

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

IN THE MATTER OF THE CLAIM OF

GARDNER-DENVER COMPANY  
GARDNER-DENVER WESTERN HEMISPHERE COMPANY

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-0322

Decision No. CU - 6035

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 GARDNER-DENVER COMPANY and GARDNER-DENVER WESTERN HEMISPHERE COMPANY in the aggregate amount of \$76,042.68, 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.

The secretary of the two claimant companies has certified that GARDNER-DENVER COMPANY is a corporation organized under the laws of the State of Delaware; that at all times between January 1, 1959 and the presentation of the claim more than fifty per cent of the outstanding capital stock of all classes has been owned by persons who were nationals of the United States; and that GARDNER-DENVER WESTERN HEMISPHERE COMPANY, a corporation also organized under the laws of Delaware, has always been and is a wholly owned subsidiary of the GARDNER-DENVER COMPANY. The aforesaid secretary further certified that between January 1, 1959, and the presentation of the claim, in excess of 95% of the outstanding capital stock of all classes of GARDNER-DENVER COMPANY was owned, directly or indirectly, by persons who were United States nationals. The Commission holds that claimants are nationals of the United States within the meaning of Section 502(1)(B) of the Act.

The claims of the two companies will be discussed under separate headings.

GARDNER-DENVER COMPANY

The record shows that GARDNER-DENVER COMPANY sold to its customers in Cuba listed below, merchandise for the amounts stated, all payments having been due at the latest 30 days after the date of the invoice:

<u>Date of Invoice</u>	<u>Name of Customer</u>	<u>Amount Due</u>
September 23, 1959	Compania Operadora Vista Alegre S.A., Santiago de Cuba	\$ 28.51
March 18, 1959	Compania Industrial Cubana de Goma S.A., Matanzas	30.49
May 18, 1959 to August 19, 1959	Consolidated Railroads of Cuba Camaguey	338.36

May 16, 1959	Guantanamo Sugar Company, Havana	\$ 58.66
April 24, 1959 to May 18, 1959	Inspiracion Cubana de Cobre S.A., Havana	143.86
November 2, 1959 to November 27, 1959	Minas de Matahambre S.A., Havana	2,243.25
September 15, 1959 to June 10, 1960	Minagro Industrial S.A., Havana	1,350.75

In addition, Minagro Industrial S.A. owed to  
GARDNER-DENVER COMPANY on promissory notes due from May 10,  
1959 to August 10, 1959.....\$ 5,835.32

Less credits for commissions....	<u>4,513.93</u>	<u>1,321.39</u>
Total.....		\$5,515.27

The record shows that the above amounts were deposited by the debtors with various banks in Cuba (Trust Company of Cuba, Banco Gelats, Banco Continental Cubano), but that no permission for dollar reimbursements was granted by the Banco Nacional de Cuba, a Cuban Government Agency in charge of foreign exchange control. Claimant GARDNER-DENVER COMPANY asserts that it had received no funds whatsoever and that these funds deposited in its name in the Cuban banks represent a total loss to the claimant.

The Government of Cuba, according to Commission records, published on September 29, 1959 its Law No. 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 No. 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimants 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 claimants, 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, 1967 FCSC Ann. Rep. 46.)

Accordingly, in the instant claim the Commission finds that the property of GARDNER-DENVER COMPANY 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 dates further shown below, or on September 29, 1959 for payments made on amounts due prior to that date, that is:

On September 29, 1959.....	\$1,892.76
On October 29, 1959.....	28.51
On December 27, 1959.....	2,243.25
On July 10, 1960.....	<u>1,350.75</u>
Total Loss....	\$5,515.27

A portion of the claim of \$10.49, said to have been due from Minas de Matahambre S.A. is not included in the above amount, because the record shows that the debtor did not recognize this charge and did not deposit the same with the bank. Accordingly, the portion relating to the amount of \$10.49 is denied.

GARDNER-DENVER WESTERN HEMISPHERE COMPANY

The record shows that between November 20, 1959 and June 21, 1960, this company shipped to Minagro Industrial S.A., Havana, merchandise in the aggregate amount of \$6,097.93, which amount was deposited by the consignee with the Trust Company of Cuba on or before July 27, 1960. Additionally, in 1959 GARDNER-DENVER WESTERN HEMISPHERE COMPANY sent to the Banco Continental Cubano, Havana, through the Hanover Bank of New York City, for collection promissory notes drawn on Minagro Industrial S.A., of which \$64,953.63 were still due and unpaid when the Cuban Government interposed the above-mentioned Law No. 568 of September 29, 1959 which prevented the remittance of the proceeds of the notes to the United States.

Accordingly, the Commission finds that claimant's property was lost as a result of the intervention of the Cuban Government and that the loss occurred on the dates shown further below, September 29, 1959 being

used for those notes which became due prior to that date. The due dates of the notes were:

Prior to September 29, 1959.....	\$48,139.23
November 15, 1959.....	5,604.80
December 15, 1959.....	5,604.80
January 15, 1960.....	<u>5,604.80</u>
Total.....	<u>\$64,953.63</u>

The aggregate amount of the loss is thus:

Funds deposited with the Trust Company of Cuba.....	\$ 6,097.93
Notes deposited at the Banco Continental Cubano.....	<u>64,953.63</u>
	<u>\$71,051.56</u>

Claimant states that Minagro Industrial S.A. was entitled to receive for commissions.....\$ 1,148.54

but that from this amount should be deducted charges for

the cancellation of two invoices for shipments sent to and

returned by Minagro Industrial S.A. in the amount of \$434.78

plus cancelled commissions.....	<u>179.12</u>	<u>613.90</u>
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Net amount due for commissions	<u>\$ 534.64</u>
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The loss sustained by claimant with respect to Minagro Industrial S.A. consists therefore of.....\$71,051.56

Less commission due.....	<u>534.64</u>
	\$70,516.92

The Commission has decided that in certifications of loss 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), and in the instant case it is so ordered:

GARDNER-DENVER COMPANY

<u>FROM</u>	<u>ON</u>
September 29, 1959	\$ 1,892.76
October 29, 1959	28.51
December 27, 1959	2,243.25
July 10, 1960	<u>1,350.75</u>
	<u>\$ 5,515.27</u>

GARDNER-DENVER WESTERN HEMISPHERE COMPANY

September 29, 1959	\$53,702.52
November 15, 1959	5,604.80
December 15, 1959	5,604.80
January 15, 1960	<u>5,604.80</u>
	\$70,516.92


CERTIFICATION OF LOSS

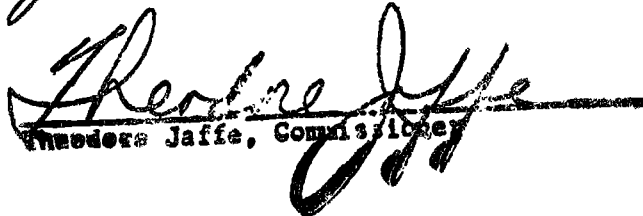
The Commission certifies that GARDNER-DENVER COMPANY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended; in the amount of Five Thousand Five Hundred Fifteen Dollars and Twenty-Seven Cents (\$5,515.27) with interest thereon at 6% per annum from the respective dates of the loss to the date of settlement; and

The Commission certifies that GARDNER-DENVER WESTERN HEMISPHERE 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 Seventy Thousand Five Hundred Sixteen Dollars and Ninety-Two Cent (\$70,516.92) with interest thereon at 6% per annum from the respective dates of the loss to the date of settlement.

Dated at Washington, D. C.,  
and entered as the Proposed  
Decision of the Commission

**MAR 11 1971**

  
Lyle S. Garlock, Chairman

  
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. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended (1970).)