

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

IN THE MATTER OF THE CLAIM OF

JOHN PRIOR, INC.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -0179

Decision No. CU -790

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 JOHN PRIOR, INC. in the amount of \$54,481.30 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 claimant was organized in the State of New York in 1933 and that at all times between that date and presentation of this claim on July 6, 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 its stockholders were United States nationals.

Claimant asserts that it sold and shipped goods to various Cuban purchasers and that the mode of payment in each transaction was by bank draft. In support of its claim, claimant has submitted a letter from the Manufacturers' Hanover Trust Company of New York, addressed to claimant and dated September 21, 1966, informing claimant that, according to the bank's records, drafts had been paid to Cuban collecting banks and that exchange approval was pending. Annexed to the letter is a statement from the Manufacturers' Hanover Trust Company, showing claimant's reference number, the Cuban bank, the date of advice, and the amount involved in each of claimant's drafts. The names of customers or draft numbers, amounts of drafts, and date of advice of payment are as follows:

<u>Customer</u>	<u>Collecting Bank</u>	<u>Amount</u>	<u>Date Advised of Payment</u>
Guerra y Pinera	Bank of Nova Scotia	\$ 373.09	4/25/60
No name (Prior's 4643)	Trust Co. of Cuba	137.72	2/ 8/60
Francisco Hernandez	Bank of Nova Scotia	189.56	2/26/60
Fernandez Linares y Cia.	Banco Continental Cubano	322.71	11/23/59
Guerra y Pinera	Banco Continental Cubano	357.29	1/22/60
I.D.E.S.A.	Banco Continental Cubano	242.54	11/ 6/59
Soler Motors, S.A.	Banco Continental Cubano	331.39	11/16/59
Imp. Del Campo, S.A.	Bank of Nova Scotia	381.20	2/23/60
Eloy Vila Vazquez	First Nat'l. City Bank of N.Y.	1710.35	2/23/60
Pascual y Gomez S.en C.	Banco de Oriente-Antilla, Ote.	851.48	3/31/60
M. Alonso M.	Banco Continental Cubano	1104.17	12/28/59
" " "	Banco Continental Cubano	1104.17	12/28/59
" " "	Banco Continental Cubano	1104.18	3/ 8/60
" " "	Banco Continental Cubano	391.17	12/28/59
" " "	Banco Continental Cubano	391.18	12/28/59
" " "	Banco Continental Cubano	391.18	2/23/60
Pedrosa Hermano y Cia.	Bank of Nova Scotia	992.18	1/15/60
Cia. Riera, Toro & Van Twistern	Trust Co. of Cuba	607.22	12/17/59
Francisco Hernandez	Bank of Nova Scotia	645.66	12/11/59
Neira y Gonzalez	Bank of Nova Scotia	326.12	2/23/60
No name (Prior's 4490)	Bank of Nova Scotia	246.60	2/26/60
No name (Prior's 4483)	Bank of Nova Scotia	318.47	2/26/60
Autos Lizmen, S.A.	Banco Agricola y Mercantil	480.01	4/12/60

<u>Customer</u>	<u>Collecting Bank</u>	<u>Amount</u>	<u>Date Advised of Payment</u>
Motor Auto Co., Ltd.	Banco Godoy y Sayan	\$1938.14	2/17/60
Salvador Valdez Velez	First Nat'l. Bank of Boston	498.82	12/ 3/59
Alvaro Fernandez	Bank of Nova Scotia	558.39	4/ 5/60
Alfonso Suarez Garcia	Royal Bank of Canada	132.31	3/24/60
" " " " "	Royal Bank of Canada	716.42	3/24/60
Oscar Garcia	Bank of Nova Scotia	562.82	3/30/60
Couto y Ferrera	Trust Co. of Cuba	1247.00	1/25/60
Berenthal, S.A.	Trust Co. of Cuba	822.05	2/ 2/60
" " " "	Trust Co. of Cuba	757.30	4/27/60
Ferreteria Perez Alvarez, S.A.	Banco Agricola e Industrial Antilla	3350.42	2/11/60
Justo Almadovar	Banco Gelats	436.81	1/27/60
Neira y Gonzalez	Bank of Nova Scotia	497.92	2/22/60
" " " "	Bank of Nova Scotia	497.93	4/28/60
Miguel y Bacardi, S.A.	Royal Bank of Canada	505.83	4/16/60
Pascual y Gomez	Trust Co. of Cuba	1147.30	3/22/60
Ruben N. Velis	Banco Nunez	1483.47	2/ 9/60
Alfonso Suarez Garcia	Royal Bank of Canada	548.57	4/28/60
Jose Saladrigas	Bank of Nova Scotia	576.37	2/23/60
Alvaro Fernandez	Banco Continental Cubano	1402.07	1/28/60
Cia. Riera, Toro & Van Twistern	Trust Co. of Cuba	644.28	3/ 1/60
Alfonso Suarez Garcia	Royal Bank of Canada	1515.11	3/29/60
Motor Auto Co., Ltd.	First Nat'l. Bank of Boston	387.86	2/ 4/60
Soler Motors, S.A.	Banco Continental Cubano	1886.02	3/ 4/60
Gilberto Lopez Vila	Trust Co. of Cuba	552.84	12/31/59
" " " " "	Trust Co. of Cuba	552.84	2/ 5/60
" " " " "	Trust Co. of Cuba	552.84	2/26/60
Perez, Palacios y Cia. S.L.	Banco Godoy & Sayan	462.58	5/ 4/60

<u>Customer</u>	<u>Collecting Bank</u>	<u>Amount</u>	<u>Date Advised of Payment</u>
Antonio Garcia y Cia.	Royal Bank of Canada	\$1739.61	5/23/60
Francisco Hernandez	Bank of Nova Scotia	577.70	3/25/60
Cia. de Accesorios de Autos	First Nat'l. City Bank of N.Y.	505.15	1/25/60
Imp. Distr. Export, S.A.	Banco Continental Cubano	549.46	2/11/60
Antonio Garcia y Cia.	Royal Bank of Canada	1453.84	5/23/60
Ferr. Trans-America, S.A.	Trust Co. of Cuba	750.45	2/23/60
" " " " " "	Trust Co. of Cuba	750.46	3/ 9/60
Autos Ros, S.A.	First Nat'l. Bank of Boston	734.58	1/20/60
M. Alonso M.	Banco Continental Cubano	762.20	1/25/60
Autos Camayd, S.A.	Royal Bank of Canada	982.82	5/17/60
Ferr. Trans-America, S.A.	Trust Co. of Cuba	192.50	3/ 1/60
Autos Camayd, S.A.	Royal Bank of Canada	900.04	12/21/59
Gonzalez y Cia.	First Nat'l. Bank of Boston	1475.89	2/10/60
Autos Camayd, S.A.	Royal Bank of Canada	3211.91	2/23/60
Berenthal, S.A.	Trust Co. of Cuba	563.52	3/ 1/60
A. Solares y Cia. S.en C.	Banco Continental Cubano	<u>27.50</u>	1/14/60
Total		\$52,411.58	

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 transfers of funds, in this and similar cases, 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.)

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

November 6, 1959 as to	\$ 242.54
November 16, 1959 as to	331.39
November 23, 1959 as to	322.71
December 3, 1959 as to	498.82
December 11, 1959 as to	645.66
December 17, 1959 as to	607.22
December 21, 1959 as to	900.04
December 28, 1959 as to	2,990.69
December 31, 1959 as to	552.84
January 14, 1960 as to	27.50
January 15, 1960 as to	992.18
January 20, 1960 as to	734.58
January 22, 1960 as to	357.29
January 25, 1960 as to	2,514.35
January 27, 1960 as to	436.81
January 28, 1960 as to	1,402.07
February 2, 1960 as to	822.05
February 4, 1960 as to	387.86
February 5, 1960 as to	552.84
February 8, 1960 as to	137.72
February 9, 1960 as to	1,483.47
February 10, 1960 as to	1,475.89
February 11, 1960 as to	3,899.88
February 17, 1960 as to	1,938.14
February 22, 1960 as to	497.92
February 23, 1960 as to	7,347.58
February 26, 1960 as to	1,307.47
March 1, 1960 as to	1,400.30
March 4, 1960 as to	1,886.02
March 8, 1960 as to	1,104.18
March 9, 1960 as to	750.46
March 22, 1960 as to	1,147.30
March 24, 1960 as to	848.73
March 25, 1960 as to	577.70
March 29, 1960 as to	1,515.11

on March 30, 1960 as to	\$ 562.82
March 31, 1960 as to	851.48
April 5, 1960 as to	558.39
April 12, 1960 as to	480.01
April 16, 1960 as to	505.83
April 25, 1960 as to	373.09
April 27, 1960 as to	757.30
April 28, 1960 as to	1,046.50
May 4, 1960 as to	462.58
May 17, 1960 as to	982.82
May 23, 1960 as to	3,193.45

in each case the date on which the Manufacturers' Hanover Trust Company was advised of collection.

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 losses occurred, to the date on which provision is made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that JOHN PRIOR, 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 Fifty-Two Thousand Four Hundred Eleven Dollars and Fifty-Eight Cents (\$52,411.58) 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

6 DEC 1967

*Edward D. Re*

Edward D. Re, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*LaVern R. Dilweg*

LaVern R. Dilweg, Commissioner

CERTIFICATION

This is a true and correct copy of the decision of the Commission which was entered as the final decision on 1967 12 19

*Thomas M. ...*  
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).)

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