

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

IN THE MATTER OF THE CLAIM OF

VENUS ESTERBROOK CORPORATION

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU - 0565

Decision No. CU - 4628

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$42,031.77, was presented originally by The Esterbrook Pen Company based upon the asserted loss of payment for merchandise shipped to consignees in Cuba. Subsequent to filing its claim, claimant merged with another corporation and is known as VENUS ESTERBROOK CORPORATION.

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.

The record shows that the original claimant was organized in Delaware and that at all pertinent times more than 50% of its outstanding capital stock was owned by nationals of the United States. An authorized officer of the original claimant has certified that as of July 24, 1967, all of its outstanding capital stock was owned by nationals of the United States. The Commission holds that the original claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record includes copies of extracts from claimant's books and records and statements to the Department of State and the Commission concerning the sales of goods to consignees in Cuba. The following information, supported by the evidence of record, shows the paid and unpaid accounts; the dates on which payments were made by the consignees to local Cuban banks, and the net amounts thereof after adjustments for commissions paid to claimant's agents; with respect to the open accounts, the dates of the last debit entries; and with respect to the other unpaid accounts, the invoice dates. Claimant states that it has received neither the funds representing payments made to local banks by consignees nor any payments for the outstanding debts due from the other Cuban consignees.

PAID ACCOUNTS

	<u>Date Paid</u>	<u>Agent's Commission</u>	<u>Net Amount Due</u>
<u>Papelera Amisted, S.A.</u>	August 26, 1959	\$ 57.39	\$ 516.54
	August 26, 1959	57.39	516.53
	September 23, 1959	26.02	234.18
	September 23, 1959	26.02	234.18
	April 30, 1959	38.94	350.42
<u>Chacon Alvarez y Cia.</u>	November 3, 1959	215.79	1,942.13
<u>Sres. Cultural, S.A.</u>	August 19, 1959	258.48	2,326.36
<u>Fernandez y Cia.</u>	November 6, 1959	34.48	310.29
<u>Isidro Fernandez y Cia.</u>	August 4, 1958	41.03	375.01
	August 4, 1958	41.03	375.01
	August 4, 1958	41.03	375.02
	November 28, 1958	11.45	111.45
<u>Celestino Gutierrez Sanchez</u>	October 29, 1959	71.63	644.69
<u>Noriega Gutierrez y Cia.</u>	November 17, 1959	139.42	1,254.76
<u>Cia. Impresora y Papelera</u>	August 29, 1958	30.97	280.45
	August 29, 1958	30.97	280.45
<u>La Moderna</u>	November 20, 1959	142.62	1,283.62
<u>Cia. Nacional de Rad. Refrig.</u>	November 16, 1959	65.66	594.47
<u>Sres. Quiroga Hnos.</u>	July 23, 1959	58.17	526.70
<u>Domingo Sanchez Alonzo</u>	December 29, 1958	51.81	466.30
	December 29, 1958	51.81	466.29
	October 9, 1959	55.95	503.60
	October 9, 1959	55.95	503.60
	October 9, 1959	55.95	503.60
<u>F. Vigil y Cia.</u>	November 23, 1959	37.59	338.31
	November 23, 1959	37.59	338.32
	Totals	<u>\$1,735.14</u>	<u>\$15,652.28</u>

UNPAID ACCOUNTS

	<u>Last Debit Entry</u>	<u>Invoice Date</u>	<u>Amount</u>
<u>Confecciones "La Mina," S.A.</u>	November 27, 1959		\$ 5,476.27
<u>Editora Colegial, S.A.</u>	August 10, 1959		1,684.81
<u>Sres. S. Fernandez y Cia.</u>	November 16, 1959		12,746.09
<u>Celestino Gutierrez Sanchez</u>	March 5, 1959		23.97
<u>Caso, Mercado y Cia.</u>		December 7, 1959	1,581.52
		December 7, 1959	42.12
<u>Papelera Kompostela</u>		August 13, 1957	688.68
		December 12, 1957	760.48
		December 12, 1957	760.48
<u>Munez y Cia.</u>		August 31, 1959	649.13
		Total	<u>\$24,413.55</u>

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 in 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, 1967 FCSC Ann. Rep. 46.)

Accordingly, the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba. In the absence of evidence to the contrary, the Commission finds that the losses occurred on the days after payments were made to the local Cuban banks, or 30 days from the last debit entries in the open accounts or from the invoice dates. However, with respect to those losses which otherwise would be found to have occurred prior to September 29, 1959, the Commission finds that the losses occurred on September 29, 1959, the effective date of Law 568.

Claim is also made for the loss of \$230.80 due from the Cuban Electric Company.

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 record indicates that this debt arose out of the sale of merchandise to the Cuban Electric Company, an American corporation. (See Claim of Cuban Electric Company, Claim No. CU-2578.) Claimant has neither alleged nor does the record show that this debt was a charge on property taken by Cuba. Accordingly, the portion of the claim for the debt due from the Cuban Electric Company is 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 date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case, it is so ordered. as follows:

<u>FROM</u>	<u>ON</u>
September 29, 1959	\$11,353.31
September 30, 1959	649.13
October 10, 1959	1,510.80
October 30, 1959	644.69
November 4, 1959	1,942.13
November 7, 1959	310.29
November 17, 1959	594.47
November 18, 1959	1,254.76
November 21, 1959	1,283.62
November 24, 1959	676.63
December 16, 1959	12,746.09
December 27, 1959	5,476.27
January 6, 1960	<u>1,623.64</u>
Total	<u>\$40,065.83</u>


CERTIFICATION OF LOSS

The Commission certifies that VENUS ESTERBROOK CORPORATION 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 Thousand Sixty-Five Dollars and Eighty-Three Cents (\$40,065.83) 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

**18 MAR 1970**

  
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Lyle S. Garlock, Chairman

  
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Theodore Jaffe, Commissioner

  
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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).)