

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

IN THE MATTER OF THE CLAIM OF

BROADWAY MFRS. SUPPLY COMPANY

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -3438

Decision No. CU 1881

Counsel for claimant:

Joseph Kahn, 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 BROADWAY MFRS. SUPPLY COMPANY, a partnership, in the amended amount of \$26,053.10 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.

The record includes a copy of an Agreement, dated March 28, 1958, establishing that Isaac Ernest Kahn, Abraham Kahn, and Joseph Kahn are the partners using the name BROADWAY MFRS. SUPPLY COMPANY, to conduct business. The record also establishes that the partners are nationals of the United States. The Commission holds that claimant, BROADWAY MFRS. SUPPLY COMPANY is a national of the United States within the meaning of the Act.

The record contains copies of bank correspondence, correspondence with the consignees, claimant's accounts receivable ledger sheets, bills of lading, and invoices, which reflect that claimant made shipments of merchandise to Cuban business firms, listed as the consignees. The record establishes that the charges for such shipments, with attendant freight charges, were in many cases paid by the consignees to local Cuban banks, but that dollar reimbursement releases were never granted by Cuban government officials. Other charges for shipments were not paid by the consignees.

The information as to the consignees, the dates payment therefor was made to local Cuban banks, or the dates payment was due is as follows:

<u>CONSIGNEE</u>	<u>DATE PAYMENT DUE OR ACKNOWLEDGED</u>	<u>AMOUNT</u>
Tiendas Flogar, S.A.	December 10, 1959	\$ 797.32
	February 12, 1960	667.60
Klepach y Hermanos	January 4, 1960	1,975.48
	January 4, 1960	792.36
	December 21, 1959	473.58
	November 20, 1959	1,466.92
	December 8, 1959	427.43
	February 1, 1960	1,474.76
	January 25, 1960	4,586.53
	March 31, 1960	783.60
	March 31, 1960	826.71
Prado Garcia y Compania	January 1, 1960	630.25

<u>CONSIGNEE</u>	<u>DATE PAYMENT DUE OR ACKNOWLEDGED</u>	<u>AMOUNT</u>
Gomez y Compania	October 18, 1959	\$1,655.21
	plus freight	<u>206.38</u>
		\$1,861.59
	November 30, 1959	930.88
	plus freight	<u>123.17</u>
		1,054.05
Rozen Textile	September 6, 1959	705.78
M. Llano y Compania	December 24, 1959	610.13
	December 30, 1959	1,376.55
	January 2, 1960	2,570.88
	January 9, 1960	415.91
	January 21, 1960	1,090.98
Lopez y Rio, S. en C.	September 30, 1959	556.70
Lopez, Paz y Compania,	December 9, 1959	383.03
S. en C.	December 11, 1959	<u>524.96</u>
	TOTAL	\$26,053.10

Claimant states that it has not received the funds.

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.)

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	\$ 705.78
September 30, 1959	556.70
October 18, 1959	1,861.59
November 21, 1959	1,466.92
November 30, 1959	1,054.05
December 9, 1959	810.46
December 11, 1959	1,322.28
December 22, 1959	473.58
December 24, 1959	610.13
December 30, 1959	1,376.55
January 1, 1960	630.25
January 2, 1960	2,570.88
January 5, 1960	2,767.84
January 9, 1960	415.91
January 21, 1960	1,090.98
January 26, 1960	4,586.53
February 2, 1960	1,474.76
February 13, 1960	667.60
April 1, 1960	<u>1,610.31</u>
TOTAL	\$26,053.10

being the date of Law 568 as to the amount of \$705.78, the dates after the days on which payment was acknowledged as to the paid amounts, and the dates payment was due as to the unpaid amounts.

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.

CERTIFICATION OF LOSS

The Commission certifies that BROADWAY MFRS. SUPPLY 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 Twenty-Six Thousand Fifty-Three Dollars and Ten Cents (\$26,053.10) 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

MAY 22 1968

*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).)

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