

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

IN THE MATTER OF THE CLAIM OF

MURIEL SILVER, PHILIP Z. WEEDON,
SCHAPIRO FOUNDATION INC., AND
HERBERT GOLDMAN AND SEWELL SHUGER AS
TRUSTEES U/A WITH ROSE K. SCHAPIRO AS
SUCCESSORS IN INTEREST TO CREST EXPORT
CORPORATION (DISSOLVED)

Claim No. CU-1307

Decision No. CU 1947

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, in the amount of \$4,219.59, was originally filed by Crest Export Corporation, and was subsequently amended to substitute MURIEL SILVER, PHILIP Z. WEEDON, SCHAPIRO FOUNDATION INC., AND HERBERT GOLDMAN AND SEWELL SHUGER AS TRUSTEES U/A WITH ROSE K. SCHAPIRO AS SUCCESSORS IN INTEREST TO CREST EXPORT CORPORATION (DISSOLVED) as claimants herein. The claim is 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 of the Act defines a "national of the United States" as (A) a natural person who is a citizen of the United States, or (B) 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.

Evidence of record establishes that Crest Export Corporation was incorporated in the State of New York, and a past officer of the corporation has certified that at all times between August 21, 1951 and the dissolution of the corporation on January 20, 1963, more than 50% of the outstanding capital stock of the corporation has been owned by nationals of the United States. The Commission finds that Crest Export Corporation (Dissolved) was a national of the United States, between the two dates indicated, within the meaning of Section 502(1)(B) of the Act.

Upon the dissolution of the corporation in 1963, the net assets of the corporation were distributed as follows:

1. MURIEL SILVER, a United States national since birth, 25%;
2. PHILIP Z. WEEDON, a national of the United States since birth, 25%;
3. SCHAPIRO FOUNDATION INC., certified to be a non-profit charitable corporation incorporated under the laws of the State of Maryland, 25%;

4. Rose K. Schapiro, a national of the United States since birth, 25%. Rose K. Schapiro subsequently conveyed her share in the liquidating distribution to Julian C. Cohen and Marvin S. Schapiro as Trustees Under Agreement with Rose K. Schapiro. The successor Trustees under this agreement are claimants HERBERT GOLDMAN and SEWELL SHUGER; the beneficiaries of the trust are Alan Schapiro and David Schapiro, each of whom has been a United States national since birth.

The Commission holds that the claimants herein, successors in interest to the claim of Crest Export Corporation, are all nationals of the United States as contemplated by Title V of the Act.

The record establishes that Crest Export Corporation made sales and delivery of goods to two Cuban consignees during 1959. Each transaction was to have been paid by bank draft. The record contains a copy of a letter to Crest Export Corporation from the Trust Company of Cuba, informing the corporation that its draft for \$878.52, drawn on Sampedro y Cia had been paid on December 21, 1959, and that the proceeds would be remitted as soon as exchange permission had been obtained from the Cuban authorities. The record contains a similar letter from the same bank to the corporation, relating to a draft drawn on Villamil Martinez y Cia for \$3,341.07 that had been paid on November 25, 1959. Neither Crest Export Corporation nor claimants as successors in interest to the corporation have ever received the funds.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded transfers of funds, in this and similar cases, 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].)

Accordingly, in the instant claim the Commission finds that claimants' 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 December 22, 1959 as to \$878.52, and on November 26, 1959 as to \$3,341.07, the days after the collections were paid to the Trust Company of Cuba.

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).

Accordingly, the Commission concludes that the amount of the loss sustained by claimants 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.

CERTIFICATIONS OF LOSS

The Commission certifies that MURIEL SILVER succeeded to and 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 One Thousand Fifty-Four Dollars and Eighty-Nine Cents (\$1,054.89) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement;

The Commission certifies that PHILIP Z. WEEDON succeeded to and 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 One Thousand Fifty-Four Dollars and Ninety Cents (\$1,054.90) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement;

The Commission certifies that SCHAPIRO FOUNDATION INC. succeeded to and 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 One Thousand Fifty-Four Dollars and Ninety Cents (\$1,054.90) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that HERBERT GOLDMAN and SEWELL SHUGER AS TRUSTEES U/A WITH ROSE K. SCHAPIRO succeeded to and 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 One Thousand Fifty-Four Dollars and Ninety Cents (\$1,054.90) 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).)