

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

IN THE MATTER OF THE CLAIM OF

DHJ INDUSTRIES, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1496

Decision No. CU

3019

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 DHJ INDUSTRIES, INC. in the amount of \$5,861.80, and 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 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 sales and shipments upon which the claim is based were made by Dubin-Haskell-Jacobson, Inc., and this business enterprise was organized in the State of New York in 1951. At all times pertinent hereto, 100% of the corporation's outstanding capital stock was owned by Eugene M. Jacobson, a national of the United States since birth, and Dubin-Haskell Lining Corp. It has been further certified that at all times pertinent hereto, 100% of the outstanding capital stock of Dubin-Haskell Lining Corp., also a New York corporation, has been owned by nationals of the United States. The record establishes that Dubin-Haskell-Jacobson, Inc. changed its name in 1965 to DHJ INDUSTRIES, INC., the claimant corporation. An officer of the claimant corporation has certified that 42.5% of claimant's outstanding capital stock is owned by Dubin-Haskell Lining Corp., and that the remainder of the stock is owned by individual persons who are all nationals of the United States. Accordingly, the Commission holds that claimant is a national of the United States within the meaning of Section 502 (1)(B) of the Act.

The record contains copies of letters to Dubin-Haskell-Jacobson, Inc., written by the Trust Company of Cuba and Banco Continental Cubano, informing the corporation as to the status of its bank drafts upon various Cuban consignees. Claimant asserts that each shipment made by Dubin-Haskell-Jacobson to Cuban purchasers was to have been paid by bank draft. A summary of the information conveyed by the various letters is as follows:

<u>CONSIGNEE</u>	<u>AMOUNT</u>	<u>DATE DUE OR DATE PAYMENT ADVISED</u>
Confecciones Mascot, S.A.	\$1,267.70	April 29, 1960
N. Smolansky	526.94	February 9, 1960
Kabay Hnos.	852.30	December 30, 1959
Confecciones Ermita, S.A.	1,231.46	November 4, 1959
Suarez & Sanchez	<u>924.82</u>	August 11, 1960
	<u>\$4,803.22</u>	

An officer of the claimant corporation has certified that the proceeds of these transactions have never been received by the claimant in payment for the merchandise. Thus, the Commission finds that in each case the date of loss was the day after payment became due or the day after payment was advised.

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, 1967 FCSC Ann. Rep. 46).

Accordingly, the Commission finds in the instant claim that claimant's property was lost as a result of intervention by the Government of Cuba; and that claimant is entitled to a certification of loss in the amount of \$4,803.22 within the meaning of Title V of the Act, as discussed hereafter.

This leaves for determination a portion of the claim asserted for the loss of certain merchandise assertedly shipped to Fabrica de Sabanas Leda, identified as draft #R42030, in the amount of \$1,058.58.

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 advised that evidence concerning the sale and shipment to the aforesaid consignee is not available and there is no supporting material to establish this portion of the claim. Accordingly, the Commission is constrained to deny this portion of the claim and it 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 date of loss to the date of settlement (See Claim of Lisle Corporation, FCSC Claim No. CU-0644).

Accordingly, the Commission concludes that the amount of loss sustained herein 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 provision is made for the settlement thereof, as follows:

From November 5, 1959, as to \$1,231.46;
From December 31, 1959, as to \$852.30;
From February 10, 1960, as to \$526.94;
From April 30, 1960, as to \$1,267.70; and
From August 12, 1960, as to \$924.82.

CERTIFICATION OF LOSS

The Commission certifies that DHI INDUSTRIES, 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 Four Thousand Eight Hundred Three Dollars and Twenty-Two Cents (\$4,803.22) 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

SEP 11 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Feldberg

Sidney Feldberg, 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).)