

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

IN THE MATTER OF THE CLAIM OF

KUPFER BROTHERS COMPANY

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. **CU** 1147

Decision No. **CU** 1955

Counsel for claimant:

Weiss, Bronston & Rosenthal  
By: George D. Cohen, Esq.

AMENDED FINAL DECISION

By Proposed Decision issued June 13, 1968, the Commission certified that a loss in the amount of \$6,352.60 was suffered by Millen Industries, Inc., the parent of claimant. The decision was entered as final on July 16, 1968. As Kupfer Brothers Company has not assigned its claim, it is

ORDERED that the Final Decision be and it is hereby amended.

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by Kupfer Brothers Co. in the amended amount of \$6,352.60 based upon the asserted loss of payment for merchandise shipped to Cuba.

Claimant corporation, by an authorized officer, has certified that claimant corporation was organized in the State of New York and that at all times pertinent to this claim, all of its outstanding capital stock was owned by nationals of the United States. The Commission holds that claimant corporation is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record includes copies of letters from various banks acknowledging payments from Cuban enterprises for merchandise shipped by Kupfer Brothers Company to Cuba. There follows a list of the amounts owed to Kupfer Brothers Company by the Cuban consignees and the dates of payment or acknowledgment of payment by the various Cuban banks. Reimbursement releases or authorization were never granted by Cuban Government officials after payment was made. Claimant states that it never received any of the funds.

<u>Consignee</u>	<u>Amount</u>	<u>Collecting Bank</u>	<u>Date of Payment or Acknowledgment</u>
Alvarez y Cia	\$ 457.07	The Chase Manhattan Bank (Cuban Branch)	October 1, 1959
Alvarez y Cia.	457.06	The Chase Manhattan Bank (Cuban Branch)	November 25, 1959
Impresora Cubana de Disc.	2,313.55	Banco Continental Cubano	March 22, 1960
Cia. Papelera Trebus	654.06	Banco Continental Cubano	October 20, 1960
Anton y Cia	1,751.26	The Trust Company of Cuba	November 28 , 1960

Additionally, the record contains a letter of October 19, 1959 from J. M. Perez Pena indicating that Alvarez y Cia owed claimant debts which had not as yet been paid. A certified copy of the ledger sheet of claimant shows that invoice number 31221 dated March 14, 1958 in the amount of \$719.60 remained unpaid. Claimant stated 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 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).

Accordingly, in the instant claim the Commission finds that property of the claimant was lost as a result of intervention by the Government of Cuba; that in the absence of evidence to the contrary, the loss occurred on the respective days after the collections were acknowledged by the various banks and on September 29, 1959, the effective date of Law 568, as to the unpaid item in the amount of \$719.60.

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

<u>From</u>	<u>On</u>
September 29, 1959;	\$ 719.60
October 2, 1959	457.07
November 26, 1959	457.06
March 23, 1960	2,313.55
October 21, 1960	654.06
November 29, 1960	<u>1,751.26</u>
	\$6,352.60

Accordingly, the Certification of loss as restated below will be entered and in all other respects the Proposed Decisions and Final Decisions are affirmed.

CU-1147

CERTIFICATION OF LOSS

The Commission certifies that KUPFER BROTHERS COMPANY 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 Three Hundred Fifty-two Dollars and Sixty Cents (\$6,352.60 ) with interest at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,  
and entered as the Amended Final  
Decision of the Commission

JAN 8 1969

*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].)

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
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IN THE MATTER OF THE CLAIM OF

MILLEN INDUSTRIES, INC.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-1147

Decision No. CU 1955

Counsel for claimant:

Weiss, Bronston & Rosenthal  
BY: George D. Cohen, Esq.

PROPOSED DECISION

This claim, as amended, against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by MILLEN INDUSTRIES, INC., in the amount of \$6,352.60 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.

The term "National of the United States" is defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States.

The record discloses that this claim was originally owned by the Kupfer Brothers Company, a New York corporation and was acquired by MILLEN INDUSTRIES, INC., by exchange of stock for assets on January 2, 1964.

A corporate officer of claimant corporation and its predecessor have certified that claimant corporation and its predecessor were organized in the State(s) of Delaware and New York respectively, and that at all times pertinent to this claim, more than 50% of the outstanding capital stock of both corporations was owned by nationals of the United States. The Commission holds that both claimant corporation and its predecessor in interest were and are nationals of the United States within the meaning of Section 502(1)(B) of the Act.

The record discloses that all of the outstanding capital stock of claimant and its predecessor in interest was held by United States nationals.

The record includes copies of letters from various banks acknowledging payments from Cuban enterprises for merchandise shipped by Kupfer Brothers Company to Cuba. There follows a list of the amounts owed Kupfer Brothers Company by the Cuban consignees and the dates of payment or acknowledgment of payment by the various Cuban banks. Reimbursement releases or authorization were never granted by Cuban Government officials after payment was made. Claimant states that neither it nor its predecessor have received any of the funds.

<u>Consignee</u>	<u>Amount</u>	<u>Cuban Collecting Bank</u>	<u>Date of Payment or Acknowledgment</u>
Alvarez y Cia	\$ 457.07	The Chase Manhattan Bank (Cuban Branch)	October 1, 1959
Alvarez y Cia.	457.06	The Chase Manhattan Bank (Cuban Branch)	November 25, 1959
Impresora Cubana de Disc.	2,313.55	Banco Continental Cubano	March 22, 1960
Cia Papelera Trebus	654.06	Banco Continental Cubano	October 20, 1960
Anton y Cia	1,751.26	The Trust Company of Cuba	November 28, 1960

Additionally, the record contains a letter of October 19, 1959 from J. M. Perez Pena indicating that Alvarez y Cia owed claimant's predecessor in interest debts which had not as yet been paid. A certified copy of the ledger sheet of claimant's predecessor in interest shows that invoice number 31221 dated March 14, 1958 in the amount of \$719.60 remained unpaid. Claimant states that neither it, nor its predecessor, 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 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 property of claimant's predecessor in interest was lost as a result of intervention by the Government of Cuba; that in the absence of evidence to the contrary, the loss occurred on the respective days after the collections were acknowledged by the various banks and on September 29, 1959 the effective date of Law 568 as to the unpaid item in the amount of \$719.60; and that pursuant to the purchase of the assets of Kupfer Brothers Company, claimant succeeded to the loss.

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

	<u>On</u>	<u>From</u>
	\$ 719.60	September 29, 1959
	457.07	October 2, 1959
	457.06	November 26, 1959
	2,313.55	March 23, 1960
	654.06	October 21, 1960
	<u>1,751.26</u>	November 29, 1960
Total	\$6,352.60	



CERTIFICATION OF LOSS

The Commission certifies that MILLEN INDUSTRIES, INC. succeeded to and 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 Three Hundred Fifty-Two Dollars and Sixty Cents (\$6,352.60) 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

**JUN 13 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).)