

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

IN THE MATTER OF THE CLAIM OF

DESSERT SEED COMPANY, INC.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -1204

Decision No. CU 1713

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 DESSERT SEED COMPANY, INC., in the amount of \$8,536.44 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."

Claimant has submitted a copy of its Articles of Incorporation showing that claimant was organized in the State of California and an officer of the corporation has certified that at all times between February 11, 1955 and presentation of this claim on March 24, 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 34 of its 36 stockholders, who own 48,373 shares out of a total of 49,748 shares outstanding, were United States nationals.

The record contains copies of correspondence from the Bank of America, United States Department of State, and the American Embassy in Havana, as well as a sight draft dated December 19, 1959 and claimant's accounts receivable ledger, which establish that claimant, on October 5, 1959, shipped C.O.D. via Pan American Airways from El Centro, California to the Ministry of Agriculture, Havana, Cuba, pursuant to an order cabled

from the Ministry of Agriculture, a quantity of vegetable seed for the price of \$8,536.44. When immediate payment was not forthcoming, claimant drew a sight draft on the consignee for the amount due on December 14, 1959. Claimant states that it has not received the funds.

The Commission holds that the funds due claimant from the Cuban Ministry of Agriculture constitute a "debt owed by the Government of Cuba" and, therefore "property" within the meaning of the terms as defined in Section 502(3) of the Act, quoted above. (See Claim of Clemens R. Maise, Claim No. CU-3191.)

Accordingly, the Commission finds that the amount of the unpaid indebtedness was \$8,536.44 and that claimant suffered a loss in that amount as a result of the actions of the Government of Cuba on December 14, 1959.

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 the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that DESSERT SEED 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 Eight Thousand Five Hundred Thirty-Six Dollars and Forty-Four Cents (\$8,536.44) with interest thereon at 6% per annum from December 14, 1959 to the date of settlement.

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

APR 24 1960

*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).)