

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

IN THE MATTER OF THE CLAIM OF

THE STANLEY WORKS

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -0237

Decision No. CU

3015

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 THE STANLEY WORKS, in the amount of \$46,554.72 based upon the asserted loss of payment for merchandise shipped to certain Cuban consignees.

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

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.

Claimant corporation, by an authorized officer, has certified that the claimant was organized under the laws of the State of Connecticut and that at all times between 1852 and presentation of this claim on July 15, 1965, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals.

The record reflects that THE STANLEY WORKS owned all of the outstanding capital stock of the Stanley Building Specialties Company; that the Stanley Building Specialties Company was organized under the laws of the State of Florida on October 28, 1955; that said company was dissolved on June 20, 1959; and that claimant corporation acquired all the assets of Stanley Building Specialties Company.

An officer of claimant corporation has certified that as of January 19, 1967, approximately 99.64% of the outstanding capital stock of THE STANLEY WORKS was held by nationals of the United States. Thus, less than one per cent of the stockholders are assumed to be nationals of countries other than the United States.

The Commission finds that the Stanley Building Specialties Company was a national of the United States until its dissolution on June 20, 1959 and that claimant corporation, at all pertinent times, has been a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record includes copies of invoices, drafts, correspondence with consignees in Cuba and of bank correspondence concerning shipments by claimant's former subsidiary to Cuba. This evidence discloses that the purchase price of the goods and charges were in some instances paid by consignees to local banks and that dollar reimbursement releases were not granted by Cuban government officials. Payment was not made for other shipments. Claimant states that it has not received any of the funds due for such shipments.

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

PAID DRAFTS

<u>CONSIGNEES</u>	<u>DATE PAID OR ACKNOWLEDGED</u>	<u>AMOUNT</u>
Cabada Ceballos y Cia., Santa Clara	May 4, 1960	\$ 1,718.52
Castro y Cia., Santiago	February 12, 1960	433.47
J. Chertudi y Cia. S.enC., Manzanillo	June 27, 1960	1,370.24
J. Chertudi y Cia. S.enC., Manzanillo	June 27, 1960	465.68
Ferreteria Ramiro Alonzo, S.A., Havana	July 21, 1960	1,269.39
Ferreteria Ramiro Alonzo, S.A., Havana	April 28, 1960	506.97
Gomez Ruiz & Cia., Havana	July 12, 1960	1,301.77
T. Gonzalez y Hno. S.enC., Havana	November 17, 1959	593.97
Hermanos Perez Diego, Holguin	July 29, 1960	950.35
Hermanos Shapiro y Cia., Havana	July 25, 1960	861.53
Celestino Joaristi y, Havana	February 15, 1960	1,219.56
Jose Junquera y Cia., Camaguey	March 3, 1960	428.33
Paulino Martinez y Cia., Camaguey	March 24, 1960	843.93
Modernage S.A., Havana	February 29, 1960	1,207.62
Claudio Pascual Ferrer, Santiago	February 11, 1960	876.23

<u>CONSIGNEE</u>	<u>DATE PAID OR ACKNOWLEDGED</u>	<u>AMOUNT</u>
Perez y Fernandez, Camaguey	October 13, 1960	\$ 646.71
M. Ramos y Cia., Havana	February 26, 1960	964.96
A. Solares y Cia. S.enC., Havana	February 3, 1960	2,038.12
Estructuras Modernas	December 25, 1958	11,497.60
Estructuras Modernas	February 10, 1959	15,765.51

UNPAID DRAFT ACCOUNTS

<u>CONSIGNEE</u>	<u>DUE DATE</u>	<u>AMOUNT</u>
Abastecedora Industrial Cubana, Havana	June 28, 1958	\$ 382.25
Industrias Consolidadas de Matanzas, S.A., Havana	April 25, 1959	65.22
Industrias Consolidadas de Matanzas, S.A., Havana	March 23, 1959	308.30
Industrias Consolidadas de Matanzas, S.A., Havana	May 8, 1959	277.78
Representaciones Gomez, S.A., Havana	December 24, 1959	259.39
Representaciones Gomez, S.A., Havana	November 16, 1958	3.00
Representaciones Gomez, S.A., Havana	December 21, 1958	298.32
	TOTAL	\$46,554.72

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 in 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 Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and the Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

Accordingly, in the instant claim, the Commission finds that claimant sustained a loss in the total amount of \$46,554.72 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 dates shown below, which are the days after payment, or acknowledgement, or 30 days from the dates of invoice or shipment, except that with respect to those items due prior to enactment of Law 568, the loss is found to have occurred on September 29, 1959.

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

<u>FROM</u>	<u>ON</u>
September 29, 1959	\$28,597.98
November 18, 1959	593.97
December 24, 1959	259.39
February 4, 1960	2,038.12
February 12, 1960	876.23
February 13, 1960	433.47
February 16, 1960	1,219.56
February 27, 1960	964.96
March 1, 1960	1,207.62
March 4, 1960	428.33
March 25, 1960	843.93
April 29, 1960	506.97
May 5, 1960	1,718.52
June 28, 1960	1,835.92

<u>FROM</u>	<u>ON</u>
July 13, 1960	\$ 1,301.77
July 24, 1960	1,269.39
July 26, 1960	861.53
July 30, 1960	950.35
October 14, 1960	646.71
	<u>\$ 46,554.72</u>

CERTIFICATION OF LOSS

The Commission certifies that THE STANLEY WORKS succeeded to and 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-Six Thousand Five Hundred Fifty-Four Dollars and Seventy-Two Cents (\$46,554.72) 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

SEP 11 1968

*Leonard v. B. Sutton*  
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Leonard v. B. Sutton, Chairman

*Theodore Jaffe*  
\_\_\_\_\_  
Theodore Jaffe, Commissioner

*Sidney Frelberg*  
\_\_\_\_\_  
Sidney Frelberg, 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).)