

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

IN THE MATTER OF THE CLAIM OF

SEALRIGHT CO., INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0247

Decision No. CU 2051

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 SEALRIGHT CO., INC. in the amount of \$12,206.89 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)(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.

Information available to the Commission establishes that claimant's predecessor, Sealright Co., Inc., a New York corporation and a division of Sealright-Oswego Falls Corporation, was the consignor of the merchandise shipped to Cuba for which this claim is now being made. An officer of the claimant corporation has certified that Sealright Co., Inc. (Incorporated in New York) was not an operating entity, but was created and wholly-owned by Sealright-Oswego Falls Corp. in order to preserve the trade name "Sealright." Sealright-Oswego Falls Corp. was incorporated in the State of New York on March 25, 1957 and in excess of 50% of its total outstanding capital stock was owned by United States nationals at all times from the date of incorporation until the sale of its assets in 1964.

By General Conveyance dated October 15, 1964, Sealright-Oswego Falls Corp. transferred all of its assets, properties and business to the claimant herein, SEALRIGHT CO., INC., a Delaware Corporation and a wholly-owned subsidiary of Phillips Petroleum Co. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act. Further, the Commission holds that SEALRIGHT CO., INC. is the legal successor in interest to the former Sealright Co., Inc., (incorporated in New York) and to the former Sealright-Oswego Falls Corp. and as such succeeded to the losses which are the subject of this claim.

(See Claim of Berwind-White Coal Mining Co., Claim No. CU-0538.)

An officer of the Phillips Petroleum Company has certified that in excess of 99% of its total outstanding capital stock is owned by persons who are citizens of the United States.

The record contains a copy of claimant's predecessor's invoice No. 57828 of November 2, 1959 reflecting the sale to San Bernardo Productos Lacteos, S. A., of Havana, Cuba, of goods totalling \$11,107.45, as to which freight, shipping and other attendant fees increased the total to \$12,206.89.

Additionally, the record includes a letter of March 8, 1960 from the First National City Bank of New York, Havana, Cuba, to claimant's predecessor, in which it is stated that the collection of \$5,553.72 was paid by the consignee and that it was still awaiting a dollar reimbursement release from the Exchange Control authorities, a Cuban Government agency; and another letter dated March 17, 1960 from the claimant's predecessor's local bank to the claimant's predecessor stating that the collection of \$6,653.17 was paid by the consignee and that the Cuban collecting bank was awaiting similar authorization from the Exchange Control authorities.

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 Claim of The Schwarzenbach Huber Company, FCSC Claim No. CU-0019, 25 FCSC

Semiann. Rep. 58 [July-Dec. 1966].)

Accordingly, in the instant claim the Commission finds that the claimant's predecessor's property was lost as a result of intervention by the Government of Cuba, that the claimant herein succeeded to that loss, and that, in the absence of evidence to the contrary, the loss occurred on January 29, 1960 as to \$6,653.17, and on March 9, 1960 as to \$5,553.72, the days after the collections were acknowledged by the Cuban collecting bank.

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 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 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 SEALRIGHT CO., INC. 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 Twelve Thousand Two Hundred Six Dollars and Eighty-nine Cents (\$12,206.89) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

ated at Washington, D.C.,
nd entered as the Proposed
ecision of the Commission

3 JUL 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

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 at 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).)

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.

GU-0247