

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

IN THE MATTER OF THE CLAIM OF

H. WEDEEN, INC.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -0471

Decision No. CU 175

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 H. WEDEEN, INC. in the amount of \$6,754.80 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) of the Act defines the term "national of the United States" as "(B) 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 the State of New York and that all times between May 1, 1941 and presentation of this claim on October 1, 1965, more than 50% of the outstanding capital stock of the claimant 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 states and on the basis of submitted birth certificates, the Commission finds that all of claimant's stockholders were nationals of the United States during the period from 1958 to October 1, 1965, the date when this claim was filed with the Commission.

The record contains copy of claimant's invoice No. 710 of December 7, 1959, reflecting the sale to Duran, Alvarez, Vazquez & Cia of Havana, Cuba, of goods totalling \$890.92, as to which freight, shipping and other attendant fees increased the total to \$968.14; copy of invoice No. 702 of November 24, 1959, reflecting the sale to Jose Iza, of Cuba, of goods totalling \$804.13 and as to which freight, shipping and other fees increased the total to \$873.86; copy of invoice No. 696 of November 17, 1959, reflecting the sale to Rex Textile Co., Inc, of Havana, Cuba, of goods totalling \$715.54 and as to which freight, shipping and

other fees increased the total to \$781.20; copy of invoice No. 706 of December 3, 1959 reflecting the sale to Cristobal Valdes of Havana, Cuba, of goods totalling \$634.21 and as to which freight, shipping and other fees increased the total to \$712.69; copy of invoice No. 687 of November 6, 1959, reflecting the sale to Kaba Hnos S. en C. of Havana, Cuba, of goods totalling \$756.39 and as to which freight, shipping and other fees increased the total to \$826.16; copy of invoice No. 707 of December 3, 1959, reflecting the sale to Casa Montero Sport of Havana, Cuba, of goods totalling \$1,667.03 and as to which freight, shipping and other fees increased the total to \$1,858.25; and a copy of invoice No. 689 of November 6, 1959, reflecting the sale to Pecal, S.A. of Havana, Cuba, of goods totalling \$720.57 and as to which freight, shipping and other fees increased the total to \$734.50.

Additionally, the record includes a copy of a letter of March 15, 1961, from Banco Nacional De Cuba, to claimant, in which it is stated that the collection of \$968.14 was paid by the consignee Duran Alvarez Vazquez y Cia and that the Banco Nacional De Cuba was still awaiting a dollar reimbursement release; a copy of a letter of March 9, 1961, from Banco Nacional De Cuba, to claimant, in which it is stated that the collection of \$873.86 was paid by the consignee Jose Iza and that the Banco Nacional De Cuba was still awaiting a dollar reimbursement release; a copy of a letter of March 8, 1961, from Banco Nacional De Cuba, to claimant, in which it is stated that the collection of \$781.20 was paid by the consignee Rex Textile Co. Inc. and that the Banco Nacional De Cuba was still awaiting a dollar reimbursement release; a copy of a letter of April 12, 1961, from the Banco Nacional De Cuba, to claimant, in which it is stated that the collection of \$712.69 was paid by the consignee Cristobal Valdes and that the Banco Nacional De Cuba was still awaiting a dollar reimbursement release from the Exchange Board, a Cuban Government agency; a copy of a letter of May 4, 1960, from the Trust Company of Cuba, to claimant, in

which it is stated that the collection of \$826.16 was paid by the consignee Kaba Hermanos, S. en C. and that the Trust Company of Cuba was still awaiting a dollar reimbursement release from the Exchange Board, a Cuban Government agency; and a copy of a letter of July 12, 1960, and a certified translation thereof, from the Banco Gelats, to claimant, in which it is stated that the collection of \$1,858.25 was paid by the consignee Montero Sport Store and that the Banco Gelats was still awaiting a dollar reimbursement release from the Monetary Stabilization Fund, a Cuban Government agency.

The record also contains claimant's statement that invoice No. 689 was a sale on open account to Pecal, S.A. in the amount of \$734.50 and 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 the Claim of The Schwarzenbach Huber Company, FCSC Claim No. CU-0019; and the Claim of Etna Pozzolena Corporation, FCSC 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 loss occurred on March 24, 1960, as to \$968.14, on February 24, 1960, as to \$873.86, on February 6, 1960, as to \$781.20, on March 16, 1960, as to \$712.69, on

February 20, 1960, as to \$826.16, on February 27, 1960, as to \$1,858.25, all being one day subsequent to payment and on December 6, 1959, as to \$734.50, the date the account was due.

The Commission has decided that in payment of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be allowed at the rate of 6% per annum from the date of loss to the date of settlement (See the Claim of American Cast Iron Pipe Company, FCSC Claim No. CU-0249).

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 loss occurred, to the date on which provisions are made for the settlement thereof, as follows:

\$ 968.14 from March 24, 1960  
873.86 from February 24, 1960  
781.20 from February 6, 1960  
712.69 from March 16, 1960  
826.16 from February 20, 1960  
1,858.25 from February 27, 1960, and  
734.50 from December 6, 1959

CERTIFICATION OF LOSS

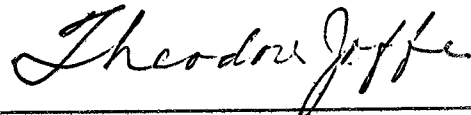
The Commission certifies that H. WEDEEN, INC. suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Six Thousand Seven Hundred Fifty-Four Dollars and Eighty Cents (\$6,754.80) with 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

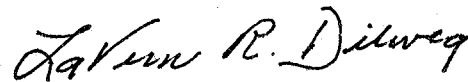
AUG 23 1967



Edward D. Re, Chairman




Theodore Jaffe, Commissioner



LaVern R. Dilweg, Commissioner

CERTIFICATION

This is a true and correct copy of the decision  
of the Commission which was entered as the final  
decision on SEP. 25 1967

  
Clerk of the Commission

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. 412-13 (1967).)