

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

IN THE MATTER OF THE CLAIM OF

SKIL CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0111

Decision No. CU -

1967

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 SKIL CORPORATION in the amount of \$12,138.18, and is based upon the asserted loss of payment for merchandise shipped to various customers 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 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.

Evidence of record indicates that claimant corporation was originally organized in the State of Delaware in 1937, and that the corporate title of claimant was subsequently changed to SKIL CORPORATION on August 21, 1952. An officer of claimant corporation has certified that at all times between the respective dates of loss and presentation of this claim on June 23, 1965, more than 50% of the outstanding capital stock of the claimant corporation has been owned by 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.

An officer of claimant corporation has further certified that at all times pertinent to this claim, approximately 99% of the outstanding shares of stock of SKIL CORPORATION were held by nationals of the United States.

Claimant asserts the loss of payment for merchandise shipped to several Cuban consignees on various dates from 1958 to 1960.

The record includes a sworn statement of outstanding accounts, dated May 5, 1961, which was submitted to the United States Department of State. The record further includes United States Department of State correspondence; a Certificate of Amendment issued by the State of Delaware; and correspondence from claimant corporation's Export Department regarding subject losses. Claimant states that it has not received any of the funds for such shipments.

There follows hereafter data concerning the shipments made to Cuban consignees, including information on unpaid accounts with the dates on which the items were due and payable:

<u>Invoice Date</u>	<u>Consignee</u>	<u>Amount</u>	<u>Due Date</u>
October 20, 1958	M. Ramos & Cia.	\$3,696.43	December 20, 1958
December 11, 1958	M. Ramos & Cia.	2,491.80	February 11, 1959
November 4, 1959	M. Ramos & Cia.	2,453.68	January 4, 1960
November 6, 1959	M. Ramos & Cia.	290.81	January 6, 1960
October 21, 1959	Srs. J. Boix & Cia.	306.80	December 21, 1959
December 2, 1958	Estructores Modernas de Aluminio, S. A.	47.60	February 2, 1959
	TOTAL	\$9,287.12	

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 claimants, 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 the aforementioned accounts receivable were lost as a result of intervention by the Government of Cuba, and that in the absence of evidence to the contrary, such losses occurred on the respective maturity dates with regard to payments maturing after September 29, 1959. With respect to the dates of loss as to those

goods sold, and for which payment was due prior to September 29, 1959, the Commission finds that the losses occurred on September 29, 1959, the effective date of Law 568.

The record further discloses that during the year 1958, claimant corporation made numerous shipments to Abastecedora Industrial Cubana totalling \$2,804.52. In addition, the record further discloses that on July 27, 1960, and on September 13, 1960, claimant corporation made two additional shipments in the amounts of \$28.88 and \$17.66, respectively. Claimant corporation states that these shipments were covered by three 60 day drafts, but has not submitted evidence to establish the issuance dates of the drafts, the due dates of the drafts, or that the drafts were in fact paid to a Cuban bank. Accordingly, in the absence of evidence to the contrary, the Commission finds that payment for the 1958 shipments was due prior to September 29, 1959, and consequently the loss occurred on September 29, 1959, the effective date of Law 568. With respect to the two shipments made in 1960, the Commission further finds that the losses occurred 60 days after the date of shipment in each case.

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 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 date on which the loss occurred, to the date on which provisions are made for the settlement thereof, as follows:

On September 29, 1959 as to	\$ 9,040.35
On December 21, 1959 as to	306.80
On January 4, 1960 as to	2,453.68
On January 6, 1960 as to	290.81
On September 27, 1960 as to	28.88
On November 13, 1960 as to	17.66

TOTAL \$12,138.18

CERTIFICATION OF LOSS

The Commission certifies that SKIL CORPORATION 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 Twelve Thousand One Hundred Thirty-Eight Dollars and Eighteen Cents (\$12,138.18) 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

JUN 19 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).)