

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

IN THE MATTER OF THE CLAIM OF

HERMAN COHEN AND COMPANY, INC.

Claim No. CU -1447

Decision No. CU

842

Under the International Claims Settlement
Act of 1949, as amended

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 HERMAN COHEN AND COMPANY, INC., in the amount of \$45,511.69, and is 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(e) 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 December 8, 1956 and presentation of this claim on April 13, 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.

The record discloses that all of the outstanding stock in claimant corporation is held by three persons, all of whom are nationals of the United States by birth.

The record includes copies of correspondence from banks and consignee business enterprises in Cuba, copies of invoices, and other data concerning shipments of merchandise to Cuban business firms, listed hereafter as the consignees. This evidence discloses that the purchase price of the goods and accompanying charges for such shipments were, in many instances, paid by the consignees to local Cuban banks; and that the dollar reimbursement releases or authorization were never granted by Cuban governmental authorities. Other collections for shipments made by claimant were not paid to the collecting bank by the consignee; claimant states that it has not received any of the funds for such shipments.

There follows hereafter a listing of shipments made to Cuban consignees, including information on paid and unpaid collections, with the dates on which payments were acknowledged, or the dates when the unpaid collections were due and payable:

<u>INVOICE DATE</u>	<u>CONSIGNEE</u>	<u>AMOUNT AND DUE DATE OF UNPAID COLLECTIONS</u>	<u>AMOUNT AND DATE OF PAYMENT OR ACKNOWLEDGMENT</u>
June 18, 1959	Tejidos Unica, S.A. Havana, Cuba	\$1,161.65 (July 18, 1959)	_____
July 21, 1959	Confecciones Neiman Havana, Cuba	\$191.34 (August 21, 1959)	_____
September 2, 1959	Salomon Kress Havana, Cuba	\$2,347.13 (October 2, 1959)	_____
September 2, 1959	Salomon Kress Havana, Cuba	\$3,145.71 (October 2, 1959)	_____
September 4, 1959	Necuze y Hijos Holguin, Cuba	\$1,165.91 (October 4, 1959)	_____
September 25, 1959	Compania Comercial Guanabo Havana, Cuba	\$1,127.80 (October 25, 1959)	_____
October 6, 1959	F. Martin & Cia. Havana, Cuba	\$1,034.78 (November 6, 1959)	_____
October 16, 1959	Manuel Menendez Havana, Cuba	\$2,460.63 (November 16, 1959)	_____
October 26, 1959	Villar, Pica & Co. Havana, Cuba	\$997.74 (November 26, 1959)	_____
October 27, 1959	Jose Iza Havana, Cuba	\$338.09 (November 27, 1959)	_____
October 29, 1959	Lopez Paz & Co. Havana, Cuba	\$5,041.27 (November 29, 1959)	_____
November 4, 1959	Lopez Paz & Co. Havana, Cuba	\$2,021.63 (December 4, 1959)	_____
November 4, 1959	Lopez Paz & Co. Havana, Cuba	\$1,894.24 (December 4, 1959)	_____
October 14, 1959	Tejidos Karioka, S.A. Havana, Cuba		\$1,111.75 (December 9, 1959)
October 14, 1959	Tejidos Karioka, S.A. Havana, Cuba		\$1,477.89 (December 9, 1959)
November 18, 1959	Feder & Rips Havana, Cuba	\$930.65 (December 18, 1959)	_____

INVOICE DATE	CONSIGNEE	AMOUNT AND DUE DATE OF UNPAID COLLECTIONS	AMOUNT AND DATE OF PAYMENT OR ACKNOWLEDGMENT
November 20, 1959	M. Llano & Company Havana, Cuba	\$1,767.09 (December 20, 1959)	----
November 20, 1959	M. Llano & Company Havana, Cuba	\$2,252.06 (December 20, 1959)	----
November 20, 1959	Lopez Paz & Company Havana, Cuba	\$653.08 (December 20, 1959)	----
November 23, 1959	Martinez Hnos. & Cia. Havana, Cuba	\$544.07 (December 23, 1959)	----
November 5, 1959	Pesach Gutterman Havana, Cuba	----	\$889.49 (December 24, 1959)
September 28, 1959	R. Lewis Havana, Cuba	----	\$2,186.14 (December 29, 1959)
September 15, 1959	Novick Textiles, S.A. (Yukin Novick) Havana, Cuba	----	\$1,870.16 (January 6, 1960)
September 28, 1959	Klepach Hnos. Havana, Cuba	----	\$522.21 (January 18, 1960)
October 15, 1959	Klepach Hnos. Havana, Cuba	----	\$920.76 (January 25, 1960)
November 5, 1959	Klepach Hnos. Havana, Cuba	----	\$2,909.04 (See below)
November 5, 1959	Klepach Hnos. Havana, Cuba	----	\$1,489.32 (See below)
November 5, 1959	Klepach Hnos. Havana, Cuba	----	\$923.55 (See below)
November 9, 1959	Klepach Hnos.	----	\$1,196.20 (February 2, 1960) Payment to bank of \$6,518.11; claimant credits this consignee with \$1,611.40; amount still due: \$4,906.71
October 28, 1959	R. Lewis Havana, Cuba	----	\$2,551.71 (March 14, 1960)
TOTAL:		\$45,511.69	

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, FGSC Claim No. CU-0019; and the Claim of Etna Pozzolana Corporation, FGSC 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 the respective due dates with regard to unpaid collections maturing after September 29, 1959. However, with respect to the dates of loss as to those goods sold to Tejidos Unica, S.A. and Confecciones Neiman, for which payment was due prior to September 29, 1959, the Commission finds that the loss occurred on September 29, 1959, the effective date of Law 568. The Commission further finds that in those instances in which payments were made to the collecting banks by Cuban consignees, the losses occurred on the days after payments were made to the Cuban banks, where ascertained, or the days after notification of payments were made to claimant.

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 the Claim of Lisle Corporation, FGSC 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:

On \$1,352.99 from September 29, 1959
On 5,492.84 from October 2, 1959
On 1,165.91 from October 4, 1959
On 1,127.80 from October 25, 1959
On 1,034.78 from November 6, 1959
On 2,460.63 from November 16, 1959
On 997.74 from November 26, 1959
On 338.09 from November 27, 1959
On 5,041.27 from November 29, 1959
On 3,915.87 from December 4, 1959
On 2,589.64 from December 10, 1959
On 930.65 from December 18, 1959
On 4,672.23 from December 20, 1959
On 544.07 from December 23, 1959
On 889.49 from December 25, 1959
On 2,186.14 from December 30, 1959
On 1,870.16 from January 7, 1960
On 522.21 from January 19, 1960
On 920.76 from January 26, 1960
On 4,906.71 from February 3, 1960
On 2,551.71 from March 15, 1960

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CERTIFICATION OF LOSS

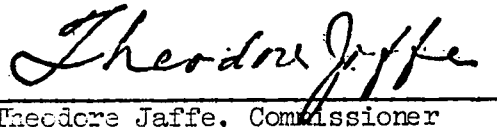
The Commission certifies that HERMAN COHEN AND COMPANY, INC. suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Forty-Five Thousand Five Hundred Eleven Dollars and Sixty-Nine Cents (\$45,511.69) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

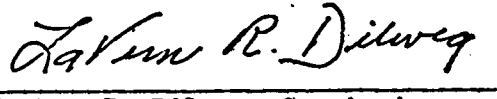
Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

20 DEC 1967

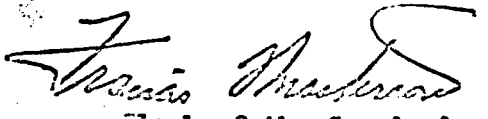

Edward D. Re, Chairman

Certification


Theodore Jaffe, Commissioner


LeVern R. Dilweg, Commissioner

is a true and correct copy of the decision of the Commission which was entered as the final decision on _____


Francis Macdonald
Clerk of the Commission

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).)

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