

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

IN THE MATTER OF THE CLAIM OF

TYCO AUTOMOTIVE CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0393

Decision No. CU -0617

AMENDED PROPOSED DECISION

This claim against the Government of Cuba, in the amount of \$2,999.26, was presented by TYCO AUTOMOTIVE CORPORATION, and is based upon the asserted loss of merchandise sold and delivered to Cuban consignees. The Commission issued its Proposed Decision in this matter on November 15, 1967, denying the claim for the reason that claimant failed to establish ownership of rights and interests in property which was nationalized or otherwise taken by the Government of Cuba.

Claimant has submitted additional supporting evidence, including data to establish that shipments were made to the Cuban consignees. The matter has been considered and the Proposed Decision is hereby amended.

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.

A certification of a company official establishes that the claimant corporation was formerly known as Corneliussen & Stakgold, Inc., which was

incorporated in New York State in 1940; that in 1962 all of the shares of stock of Corneliussen & Stakgold, Inc. were purchased by Motor Parts Industries, Inc., a New York corporation; and that Corneliussen & Stakgold, Inc. continued to operate under its own name until July 14, 1965, when the name was changed under New York law to TYCO AUTOMOTIVE CORPORATION. All of the stock of the aforesaid corporations, including that of Motor Parts Industries, Inc., has been owned by nationals of the United States at times pertinent to this claim. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

On May 12, 1961, the claimant, then known as Corneliussen & Stakgold, Inc., prepared a recapitulation for the State Department indicating certain outstanding accounts in Cuba in the total amount of \$2,999.26. This sum represented the total unpaid accounts of Cuban firms which were due and payable to claimant for merchandise shipped to Cuba by the predecessor of claimant. Claimant has submitted to the Commission copies of certain invoices and drafts in support of this portion of the claim. The Cuban consignee firms and the amounts due claimant are as follows:

Candido Gonzalez	\$ 586.50
Johnies Rodriguez, S.A.	380.40
Luis R. Latour	1,738.50
Pedro Martin Betancourt	<u>293.86</u>
T O T A L\$2,999.26

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter, the Cuban Government effectively precluded not only transfer 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 Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

The Commission finds that the claimant's right to receive payment for the aforesaid shipments was lost as a result of the intervention by the Government of Cuba. The evidence establishes that the shipments were made by invoice and draft or open account, three of which were paid in whole or in part to local Cuban banks, although the amount of local payments has not been established by the evidence of record. These accounts arose from shipments made by claimant between August 1959 and January 1960, payment for which would ordinarily be due and payable within sixty days after shipment. Claimant states that it has not received payment for these outstanding balances.

The Commission finds that all accounts were due and payable on March 1, 1960, or approximately sixty days after the due date of the last shipment, which was made by claimant on or about January 4, 1960, to Candido Gonzalez.

Accordingly, the Commission finds that the claimant's property was lost as a result of the intervention by the Government of Cuba within the scope of Title V of the Act, and that the loss occurred on March 1, 1960.

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.

Accordingly, the following certification of loss will be entered and in all other respects the Proposed Decision is affirmed.

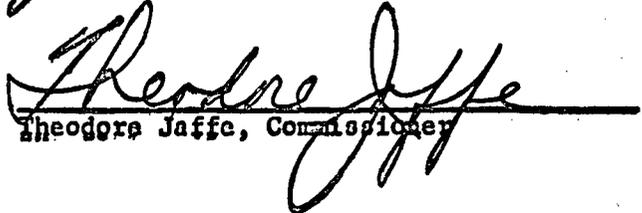
CERTIFICATION OF LOSS

The Commission certifies that TYCO AUTOMOTIVE CORPORATION 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 Two Thousand Nine Hundred Ninety-nine Dollars and Twenty-six Cents (\$2,999.26) with interest thereon at 6% per annum from March 1, 1960 to the date of settlement.

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

OCT 7 1970


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 Amended 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].)

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

IN THE MATTER OF THE CLAIM OF

TYCO AUTOMOTIVE CORP.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 0393

Decision No. CU 617

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$2,999.26, was presented by TYCO AUTOMOTIVE CORP. and is based upon the asserted loss of certain merchandise sold and delivered to Cuba. The record reflects that claimant corporation was previously known as Corneliussen and Stakgold Incorporated and that it acquired its present name on July 14, 1965.

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 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

Claimant corporation, originally incorporated as Corneliussen and Stakgold Inc., submitted evidence to establish its change of name. Claimant also submitted an affidavit executed by its president verifying that to the best of his knowledge, the consignees who were assertedly indebted to the claimant were not nationals of the United States within the purview of the Act.

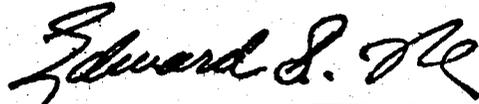
Despite numerous letters to the claimant requesting evidence to substantiate the United States nationality of the claimant and the loss claimed, no evidence has been submitted. By letter of October 20, 1967, claimant advised that it did not have additional evidence to submit in support of this claim.

CU-0393

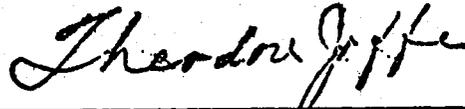
The Commission finds that claimant has not met the burden, of proof in that it has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

15 NOV 1967



Edward D. Re, Chairman



Theodore Jaffe, Commissioner



LaVern R. Dilweg, 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).)

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