

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

IN THE MATTER OF THE CLAIM OF

MINNESOTA MINING AND MANUFACTURING
COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0242

Decision No. CU

3016

Counsel for claimant:

Luis A. Padilla, 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 MINNESOTA MINING AND MANUFACTURING COMPANY in the amount of \$115,259.16, and is 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)(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.

Officers of the claimant corporation have certified that the claimant was organized in the State of Delaware, and that at all times between the respective dates of loss and presentation of this claim on November 29, 1965, more than 50% of the outstanding capital stock of the claimant corporation has been owned by nationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The evidence of record, including a statement of a corporate official of claimant corporation, discloses that at all times pertinent to this claim approximately 93.54 per cent of the outstanding shares of stock of the MINNESOTA MINING AND MANUFACTURING COMPANY were owned by shareholders who had registered addresses within the United States, including Puerto Rico, the Canal Zone and the Virgin Islands; and that the persons so residing are assumed to be nationals of the United States.

The evidence of record includes copies of correspondence from the claimant corporation to Cuban banks and consignees and from banking institutions, including the Havana Branch of the First National City Bank of New York, The Trust Company of Cuba, the Havana Branch of The First National Bank of Boston, Banco Agricola e Industrial, and from the consignees and others, such as Pan-American Cargo Service and Compania Cubana de Electricidad. Further, the record includes recapitulations of the transactions involved in this claim, prepared by claimant; and copies of

invoices, drafts and other data concerning the shipments of merchandise to the consignees, discussed hereafter. The record also includes an affidavit executed by Jose Ramon Alvarez y Lopez on August 31, 1966, concerning shipments made to the Casa Rex Tone, S. A., while affiant was general manager of this Cuban business enterprise. The evidence discloses that the purchase price of the merchandise and accompanying charges for such shipments, with minor exceptions, were paid by the consignees to the local Cuban banks for dollar reimbursement to the claimant; and that dollar reimbursement releases or authorization for such reimbursement were never granted by Cuban governmental officials. Other shipments made by claimant on an open account basis were not paid to the collecting banks by the consignees. Claimant states that in all instances it has not received any of the funds for the shipments, enumerated herein.

There follows a listing of the shipments made by claimant to the Cuban consignees, including information on the paid drafts and open accounts. Certain credits were allowed by the claimant in connection with some of these shipments which will be discussed in those instances where allowed. The items listed include information on the date and number of the draft, amount and the date that the consignee paid the draft in Cuba, although dollar reimbursement to claimant was not permitted by the Cuban authorities:

Casa Rex Tone, S. A.

<u>Date and Number of Draft</u>	<u>Amount</u>	<u>Date of Payment</u>
19808, August 26, 1959	\$ 18,359.98	December 3, 1959
20095, September 29, 1959	1,182.48	January 11, 1960
20113, September 30, 1959	1,723.14	January 11, 1960
20129, October 1, 1959	13,881.75	January 11, 1960
20191, October 8, 1959	155.61	January 25, 1960
20197, October 9, 1959	57.60	January 21, 1960
20252, October 20, 1959	202.80	January 29, 1960
20265, October 20, 1959	178.04	January 29, 1960
20291, October 22, 1959	128.62	January 29, 1960
20315, October 23, 1959	555.66	February 3, 1960
20448, November 5, 1959	1,855.80	February 12, 1960
20456, November 5, 1959	624.67	February 12, 1960
20607, November 19, 1959	4,521.50	February 26, 1960

20321, October 26, 1959	\$ 20,300.68	March 2, 1960
20659, November 25, 1959	13,633.22	March 3, 1960
20628, November 24, 1959	287.37	March 3, 1960
20688, November 30, 1959	5,283.49	March 10, 1960
20724, December 2, 1959	2,635.07	March 11, 1960
20755, December 7, 1959	396.60	March 16, 1960
20762, December 9, 1959	155.40	March 24, 1960
20843, December 17, 1959	406.90	March 28, 1960

\$ 86,526.38

Additionally, claimant has submitted the affidavit of Jose Ramon Alvarez y Lopez, Manager of Casa Rex Tone, S. A. from August 1, 1959, to August 17, 1961, and other evidence, disclosing that there were certain open accounts with the aforesaid Cuban firm which arose as a result of five shipments between September 1959 and September 19, 1960, in the total amount of \$781.80; and that the consignee, Casa Rex Tone, S. A., made no local payments on these accounts.

Thus, evidence has been submitted to establish payment by the consignee on drafts involving shipments in the total amount of \$86,526.38; and that open accounts were due and payable on other shipments in the total amount of \$781.80, for a total of \$87,308.18. Claimant asserted in its Statement of Claim, and in a letter to this Commission, dated September 1, 1966, that while clarifying data is not available, its records disclose that certain credits were allocated to the account of Casa Rex Tone, S. A., resulting in the net "write off" by claimant of this account in the reduced amount of \$83,817.33. The latter amount is therefore asserted as the total amount outstanding on this account.

The Commission finds that claimant suffered a loss of the paid drafts and open accounts involving Casa Rex Tone, S. A., in a total amount of \$83,817.33; that in the absence of clarifying data as to the dates that allocations of credit were entered on the account of this consignee on such shipments, listed above, the sum of \$83,035.53 was the total sum outstanding on the paid drafts, with the loss of such amount arising on the day after the last payment was made by the consignee to Cuban banks, or, on March 29, 1960; and that with respect to

the open accounts in the total amount of \$781.80, such sum was due and payable thirty days after the date that the last shipment was made, or, on October 19, 1960, as to all five shipments.

Claimant also submitted supporting evidence to establish that other shipments were made to Cuban consignees; and that the consignees paid the drafts locally or tried to comply with local regulations in paying for such merchandise, although no dollar reimbursement was made to the claimant. Some of these items also include credits given by the claimant corporation which will be discussed where such credits were given.

<u>Consignee</u>	<u>Date, number of draft; Open account</u>	<u>Amount</u>	<u>Date of Payment or when due</u>
Conde of New York	Invoice 13947, 11/27/59	\$ 580.96	March 3, 1960
Tiradores Roure	Dr. #20317, 10/23/59 Dr. #20803, 12/11/59 Invoice #7588, 6/23/59	1,137.06	March 14, 1960
Carreras Lopez	Dr. #20788, 12/9/59	2,214.32	May 31, 1960
Kopix	Dr. #22484, 6/16/60 Dr. #22576, 6/27/60	6,367.68	October 3, 1960
Casa Gonzalez Jimenez	Open account item	178.52	November 14, 1960
Cia. Textilera Delta	Dr. #20110, 9/30/59	<u>113.33</u>	November 23, 1960
		\$ 10,591.87 (Total)	

In connection with transactions with Cuban consignees Casa Gonzalez Jimenez and Conde of New York, the consignees applied for permission to remit payment for the shipments made by claimant but their applications were denied by the local authorities and dollar reimbursement was not made. In connection with the sums shown in the accounts with Kopix and Tiradores Roure, it is noted that credits or adjustments were allowed by the claimant in the accounts of these Cuban consignees, leaving the above balances or outstanding sums.

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 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).

With the exception of the unpaid accounts of the Casa Rex Tone, S.A., as discussed above, the Commission finds that, in the absence of evidence to the contrary, all losses of unpaid accounts of the other consignees occurred on the draft maturity dates from dates of shipment, or, thirty days from shipment on open accounts; and that in those instances in which payments were made in Cuba by the Cuban consignees, which includes most of the above items with all consignees, the Commission finds that the losses occurred on the days after payments were made by the Cuban consignees to local banks.

This leaves for determination other portions of the claim for assertedly unpaid shipments made to Cuban consignees, including the following accounts:

<u>Cuban Consignee</u>	<u>Amount Due</u>
Independent Electric Company	\$ 210.25
Industria DeKalcos, S. A.	66.55
Industrias Consolidados de Matanzas	48.90
Rodolfanz Luis	90.57
Fabrica Nacional de Pintures, S. A.	408.78
Fernandez Segrera & Cia	1,639.85
Hammel & Cia S En C	3,584.56
J. L. E. Roberdo	4,471.38
Hammel & Cia S en C	<u>2,841.66</u>
	\$13,362.50 (Total)

With respect to these items, claimant has not submitted sufficient supporting evidence to establish shipment of merchandise to these consignees. Even if such shipments could be deemed to have been made based on the assertion of claimant, nevertheless, the consignees failed to establish that there had not been a dollar reimbursement to the claimant. In Commission letters of July 7, 1966, and February 2, 1968, it was suggested that supporting information or evidence be forwarded to the Commission in support of these portions of the claim. In a letter of March 21, 1968, the claimant advised that no evidence was available to support these items. Accordingly, the Commission is constrained to deny these portions of the claim and they are hereby denied.

The remaining portion of this claim pertains to certain shipments made to Cia. Cubana de Electricidad, doing business in Havana, Cuba, in the total amount of \$2,973.00.

Section 505(a) of the Act provides:

A claim under Section 503(a) of this title based upon a debt or other obligation owing by any corporation, association, or other entity organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico shall be considered only when such debt or other obligation is a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

The records of the Commission reveal that Cia. Cubana de Electricidad is a corporation organized under the laws of the State of Florida. Therefore, this portion of the claim can be considered

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only if the claimed debt is a charge upon property which was nationalized, expropriated, intervened, or taken by the Government of Cuba.

Claimant has neither alleged nor submitted evidence to establish that this debt was a charge upon property which was nationalized, expropriated, intervened, or taken by the Government of Cuba. Therefore, the Commission is without authority to consider this portion of the claim, and it is hereby denied.

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 dates of loss to the date of settlement. (See Claim of Lisle Corporation, Claim No. CU-0644.)

Accordingly, the Commission concludes that the amount of losses arising from shipments of goods to the Cuban consignees, a total of \$94,409.20, 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 provisions are made for the settlement thereof, as follows:

On \$	580.96	from March 4, 1960
On	1,137.06	from March 15, 1960
On	83,035.53	from March 29, 1960
On	2,214.32	from June 1, 1960
On	6,367.68	from October 4, 1960
On	781.80	from October 19, 1960
On	178.52	from November 15, 1960
On	<u>113.33</u>	from November 24, 1960
	\$94,409.20	(Total)

CERTIFICATION OF LOSS

The Commission certifies that MINNESOTA MINING AND 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 Ninety-Four Thousand Four Hundred Nine Dollars and Twenty Cents (\$94,409.20) 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.

SEP 11 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Frolberg

Sidney Frolberg, 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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