

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

IN THE MATTER OF THE CLAIM OF

OMNI PRODUCTS CORPORATION

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -0451

Decision No. CU 3371

Counsel for claimant:

Otto Muller, Esq.

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 OMNI PRODUCTS CORPORATION in the amount of \$50,253.83 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.

Claimant corporation, by an authorized officer, has certified that the claimant was organized in the State of New York and that at all times between 1958 and presentation of this claim on September 22, 1967, all of its outstanding capital stock 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 describes its losses as follows:

|                          | <u>Drafts Paid<br/>to Cuban Banks</u> | <u>Drafts<br/>Unpaid</u> | <u>Totals</u>    |
|--------------------------|---------------------------------------|--------------------------|------------------|
| E. Pidal & Cia.          | \$ 2,921.65                           | \$                       | \$ 2,921.65      |
| Segismundo Pons          | 27,142.27                             | 2,129.76                 | 29,272.03        |
| Fernandez Segrera & Cia. | <u>3,612.03</u>                       | <u>14,448.12</u>         | <u>18,060.15</u> |
|                          | \$33,675.95                           | \$16,577.88              | \$50,253.83      |

Claimant avers that it has not received the funds.

Evidence submitted by claimant in support of its claim, in the form of bank letters and notices, however, discloses a lesser total amount viz. \$41,352.84 as the correct amount due. That evidence as to its drafts is:

|                        | <u>Due Date</u> | <u>Date of<br/>Payment<br/>or Notice</u> | <u>Amount</u> |
|------------------------|-----------------|--|---------------|
| E. Pidal & Cia.:       |                 | April 1, 1960                            | \$ 2,921.65   |
| Segismundo Pons:       |                 |  |               |
| 6025/58 (3,4,5)        |                 | Nov. 3, 1959                             | 2,336.99      |
| 8125/58 (12,13)        |                 | Oct. 12, 1960                            | 502.60        |
| 8125/58 (14,15)        |                 | Oct. 12, 1960                            | 496.62        |
| 8125/58 (16,17)        |                 | Oct. 12, 1960                            | 490.44        |
| 8125/58 (18,19)        |                 | Oct. 12, 1960                            | 484.25        |
| 8125/58 (20,21)        |                 | Oct. 12, 1960                            | 478.07        |
| A-6,7,9,10,11,12,13,14 |                 | May 13, 1960                             | 13,112.48     |
| 6025/58 (6)            |                 | May 13, 1960                             | 808.43        |
| 6025/58 (7,8)          |                 | March 8, 1961                            | 1,660.96      |

|                           | <u>Due Date</u> | <u>Date of Payment of Notice</u> | <u>Amount</u>   |
|---------------------------|-----------------|----------------------------------|-----------------|
| Fernandez Segrera & Cia.: | May 22, 1959    |                                  | \$ 1,204.01     |
|                           | June 22, 1959   |                                  | 1,204.01        |
|                           | July 22, 1959   |                                  | 1,204.01        |
|                           | Aug. 22, 1959   |                                  | 1,204.01        |
|                           | Sept. 22, 1959  |                                  | 1,204.01        |
|                           | Oct. 22, 1959   |                                  | 1,204.01        |
|                           | Nov. 22, 1959   |                                  | 1,204.01        |
|                           | Dec. 22, 1959   |                                  | 1,204.01        |
|                           | Jan. 22, 1960   |                                  | 1,204.01        |
|                           | Feb. 22, 1960   |                                  | 1,204.01        |
|                           | March 22, 1960  |                                  | 1,204.01        |
|                           | April 22, 1960  |                                  | 1,204.01        |
|                           | May 22, 1960    |                                  | 1,204.01        |
|                           | June 22, 1960   |                                  | 1,204.01        |
|                           | July 22, 1960   |                                  | <u>1,204.01</u> |
|                           |                 |                                  | \$41,352.84     |

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 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.)

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 following dates, being the dates of payment to banks in Cuba, or due dates, or the date of Law 568 as to dates prior to its enactment:

| <u>FROM</u>        | <u>ON</u>       |
|--------------------|-----------------|
| September 29, 1959 | \$ 6,020.05     |
| October 22, 1959   | 1,204.01        |
| November 3, 1959   | 2,336.99        |
| November 22, 1959  | 1,204.41        |
| December 22, 1959  | 1,204.41        |
| January 22, 1960   | 1,204.41        |
| February 22, 1960  | 1,204.41        |
| March 22, 1960     | 1,204.41        |
| April 22, 1960     | 1,204.41        |
| May 13, 1960       | 13,920.91       |
| May 22, 1960       | 1,204.41        |
| June 22, 1960      | 1,204.41        |
| July 22, 1960      | 1,204.41        |
| October 12, 1960   | 2,452.18        |
| March 8, 1961      | <u>1,660.96</u> |
|                    | \$41,352.84     |

The Commission further finds that the remainder of the items claimed have not been established by proper evidence and that part of the claim is denied.

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 dates 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.

CERTIFICATION OF LOSS

The Commission certifies that OMNI PRODUCTS 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 Forty-one Thousand Three Hundred Fifty-two Dollars and Eighty-four Cents (\$41,352.84) 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

**DEC 11 1968**

*Leonard v. B. Sutton*

Leonard v. B. Sutton, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*Sidney Freidberg*

Sidney Freidberg, 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, 32 Fed. Reg. 412-13 (1967).)