

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

IN THE MATTER OF THE CLAIM OF

MONODON CORPORATION

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -2954

Decision No. CU-0854

Counsel for claimant:

Stassen, Kephart, Sarkis & Kostos  
By Frederick D. Sarkis, Esq.

FINAL DECISION

This claim in the amount of \$153,892.84 was based on loss of payment for merchandise shipped to Cuba and other liquid assets in Cuba. It was denied on December 20, 1967.

Counsel for claimant has since submitted evidence on the basis of which the decision is now amended.

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."

The MONODON CORPORATION was organized in New York in about March, 1945. It had 400 shares of stock outstanding, 200 of which were owned by Ethel G. Sonnenborn, who was born in 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.

The record discloses that 200 shares of claimant corporation were owned by Jerome J. Sonnenborn, said to have derived United States citizenship from his father, and who held a passport issued to him on May 10, 1961.

Claimant was engaged in selling bond paper, chrome paper and newsprint. The evidence of record includes affidavits of Francisco Valdes, former president of Roca y Valdes, jobber in the paper business, and who assisted claimant in the sale of its product; of Rene Lombana, former resident manager of claimant in Havana; and of Jerome J. Sonnenborn, President of claimant. The data on which the affidavits were based included notes and rough memoranda together with knowledge of facts known to the said Rene Lombana. It appears that these original notes and memoranda are not now available.

The record as thus constituted discloses that between 1957 and 1959, claimant made sales and shipments to customers in Cuba, outlined below, payments for which were made to banks which were precluded from forwarding the sums to claimant:

<u>Customer</u>	<u>Amount</u>
Chacon Alvarez y Cia.	\$ 1,086.76
Papelera La Revoltosa	2,217.16
Litografica de Cuba	1,739.75
Antonio Garcia Otero	699.11
Papelera Crespo, S.A.	5,038.25
Cuartel Maestro	43,264.93
Roca y Valdes	<u>57,010.69</u>
	\$111,058.65

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 claimants, 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,

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 the subject accounts receivable were lost as a result of intervention by the Government of Cuba, and that in the absence of evidence as to the specific dates of payments to the banks listed in the record, the losses occurred on September 20, 1959, the effective date of Law 568.

The record further discloses that over the above period of time claimant made sales to the Government of Cuba of quantities of writing and printing paper; and that payments in the amount of \$37,416.16 were approved by the Cuban Treasury Ministry, but that payment was stopped and the sums were not received by claimant. The Commission holds that in this instance also the Law 568 was applied and precluded the funds from being transferred; and that in the absence of specific evidence to the contrary, the loss occurred also on September 29, 1959.

Further the evidence reflects that liquid assets of the claimant in its sales office in Havana consisted of the following:

Cash	\$3,793.72
Accounts Receivable	1,396.31
Deposit	<u>230.00</u>
	\$5,420.03

The Commission holds that the sums represented by these items were also intervened by the Government of Cuba through its Law 568, and on the date of September 29, 1959.

Accordingly, the Commission holds that claimant suffered losses in the aggregate amount of \$153,892.84 within the meaning of Title V of the Act as a result of intervention of its property by the Government of Cuba.

The Commission has decided that in certifications of loss 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.

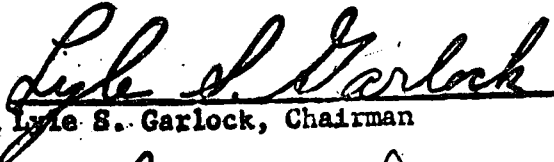
Accordingly, the following Certification of Loss will be entered and in all other respects, the Proposed Decision as amended herein, is affirmed.

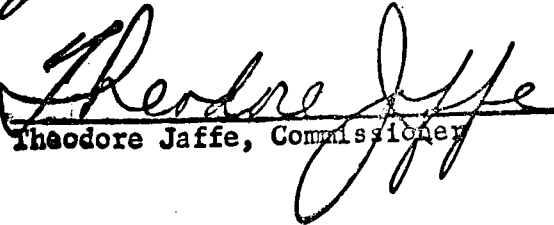
CERTIFICATION OF LOSS

The Commission certifies that MONODON 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 One Hundred Fifty-three Thousand Eight Hundred Ninety-two Dollars and Eighty-four Cents (\$153,892.84), with interest thereon at 6% per annum from September 29, 1959 to the date of settlement.

Dated at Washington, D. C.,  
and entered as the Final  
Decision of the Commission

SEP 15 1971

  
Lyle S. Garlock, Chairman

  
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.

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Claim No. CU -2954

Decision No. CU

854

Counsel for claimant:

Stassen, Kephart, Sarkis & Kostos  
by Frederick D. Sarkis, Esquire

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$153,892.84, was presented by the MONODON CORPORATION and is based upon the asserted loss of payment for merchandise shipped to Cuba and corporate assets expropriated by the Government of 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 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

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).)

This claim is based upon the asserted loss of assets located in claimant's office in Havana, Cuba, and of payment for certain merchandise shipped to Cuba. No documentary evidence has been submitted in support of the claim. By Commission letter of August 8, 1967 claimant, through counsel, was advised as to the type of evidence proper for submission to establish his claim under the Act. However, no evidence in response to this correspondence has been received to date. On October 20, 1967, counsel was invited to submit any evidence available to him within 45 days from that date, and he was informed, that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. No evidence has since been submitted.

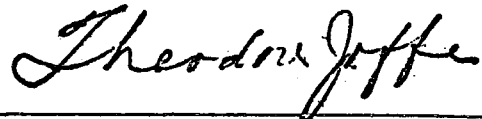
The Commission finds that claimant has not met the burden of proof in that it has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

Dated at Washington, D. C.,  
and entered as the Proposed  
Decision of the Commission

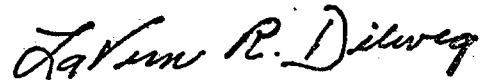
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Edward D. Re, Chairman



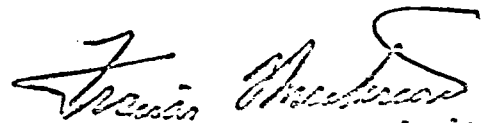
Theodore Jaffe, Commissioner



LaVern R. Dilweg, Commissioner

**CERTIFICATION**

This is a true and correct copy of the decision  
of the Commission which was entered as the final  
decision on \_\_\_\_\_

  
Clerk of the Commission

**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).)