

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

IN THE MATTER OF THE CLAIM OF

THE MEYERCORD COMPANY

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -0614

Decision No. CU **3373**

Counsel for claimant:

Chadwell, Keck, Kayser, Ruggles & McLaren

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 MEYERCORD COMPANY in the amount of \$49,765.34, based upon the asserted loss of payment for materials and merchandise shipped to a consignee in Cuba known as Calcomanias Meyercord de Cuba, S.A., doing business in 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)(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 claimant corporation have certified that 98.26 per cent of the outstanding shares of stock of the claimant herein, organized in the State of Illinois, were owned at times pertinent to this claim by shareholders who had registered addresses located within the United States, and, are assumed to be nationals of the United States; and that 1.74 per cent of the stockholders, residing outside of the United States, are assumed to be nationals of countries other than the United States. The Commission finds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The evidence of record includes copies of correspondence, with supporting material, transmitted by the claimant to the United States State Department concerning the accounts payable, subject of this claim, as well as correspondence to the Cuban banks and consignee, Calcomanias Meyercord de Cuba, S.A., to whom all of the shipments were made by the claimant corporation. Further, the record includes correspondence from the Cuban banks to claimant concerning the payment or nonpayment of certain items shipped by claimant and the record also includes recapitulations and Statements of Account covering the transactions involved in the claim, along with affidavits, invoices and other data concerning the shipments of materials or merchandise to the aforesaid consignee.

The evidence discloses that the purchase price of the shipments and accompanying charges for such shipments, with certain exceptions, were not

paid locally by the consignee; that the dates of such local payments, when made by the consignee, are not specified in all instances; and that dollar reimbursement releases or authorization for such reimbursement were never granted by Cuban governmental officials. Most of the shipments made by claimant, however, were shipped to the consignee on an open account basis and the items included in this claim were not paid by the consignee for dollar reimbursement to claimant. The claimant states that in all instances it has not received any of the funds for the shipments made to Cuba, enumerated herein, which are the subject of the claim.

There follows hereafter a recapitulation of the amounts due for shipments made by claimant to the Cuban consignee, including information on the open accounts or balance due on open accounts as well as other transactions. The claimant corporation apparently made all shipments on an open account basis until June 1959 but at that time began to forward certain shipments by sight draft, some of which were paid locally. However, during this period, claimant also forwarded additional shipments on an open account basis.

#### R E C A P I T U L A T I O N

I. Balance due on open accounts:

Amount outstanding December 31, 1956:	\$ 12,191.23
Amount outstanding December 31, 1957:	15,848.27
Amount outstanding December 31, 1958:	6,022.43
Amount outstanding June 30, 1959:	<u>9,675.03</u>
Total due and payable as of June 30, 1959:	\$ 43,736.96 (Sub-total)

II. Unpaid sight drafts, open accounts or drafts paid locally, with no dollar reimbursement, from July 1, 1959, to January 4, 1960:

\$ 6,028.38

GRAND TOTAL, Unpaid accounts: \$ 49,765.34

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.)

The Commission finds that the claimant's right to receive payment for the aforesaid shipments was lost as a result of intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the losses occurred thirty (30) days after the date of invoice of the open accounts or the day after payment was made by the consignee on the locally-paid drafts. The Commission finds, however, that for those losses arising prior to the effective date of Law 568 such losses actually arose on the date of publication of this law, or on September 29, 1959. Thus, in this particular claim, the sum of \$46,943.41 represents the amount of losses on transactions arising prior to September 29, 1959. With respect to the transactions arising subsequent to September 29, 1959, the Commission finds that all were due and payable on February 4, 1960, or thirty (30) days after the last shipment, which was made by the claimant corporation on January 4, 1960.

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 respective 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 materials or merchandise to the Cuban consignee, a total of \$49,765.34, 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:

<u>FROM</u>	<u>ON</u>
September 29, 1959	\$ 46,943.41
February 4, 1960	<u>2,821.93</u>
Total	<u>\$ 49,765.34</u>

CERTIFICATION OF LOSS

The Commission certifies that THE MEYERCORD 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-nine Thousand Seven Hundred Sixty-five Dollars and Thirty-four Cents (\$49,765.34) 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

DEC 11 1968

*Leonard v. B. Sutton*

Leonard v. B. Sutton, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*Sidney Broidberg*

Sidney Broidberg, 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).)