

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

IN THE MATTER OF THE CLAIM OF

ALBERT VERLEY & COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3085

Decision No. CU **1252**

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 ALBERT VERLEY & COMPANY in the amount of \$5,573.05 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 Illinois and that at all times between May 26, 1946 and the presentation of this claim on April 27, 1967, 100% of claimant's 313,375 shares of stock outstanding have been owned by The Andrew Jergens Company. An officer of The Andrew Jergens Company has certified that said corporation was organized in the State of Ohio in March 1913, and that over 98% of its outstanding capital stock is owned by United States nationals and less than 2% by non-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 record includes copies of correspondence from banks, copies of invoices, and other data concerning 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 many instances, paid by the consignees to local Cuban banks; and that the dollar reimbursement releases or authorization were never granted by Cuban Government 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.

The evidence of record establishes the following:

UNPAID ACCOUNTS

<u>Invoice No.</u>	<u>Consignee</u>	<u>Due Date</u>	<u>Amount</u>
3636A	Lab. de Belleza Irene Darie, S.A.	September --, 1958	\$ 60.00
3636B	"	October --, 1958	60.00
3656B	"	October 15, 1958	60.00
3739B	"	February 25, 1959	181.45
3739C	"	March 25, 1959	181.45
3889A	"	August 4, 1959	254.00
3889B	"	September 4, 1959	254.00
3889C	"	October 4, 1959	256.35
4031A	"	January 18, 1960	302.00
4031B	"	February 18, 1960	302.00
4031C	"	March 18, 1960	303.25
4132A	"	April 16, 1960	100.00
4132B	"	May 16, 1960	100.00
3765	Jose Luis Martinez	January 5, 1959	70.00
			<u>\$2,484.50</u>

PAID ACCOUNTS

<u>Draft No.</u>	<u>Date Paid or Acknowledged</u>	<u>Acknowledging Bank</u>	<u>Amount</u>
3656-A	February 19, 1960	First National Bank of Boston	\$ 60.00
3739-A	February 19, 1960	First National Bank of Boston	163.30
3743	January 6, 1960	First National City Bank of New York	190.00
3933	April 6, 1961	First National City Bank of New York	644.00
4021	March 18, 1960	First National City Bank of New York	767.10
4260	September 6, 1960	First National City Bank of New York	400.00
4259	February 8, 1961	First National City Bank of New York	966.00
			<u>\$3,190.40</u>
			<u>2,484.50</u>
			<u>\$5,674.90</u>

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).

The amount of \$163.30, listed above as a paid draft, is net after the deduction of a 10% commission of \$18.15 to claimant's agent in Cuba. The evidence reflects that claimant authorized the First National Bank of Boston to instruct the Cuban collecting bank to pay said commission to claimant's agent. The Commission finds, therefore, that claimant's loss resulting from the intervention of the Cuban Government is the amount collected by the Cuban bank from the consignee, less the amount of the authorized commission.

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

<u>On</u>	<u>As To</u>
September 29, 1959	\$1,120.90
October 4, 1959	256.35
January 7, 1960	190.00
January 18, 1960	302.00
February 18, 1960	302.00
February 20, 1960	223.30
March 19, 1960	1,070.35
April 16, 1960	100.00
May 16, 1960	100.00
September 7, 1960	400.00
February 9, 1961	966.00
April 7, 1961	644.00
	<u>\$5,674.90</u>

being the date of Law 568 as to the amount of \$1,120.90, the dates payment was due as to the unpaid accounts, and the days after the dates on which payment was acknowledged as to the paid accounts.

The Commission has decided that in the 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 the Claim of Lisle Corporation, FCSC 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.

It will be noted that the total amount of loss found herein is in excess of the amount asserted by claimant. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amounts which may be asserted by claimant as the extent thereof.

CERTIFICATION OF LOSS

The Commission certifies that ALBERT VERLEY & 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 Five Thousand Six Hundred Seventy-Four Dollars and Ninety-Cents (\$5,674.90) 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

FEB 14 1968

Edward D. Re

Edward D. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

**This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on ---MAR 18 1968---**

Francis MacKinnon
Clerk of the Commission

NOTICE TO TREASURY DEPARTMENT: The above listed certificates and/or bonds may have been returned to claimant and no payment should be made until they are resubmitted.

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).)

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