

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

IN THE MATTER OF THE CLAIM OF

ARMCO STEEL CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0667

Decision No. CU 4415

Counsel for claimant:

Joseph P. Tumulty, Jr., Esq.

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 ARMCO STEEL CORPORATION in the amount of \$35,000.00 based upon the asserted loss of payment for a drilling rig.

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)(B) of the Act defines the term "national of the United States" as 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 claimant was organized under the laws of the State of Ohio and that at all times pertinent hereto at least 99.5% of its outstanding capital stock was owned by nationals of the United States. He also certified that The National Supply Company, an Ohio corporation, was a wholly-owned subsidiary of ARMCO STEEL CORPORATION which was merged with and into the parent company on December 31, 1960. The Commission holds that claimant and The National Supply Company are nationals of the United States within the meaning of Section 502(1)(B) of the Act.

The record contains an affidavit of claimant's representative in Cuba, correspondence and bank notices reflecting the sale of an oil rig to a Cuban purchaser for the sum of \$35,000.00 by The National Supply Company on August 25, 1959. The record further establishes that the purchaser paid \$5,000.00 at the time of purchase to the Banco Nunez in Havana, Cuba and paid \$5,000.00 to that bank on October 8, 1959, January 11, 1960 and February 18, 1960 for three bank drafts. The remaining drafts for \$5,000.00 each due December 30, 1959, January 30, 1960 and February 28, 1960 were not paid. Claimant states that neither it nor The National Supply Company 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 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.)

Accordingly, in the instant claim the Commission finds that the property of The National Supply Company was lost as a result of intervention by the Government of Cuba, that claimant succeeded to the claim for the loss through the merger on December 31, 1960, and that, in the absence of evidence to the contrary, the loss occurred

<u>ON</u>	<u>AS TO</u>
September 29, 1959	\$ 5,000.00
October 9, 1959	5,000.00
December 30, 1959	5,000.00
January 12, 1960	5,000.00
January 30, 1960	5,000.00
February 19, 1960	5,000.00
February 28, 1960	5,000.00
	5,000.00
	\$35,000.00

the dates being the effective date of Law 568 for the payment made prior to September 29, 1959 and the remaining dates being the dates payments were due or the date after payment acknowledged by the collecting bank.

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), and in the instant case it is so ordered from the aforesaid dates.

CERTIFICATION OF LOSS

The Commission certifies that ARMCO STEEL CORPORATION succeeded to and sustained 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-five Thousand Dollars (\$35,000.00) 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

22 JAN 1970

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, 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).)

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