

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

IN THE MATTER OF THE CLAIM OF

JOHN H. GRAHAM & CO., INC.

Claim No. CU-0656

Decision No. CU 513

Under the International Claims Settlement
Act of 1949, as amended

ORDER AND AMENDED PROPOSED DECISION

By Proposed Decision of October 25, 1967, this claim was denied on the ground that claimant had not established ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Claimant objected to the findings of the Commission, and submitted additional evidence in support of the claim. After due consideration of all the evidence of record, it is

ORDERED, that the Proposed Decision be amended as follows:

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.

Claimant corporation, by an authorized officer, has certified that the claimant was organized in the State of New York in 1924, and that at all times between 1925 and the presentation of this claim on January 28, 1966, more than 50% of the corporation's outstanding capital stock has been owned by United States nationals. It is stated that 100% of the outstanding capital stock is owned by individual persons who are nationals of 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 record establishes that claimant made sales and shipments to various Cuban entities in the total amount of \$36,132.40, payment for which was to have been effected by bank draft. The record also establishes that payment for most of the transactions had been made to the collecting bank in Cuba. Sales and shipments established by the record are summarized as follows:

<u>DRAWEE</u>	<u>DATE OF DRAFT</u>	<u>AMOUNT DUE</u>
Arturo Perez y Cia.	October 9, 1958	\$ 939.84
Gumersinde Danger & Cia.	April 9, 1959	914.38
Guillermo Castro y Cia.	May 26, 1959	1,498.58
Guillermo Castro y Cia.	June 17, 1959	1,631.61
Vincente Juan e Hijos	June 17, 1959	510.12
Sres. Marce y Compania	June 24, 1959	1,731.57
Marcelino Garcia	June 26, 1959	487.21
Sres. Ortiz Lloreda y Cia.	July 1, 1959	986.40
Sanchez y Cia.	July 8, 1959	375.20
Sanchez y Cia.	July 20, 1959	1,147.83
Aguirregavimiamia y Cia., S.en C.	July 21, 1959	1,533.89
Ferr. Pomar, S.A.	July 27, 1959	168.45
Sres. Sanchez y Cia.	July 28, 1959	393.13
Sres. Perez y Fernandez	August 13, 1959	801.11
Aguirregavimiamia y Cia., S.en C.	August 25, 1959	487.40
Hnos. Shapiro & Cia.	September 2, 1959	765.63
Valentin Garcin y Hnos.	September 3, 1959	811.24
L. Matamales Hno y Cia.	September 11, 1959	759.78
Sres. Anton e Hijos	September 14, 1959	693.96
Sres. J. Boix & Cia.	September 16, 1959	677.23
Victoriano Diaz	September 17, 1959	1,766.43
Sres. Gomez y Cia., S.A.	September 17, 1959	1,345.86
Everardo G. Del Campo	September 25, 1959	355.89
Sres. J. Monte Sarabia y Cia.	September 28, 1959	1,061.37
J. Chertudi & Cia., S.en C.	September 29, 1959	710.16
J. Chertudi & Cia., S.en C.	October 2, 1959	1,240.09
Sres. Marce y Compania	October 5, 1959	879.01
M. Martinez Hernandez	October 9, 1959	465.17
Juan R. Curbelo	November 4, 1959	383.14
Anton e Hijos	November 5, 1959	815.08
Sres. Hnos. Shapiro y Cia.	November 18, 1959	<u>1,020.11</u>
		\$27,356.87

The record does not reveal the dates of issuance of the following drafts; however, the record does show that each of the following had been collected in Cuba, and that each had been deemed uncollectible by claimant's New York bank, and by claimant, on February 13, 1961.

<u>DRAWEE</u>	<u>AMOUNT DUE</u>
Rocha, Rodriguez & Cia.	\$ 796.27
Ferr. Orriols, S.A.	1,370.73
Sres. Hnos. Shapiro y Cia.	3,921.64
Ferr. Aguila, S.A.	747.33
Lucas Echavarria	78.95
Ferr. Orriols, S.A.	455.39
Jose Dip Cury	777.35
Ferr. Canosa, S.A.	<u>627.87</u>
	<u>\$ 8,775.53</u>
TOTAL	<u><u>\$36,132.40</u></u>

Claimant states that it has not received any of these funds.

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, in the instant claim the Commission finds that claimant's property 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 on September 29, 1959, the date of the publication of Law 568, on all drafts falling due or collected on or before that date, and on the dates shown further below with respect to the remaining drafts:

<u>FROM</u>	<u>ON</u>
September 29, 1959	\$13,606.72
October 2, 1959	765.63
October 3, 1959	811.24
October 11, 1959	759.78
October 14, 1959	693.96
October 16, 1959	677.23
October 17, 1959	3,112.29
October 25, 1959	355.89
October 28, 1959	1,061.37
October 29, 1959	710.16
November 1, 1959	1,240.09
November 4, 1959	879.01
November 8, 1959	465.17
December 4, 1959	383.14
December 5, 1959	815.08
December 18, 1959	1,020.11
February 13, 1961	<u>8,775.53</u>
Total	\$36,132.40

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).)

Claimant has asserted the loss of \$7,599.51 for goods shipped to Cuba in addition to the transactions previously enumerated herein. However, no evidence in support of these contentions has been submitted, and further findings favorable to claimant would not be justified. Consequently, this additional amount claimed must be, and 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), and in the instant case it is so ordered.

The following certification of loss will be entered and in all other respects the Proposed Decision is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that JOHN H. GRAHAM & CO., INC. suffered a loss, as a result of the 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 Thirty-Six Thousand One Hundred Thirty-Two Dollars and Forty Cents (\$36,132.40) 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

OCT 16 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).)

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

IN THE MATTER OF THE CLAIM OF

JOHN H. GRAHAM & CO., INC.

Claim No. CU -0656

Decision No. CU 513

Under the International Claims Settlement
Act of 1949, as amended

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 \$43,731.91, was presented by JOHN H. GRAHAM & CO., INC., and is based upon the asserted loss of payment for goods shipped to Cuba. Claimant alleged that it has been a national of the United States since 1925, the asserted date of its incorporation, although no evidence has been submitted in this regard.

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 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).)

Claimant allegedly shipped merchandise to 86 Cuban purchasers prior to June 1961. Claimant states that it has never received the funds due on these sales. The only evidence submitted by claimant is a one and one-half page list of the Cuban debtors, showing the account number and amount due from each, submitted with the statement of claim.

By Commission letter of October 28, 1966, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act. Thereafter, by letter of February 3, 1967, the Commission made additional suggestions to claimant concerning the submission of supporting evidence in this matter. However, no evidence in response to this correspondence has been received to date.

On August 23, 1967, claimant was invited to submit any evidence available to it within 45 days from that date, and 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.

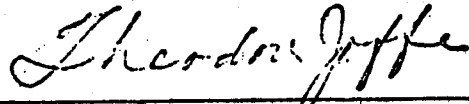
The Commission finds that claimant has not met the burden of proof in that it has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby 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

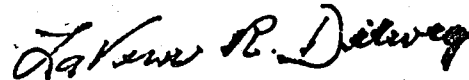
OCT 25 1967



Edward D. Re, Chairman



Theodore Jaffe, Commissioner



LaVern R. Dilweg, Commissioner

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CU- 0656