

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

IN THE MATTER OF THE CLAIM OF

STERLING AUTOMOTIVE MFG. CO.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -1150

Decision No. CU 1950

Counsel for claimant:

Sidney M. Fields, Esq.

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 STERLING AUTOMOTIVE MFG. CO. in the amount of \$4,573.55 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.

The term "National of the United States" is defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, whose ownership is vested directly or indirectly to the extent of 50 per centum or more in natural persons who are citizens of the United States.

An officer of the claimant corporation has certified that the claimant was organized in the State of Illinois and that at all times between 1935 and presentation of this claim on March 17, 1967, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The evidence of record discloses that all of the outstanding capital stock of claimant is held by United States nationals.

The record contains copy of a letter dated May 12, 1960 from the claimant to the Industrial Bank, Havana, Cuba, stating that \$202.45 was owed by Pedro Martin Betancourt to claimant, reflecting the shipment of merchandise to Cuba, and having matured on January 10, 1960, no word had been received regarding payment of this draft.

There also appears a copy of an Advice of Payment from the First National Bank of Chicago dated August 3, 1959, reflecting the sale of merchandise to Antonio Garcia and Cia, S.A. in the amount of \$1,492.60 and advising that the draft had been returned unpaid.

Additionally, the record contains copies of letters from various banks indicating that collections were paid by the consignees, and that the banks were awaiting similar authorization from the Currency Stabilization Fund, a Cuban Government Agency. There follows a list of the

consignees, the Cuban collecting banks, the amounts owing from each, and the dates of payment or acknowledgement:

<u>Consignee</u>	<u>Cuban Collecting Bank</u>	<u>Amount</u>	<u>Date of Payment or Acknowledgement</u>
Ferreteria Lisamar	Agriculture & Industrial	\$1,111.68	March 3, 1960
Pedro Martin Betancourt	Industrial Bank of Havana	246.90	January 8, 1960
Pedro Martin Betancourt	(same as above)	246.89	May 23, 1960
Importadora Distribuidora Exportadora	Banco Continental Cubano	371.25	February 29, 1960
Importadora Distribuidora Exportadora	(same as above)	371.25	August 12, 1960
Motor Supply Corp.	(same as above)	<u>530.53</u>	November 25, 1960
Total			\$2,878.50

Claimant states that it has not received any of the above-stated funds, including those accounts which were not paid to Cuban banks.

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 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 January 10, 1960, as to \$202.45 unpaid at maturity. As to the debt in the amount of \$1,492.60 which was due prior to September 29, 1959, the Commission finds that the date of loss was September 29, 1959, the effective date of Law 568. All other debts are found by the Commission to be due on the date following the respective dates of acknowledgment of payment.

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>
September 29, 1959	\$1,492.60
January 9, 1960	246.90
January 11, 1960	202.45
March 1, 1960	371.25
March 4, 1960	1,111.68
May 24, 1960	246.89
August 13, 1960	371.25
November 26, 1960	<u>530.53</u>
Total	\$4,573.55

CERTIFICATION OF LOSS

The Commission certifies that STERLING AUTOMOTIVE MFG. CO. 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 Four Thousand Five Hundred Seventy-Three Dollars and Fifty-Five Cents (\$4,573.55) 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

JUN 13 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, 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).)