

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

IN THE MATTER OF THE CLAIM OF

BARNHARDT MANUFACTURING COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2486

Decision No. CU

821

Counsel for claimant:

Grier, Parker, Poe & Thompson
By: Gaston H. Gage, 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 BARNHARDT MANUFACTURING COMPANY in the amount of \$61,000.00 based upon the asserted ownership and loss of five promissory notes, assertedly due from Industria de Algodon Quirurgico, S.A. of Havana, 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 interests of such corporation or entity."

An officer of the claimant corporation has certified that the claimant was organized in North Carolina in 1900 and that all times between 1900 and presentation of this claim on April 18, 1967, 100% 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.

The five promissory notes which are the subject of this claim were given pursuant to a contract, executed July 18, 1959, between claimant and Industria de Algodon Quirurgico, S.A. of Havana, Cuba, in consideration for the procurement and installation by claimant of certain machinery and equipment for the processing of bleached raw cotton into surgical absorbent cotton in the manufacturing plant of the promissor.

The Government of Cuba, on March 27, 1962, published its Resolution No. 200 (pursuant to Cuban Law 890) and listed therein, as nationalized, Industria de Algodon Quirurgico, S.A.

By the terms of the contract, the promissor acknowledged its indebtedness to claimant in the amount of \$40,000.00 and agreed to pay said amount with five promissory notes, each in the amount of \$8,000.00: the first due July 18, 1964; the second due July 18, 1965; the third due July 18, 1966; the fourth due July 18, 1967; and the fifth due July 18, 1968. Interest at 6% was to accrue on each note beginning on July 18, 1958. The notes were secured by the assignment to claimant of New England Life Insurance Company policy No. 1813278, the insured on said policy being one Enrique Novellas Prince, President of Industria de Algodon Quirurgico, S.A. The record contains a copy of the aforementioned contract and copies of the five promissory notes.

The record shows that interest had accrued, under the contract, in the amount of \$8,803.00, up to the date of the nationalization of Industria de Algodon Quirurgico, S.A.

Accordingly, it is concluded that claimant suffered a loss in the amount of \$48,803.00 within the meaning of Title V of the Act as a result of the nationalization of Industria de Algodon Quirurgico, S.A. on March 27, 1962.

The record does not reflect that more than \$8,803.00 in interest had accrued when the debtor enterprise was nationalized by the Government of Cuba.

However, 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 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 BARNHARDT MANUFACTURING COMPANY 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-Eight Thousand Eight Hundred Three Dollars (\$48,803.00) with interest thereon at 6% per annum from March 27, 1962 to the date of settlement.

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

14 DEC 1967

CERTIFICATION

Edward D. Re
Edward D. Re, Chairman

This is a true and correct copy of the decision of the Commission which was entered as the final decision on 12/15/67

Theodore Jaffe
Theodore Jaffe, Commissioner

LaVern R. Dilweg
LaVern R. Dilweg, Commissioner
Clerk of the Commission

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).)