

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

IN THE MATTER OF THE CLAIM OF

ABEX CORPORATION

Claim No. CU-0757

Decision No. CU 3981

Under the International Claims Settlement  
Act of 1949, as amended

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 ABEX CORPORATION on June 13, 1966 in the amount of \$88,959.75 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 claimant corporation has certified that claimant was organized in Delaware, that in 1943 its name was American Brake Shoe Company and in 1966 its name was changed to ABEX CORPORATION; and further, that at all times at least 90% of the stock was owned by citizens 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.

It further appears that Dominion Brake Shoe Company of Canada is wholly owned by claimant.

The record contains copies of invoices, bank letters and ledger extracts, reflecting the sale by claimant and by Dominion of goods to Cuban consignees as follows:

<u>Consignee</u>	<u>American Brake Shoe Company</u> <u>Amount</u>	<u>Date Due or Paid to Bank</u>
Aspuru & Cia., S.A.	\$ 679.34	Jan. 11, 1960
Auto Frenos	548.16	Feb. 8, 1960
Jose F. Cepero	180.81	Apr. 21, 1960
Cia. de Accesorios de Autos	1,006.03 1,525.78	Apr. 19, 1960 Mar. 3, 1960
Cia. Distribuidora G. de la Fe, S.A.	6,385.56 1,647.45 5,641.65 1,339.01 5,940.00	Nov. 30, 1961 Dec. 30, 1959 Feb. 3, 1960 Feb. 17, 1960 Nov. 1, 1960

<u>Consignee</u>	<u>Amount</u>	<u>Date Due or Paid to Bank</u>
Commercial Auto Johnnie Rodriguez, S.A.	\$ 1,923.11	Feb. 1, 1960
	3,043.09	Feb. 16, 1960
	844.66	Jul. 7, 1960
	1,089.55	Sep. 26, 1960
	2,721.23	Sep. 16, 1960
Commercial Franco y Fernandez	2,866.74	Jan. 14, 1960
Consolidated Railroads of Cuba	9,411.11	Jul. 10, 1959
	22,217.20	May 22, 1959
A. Garcia	571.32	Feb. 26, 1960
Importadora Cabera	21.67	Feb. 1, 1960
Importadora del Campo	1,011.53	Jan. 29, 1960
Minagro Industrial, S.A.	771.40	Dec. 24, 1958
Luis Vicens & Cia.	551.32	Jan. 20, 1960
	<u>\$71,937.72</u>	

Claimant's wholly-owned Canadian subsidiary

<u>Consignee</u>	<u>Amount</u>	<u>Date Due or Paid to Bank</u>
Auto Frenos	\$ 1,292.68	Jan. 18, 1960
Cia. de Accesorios de Automoviles	640.29	Mar. 25, 1960
Cia. Riera, Toro & Van Twistern, S.A.	755.34	Mar. 24, 1960
	\$1,754.47	
Credit	<u>2.50</u>	Aug. 3, 1960
Cooperativa de Omnibus Aliados, S.A.	7,852.63	Jan. 4, 1960
Commercial Auto Johnnie Rodriguez, S.A.	2,179.06	Dec. 16, 1960
Erginio Fernandez Garcia	1,980.37	Aug. 11, 1959
Trans-America, S.A.	<u>569.69</u>	Mar. 16, 1960
	<u>\$17,022.03</u>	

Claimant states that it has not received the funds either due it or which had been paid for its account to local banks and not transmitted to it.

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 and that of its wholly-owned Canadian subsidiary were lost as a result of intervention by the Government of Cuba and that the losses occurred on the dates shown below, the date of Law 568 being used for those items of claim arising prior to that date:

<u>FROM</u>	<u>ON</u>
September 29, 1959	\$34,380.08
December 30, 1959	1,647.45
January 4, 1960	7,852.63
January 11, 1960	679.34
January 14, 1960	2,866.74
January 18, 1960	1,292.68
January 20, 1960	551.32
January 29, 1960	1,011.53
February 1, 1960	1,944.78
February 3, 1960	5,641.65
February 8, 1960	548.16
February 16, 1960	3,043.09
February 17, 1960	1,339.01
February 26, 1960	571.32
March 3, 1960	1,525.78
March 16, 1960	569.69
March 24, 1960	755.34
March 25, 1960	640.29
April 19, 1960	1,006.03
April 21, 1960	180.81
July 7, 1960	844.66
August 3, 1960	1,751.97
September 16, 1960	2,721.23
September 26, 1960	1,089.55
November 1, 1960	5,940.00
December 16, 1960	2,179.06
November 30, 1961	<u>6,385.56</u>
	\$88,959.75

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.

CERTIFICATION OF LOSS

The Commission certifies that ABEX 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 Eighty-eight Thousand Nine Hundred Fifty-nine Dollars and Seventy-five Cents (\$88,959.75) 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 8 1969

*Leonard v. B. ...*  
Leonard v. B. ..., Chairman

*Theodore J. ...*  
Theodore J. ...

*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).)