

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

IN THE MATTER OF THE CLAIM OF

THE B.V.D. COMPANY, INC.

Claim No. CU-0454

Decision No. CU 3235

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for claimant:

Riesner, Jawitz & Holland

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 THE B.V.D. COMPANY, INC. in the amount of \$48,458.19 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 claimant corporation was organized in the State of Delaware and an officer of the claimant corporation has certified that at all times between March 31, 1950 and presentation of this claim on September 20, 1965 more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. Claimant states that the majority of its 4491 stockholders were residents of the United States and assumes that substantially all of them were United States nationals and that a very insignificant portion of B.V.D. stockholders were residents of foreign countries and assumed to be citizens of those countries. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record includes copies of drafts drawn on Consolidated Textile Mills, Inc. of Havana, Cuba, and bank correspondence informing claimant that the drafts were paid in local currency and that the collecting bank was awaiting exchange control approval.

The drafts identified by bank number, amount and date of payment or confirmation of payment are as follows:

<u>BANK NO.</u>	<u>DATE OF PAYMENT AND/OR CONFIRMATION OF PAYMENT</u>	<u>AMOUNT</u>
76384	April 13, 1960	\$ 1,383.15
76424	April 13, 1960	1,683.16
76693	April 13, 1960	925.05
77172	April 13, 1960	447.17
76294	May 10, 1960	1,273.42
78452	June 13, 1960	1,147.80
76293	June 17, 1960	618.12
77589	July 27, 1960	635.82
77667	July 27, 1960	1,035.61
77822	July 27, 1960	1,447.14
77635	July 27, 1960	545.21

<u>BANK NO.</u>	<u>DATE OF PAYMENT AND/OR CONFIRMATION OF PAYMENT</u>	<u>AMOUNT</u>
77590	July 27, 1960	\$ 1,441.47
75588	August 4, 1960	750.06
77637	August 9, 1960	461.50
76692	August 9, 1960	2,706.09
77138	August 9, 1960	495.53
78103	August 9, 1960	939.05
78120	August 9, 1960	2,817.87
78119	August 9, 1960	883.85
78133	August 9, 1960	785.44
74806	August 10, 1960	382.50
76966	August 10, 1960	3,950.54
78799	August 15, 1960	1,623.10
76257	August 22, 1960	3,863.40
76404	August 22, 1960	2,420.82
17260	September 20, 1960	9,306.13
21635	November 21, 1960	3,063.44
34079	February 21, 1961	<u>1,425.75</u>
		\$48,458.19

Claimant states that it has not received any of these 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 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 sustained a loss in the total amount of \$48,458.19 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 shown below which are the dates on which payment was acknowledged.

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 it is so ordered in this case.

The dates of loss are as follows:

<u>FROM</u>	<u>ON</u>
April 14, 1960	\$ 4,438.53
May 11, 1960	1,273.42
June 14, 1960	1,147.80
June 18, 1960	618.12
July 28, 1960	5,105.25
August 5, 1960	750.06
August 10, 1960	9,089.33
August 11, 1960	4,333.04
August 16, 1960	1,623.10
August 23, 1960	6,284.22
September 21, 1960	9,306.13
November 22, 1960	3,063.44
February 22, 1961	<u>1,425.75</u>
	\$48,458.19

CERTIFICATION OF LOSS

The Commission certifies that THE B.V.D. COMPANY, 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 Forty-Eight Thousand Four Hundred Fifty-Eight Dollars and Nineteen Cents (\$48,458.19) 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

**OCT 30 1968**

*Leonard B. Austin*  
Leonard B. Austin, Chairman

*Theodore G. Hoff*  
Theodore G. Hoff, 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).)