

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

IN THE MATTER OF THE CLAIM OF

COVINGTON FABRICS CORP.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3657

Decision No. CU

593

Counsel for claimant:

Wolf, Popper, Ross, Wolf & Jones
By: Morris Katz, 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 COVINGTON FABRICS CORP., in the amount of \$20,363.49 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 503(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."

The record discloses that the claimant corporation was organized in the State of New York on August 28, 1946, and that at all times since then until presentation of this claim on May 31, 1967, more than 50% 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.

Claimant states that all of its stockholders are United States citizens.

The record contains copies of claimant's work sheets, statements of account, and bills of lading reflecting the sales of goods between June 11, 1959 and January 19, 1960 to the following consignees in Cuba and their outstanding balances:

<u>Consignee</u>	<u>Balance</u>
Textilera Astral, S.A.	\$ 3,230.77
Garcia, Fernandez y Cia. "La Casa Sanchez"	\$ 2,462.71
Medina y Cia. "Medina Tapicerias"	\$ 420.96
Almacenes Ultra, S.A.	\$ 1,683.03

<u>Consignee</u>	<u>Balance</u>
Duran, Alvarez, Vazquez y Cia.	\$ 1,710.53
F. Martin y Cia.	\$ 6,129.68
Jesus Prieto "Prieto Tapicerias"	\$ 2,944.57
Tejidos Nina, S.A.	\$ 1,781.24

Claimant states that it has not received the above-mentioned 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 the Claim of The Schwarzenbach Huber Company, FCSC Claim No. CU-0019; and the Claim of Etna Pozzolana Corporation, FCSC 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 on the following dates which are the dates that payment, with the exception of the first stated item, became due.

<u>On</u>	<u>As To</u>
September 29, 1959 (effective date of Law 568)	\$ 5,323.30
October 5, 1959	332.75
October 6, 1959	189.14
October 19, 1959	227.20
November 4, 1959	1,229.81
November 18, 1959	712.44
November 20, 1959	307.80
November 25, 1959	380.64
November 27, 1959	131.62
December 4, 1959	614.60
December 9, 1959	379.60
December 15, 1959	106.25
December 29, 1959	143.52
January 2, 1960	277.48
January 4, 1960	601.50
January 8, 1960	2,395.93
January 9, 1960	941.42
January 18, 1960	398.08
January 22, 1960	643.60
January 25, 1960	37.20
January 26, 1960	103.40
January 29, 1960	1,903.70
February 1, 1960	233.89
February 3, 1960	37.94
February 7, 1960	646.01
February 8, 1960	2,064.67

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 the Claim of Lisle Corporation, FCSC Claim No. CU-0644).

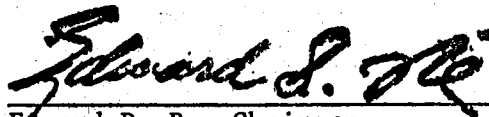
Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the dates on which the loss occurred, to the date on which provisions are made for the settlement thereof.

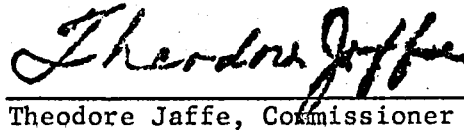
CERTIFICATION OF LOSS

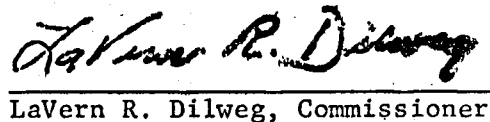
The Commission certifies that COVINGTON FABRICS CORP. suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Twenty Thousand Three Hundred Sixty-Three Dollars and Forty-Nine Cents (\$20,363.49) 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

NOV 15 1967


Edward D. Re, Chairman


Theodore Jaffe, Commissioner


LaVern R. Dilweg, 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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