

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

IN THE MATTER OF THE CLAIM OF

AKWELL INDUSTRIES INCORPORATED

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU - 0132

Decision No. CU - 428

Counsel for claimant:

Hankins & Marr

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 Killashun International, a division of Akwell Corporation, a wholly-owned subsidiary of AKWELL INDUSTRIES INCORPORATED, in the amount of \$11,359.06, and is 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."

An officer of the claimant corporation has certified that the AKWELL INDUSTRIES INCORPORATED was organized in the State of Ohio and that all times between August 9, 1946, and presentation of this claim on June 28, 1965, 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 the outstanding shares of stock in AKWELL INDUSTRIES INCORPORATED are owned by citizens of the United States.

The evidence of record in support of this claim consists of copies of invoices which reflect sales of merchandise by claimant to a Cuban consignee, May Trading Company, S.A., of Havana, Cuba. (The amounts listed include the price of the merchandise, shipping costs and other attendant fees), as follows:

<u>Invoice Number</u>	<u>Amount</u>
9553	\$ 720.00
9099	672.00
8718/B	2,424.63
8718/C	2,424.64
8866	1,478.14
8775	1,557.74
8774	2,106.00

Additionally, the record includes letters from the Chase Manhattan Bank of New York, addressed to claimant corporation, advising that payments had been made by the Cuban consignee on the following accounts to the collecting bank in Cuba:

<u>Invoice Number</u>	<u>Amount</u>	<u>Date of Payment</u>
8718/B	\$2,424.63	April 6, 1960
8718/C	2,424.64	April 6, 1960
8774	2,106.00	March 10, 1960
8775	1,557.74	March 10, 1960

Claimant states that it has not received the funds.

The record also discloses that the remaining shipments of merchandise were delivered to the Cuban consignee, May Trading Co., S.A., and that drafts had been drawn against the consignee for payment on the following specified dates:

<u>Invoice Number</u>	<u>Amount</u>	<u>Date of Payment</u>
9553	\$ 720.00	August 7, 1960
9099	672.00	March 19, 1960
8866	1,478.14	January 14, 1960

Claimant states that it has no record of payment on these accounts and that claimant 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 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 losses occurred on the following dates (the maturity dates of the unpaid drafts, or the days after the collections were acknowledged by the Chase Manhattan Bank):

<u>Invoice Number</u>	<u>Amount</u>	<u>Date of Loss</u>
9553	\$ 720.00	August 17, 1960
9099	672.00	March 19, 1960
8718/B	2,424.63	April 7, 1960
8718/C	2,424.64	April 7, 1960
8866	1,478.14	January 14, 1960
8775	1,557.74	March 11, 1960
8774	2,106.00	March 11, 1960

The Commission has decided that in certification of loss 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).

It will be noted that the total amount certified as claimant's loss is in excess of the amount claimed. However, in making such determinations the Commission is not bound by any lesser or greater amounts which may be asserted by claimant as the amount of total loss.

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, as follows:

- On \$1,478.14 from January 14, 1960
- On 1,557.74 from March 11, 1960
- On 2,106.00 from March 11, 1960
- On 672.00 from March 19, 1960
- On 2,424.63 from April 7, 1960
- On 2,424.64 from April 7, 1960
- On 720.00 from August 17, 1960

CERTIFICATION OF LOSS

The Commission certifies that AKWELL INDUSTRIES 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 Eleven Thousand Three Hundred Eighty-Three Dollars and Fifteen Cents (\$11,383.15) 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

OCT 18 1967

*Edward D. Re*

Edward D. Re, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*LaVern R. Dilweg*

LaVern R Dilweg, Commissioner

CERTIFICATE

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

*Francis Macdonald*  
Clerk of the Commission

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).)