

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

IN THE MATTER OF THE CLAIM OF

PRICE PAPER PRODUCTS CORP.

Claim No. CU - 3040

Decision No. CU - 3359

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, was presented by PRICE PAPER PRODUCTS CORP. in the amount of \$62,818.49 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)(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.

A copy of claimant's Articles of Incorporation reflects that the claimant was organized in the State of Ohio and evidence has been submitted to establish that at all times between its incorporation in 1956 and presentation of this claim 100% 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 record contains copies of bank correspondence, drafts, and claimant's invoices reflecting shipments of merchandise to Cuban business firms, listed hereafter as the consignees. This evidence discloses that the purchase price of the goods and accompanying charges for such shipments were, in some instances, paid by the consignee to local Cuban banks, and that dollar reimbursement releases were never granted by Cuban Government officials. Other drafts for shipments made by claimant were not paid by the consignees. Claimant states that it has not received the funds due for such shipments.

There follows hereafter data concerning the shipments made to Cuban consignees, including information on paid and unpaid drafts, with the dates on which the payments were acknowledged or the dates when the drafts were due and payable:

<u>Consignee</u>	<u>Date</u>	<u>Transaction</u>	<u>Amount</u>
Ferran y Villar	February 9, 1959	Debit Memo	\$ 9.50
	January 28, 1960	Invoice	305.10
	April 3, 1961	Paid draft	<u>1,931.24</u>
			2,245.84
Pedro G. Celorio	June 13, 1958	Invoice \$18,245.45	
		less credits <u>2,951.97</u>	15,293.48
	November 26, 1958	Invoice	<u>11,672.53</u>
			26,966.01
A. Garcia Otero	January 28, 1960	Invoice \$ 9,067.95	
		less credits <u>5,977.30</u>	3,090.65
	March 10, 1961	Paid draft	<u>1,266.37</u>
			4,357.02
Papelera Amaury	January 28, 1958	Invoice \$22,396.85	
		less credits <u>13,695.43</u>	8,701.42
	July 22, 1958	Invoice	<u>1,086.01</u>
			9,787.43
Papelera Regla	December 2, 1958	Invoice \$ 3,966.29	
		less credits <u>319.02</u>	<u>3,647.27</u>
TOTAL			\$47,003.57

Claim is also asserted for amounts alleged to be due from the following consignees:

German Muniz, Agent	\$15,296.11
Papelera Trebus	391.65
Roca y Valdes	<u>127.16</u>
TOTAL	\$15,814.92

Upon consideration of all the evidence of record, however, the Commission concludes that the evidence as to these claims is of insufficient probative value to warrant a finding that the additional claimed amounts were due and owing to claimant from the asserted consignees. Thus, the Commission hereby denies this part of the claim.

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, 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 as shown further below.

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	\$40,410.21
January 28, 1960	3,395.75
March 10, 1961	1,266.37
April 3, 1961	<u>1,931.24</u>
TOTAL	\$47,003.57

CERTIFICATION OF LOSS

The Commission certifies that PRICE PAPER PRODUCTS CORP. 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 Forty-seven Thousand Three Dollars and Fifty-seven Cents (\$ 47,003.57) with interest 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

DEC 11 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities for the loss here certified.

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].)