

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

IN THE MATTER OF THE CLAIM OF

ONIVEL CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0701

Decision No. CU 3567

Counsel for claimant: Strasser, Spiegelberg, Fried, Frank & Kampelman

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$48,503.99, was presented by Guiterman Company, Inc., based upon the asserted loss of payment for merchandise shipped to Cuba. The record shows that as of April 1, 1968, claimant's name was changed to ONIVEL CORPORATION.

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, by an authorized officer, has certified that it was organized under the laws of the State of New York; that more than 50% of its outstanding capital stock was owned by nationals of the United States at all pertinent times; and that as of October 13, 1967, 100% of claimant's outstanding capital stock was owned by nationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The claim is based upon the sale of products to various consignees in Cuba, stated to be Cuban nationals. The record includes copies of invoices, bank statements indicating payment by the consignees to Cuban banks, extracts from claimant's records, and statements from officials of claimant concerning the debts herein.

The following is a listing of the consignees, the dates on which payment was made by the consignees to or acknowledged by the banks, and the net amounts thereof after adjustments for credits:

<u>Consignee</u>	<u>Date of payment or acknowledgment</u>	<u>Net amount</u>
Juan B. Herrera	March 18, 1960	\$ 1,958.49
Juan B. Herrera	January 18, 1960	1,673.34
Importadora del Campo, S.A.	April 25, 1960	1,580.91
Importadora Rabonet, S.A.	February 18, 1960	673.53
Importadora Rabonet, S.A.	February 8, 1960	648.34
Kohly Motor de Armando Fernandez	May 18, 1960	689.34
Pedro Martin Bentancourt	February 19, 1960	295.22
Pedro Martin Bentancourt	February 5, 1960	424.18
Pedro Martin Bentancourt	February 5, 1960	311.66
Pedro Martin Bentancourt	March 11, 1960	399.54
Pedro Martin Bentancourt	May 9, 1960	343.54
Pedro Martin Bentancourt	March 28, 1960	685.79
Pedro Martin Bentancourt	June 3, 1960	529.50
Mario Martinez Moya	February 1, 1960	893.42
Mario Martinez Moya	July 15, 1960	1,315.30
Motor Auto Co. Ltd.	February 2, 1960	610.84
Motors Cuba Importing Corp.	March 2, 1960	239.85
Motores Diamond T de Cuba, S.A.	March 31, 1960	1,545.50
Neira Y Gonzalez	January 25, 1960	1,245.70
Neira Y Gonzalez	February 3, 1960	462.70
Pedrosa Hno. Y Cia., S.A.	December 30, 1959	1,053.41
Piezas Y Accesorios K-W, S.A.	November 3, 1959	1,018.51
Piezas Y Accesorios K-W, S.A.	March 4, 1960	720.02
Jose Saladrigas	May 12, 1960	627.05
Solor Motors, S.A.	February 3, 1960	340.47
Trans American, S.A.	December 15, 1959	1,613.04
Tiendos Los Precios Fijos, S.A.	December 14, 1959	727.73

<u>Consignee</u>	<u>Date of payment or acknowledgment</u>	<u>Net amount</u>
Accesorios Fren Parts, S.A.	February 9, 1960	\$ 679.72
Autos Latour, S.A.	December 16, 1959	2,041.39
Autos Latour, S.A.	January 25, 1960	2,164.80
Auto Lizmen, S.A.	June 13, 1960	799.57
Domingo Bolanos	May 4, 1960	192.69
Casa Daubar, S.A.	December 30, 1959	1,504.14
Jose F. Cepero, S. en C.	April 1, 1960	102.68
Commercial de Autos Johnnie Rodriguez, S.A.	February 19, 1960	1,514.73
Cia. de Autos Y Accesorios, S.A.	March 18, 1960	81.53
Cia. de Autos Y Accesorios, S.A.	May 4, 1960	556.62
Cia. de Autos Muelles Para Automoviles	February 5, 1960	596.31
Diaz Y Rodriguez	June 13, 1960	2,532.83
El Aguila de Erginio Fernandez Garcia	February 17, 1960	357.38
Alvaro Fernandez	January 27, 1960	341.22
Alvaro Fernandez	January 5, 1960	708.96
Alvaro Fernandez	January 5, 1960	1,137.30
Antonio Garcia Y Cia. S. L.	October 27, 1959	490.56
Antonio Garcia Y Cia. S. L.	November 6, 1959	490.55
Armando Garcia	December 16, 1959	369.40
Juan Garcia	December 18, 1959	1,069.22
Sireno Garcia	April 12, 1960	1,556.27
Francisco Hernandez	May 6, 1960	465.52
Francisco Hernandez	May 23, 1960	1,080.51
Francisco Hernandez	May 6, 1960	424.59
J y W Hernandez Muniz	February 2, 1960	1,627.53
Herranz Y Cia.	April 4, 1960	1,595.44
Herranz Y Cia.	March 10, 1960	<u>1,198.45</u>
Total		<u>\$48,306.83</u>

In the following instance, merchandise was shipped to a Cuban consignee, but the record does not establish that the consignee ever paid therefor to any bank or, if it did, the date of payment:

<u>Consignee</u>	<u>Invoice date</u>	<u>Net amount</u>
Novedades Deportivas Y Culturales, S.A.	October 15, 1959	\$401.84

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, the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba. In the absence of evidence to the contrary, the Commission finds that the losses occurred on the days after payments were made to or acknowledged by the banks, and that with respect to the one instance in which payment to a bank was not established, the loss occurred thirty days after the invoice date.

Claimant has reduced its losses by certain credits appearing on its books in favor of four Cuban consignees from whom, however, no debts were due. The amount of these credits is \$168.15. In addition, claimant has

reduced its losses by the amount of \$36.53 for credits due with respect to "Unreconcilable items." In the absence of evidence establishing that these credits applied to Cuban consignees who owed debts to claimant, the Commission finds no basis for making any reduction on account of these credits, which aggregate \$204.68.

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 date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in this case it is so ordered as follows:

<u>From</u>	<u>On</u>
October 28, 1959	\$ 490.56
November 4, 1959	1,018.51
November 7, 1959	490.55
November 14, 1959	401.84
December 15, 1959	727.73
December 16, 1959	1,613.04
December 17, 1959	2,410.79
December 19, 1959	1,069.22
December 31, 1959	2,557.55
January 6, 1960	1,846.26
January 19, 1960	1,673.34
January 26, 1960	3,410.50
January 28, 1960	341.22
February 2, 1960	893.42
February 3, 1960	2,238.37
February 4, 1960	803.17

<u>From</u>	<u>On</u>
February 6, 1960	\$ 1,332.15
February 9, 1960	648.34
February 10, 1960	679.72
February 18, 1960	357.38
February 19, 1960	673.53
February 20, 1960	1,809.95
March 3, 1960	239.85
March 5, 1960	720.02
March 11, 1960	1,198.45
March 12, 1960	399.54
March 19, 1960	2,040.02
March 29, 1960	685.79
April 1, 1960	1,545.50
April 2, 1960	102.68
April 5, 1960	1,595.44
April 13, 1960	1,556.27
April 26, 1960	1,580.91
May 5, 1960	749.31
May 7, 1960	890.11
May 10, 1960	343.54
May 13, 1960	627.05
May 19, 1960	689.34
May 24, 1960	1,080.51
June 4, 1960	529.50
June 14, 1960	3,332.40
July 16, 1960	<u>1,315.30</u>
Total	\$48,708.67

It will be noted that the total amount of loss found herein is in excess of the amount asserted by claimant. In determining the amount of loss sustained, however, the Commission is not bound by any lesser or greater amount which may be asserted by claimant as the extent thereof.

CERTIFICATION OF LOSS

The Commission certifies that ONIVEL 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-eight Thousand Seven Hundred Eight Dollars and Sixty-seven Cents (\$48,708.67) 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

MAR 26 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Feidberg

Sidney Feidberg, 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).)