

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

IN THE MATTER OF THE CLAIM OF

KOPPERS COMPANY, INCORPORATED
and
KOPPERS INTERNATIONAL, S.A.

Claim No. CU-3172

Decision No. CU-499

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Templeton Smith, Esq.

AMENDED PROPOSED DECISION

This claim, in the amount of \$31,082.60, is based upon the asserted loss of merchandise sold and shipped to Cuba. By Proposed Decision dated October 18, 1967, the Commission determined that claimant failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. The Proposed Decision in denial of this claim was entered as the Final Decision of the Commission on November 21, 1967. Thereafter, on January 3, 1969, claimants, through counsel, submitted additional supporting evidence in this claim, pertaining to the merchandise shipped to Cuban consignees.

Accordingly, the Final Decision is set aside, and the Proposed Decision is amended as follows:

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 affidavit of an officer of KOPPERS COMPANY INCORPORATED discloses that claimant was organized in the State of Delaware; that

KOPPERS INTERNATIONAL, C.A., a Venezuelan corporation, is a wholly owned subsidiary of KOPPERS COMPANY INCORPORATED of Delaware; and that in excess of 99 percent of the capital stock of KOPPERS COMPANY INCORPORATED has been owned at all times pertinent to this claim by persons who are United States nationals. The Commission holds that claimant KOPPERS COMPANY INCORPORATED is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The evidence of record herein, including affidavits, invoices, correspondence and other data, discloses that claimant KOPPERS COMPANY INCORPORATED and their subsidiary, KOPPERS INTERNATIONAL, C.A., shipped merchandise to Cuban consignees for which no payment was made. There follows a listing of the invoices of record, with other data, shipped by KOPPERS COMPANY INCORPORATED, showing the date, number, terms and amount due on each:

1. Invoice ID-16231, dated November 2, 1959, terms 30 days, shipped to Consolidated Railroads of Cuba, in the amount of \$986.53;
2. Invoice 25-1930, dated August 12, 1960, terms 90 days, shipped to Ribbon Fabrics Company of Cuba, S.A., in the amount of \$2,695.50;
3. Invoice 25-1962, dated August 16, 1960, terms 90 days, shipped to Ribbon Fabrics Company of Cuba, S.A., in the amount of \$10,380.74;
4. Invoice 25-2250, dated September 14, 1960, terms 90 days, shipped to Ribbon Fabrics Company of Cuba, S.A., in the amount of \$10,262.25; and
5. Invoice 25-2394, dated October 4, 1960, terms 90 days, shipped to Ribbon Fabrics Company of Cuba, S.A., in the amount of \$2,632.50.

KOPPERS INTERNATIONAL, C.A., unpaid accounts include:

6. Invoice 153642, dated October 12, 1959, terms 180 days, shipped to Ribbon Fabrics Company of Cuba, S.A. in the amount of \$1,991.91; and
7. Invoice 154005, dated November 17, 1959, terms 180 days, shipped to Ribbon Fabrics Company of Cuba, S.A., in the amount of \$2,133.17.

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, KOPPERS COMPANY INCORPORATED, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba in 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 the property of KOPPERS COMPANY INCORPORATED was lost as a result of intervention by the Government of Cuba. The Commission further finds that the invoiced amounts in payment for materials to the consignees were due and payable according to the terms, as specified above, after the respective dates of the invoices; and that the losses occurred on the due dates as thus determined. Thus, the Commission finds that KOPPERS COMPANY INCORPORATED suffered such losses directly or through their wholly owned subsidiary, KOPPERS INTERNATIONAL, C.A.

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), and in the instant case it is so ordered, as follows:

<u>ON</u>	<u>FROM</u>
\$ 986.53	December 2, 1959
1,991.91	April 12, 1960
2,133.17	May 17, 1960
2,695.50	November 12, 1960
10,380.74	November 16, 1960
10,262.25	December 14, 1960
2,632.50	January 4, 1961

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

CERTIFICATION OF LOSS

The Commission certifies that KOPPERS COMPANY INCORPORATED 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 Thirty-One Thousand Eighty-Two Dollars and Sixty Cents (\$31,082.60), 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 Amended Proposed Decision of the Commission

30 JUL 1969

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 Amended 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).)

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

IN THE MATTER OF THE CLAIM OF

KOPPERS COMPANY, INCORPORATED

&

KOPPERS INTERNATIONAL C.A.

Claim No. CU - 3172

Decision No. CU 499

Under the International Claims Settlement
Act of 1949, as amended

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 \$31,082.60, was presented by KOPPERS COMPANY, INCORPORATED and KOPPERS INTERNATIONAL C.A., and is based upon an asserted loss in connection with merchandise sold and delivered in 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).)

Claimant states that the asserted claim is based on non-payment for material sold and delivered in Cuba, but submitted no evidence in support of the claim.

By Commission letter of July 10, 1967, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act.

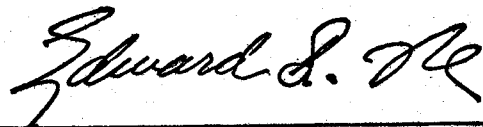
On August 22, 1967, claimant was invited to submit the suggested evidence within 45 days from that date, and was informed that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. No evidence has since been submitted.

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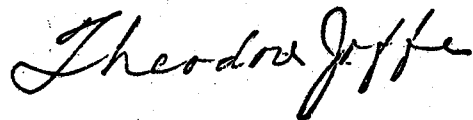
The Commission finds that claimant has not met the burden of proof in that claimant has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is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

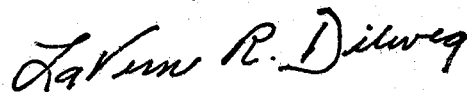
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Edward D. Re, Chairman

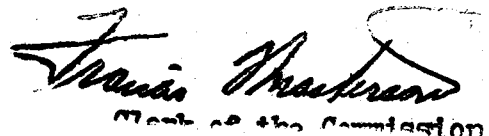


Theodore Jaffe, Commissioner



LaVern R. Dilweg, Commissioner

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on 21 NOV 1967



Francis Macrae
Member 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).)

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