

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

IN THE MATTER OF THE CLAIM OF

THE KELLY-SPRINGFIELD TIRE COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 2483

Decision No. CU 1791

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 THE KELLY-SPRINGFIELD TIRE COMPANY in the amount of \$109,761.52 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) of the Act defines the term "national of the United States" as "(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."

An officer of the claimant corporation has certified that the claimant was organized in the State of Maryland in 1935, and that it has at all times been a wholly-owned subsidiary of the Goodyear Tire and Rubber Company.

An officer of the Goodyear Tire and Rubber Company has certified that since May 15, 1959 more than 50% of the outstanding capital stock of that corporation has been held 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.

An officer of the Goodyear Tire and Rubber Company states that 63,575 of its 64,116 shareholders are residents of the United States and presumed to be nationals of the United States, and that 541 of its stockholders are residents of foreign countries and assumed to be nationals of those countries. (See the Claim of Goodyear Tire and Rubber Company, Claim No. CU-0887, Decision No. CU-0887).

The record contains copies of 10 invoices and accompanying letters of instruction to a collecting bank in Havana, which reflects the sale of goods in the amount of \$109,761.52 to Cia. Commercial de Gomas S. A., of Havana. Claimant states that the merchandise covered by these invoices was delivered to the consignee and that it has reason to believe that collections of drafts issued with the invoices were made by the aforementioned bank in Cuba. Claimant asserts that it has never received payment of these debts.

The data concerning sale and shipment of goods claimed to Cia. Commercial de Gomas S. A., including invoices, amounts and due dates is as follows:

<u>Invoice Date and Number</u>	<u>Amount</u>	<u>Due Date</u>
July 28, 1959 No. 8979	\$ 2,087.98	December 29, 1959
August 12, 1959 No. 9006	7,247.50	January 12, 1960
August 20, 1959 No. 9018	22,155.71	January 25, 1960
September 11, 1959 No. 9054	3,352.80	February 15, 1960
September 23, 1959 No. 9086	8,626.57	February 23, 1960
October 14, 1959 No. 9144	10,483.64	March 14, 1960
October 26, 1959 No. 9173	20,034.02	March 28, 1960
November 16, 1959 No. 9217	14,513.53	April 19, 1960
November 25, 1959 No. 9238	3,776.07	May 2, 1960
December 8, 1959 No. 9270	17,483.70	May 10, 1960
Total	<hr/> \$109,761.52	

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 the Claim of The Schwarzenbach Huber Company, FCSC Claim No. CU-0019; and the Claim of Etna Pozzolana Corporation, FCSC 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 the following dates:

<u>ON</u>	<u>AS TO</u>
December 29, 1959	\$,2,087.98
January 12, 1960	7,247.50
January 25, 1960	22,155.71
February 15, 1960	3,352.80
February 23, 1960	8,626.57
March 14, 1960	10,483.64
March 28, 1960	20,034.02
April 19, 1960	14,513.53
May 2, 1960	3,776.07
May 10, 1960	<u>17,483.70</u>
Total	\$109,761.52

The Commission has decided that in payment of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be allowed at the rate of 6% per annum from the date of loss to the date of settlement (See the Claim of Lisle Corporation, FCSC Claim No. CU-0644).

Accordingly, the Commission concludes that the amount of loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that THE KELLY-SPRINGFIELD TIRE COMPANY 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 Hundred Nine Thousand Seven Hundred Sixty-One Dollars and Fifty-Two Cents (\$109,761.52) 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

MAY 1 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).)