

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

IN THE MATTER OF THE CLAIM OF

DIXIE PAINT AND VARNISH COMPANY, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 3468

Decision No. CU 3236

Counsel for claimant:
By:

Duffy, Miller & Duffy
Robert J. Duffy, Esquire

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 DIXIE PAINT AND VARNISH COMPANY, INC. in the original amount of \$48,835.07 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."

Claimant corporation by an authorized officer has certified that the claimant was organized in the State of Georgia and that at all times between April 1946 and presentation of this claim 100% of the outstanding capital stock of the claimant has been owned by United States nationals. 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 reflects that claimant was owed the following accounts by Cuban entities:

Manufacturera Internacional, S.A.:

\$25,000.00	- loan
18,782.88	- supplies
<u>1,408.92</u>	- rental account
\$45,191.80	

Munoz-Bustamente y Hno:

\$ 1,321.15	- supplies
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Additionally, the record discloses that in 1959 claimant purchased for the amount of \$2,198.05 a Cowles Dissolver, which was leased to Manufacturera Internacional, S.A. This machine had a depreciated value of \$1,367.94 on the date of taking.

The record discloses that Manufacturera Internacional, S.A., was listed as nationalized by the Government of Cuba in the Official Gazette on June 29, 1961. Munoz-Bustamente y Hno was located at the same address. One of its partners was also President of Manufacturera Internacional, S.A.

The Commission finds that both the company and the partnership were nationalized on that date. In this type of situation it has been held previously that a claimant is entitled to file a claim based upon the debt of a nationalized enterprise. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

Moreover, the Commission finds that claimant's personal property, one Cowles Dissolver, located on the aforesaid premises was also taken by the Government of Cuba on June 29, 1961.

Accordingly, the Commission finds that claimant suffered a loss as a result of the actions of the Government of Cuba on June 29, 1961, in the amount of \$47,880.89 within the scope of Title V of the Act.

Additionally, claim has been made based on two letters of credit issued to claimant by the Royal Bank of Canada for the account of Manufacturera Internacional, S.A., one in the amount of "approximately \$800.95" and the other in the amount of "approximately \$1,882.38." However, the record does not establish that any drafts were drawn against these letters and the statements of account sent by claimant to Manufacturera Internacional, S.A. do not include such amounts. Accordingly, the Commission finds that no debt was incurred under the said letters of credit by Manufacturera Internacional, S.A. and these items of the claim are denied.

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 claim it is so ordered.

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CERTIFICATION OF LOSS

The Commission certifies that DIXIE PAINT AND VARNISH COMPANY, INC. 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 Forty-seven Thousand Eight Hundred Eighty Dollars and Eighty-nine Cents (\$47,880.89) with interest thereon at 6% per annum from June 29, 1961 to the date of settlement.

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

OCT 30 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(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)