

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

IN THE MATTER OF THE CLAIM OF

FEDERAL-MOGUL SERVICE, INC.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-0307

Decision No. CU

1864

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 FEDERAL-MOGUL SERVICE, INC. in the amount of \$35,929.50 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 Michigan, that it is wholly owned by Federal-Mogul Corporation and that at all times between 1950 and presentation of this claim on August 2, 1965, more than 50% of the outstanding capital stock of the present corporation 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.

Federal-Mogul Corporation states that over 99% of its stockholders are citizens of the United States.

The record contains copies of agent's and bank letters reflecting the sale to various Cuban enterprises of goods totalling \$35,929.50 subject to commissions totalling \$181.20, reducing the total to \$35,748.30, as shown below:

	<u>AMOUNT OF SALE</u>	<u>DATE OF PAYMENT OR BANK LETTER</u>
Daniel Gonzalez Castano \$1,499.52 Less commission <u>- 74.79</u>	\$1,424.73	February 5, 1960
Vda. Alberto Gonzalez	1,098.95	December 15, 1959
Comercial Franco y Fernandez, S.A.	1,769.98	January 20, 1960
Autos Ros, S A.	1,233.34	April 13, 1960
Importadora Distribuidora Exportadora, S.A.	491.14	December 28, 1959
Manuel Alonzo M.	2,596.37	February 5, 1960

	<u>AMOUNT OF SALE</u>	<u>DATE OF PAYMENT OR BANK LETTER</u>
Maximino Lopez Lopez \$2,133.51 Less commission -106.41	\$2,027.10	March 23, 1960
Cia. Importadora Vaughn & Wright S.A.	4,594.98	July 19, 1960
Erginio Fernandez Garcia	657.42	December 19, 1959
Alvaro Fernandez Garcia	452.21	January 15, 1960
Diaz Y Rodriguez	1,160.25	January 22, 1960
Comercial Nasurco, S.A.	225.30	January 28, 1960
Cia. Riera Toro & Van Twistern, S.A.	865.45	February 6, 1960
Cia. Riera Toro & Van Twistern, S.A.	865.45	March 6, 1960
Accesorios Valles, S.A.	756.10	January 20, 1960
Accesorios Valles, S.A.	653.83	March 16, 1960
Arencibia Y Cia.	335.24	March 29, 1960
Accesorios De Omnibus, Carlos Mesa	944.92	August 25, 1960
Berenthal, S.A.	722.20	July 22, 1960
Soler Motors, S.A.	980.20	January 27, 1960
Trans-America, S.A.	583.80	January 27, 1960
Auto Llinas	1,018.88	January 13, 1960
Juan Rodriguez Pena	2,455.70	July 15, 1960
Niera Y Gonzalez	440.34	March 10, 1960
Cia. De Muelles Para Autos, S.A.	2,173.56	January 28, 1960
Mejido Y Cia.	643.51	December 21, 1959
Importadora De Piezas La Federal, S.A.	632.94	December 2, 1959
Importadora De Piezas La Federal, S.A.	581.41	March 7, 1960
Juan Magraner Noriega	2,677.02	January 27, 1960
Juan Magraner Noriega	197.44	June 2, 1960
Juan B. Herrera	488.54	October 30, 1960
Total	<u>\$35,748.30</u>	

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 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 Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, 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 dates shown below, which are the dates after payment was made to the Bank concerned, or the dates after the date of the Bank letter involved:

\$ 632.94	December 3, 1959
1,098.95	December 6, 1959
657.42	December 20, 1959
643.51	December 22, 1959
491.14	December 29, 1959
1,018.88	January 14, 1960
452.21	January 15, 1960
1,769.98	January 21, 1960
1,160.25	January 23, 1960
4,241.02	January 28, 1960
2,398.86	January 29, 1960
4,021.10	February 6, 1960
865.45	February 7, 1960
865.45	March 7, 1960
581.41	March 8, 1960
440.34	March 11, 1960
653.83	March 17, 1960
2,027.10	March 24, 1960
335.24	March 30, 1960
1,233.34	April 14, 1960
197.44	June 3, 1960

	\$2,455.70	July 16, 1960
	4,594.98	July 20, 1960
	722.20	July 23, 1960
	944.92	August 26, 1960
	<u>488.54</u>	October 31, 1960
Total	\$35,748.30	

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 losses occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that FEDERAL-MOGUL SERVICE, 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 Thirty-Five Thousand Seven Hundred Forty-Eight Dollars and Thirty Cents (\$35,748.30) 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 15 1968

*Leonard v. B. Sutton*

Leonard v. B. Sutton, Chairman

*Theodore Jaffe*

Theodore Jaffe, 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 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).)