

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

IN THE MATTER OF THE CLAIM OF

CONTINENTAL-SHELLMAR, INC.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -0773

Decision No. CU 538

Counsel for claimant:

Willkie Farr Gallagher  
Walton & FitzGibbon

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 CONTINENTAL-SHELLMAR, INC. in the amount of \$46,269.89 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 in 1952 and that at all times between January 1, 1959 and presentation of this claim on July 5, 1966, 100% of the outstanding capital stock of the claimant has been owned by the Continental Can Company, Inc. The Commission's records show that the Continental Can Company, Inc. was organized in the State of New York in 1913, and an officer of that corporation has certified that more than 50% of the outstanding capital stock has been owned by United States nationals at all times between January 1, 1959 and July 5, 1966. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

An officer of the Continental Can Company, Inc. states that 98.6% of its 19,062,238 outstanding shares were held by United States nationals.

The record contains copies of claimant's invoices, as below, which reflect the sale and delivery of merchandise to various Cuban purchasers. The terms in each transaction were 60 days less varying percentages if paid at first presentation.

<u>Invoice Number</u>	<u>Purchaser</u>	<u>Date</u>	<u>Amount</u>
92-1272	La Flor Catalana	7/16/59	\$ 1,360.00
108-1738	Levadura Medina, S. A.	9/ 2/59	1,450.00
108-1762	La Flor Catalana	9/ 4/59	1,096.43
108-1835	Pascual y Gomez S. en C.	9/17/59	759.24
108-1855	La Flor Catalana	9/21/59	611.85
108-1864	Levadura Medina, S. A.	9/21/59	3,085.79
108-1867	" " " " "	9/21/59	5,240.05
108-1918	Jose Junquera y Cia.	9/25/59	879.87
108-1994	Levadura Medina, S. A.	10/ 2/59	399.07
108-2284	La Flor Catalana	11/16/59	2,940.25
108-2285	Cia. Papelera Amistad, S. A.	11/16/59	1,640.18
108-2286	La Flor Catalana	11/16/59	312.28
108-2364	" " " "	11/23/59	597.61
108-2367	" " " "	11/23/59	2,931.54
108-2443	Bigelman y Cia.	12/ 2/59	1,657.98
108-2445	J. Chertudi & Cia, S. en C.	12/ 2/59	1,041.89
108-2449	Seventeen Beauty Products, S. A.	12/ 2/59	1,144.37
108-2483	Ferreteria El Sol de Cuba	12/ 7/59	2,677.50
108-2504	Guillermo Castro S. en C.	12/11/59	2,535.50
108-2507	Cia. Papelera Amistad, S. A.	12/11/59	508.24
108-2567	Rodriguez Cardin y Cia.	12/16/59	3,169.06
108-2621	Belleau y Cia.	12/22/59	1,655.98
108-492	Rodriguez Cardin y Cia.	3/21/60	6,239.64
108-728	" " " " "	4/14/60	264.85
108-796	Mendez y Cia, S. L.	4/22/60	26.00
108-1564	Editorial Omega, S.A.	8/12/60	<u>2,130.89</u>
Total			\$ 46,356.06

The record also contains evidence of two credits extended to purchasers by claimant in the amounts of \$64.25 (La Flor Catalana) and \$21.92 (Levadura Medina, S.A.). When these credits are deducted from the total shown above, a balance of \$46,269.89, the amount claimed, remains. Claimant states that it has never received any of 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 September 29, 1959, the publication date of Law 568, as to \$1,295.75 (\$1,360.00 less the credit of \$64.25); on November 1, 1959, as to \$1,428.08 (\$1,450.00 less the credit of \$21.92); and in every other case, 60 days after the invoice date, as follows:

On November 3, 1959 as to \$1,096.43  
November 16, 1959 as to \$759.24  
November 20, 1959 as to \$8,937.69  
November 24, 1959 as to \$879.87  
December 1, 1959 as to \$399.07  
January 15, 1960 as to \$4,892.71  
January 22, 1960 as to \$3,529.15  
January 31, 1960 as to \$3,844.24  
February 5, 1960 as to \$2,677.50  
February 9, 1960 as to \$3,043.74  
February 14, 1960 as to \$3,169.06  
February 20, 1960 as to \$1,655.98  
May 20, 1960 as to \$6,239.64  
June 13, 1960 as to \$264.85  
June 21, 1960 as to \$26.00  
October 11, 1960 as to \$2,130.89

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 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 provision is made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that CONTINENTAL-SHELLMAR, 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 Forty-Six Thousand Two Hundred Sixty-Nine Dollars and Eighty-Nine Cents (\$46,269.89) 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 25 1967

*CERTIFICATION*  
*THIS IS A TRUE AND CORRECT COPY OF THE*  
*DECISION OF THE COMMISSION WHICH WAS ENTERED AS*  
*4-DEC-1967*  
*Marie Madorsky*  
*CLERK OF THE COMMISSION*

*Edward D. Re*

Edward D. Re, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*LaVern R. Dilweg*

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).)