

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

IN THE MATTER OF THE CLAIM OF

LEON E. GLAZER
PASCUAL CHAVEZ

Claim No. CU - 1136

Decision No. CU-276

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

Ralph M. Jones, Esq.

Appeal and objections from a Proposed Decision entered September 20, 1967; No oral hearing requested; hearing on the record.

Hearing on the record held on October 9, 1968.

FINAL DECISION

The Commission issued its Proposed Decision in this claim on September 20, 1967, denying the claim for the reason that claimants failed to establish ownership of rights and interests in property which were nationalized or otherwise taken by the Government of Cuba.

Claimants objected to the Proposed Decision, through counsel, and submitted additional evidence pertaining to the property which is the subject of their claim. Following receipt of such material a Hearing on the Record was held by the Commission on October 9, 1968, and the Commission made additional suggestions to claimants, through counsel, to submit further evidence in clarification of the claim. Additionally, the Commission obtained evidence in support and clarification of the claim which was supplemented by information or evidence submitted by counsel for claimants and the employer of claimants at the time that this claim arose.

Full consideration having been given to the objections of the claimants, and the entire record having been reviewed, it is

ORDERED that the Proposed Decision of the Commission be amended to read as follows:

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 \$17,301.00, was presented by LEON E. GLAZER and PASCUAL CHAVEZ and is based upon the asserted loss of personal property in Havana, Cuba. Claimant, LEON E. GLAZER, has been a national of the United States since birth, and claimant, PASCUAL CHAVEZ, has been a national of the United States since his naturalization on June 22, 1943.

The claimants have submitted evidence to establish that they purchased extensive merchandise from the Century Metalcraft Corporation in Havana, Cuba, under agreements whereby no sales would be made by claimants until six months after the respective dates of purchase of such merchandise. The claimants have submitted an inventory indicating that merchandise was on hand in Cuba and they have also submitted invoices, agreements, their joint affidavit executed on January 12, 1968, statements from Century Metalcraft Corporation and other data. This evidence includes an invoice dated June 12, 1959, in the amount of \$4,300.00, and an invoice dated October 22, 1959, in the amount of \$10,394.08, for a total purchase price of \$14,694.08. The evidence also discloses that these sums were paid by claimants to Century Metalcraft Corporation.

The claimants have been unable to furnish evidence to establish a specific date of nationalization or other taking by the Cuban Government. The Commission appreciates the fact that there may be instances wherein primary evidence in support of a claim may not be available due to its loss or destruction during years between the taking of a claimant's property and the filing of claim under Title V of the Act. Also, the

Commission notes that due to the political conditions which now exist in Cuba claimants have no direct access to the primary evidence which is obtainable only in said country. In addition, the Commission takes administrative notice that, in some instances, there was no decree, law or order issued under which the present Government of Cuba nationalized or otherwise took the property of nationals of the United States. In the absence of said decrees, laws and orders the Commission will examine the specific actions of agents of the Cuban Government which resulted in loss of a claimant's property.

Claimants have submitted evidence to establish that they attempted to ship the merchandise in question out of Cuba early in 1960 but were prevented from making such shipment due to the refusal of governmental employees of Cuba to grant the necessary permission to make such shipment; and that the office of their employer was closed in March 1960 due to insufficient sales activity under conditions then prevailing in Cuba. Further, the claimants left Cuba under these circumstances, with claimant PASCUAL CHAVEZ remaining until the local office was closed.

On the basis of the evidence of record, and in the absence of additional or contrary evidence, the Commission finds that claimants were the owners of certain merchandise hereinbefore described, and that they suffered the loss of their property, each owning a 50 per cent interest, on March 15, 1960, when the sales office was closed and claimant PASCUAL CHAVEZ was forced to leave Cuba through such activities of the Cuban Government. (See Claim of Jack Moss, Claim No. CU-0225, 25 FCSC Semiann. Rep. 52 [July-Dec. 1966].)

While the inventory discloses the presence of merchandise by symbols or lots and number of items, there is no accompanying data whereby the Commission

can clarify the extent, type or value of the items appearing on the inventory. However, the claimants were bound by their agreements not to sell for six months those items appearing on the invoice involving \$10,394.00, which were acquired in October 1959. Further, due to conditions then prevailing in Cuba the Commission finds that no sales occurred for the items appearing on the June 1959 invoice, involving a consideration of \$4,300.00. Based on the entire record, the Commission finds that claimants owned merchandise valued at \$14,694.00 at the time of loss; and that the claimants suffered a loss of their respective 50 per cent interests in such merchandise within the meaning of Title V of the Act.

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-0633), and in the instant case it is so ordered.

Accordingly, the certification of losses, as stated below, will be entered and the remainder of the Proposed Decision, as amended herein, is affirmed as the Commission's Final Decision in this matter.

CERTIFICATION OF LOSSES

The Commission certifies that LEON E. GLAZER 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,

CU-1136

in the amount of Seven Thousand Three Hundred Forty-seven Dollars (\$7,347.00) with interest at 6% per annum from March 15, 1960, to the date of settlement; and

the Commission certifies that PASCUAL CHAVEZ 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 Seven Thousand Three Hundred Forty-seven Dollars (\$7,347.00) with interest at 6% per annum from March 15, 1960, to the date of settlement.

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

FEB 19 1969

Leonard v. B. Sutton
Leonard v. B. Sutton, Chairman

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.

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

IN THE MATTER OF THE CLAIM OF

LEON E. GLAZER
PASCUAL CHAVEZ

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 1136

Decision No. CU 276

Counsel for claimant:

Ralph M. Jones, 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 \$17,301.00, was presented by LEON E. GLAZER and PASCUAL CHAVEZ and is based upon the asserted loss of personal property in Havana, Cuba. Claimant, LEON E. GLAZER, states that he has been a national of the United States since his birth in the United States on November 16, 1914. Claimant, PASCUAL CHAVEZ, has been a national of the United States since his naturalization in Oklahoma City, Oklahoma on June 22, 1943.

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 right 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 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.

The Regulations of the Commission provide:

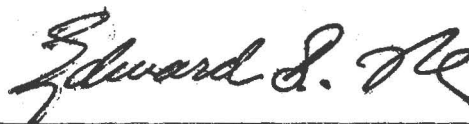
The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

By Commission letter of March 20, 1967, claimant was advised, through counsel, as to the type of evidence proper for submission to establish this claim under the Act. No evidence in response to this letter was submitted. On July 21, 1967, counsel was invited to submit any evidence available to him within 45 days from that date, and he was informed, that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. No evidence has since been submitted.

The Commission finds that claimants have not met the burden of proof in that they have failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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


SEP 20 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. 531.1(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)