

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

IN THE MATTER OF THE CLAIM OF

BROCKWAY GLASS COMPANY, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0970

Decision No. CU 1807

Counsel for claimant:

Saperston, Wiltse, Duke, Day
& Wilson
By: Ray.W. Brown, 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 BROCKWAY GLASS COMPANY, INC., in the amount of \$15,329.25 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 at all times between January 1, 1959 and presentation of this claim on February 1, 1967, 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 that no more than 10% of its approximate 2900 stockholders were nationals of foreign countries.

The record contains copies of claimants invoices and bills of lading which reflect the sale and delivery of goods to various Cuban enterprises.

<u>CUSTOMER</u>	<u>INVOICE DATE</u>	<u>AMOUNT</u>
Gloria Jiminez	October 28, 1959	\$1,022.00
Gloria Jiminez	October 28, 1959	3,408.37
Gloria Jiminez	April 19, 1960	169.82
Gloria Jiminez	November 16, 1959	881.98
Gloria Jiminez	April 29, 1960	20.44
Sidras San Julio, S.A.	October 26, 1959	723.00
Sidras San Julio, S.A.	September 26, 1959	307.78

<u>CUSTOMER</u>	<u>INVOICE DATE</u>	<u>AMOUNT</u>
Sidras San Julio, S.A.	November 10, 1959	186.97
Sidras San Julio, S.A.	October 5, 1959	100.67
Centro Asturiano de la H. Casa Salud	April 22, 1959	1,756.14
Centro Asturiano de la H. Casa Salud	May 27, 1959	1,138.24
Centro Asturiano de la H. Casa Salud	June 25, 1959	1,267.65
Centro Asturiano de la H. Casa Salud	July 7, 1959	592.46
Manuel Perez	July 31, 1959	149.63
	TOTAL	<u>\$11,684.27</u>

The record also contains copies of claimants invoices, which reflect sales and deliveries of goods to Cuban enterprises other than those already enumerated. Corresponding to each of these invoices is a letter from a Cuban collecting bank, each of which informs claimant that its bank draft, drawn on claimant's Cuban customer, had been paid provisionally in local currency, and that exchange authorization was being awaited from the Government of Cuba.

<u>CUSTOMER</u>	<u>DATE OF BANK NOTIFICATION</u>	<u>AMOUNT</u>
May Trading Company	December 23, 1959	780.00
Laboratories Veter, S.A.	July 27, 1960	267.00
Laboratories Veter, S.A.	July 27, 1960	888.00
Laboratories Veter, S.A.	July 27, 1960	260.78
Medical Productos, S.A.	January 8, 1960	368.76
Medical Productos, S.A.	January 8, 1960	133.87
Drogueria Taquechel	July 20, 1960	118.20
Drogueria Taquechel	July 20, 1960	683.50
Drogueria Taquechel	July 20, 1960	144.87
	TOTAL	<u>\$3,644.98</u>

Claimant states that it has never received any of 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 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,)

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

September 29, 1959	as to	\$4,904.12
November 5, 1959	as to	100.67
November 26, 1959	as to	723.00
November 28, 1959	as to	4,409.93
December 10, 1959	as to	186.97
December 16, 1959	as to	881.98
December 24, 1959	as to	780.00
January 9, 1960	as to	502.63
March 29, 1960	as to	307.78

May 19, 1960	as to	\$ 169.82
July 21, 1960	as to	946.57 and on
July 28, 1960	as to	1,415.78

In each case, the date of loss is either the date of publication of Law 568, the day falling 30 days after the invoice date, or the day after the date of the bank letter.

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).

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 date on which each loss occurred, to the date on which provision is made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that BROCKWAY GLASS 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 Fifteen Thousand Three Hundred Twenty-Nine Dollars and Twenty-Five Cents (\$15,329.25) 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

MAY 1 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

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 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).)

CU-0970