

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

IN THE MATTER OF THE CLAIM OF

VICTOR MANUFACTURING  
AND GASKET COMPANY

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-0284

Decision No. CU

1897

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 VICTOR MANUFACTURING AND GASKET COMPANY in the amount of \$27,427.47 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.

An officer of the claimant corporation has certified that the claimant was organized in the State of Illinois and that at all times between 1959 and the presentation of this claim on July 22, 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 as of July 22, 1965 all of its stockholders were citizens of the United States.

The record reflects the sales of merchandise by claimant to a number of Cuban consignees. Additionally, the record includes evidence to indicate that all of the consignees paid their respective drafts to Cuban banks in local currency. Under the existing regulations of the Currency Stabilization Fund, the local banks applied to the Exchange Control authorities for permission to make a dollar reimbursements to claimant. Claimant states that it has not received the funds. Details of these sales and payments set forth below:

<u>Consignee</u>	<u>Local Bank</u>	<u>Amount</u>	<u>Date Paid</u>
Accesorios de Omnibus Carlos Mesa, S.A. Havana	Trust Co. of Cuba, Havana	\$1,620.26 (Agent's Commission \$162.03 )	January 12, 1960
Alvaro Fernandez Garcia, Havana	(same as above)	1,820.10	March 16, 1960
Berenthal, S.A. Havana	(same as above)	646.24	January 25, 1960
Cia Riera Toro & Van Twistern, S.A. Havana	(same as above)	1,796.53 (Agent's Commission \$179.65)	January 15, 1960
Comercial de Autos Johnnie Rodriguez, S. A., Havana	(same as above)	816.09 (Agent's Commission \$81.61)	November 2, 1959
Comercial de Autos Johnnie Rodriguez S. A., Havana	Banco Agricola E Industrial Havana	1,403.19 (Agent's Commission \$140.32)	July 7, 1960
Comercial Nasuro, S.A. Havana	Trust Co. of Cuba, Havana	160.45 <u>181.68</u>	
	Total	342.13	March 3, 1960
Distribuidora Couto,S.A. Oriente	(same as above)	1,978.41 (Agent's Commission \$197.84)	March 11, 1960
Ferreteria Perez Alvarez, S.A., Oriente	(same as above)	906.57 (Agent's Commission \$90.66)	March 2, 1960
Jose R. Hernandez Havana	(same as above)	1,675.72 (Agent's Commission \$167.57)	May 11, 1960
Importadora Distri- buidora Exportadora, S.A., Las Villas	First National City Bank of New York, Havana	470.40 <u>470.41</u>	November 19, 1959 December 17, 1959
	Total	940.81	(Agent's Commission \$94.08)
Importadora Rabonet, S.A., Havana	Trust Co. of Cuba Havana	439.85 (Agent's Commission \$43.99)	November 24, 1959
Kohly Motor Havana	Banco de Los Colones, Havana	923.01 <u>923.01</u>	
	Total	1,846.02	January 25, 1960 (Agent's Commission \$184.60)
Miquel y Bacardi, S.A., Oriente	Banco Nactional de Cuba, Havana	254.42 (Agent's Commission \$25.44)	October 6, 1959
Miquel y Bacardi, S.A., Oriente	Trust Co. of Cuba, Havana	1,094.32 (Agent's Commission \$109.43)	January 25, 1960
Motor Auto. Co. Ltd. Havana	First National Bank of Boston Havana	3,079.55 (Agent's Commission \$307.96)	May 31, 1960

<u>Consignee</u>	<u>Local Bank</u>	<u>Amount</u>	<u>Date Paid</u>
Antonio Perez Munez Havana	Trust Co. of Cuba Havana	\$ 358.60	February 26, 1960
Pedrosa Hno y Cia, S.L.	(same as above)	592.65	November 17, 1959
Perez Palacios y Cia, S.L. Havana	(same as above)	1,311.40 (Agent's Commission \$131.14)	February 26, 1960
Rivas y Cia Havana	(same as above)	1,864.12 (Agent's Commission \$186.41)	November 16, 1959
Rogers International de Cuba, S.A., Havana	(same as above)	314.86	December 22, 1959
Hermanos Marin Sierra Havana	(same as above)	1,840.99	March 24, 1960
Soler Motors, S.A. Oriente	(same as above)	484.64 (Agent's Commission \$48.46)	December 26, 1959
	Total	\$27,427.47	

For each debt owed, claimant is making a claim for the entire amount paid by the consignee to the Cuban collecting bank. However, the evidence submitted reflects that claimant authorized the Cuban collecting banks to pay a certain stated percentage of the sum collected from some of the consignees to claimant's agent in Cuba as his commission. The Commission finds, therefore, that claimant's loss resulting from the intervention of the Cuban Government is the amount paid to the Cuban banks from the various consignees (\$27,427.47) less the amount claimant authorized the collecting banks in Cuba to pay its agent as commission (\$2,151.19).

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, Claim No. CU-0019, 25 FCSC Semiann.

Rep. 58 [July-Dec. 1966.]

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 the following dates:

October 7, 1959	\$ 228.98
November 3, 1959	734.48
November 17, 1959	1,677.71
November 18, 1959	592.65
November 20, 1959	423.36
November 25, 1959	395.86
December 18, 1959	423.36
December 23, 1959	314.86
December 27, 1959	436.18
January 13, 1960	1,458.23
January 16, 1960	1,616.88
January 26, 1960	3,292.55
February 27, 1960	1,538.86
March 3, 1960	815.91
March 4, 1960	342.13
March 12, 1960	1,780.57
March 17, 1960	1,820.10
March 25, 1960	1,840.99
May 12, 1960	1,508.15
June 1, 1960	2,771.59
July 8, 1960	<u>1,262.88</u>

Total \$25,276.28

The dates of loss being the days following the dates of payment by the consignees to the Cuban collecting banks.

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 VICTOR MANUFACTURING AND GASKET COMPANY 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 Twenty-Five Thousand Two Hundred Seventy-Six Dollars and Twenty-Eight Cents (\$25,276.28) 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

MAY 29 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. (FGSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)