

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

IN THE MATTER OF THE CLAIM OF

HEWITT-ROBINS INCORPORATED

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-0446

Decision No. CU 2004

Counsel for claimant:

John A. Spain, 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 the Alvey Ferguson Company in the amount of \$10,569.36 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.

An officer of the Alvey Ferguson Company has certified that the corporation was organized in Ohio and that at all times between 1951 and the presentation of this claim on September 15, 1965, more than 50% of its capital stock was owned by United States nationals.

On January 7, 1966 all the assets and liabilities of the Alvey Ferguson Company were transferred to HEWITT-ROBINS, INCORPORATED, a wholly subsidiary of Litton Industries, Inc. Both HEWITT-ROBINS, INCORPORATED and Litton Industries Inc. were organized in the State of Delaware.

An officer of Litton Industries, Inc. states that less than 3% of its outstanding capital stock was held by nonnationals 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 record contains copies of customer purchase orders and invoices of the Alvey Ferguson Company Nos. C-67870, dated December 3, 1959, and C-67930, dated December 8, 1959, which reflect the sale of goods to Esso Standard Oil, S.A., of Havana, in the total amount of \$10,569.36. In addition, claimant advised that sight drafts were drawn on that firm and forwarded for collection. There is also in the record a copy of a letter, dated September 9, 1960, from the Alvey Ferguson Company's bank (the Fifth Third Union Trust Company of Cincinnati, Ohio) stating that the subject drafts had been sent to a local Cuban bank in Havana for collection in December 1959, and that payment in Cuban pesos had been made without further remittance of the funds. Claimant states that it has not received the funds.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded transfers of funds, in this and similar cases, by numerous, unreasonable and costly 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 Semiann. Rep. 58 [July-Dec. 1966]).

Accordingly, in the instant claim the Commission finds that the Alvey Ferguson Company suffered a loss of property as a result of intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the loss occurred on December 31, 1959, the day following the date of payment of the drafts to the Cuban bank. The Commission further finds that on January 7, 1966, the claimant herein HEWITT-ROBINS, INCORPORATED succeeded to the assets of Alvey Ferguson including this claim.

The Commission has decided that in payment of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be allowed 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).

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 HEWITT-ROBINS INCORPORATED succeeded to and 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 Ten Thousand Five Hundred Sixty-Nine Dollars and Thirty-Six Cents (\$10,569.39) 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.

26 JUN 1968

*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.

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).)