

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

IN THE MATTER OF THE CLAIM OF

VANDERBILT EXPORT CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0696

Decision No. CU 2000

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 VANDERBILT EXPORT CORPORATION in the amount of \$3,813.54 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.

The record discloses that claimant corporation was organized under the laws of the State of New York and since January 17, 1949 has been a wholly-owned subsidiary of the R. T. Vanderbilt Company, Inc. An officer of R. T. Vanderbilt Company, Inc. has certified that R. T. Vanderbilt Company, Inc. was organized in the State of New York and that at all times pertinent to this claim, more than 50% of the outstanding capital stock of both R. T. Vanderbilt Company, Inc. and its subsidiary was owned by nationals of the United States. The Commission holds that both claimant corporation and its parent are nationals of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant states that 100% of its outstanding capital stock and that of its parent, was held by persons who were nationals of the United States.

The record contains copy of claimant's invoice No. 9449 of July 22, 1960 reflecting the sale to Compania De Vidrios-Owens Illinois de Cuba, S. A. of goods totalling \$1,117.44 including freight, shipping and other attendant fees.

The record also contains a letter dated March 20, 1961 from the Banco Nacional De Cuba stating the collection of \$1,117.44 was paid by the consignee Compania De Vidrios-Owens Illinois de Cuba, S. A. on September 9, 1960 and that the Banco Nacional De Cuba was still awaiting a dollar reimbursement release from the exchange authorities. Claimant asserts that a subsequent credit of \$16.87 was made to the account of

Compania De Vidrios-Owens Illinois de Cuba, S.A. leaving the amount of \$1,100.57 still owing. Claimant states that it has not received the funds.

In addition, the record contains copies of claimant's invoices Numbers 9918 and 9874 both dated September 16, 1960 reflecting the sale of goods in the amounts of \$1,049.57 and \$38,743.50 to Industria Sanitarios Nacional, S.A. of Havana, Cuba. Also the record contains correspondence from the Chase Manhattan Bank dated September 6, 1960 and July 25, 1960 establishing letters of credit in the respective amounts of \$1,049.47 and \$38,743.50 in favor of the claimant for the account of Industria Sanitarios Nacional, S.A. A bank statement dated October 20, 1960 from the Chase Manhattan Bank indicates a payment of \$37,080.00 to the account of claimant thereby reducing the unpaid debt of Industria Sanitarios Nacional, S.A. to \$2,712.97. Claimant states that it has not received 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 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.)

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 loss occurred on September 10, 1960 as to \$1,100.57, the day after payment to the Banco

Nacional De Cuba and as to \$1,663.50 and \$1,049.47 owing under the letters of credit, the loss occurred on the day after the credits were established, July 26, 1960 and September 7, 1960 respectively.

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).

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 dates on which the loss occurred, to the date on which provisions are made for the settlement thereof, as follows:

<u>ON</u>	<u>AS TO</u>
July 26, 1960	\$1,663.50
September 7, 1960	1,049.47
September 10, 1960	<u>1,100.57</u>
Total	\$3,813.54

CERTIFICATION OF LOSS

The Commission certifies that VANDERBILT EXPORT 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 Three Thousand Eight Hundred Thirteen Dollars and Fifty-Four Cents (\$3,813.54) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement. *Leonard v. B. Acetone*

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

Leonard v. B. Acetone

Theodore Jaffe

Theodore Jaffe, Commissioner

JUN 19 1968

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).)

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.