

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

IN THE MATTER OF THE CLAIM OF

LIGGETT & MYERS TOBACCO COMPANY

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-3084

Decision No. CU 1715

Counsel for claimant:

Charles B. Morgenthauer, Esq.

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 LIGGETT & MYERS TOBACCO COMPANY, in the amount of \$82,698.99, 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. 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."

Officers of the claimant corporation have certified that the claimant was organized in the State of New Jersey and that at all times between the respective dates of loss and presentation of this claim on May 1, 1967, more than 50% of the outstanding capital stock of the claimant corporations has been owned by nationals of 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 evidence of record, including a statement of a corporate official of claimant, discloses that at all times pertinent to this claim approximately 99 per cent of the outstanding shares of stock of the LIGGETT & MYERS TOBACCO COMPANY were held by nationals of the United States.

The record includes copies of correspondence from the Havana Branch of The First National Bank of Boston, agents of the claimant and Roberts Tobacco Company as well as copies of invoices and other data concerning shipments of tobacco products to the account of the Roberts Tobacco Company of Havana, as the consignee. 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 the Havana Branch of The First National Bank of Boston; and that the dollar reimbursement releases or authorization for such reimbursement were never granted by Cuban governmental officials. Other drafts for shipments made by claimant were not paid to the collecting bank by the consignee. Claimant states that it has not received any of the funds for such shipments.

There follows hereafter data concerning the shipments made by claimant to the Cuban consignee, including information on the paid and unpaid drafts. The claimant utilized sight drafts which were paid upon delivery or were due and payable within thirty (30) days from date of the invoice. The listed amounts are net after adjustment or credit and in all transactions the consignee is the Roberts Tobacco Company, Havana Cuba.

I. PAID DRAFTS

<u>INVOICE DATE AND NUMBER</u>	<u>AMOUNT</u>	<u>DATE OF PAYMENT</u>
XC-493 (477) October 30, 1959	\$12,810.00	December 1, 1959
XC-495 (479) October 30, 1959	12,810.00	December 5, 1959
XC-515 (552) December 4, 1959	12,810.00	January 13, 1960
XC-516 (553) December 4, 1959	7,552.00	January 4, 1960
XC-517 (554) December 4, 1959	12,810.00	January 4, 1960
XC-518 (555) December 4, 1959	7,552.00	January 4, 1960
XC-527 (557) December 4, 1959	<u>7,552.00</u>	January 13, 1960
	\$73,896.00	(Sub total)

There is, in addition to the above items, a transaction whereby claimant shipped merchandise to the aforesaid consignee by draft #556 in the amount of \$3,856.00. While claimant has not submitted an invoice covering this sum, the amount is included in the claim and

reference is made to the amount in question by The First National Bank of Boston (Havana Branch) in letter to claimant dated July 25, 1960. The bank advised claimant that although the sum was paid by the consignee, presumably within thirty days from December 4, 1959, the date of the invoice, the funds were not transmitted due to actions of the Cuban authorities. Thus, the date of such payment is found to be on January 4, 1960.

GRAND TOTAL (PAID DRAFTS): \$77,752.00

II. UNPAID ACCOUNTS:

The claimant includes a list of transactions during the period February 1959, through February 1960, when numerous small shipments of merchandise were shipped for the account of Roberts to various resident embassies located in Havana, Cuba. The claimant advised that these shipments total \$5,146.99; and that claimant has never been paid due to actions of the Cuban Government. The shipments include the following:

<u>DATE</u>	<u>INVOICE NO.</u>	<u>AMOUNT</u>
February 20, 1959	X-1550	\$ 58.50
February 25, 1959	X-1134-H	62.25
February 25, 1959	X-9910-J	22.50
February 27, 1959	X-1556	49.50
February 27, 1959	X-1557	27.00
February 27, 1959	X-1558-A	45.00
March 4, 1959	X-1570	9.00
March 6, 1959	X-1573	48.75
March 6, 1959	X-1574	25.00
March 6, 1959	X-1575	9.00
March 11, 1959	X-1582	13.50
March 18, 1959	X-1595	57.50
March 18, 1959	X-1596	11.50
March 20, 1959	X-1609	9.00
March 25, 1959	X-1134-T	62.25
March 25, 1959	X-1558-B	45.00
March 25, 1959	X-1620	28.75
March 25, 1959	X-9910-K	22.50
April 8, 1959	X-1646	13.50
April 10, 1959	X-1652	137.50
April 10, 1959	X-1655-A	68.00
April 29, 1959	X-1558-C	45.00
April 29, 1959	X-1686	22.50
April 29, 1959	X-1687	76.50
April 29, 1959	X-9910-L	22.50
May 1, 1959	X-1691	9.00
May 1, 1959	X-1692	51.25
May 8, 1959	X-1697	73.75
May 13, 1959	X-1655-B	68.00
May 20, 1959	X-1712	94.50
May 22, 1959	X-1718	5.75

<u>DATE</u>	<u>INVOICE NO.</u>	<u>AMOUNT</u>
May 27, 1959	X-1558-D	\$ 45.00
May 27, 1959	X-1722	58.50
May 27, 1959	X-9910-M	22.50
June 3, 1959	X-1541-A	65.50
June 10, 1959	X-1655-C	68.00
June 10, 1959	X-1751	22.50
June 10, 1959	X-1752	22.50
June 10, 1959	X-1753	28.75
June 17, 1959	X-1769	17.25
June 24, 1959	X-1558-E	45.00
June 24, 1959	X-1780	81.00
June 24, 1959	X-9910-N	22.50
July 1, 1959	X-1789	27.00
July 1, 1959	X-1793	147.50
July 6, 1959	X-1800	14.75
July 8, 1959	X-1541-B	32.75
July 8, 1959	X-1768-A	73.75
July 10, 1959	X-1806	73.75
July 29, 1959	X-1558-F	45.00
July 29, 1959	X-1830	13.50
July 29, 1959	X-1831	11.50
July 29, 1959	X-1910-O	22.50
July 31, 1959	X-1834	71.00
August 12, 1959	X-1768-B	73.75
August 14, 1959	X-1858	27.00
August 19, 1959	X-1862	22.50
August 26, 1959	X-1541-C	32.75
August 26, 1959	X-1558-C	45.00
August 26, 1959	X-1876	73.75
August 26, 1959	X-9910-P	22.50
September 2, 1959	X-1887	5.75
September 4, 1959	X-1890	11.50
September 9, 1959	X-1768-C	73.75
September 16, 1959	X-1910	43.00
September 18, 1959	X-1913	13.50
September 25, 1959	X-1923	76.50
September 25, 1959	X-1924	28.75
September 30, 1959	X-1558-H	45.00
September 30, 1959	X-1931	18.00
September 30, 1959	X-9910-Q	22.50
October 2, 1959	X-1936	9.00
October 9, 1959	X-1945	17.25
October 14, 1959	X-1541-D	32.75
October 14, 1959	X-1768-D	73.75
October 16, 1959	X-1957	56.50
October 16, 1959	X-1958	22.50
October 16, 1959	X-1959	9.00
October 21, 1959	X-1970	17.25
October 28, 1959	X-1558-I	45.00
October 28, 1959	X-1983	27.00
October 28, 1959	X-9910-R	22.50
November 6, 1959	X-1989	49.50
November 13, 1959	X-1768-E	73.75
November 13, 1959	X-2004	64.75
November 13, 1959	X-2005	85.50
November 18, 1959	X-2008	63.25
November 18, 1959	X-2011-A	28.25
November 25, 1959	X-1558-J	45.00
November 30, 1959	X-2025	45.00

<u>DATE</u>	<u>INVOICE NO.</u>	<u>AMOUNT</u>	
December 2, 1959	X-2027	\$ 28.75	
December 9, 1959	X-1768-P	73.75	
December 10, 1959	X-9312	547.49	
December 11, 1959	X-2038	13.50	
December 16, 1959	X-2052	160.00	
December 22, 1959	X-2061	48.00	
December 30, 1959	X-1558-K	45.00	
January 6, 1960	X-2011-B	28.25	
January 6, 1960	X-2064	22.50	
January 6, 1960	X-2065	30.00	
January 6, 1960	X-2072	70.50	
January 6, 1960	X-2076	43.00	
January 13, 1960	X-1768-G	73.75	
January 15, 1960	X-2083	9.00	
January 22, 1960	X-2101	76.50	
January 27, 1960	X-1558-L	45.00	
February 5, 1960	X-2127	9.00	
February 10, 1960	X-1768-H	73.75	
	TOTAL	<u>5,146.99</u>	
	GRAND TOTAL, PAID DRAFTS AND UNPAID ACCOUNTS:		\$82,898.99

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 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).

Accordingly, the Commission finds that the unpaid accounts were lost as a result of intervention by the Government of Cuba, and that in the absence of evidence to the contrary, such losses occurred on

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the respective maturity dates of thirty (30) days from date of shipment with regard to unpaid accounts, maturing after September 29, 1959. However, with respect to the dates of loss as to those goods shipped for which payment was due prior to September 29, 1959, the Commission finds that the losses occurred on September 29, 1959, the effective date of Law 568. The Commission further finds that in those instances in which payments were made by the Cuban consignee, the losses occurred on the days after payments were made by the Cuban consignee to the Cuban bank, where ascertained, or within thirty (30) days from the respective dates of shipment when dates of payment are unknown.

The aforesaid total of unpaid accounts and paid drafts involving the consignee, Roberts Tobacco Company, is in the amount of \$82,898.99 whereas the claimant filed this claim in the amount of \$82,698.99. Since the claimed sum was a calculation based on a minor error in addition, the claimed sum is hereby amended to conform with the corrected sum of \$82,898.99.

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 dates of loss to the date of settlement. (See Claim of Lisle Corporation, Claim No. CU-0644.)

Accordingly, the Commission concludes that the amount of losses arising from shipments of goods to the Cuban consignee 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 provisions are made for the settlement thereof, as follows:

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On \$ 2,876.25 from September 29, 1959  
On 85.50 from October 30, 1959  
On 9.00 from November 2, 1959  
On 17.25 from November 9, 1959  
On 106.50 from November 14, 1959  
On 88.00 from November 16, 1959  
On 17.25 from November 21, 1959  
On 94.50 from November 28, 1959  
On 12,810.00 from December 2, 1959  
On 12,859.50 from December 6, 1959  
On 224.00 from December 13, 1959  
On 91.50 from December 18, 1959  
On 45.00 from December 25, 1959  
On 45.00 from December 30, 1959  
On 28.75 from January 2, 1960  
On 31,770.00 from January 5, 1960  
On 73.75 from January 9, 1960  
On 547.49 from January 10, 1960  
On 13.50 from January 11, 1960  
On 20,362.00 from January 14, 1960  
On 160.00 from January 16, 1960  
On 48.00 from January 22, 1960  
On 45.00 from January 30, 1960  
On 194.25 from February 6, 1960  
On 73.75 from February 13, 1960  
On 9.00 from February 15, 1960  
On 76.50 from February 22, 1960  
On 45.00 from February 27, 1960  
On 9.00 from March 7, 1960  
On 73.75 from March 12, 1960

TOTAL: \$82,898.99



CERTIFICATION OF LOSS

The Commission certifies that LIGGETT & MYERS TOBACCO 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 Eighty-Two Thousand Eight Hundred Ninety-Eight Dollars and Ninety-Nine Cents (\$82,898.99), 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

APR 24 1966

*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).)