(c) (1958) (Emphasis added)). Nowhere does the Act specify which awards should bear interest.

In a case of this nature, the Commission is expressly directed by Congress to apply "the applicable principles of international law, justice, and equity" (International Claims Settlement Act of 1949, as amended, 64 Stat. 12; 69 Stat. 562; 72 Stat. 527; 78 Stat. 1110; 79 Stat. 988).

Although some commissions have refused to allow interest in claims of this type on the ground that interest is a matter of contract which should be specifically provided for in the protocol (See Borchard, Diplomatic Protection of Citizens Abroad 428 (1928) and authorities cited therein), this Commission regards it as a settled principle of international law that "interest, according to the usage of nations, is a necessary part of a just national indemnification." (6 Moore, A Digest of International Law 1029 (1906), citing Davis, Notes, Treaty Vol. (1776-1887); Wirt, At. Gen., 1 Op. 28, Crittenden, At. Gen., 5 Op. 350; Geneva Award, 4 Papers Relating to the Treaty of Washington, 53).

"The award of interest is usually considered to be merely a part of the duty of make full reparation . . . arbitral tribunals have felt that it was not outside of their jurisdiction to award interest, even though the Convention by which they were set up made no mention of interest." (Eagleton, The Responsibility of States in International Law 203-4 (1928) [Emphasis added]).

The theories upon which interest is founded are varied. Some tribunals have expressed the idea that interest is given as compensation for the loss of the use of the principal during the period within which the payment thereof continues to be withheld (see Opinions of Commissioners, United States-Mexican General Claims Commission 189 (1927) (Illinois Central R.R. Co. v. United Mexican States)). Interest has been included by one author as a natural part of the compensation for the "improper withholding of satisfaction" (see Borchard, op. cit. supra, at 428).

Again, it has been said that the awarding of interest is in the nature of damages from the date of the loss, (Opinions of Mixed Claims Commission, United States and Germany 1925-1926, 62 (Coacol. Ed. 1927) (Ad. Dec. No. 3)).

On whatever theory the awarding of interest is based, we are constrained to adhere to the international law principle, to which we deem it proper to give effect, that interest must be regarded as a proper element of compensation. The Commission therefore concludes that the award of interest in the instant case is not only in conformity with the principles of international law, but is required by equity and justice, and should therefore be allowed.

The Commission is next faced with the probelm of the rate of interest to be allowed. This rate has generally varied from three to six percent, although higher amounts have been granted on occasion. (See authorities cited in Borchard, op. cit. supra at 429.) The Mixed Claims Commission of the United States and Germany, supra, granted 5%; the Spanish-American Commission of 1871 allowed 8%. (For a list of commissions in which interest has been allowed on awards, together with the various rates of interest, see Ralston, International Arbitral Law and Procedure 82-87 (1910).)

Although there is no settled rule as to the rate of interest, it is an appropriate exercise of the jurisdiction of the Commission to determine this rate in accordance with all the circumstances before it, including the applicable principles of international law, justice and equity. Its object in so doing is to arrive at a just and equitable compensation for the wrong. The Commission may also consider its own decisions concerning the applicable rate of interest in its prior international claims programs. In these programs, the Commission has adopted the figure of 6% as a traditional and customary interest rate for claims of this nature.

In light of this international law precedent, custom and tradition, the Commission therefore concludes that an award of interest in the present case at the rate of 6% is an appropriate, equitable and just measure of compensation under all the circumstances.

Similarly, there is no settled rule in universal effect as to the period during which the interest shall run. Various terminal dates have been applied by different commissions, including the date of the original injury, the date of the notice of the claim, or the date of payment. (See authorities cited in Eagleton, op. cit. supra at 204-05; Borchard, op. cit. supra, at 428-29.) The Commission notes, however, that the prevailing opinion in international law is that such interest should run from the date the claim arose until the "date of payment" (ibid.). (See the Claim of John Hedio Proach, PO-3197, 17 FCSC Semiann. Rep. [Jul.-Dec. 1962] 47.) The Commission notes further that the date the claim arose in this case is the date of loss.

Title V makes no provision for payment of claims agains the Government of Cuba. The statute provides for receipt and determination with respect to validity and amount of claims which is for evaluation purposes only, settlement being left to a future date. Nevertheless, the Commission concludes that interest from the date of loss to the date of settlement is a part of claimant's loss.

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.

CERTIFICATION OF LOSS

The Commission certifies that LISLE CORPORATION 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 One Thousand Two Hundred Seventy-Two Dollars and Forty-One Cents ($1,272.41) 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 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).)

CERTIFICATION

This is a true and correct copy of the decision of the Commission which was entered as the final decision on 16 OCT 1967

Clerk of the Commission