

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

IN THE MATTER OF THE CLAIM OF

JAMES S. OPPENHEIMER
THOMAS T. GRACE
and
WALTER N. GREEN, Jr.

Claim No. CU-1922
Claim No. CU-1923
Claim No. CU-1924
Claim No. CU-8745

Decision No. CU- **5762**

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

Williams & Connolly
By Charles P. Muldoon, Esq.

PROPOSED DECISION

These claims against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, are based upon the asserted loss of payment for merchandise shipped to certain Cuban consignees. The claimants have been nationals of the United States since birth.

Claim No. CU-1922 was filed by JAMES S. OPPENHEIMER on his own behalf in the net amount of \$5,872.44 after reductions for commissions. Claim No. CU-1923 was filed by JAMES S. OPPENHEIMER based upon his proportionate share as a stockholder of Oppenheimer Intercontinental Corporation, a Panamanian entity, in the net amount of \$84,498.87 after reductions for commissions. Claim No. CU-1924 was filed by THOMAS T. GRACE, based upon his proportionate share as a stockholder of that Panamanian entity, in the net amount of \$1,208.45 after reductions for commissions. Claim No. CU-8745 was filed by WALTER N. GREEN, Jr., based upon his share of the commissions, in the amount of \$4,668.73.

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.

It is noted that Claim No. CU-8745 is dated June 2, 1970 and was received by the Commission on June 9, 1970, long after the filing period (May 1, 1967) ended pursuant to the Commission's regulations (45 C.F.R. Sec. 531.1(d) (1969).) The Commission has held, however, that it will accept for consideration on their merits claims filed after the deadline so long as consideration thereof does not impede the determination of those claims which were timely filed. (See Claim of John Korenda, Claim No. CU-8255.) This is such a claim.

The Commission has held that claims based on indirect ownership of property in Cuba or debts due from nationalized Cuban corporations generally are within the purview of Title V of the Act. (See Claim of Avon Products, Inc., Claim No. CU-0072, Amended Proposed Decision, 1967 FCSC Ann. Rep. 35; and Claim of United Merchants & Manufacturers, Inc., Claim No. CU-0759, Amended Proposed Decision, id. at 52.)

The record includes copies of invoices and drafts covering the shipments of merchandise involved herein to certain Cuban consignees; copies of bank letters indicating the amounts paid by the Cuban consignees to local Cuban banks; statements of an authorized officer of the Panamanian corporation

setting forth pertinent extracts from that corporation's books and records, and indicating the stock interests in the corporation owned by JAMES S. OPPENHEIMER and THOMAS T. GRACE, as well as the commissions due WALTER N. GREEN, Jr.

Claimants THOMAS T. GRACE and JAMES S. OPPENHEIMER have reduced their claims by the amounts of commissions that were due for sales made to the Cuban consignees on behalf of the Panamanian corporation and JAMES S. OPPENHEIMER. Upon consideration of the entire record, the Commission holds that claimants have, in effect, made pro tanto assignments of portions of their claims against the Government of Cuba to WALTER N. GREEN, Jr. (See Claim of Deere & Company, Claim No. CU-2392, and Claim of William A. Powe, Claim No. CU-0502.)

The evidence establishes that JAMES S. OPPENHEIMER and THOMAS T. GRACE owned 90.9% and 1.3% stock interests, respectively, in the Panamanian corporation. The record shows that Mr. GREEN's commissions from sales made on behalf of the Panamanian corporation amounted to \$4,293.48, and that he was also due commissions on sales made on behalf of JAMES S. OPPENHEIMER in the amount of \$375.25. The aggregate amount of these commissions, \$4,668.73, is the amount Mr. GREEN is claiming in this proceeding. Based upon the evidence of record, the Commission finds that the portions of the claims assigned by JAMES S. OPPENHEIMER and THOMAS T. GRACE as stockholders of the Panamanian corporation aggregated 92.2% of \$4,293.48, or the amount of \$3,958.59. Since the portion of the claim assigned by JAMES S. OPPENHEIMER for sales made on his own behalf was equal to \$375.25, the Commission finds that WALTER N. GREEN, Jr. succeeded to valid claims in the amount of \$4,333.84.

WALTER N. GREEN, Jr., however, has based his claim upon 100% of the commissions due from the Panamanian corporation plus the \$375.25 due from JAMES S. OPPENHEIMER. Inasmuch as 7.8% of the Panamanian corporation's outstanding capital stock was owned by nonnationals of the United States, any assignments Mr. GREEN obtained either from the Panamanian corporation or its stockholders who owned said 7.8% interest would amount to assignments of claims from nonnationals of the United States to a national of the United States.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Commission finds that the portion of the claim of WALTER N. GREEN, Jr. for assignments of claims from the Panamanian corporation and/or its stockholders who were nonnationals of the United States on the date of loss is not allowable pursuant to the express provisions of Section 504 of the Act. Accordingly, that portion of his claim is denied.

The following information concerning the shipments made to the Cuban consignees, supported by the evidence of record, shows the paid and the unpaid accounts; the dates on which payments were made by the Cuban consignees to the local Cuban banks or acknowledged by the banks; and the net amounts due after deductions for commissions; and with respect to the unpaid account, the shipping dates and the net amounts due after deductions for commissions.

PANAMANIAN CORPORATION
PAID ACCOUNTS

<u>Consignee</u>	<u>Date Paid or Acknowledged</u>	<u>Net Amount</u>
Autos Volkswagen de Cuba, S.A.	November 27, 1959	\$ 8,165.42
" "	January 15, 1960	8,271.68
" "	March 17, 1960	8,377.97
" "	May 27, 1960	8,484.25
" "	December 1, 1959	1,976.78
" "	January 20, 1960	2,002.59
" "	March 22, 1960	2,028.41
" "	May 27, 1960	2,054.23
" "	December 11, 1959	191.83
" "	January 28, 1960	194.35
" "	March 29, 1960	195.60
" "	June 7, 1960	199.37
" "	December 10, 1959	3,273.75
" "	January 28, 1960	3,316.53
" "	March 29, 1960	3,359.31
" "	June 6, 1960	3,402.09
" "	December 11, 1959	935.75
" "	February 1, 1960	947.96
" "	March 29, 1960	960.18
" "	June 7, 1960	972.41

<u>Consignee</u>	<u>Date Paid or Acknowledged</u>	<u>Net Amount</u>
Autos Volkswagen de Cuba, S.A.	December 14, 1959	\$ 118.12
" " " "	January 25, 1960	119.65
" " " "	March 23, 1960	121.18
" " " "	May 31, 1960	122.72
" " " "	December 11, 1959	96.00
" " " "	December 31, 1959	301.28
Aspuru & Cia	January 13, 1960	2,910.28
" " "	January 13, 1960	8,868.25
" " "	March 1, 1960	828.55
Fabrica Nacional de Implementos Agricolas, S.A.	February 29, 1960	1,054.39
" " " "	June 6, 1960	1,074.80
Eloy Vila Vazquez	June 30, 1960	807.66
Instituto Nacional de Reforma Agraria INRA	April 20, 1960	<u>17,224.71</u>
	Total	<u>\$92,958.05</u>

JAMES S. OPPENHEIMER
PAID ACCOUNT

<u>Consignee</u>	<u>Date Paid or Acknowledged</u>	<u>Net Amount</u>
Ferreteria "La Ruta"	November 2, 1960	<u>\$ 388.29</u>

UNPAID ACCOUNT

<u>Consignee</u>	<u>Shipping Date</u>	<u>Net Amount</u>
Ferreteria "La Ruta"	December 31, 1958	<u>\$ 5,484.15</u>

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 claimants sustained losses 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 local banks; or thirty days from the date of shipment; except that with respect to the shipment of December 31, 1958 that would otherwise be deemed lost prior to September 29, 1959, the effective date of Law 568, the loss is found to have occurred on September 29, 1959.

The Commission therefore finds that claimants sustained the following losses within the meaning of Title V of the Act:

Claim No. CU-1922

JAMES S. OPPENHEIMER	<u>\$ 5,872.44</u>
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Claim No. CU-1923

JAMES S. OPPENHEIMER (90.9% of \$92,958.05)	<u>\$84,498.87</u>
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Claim No. CU-1924

THOMAS T. GRACE (1.3% of \$92,958.05)	<u>\$ 1,208.45</u>
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Claim No. CU-8745

WALTER N. GREEN, Jr. (92.2% of \$4,293.48 plus \$375.25)	<u>\$ 4,333.84</u>
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The Commission has decided that in certifications of loss 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 respective dates of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case, it is so ordered as follows:

CU-1922	CU-1924
CU-1923	CU-8745

Claim No. CU-1922 - JAMES S. OPPENHEIMER

<u>FROM</u>	<u>ON</u>
September 29, 1959	\$ 5,484.15
November 3, 1960	<u>388.29</u>
Total	<u>\$ 5,872.44</u>

Claim No. CU-1923 - JAMES S. OPPENHEIMER

90.9% of each of the following; and

Claim No. CU-1924 - THOMAS T. GRACE

1.3% of each of the following:

<u>FROM</u>	<u>ON</u>
November 28, 1969	\$ 8,165.42
December 2, 1959	1,976.78
December 11, 1959	3,273.75
December 12, 1959	1,223.58
December 15, 1959	118.12
January 1, 1960	301.28
January 14, 1960	11,778.53
January 16, 1960	8,271.68
January 21, 1960	2,002.59
January 26, 1960	119.65
January 29, 1960	3,510.88
February 2, 1960	947.96
March 1, 1960	1,054.39
March 2, 1960	828.55
March 18, 1960	8,377.97
March 23, 1960	2,028.41
March 24, 1960	121.18
March 30, 1960	4,515.09
April 21, 1960	17,224.71
May 28, 1960	10,538.48
June 1, 1960	122.72
June 7, 1960	4,476.89
June 8, 1960	1,171.78
July 1, 1960	<u>807.66</u>
Total	<u>\$92,958.05</u>

Claim No. CU-8745 - WALTER N. GREEN, Jr.

92.2% of the following:

<u>FROM</u>	<u>ON</u>
November 28, 1959	\$ 337.20
December 2, 1959	88.22
December 11, 1959	148.70
December 12, 1959	68.80
December 15, 1959	5.15
January 1, 1960	58.80
January 14, 1960	699.45
January 16, 1960	337.20
January 21, 1960	88.22
January 26, 1960	5.15
January 29, 1960	157.39

<u>FROM</u>	<u>ON</u>
February 2, 1960	\$ 42.57
March 1, 1960	54.42
March 2, 1960	35.55
March 18, 1960	337.20
March 23, 1960	88.22
March 24, 1960	5.16
March 30, 1960	199.97
April 21, 1960	817.31
May 28, 1960	425.41
June 1, 1960	5.16
June 7, 1960	203.12
June 8, 1960	51.26
July 1, 1960	<u>33.85</u>
Total	<u>\$ 4,293.48</u>

Claim No. CU-8745 - WALTER N. GREEN, Jr.

<u>FROM</u>	<u>ON</u>
September 29, 1959	\$ 263.54
November 3, 1960	<u>111.71</u>
Total	<u>\$ 375.25</u>

CERTIFICATIONS OF LOSS

The Commission certifies that JAMES S. OPPENHEIMER 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 Ninety Thousand Three Hundred Seventy-one Dollars and Thirty-one Cents (\$90,371.31) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement;

The Commission certifies that THOMAS T. GRACE 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 One Thousand Two Hundred Eight Dollars and Forty-five Cents (\$1,208.45) with interest at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that WALTER N. GREEN, Jr. succeeded to and suffered a loss, as a result of actions of the Government of Cuba within

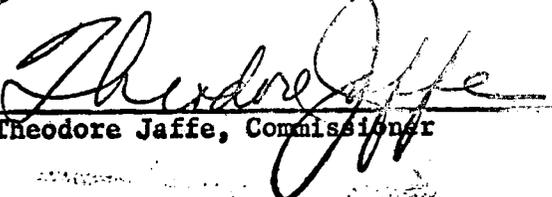
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the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Four Thousand Three Hundred Thirty-three Dollars and Eighty-four Cents (\$4,333.84) with interest at 6% per annum from the respective dates of loss to the date of settlement.

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

9 SEP 1970


Lyle S. Garlock, Chairman


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).)

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