

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

IN THE MATTER OF THE CLAIM OF

GUTMANN AND COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -3052

Decision No. CU
2018

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 GUTMANN AND COMPANY in the amount of \$1,735.45 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.

An officer of the claimant corporation has certified that the claimant was organized in the State of Illinois in 1892; and that in 1964, the Illinois Corporation was succeeded by GUTMANN AND COMPANY, a Delaware Corporation. The Commission holds that GUTMANN AND COMPANY, a Delaware Corporation, is the legal successor in interest of the aforementioned entity and as such succeeded to the claim for losses suffered by the former corporation resulting from actions of the Cuban Government after January 1, 1959.

The record also contains the certification of a corporate officer to the effect that at all times between 1892 and the presentation of this claim on April 25, 1967, more than 50% of the outstanding capital stock of the claimant and its predecessor have been owned by United States nationals. The Commission holds that claimant and its predecessor qualify as nationals of the United States within the meaning of Section 502(1)(B) of the Act. Claimant states that all of its stockholders are nationals of the United States.

The record contains a copy of the invoice of claimant's predecessor No. M 66143 of November 25, 1959 reflecting the sale to Charles Bloch "Cinturones Universal", of Havana, Cuba, of goods totalling \$1,637.40, as to which freight, shipping and other attendant fees increased the total to \$1,735.45.

Additionally, the record includes a letter of December 18, 1959 from the First National Bank of Chicago, to the predecessor of claimant, in which it is stated that the collection of \$1,735.45 was paid by the consignee and that the Cuban collecting bank was still awaiting a dollar reimbursement release from the exchange control authorities, a Cuban Government agency. Claimant states that neither it nor its predecessor 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 the property of claimant's predecessor 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 17, 1959 as to \$1,735.45, the day after the collection was acknowledged by the local Cuban bank, and that claimant succeeded to the loss.

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 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 GUTMANN AND COMPANY 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 Seven Hundred Thirty-Five Dollars and Forty-Five Cents (\$1,735.45) with interest thereon at 6% per annum from the date of loss to the date of settlement.

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

26 JUN 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, 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(a) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)