

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

IN THE MATTER OF THE CLAIM OF

PILGRIM PLASTICS CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -1979

Decision No. CU -3870

Counsel for claimant:

Lester Lichter, Esq.

FINAL DECISION

Under date of September 11, 1969, the Commission issued its Proposed Decision in this matter certifying a loss in favor of PILGRIM PLASTICS CORPORATION, in the amount of \$401,755.29 plus interest. The decision listed claimant's former counsel.

By letter, dated September 25, 1969, Lester Lichter, Esquire counsel for claimant advised the Commission that as of April 30, 1969 claimant had changed its counsel and this is of record.

It appears from counsel's communication that there are no objections to the Commission's Proposed Decision. Accordingly

it is

ORDERED that the record be corrected to reflect that

Lester Lichter, Esquire is the counsel of record in this matter
and that the Proposed Decision be affirmed in all other respects.

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

OCT 8 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

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Counsel for claimant:

Albert J. Cohen, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$570,505.29, was presented by PILGRIM PLASTICS CORPORATION based upon the asserted loss of payment for merchandise shipped to a consignee in Cuba and royalties due from said consignee.

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)(B) of the Act defines the term "national of the United States" as 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 authorized officer of claimant has certified that claimant was organized under the laws of New York, and that at all pertinent times all of the outstanding capital stock of claimant was owned by three persons in equal shares. The record shows that two of these three stockholders were nationals of the United States at all pertinent times. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Merchandise Shipped to Cuba

The record shows that claimant concluded certain agreements with a Cuban corporation, Industria Sinesio Rojo, S A., hereafter called the consignee, discussed below in connection with the portion of the claim for royalties. As a result of that relationship, claimant shipped to the consignee in Cuba a "complete mold for machinery to manufacture plastic heels" on August 6, 1959, three "Cavities for the manufacture of plastic heels", each on two occasions, October 28, 1959 and December 16, 1959, and another "Cavity" on February 26, 1960. The record contains copies of invoices, bills of lading and air waybills, as well as extracts from claimant's records and statements from officials of claimant concerning said shipments. The following indicates the shipment dates, and the amounts thereof, on the basis of the evidence of record:

<u>Shipment Date</u>	<u>Amount</u>
August 6, 1959	\$ 9,750.00
October 28, 1959	1,650.00
December 16, 1959	1,650.00
February 26, 1960	550.00
Total	<u>\$13,600.00</u>

Extracts from claimant's records show that the consignee made a number of payments on account of the foregoing debt in 1959 and 1960, which payments aggregated the amount of \$8,100.00. Accordingly, the Commission finds that the net amount due from the consignee was \$5,500.00.

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 claimant's property was lost as a result of intervention by the Government of Cuba. While it is not clear from the record, it appears on the basis of normal business practices that the payments made by the consignee in the amount of \$8,100.00 should be credited on account of the first shipment in the amount of \$9,750.00, thereby reducing that amount to \$1,650.00. In the absence of evidence to the contrary, the Commission finds that claimant's losses occurred thirty days after the shipment dates, except that with respect to losses that would otherwise be found to have occurred prior to September 29, 1959, the effective date of Law 568, the Commission finds that such losses occurred on September 29, 1959. Accordingly, claimant's losses with respect to the shipments to the consignee may be summarized as follows:

<u>Date of Loss</u>	<u>Amount</u>
September 29, 1959	\$1,650.00
November 28, 1959	1,650.00
January 16, 1960	1,650.00
March 26, 1960	<u>550.00</u>
Total	<u>\$5,500.00</u>

Royalties

Claimant has computed its claim for royalties due from the consignee in the amount of \$565,005.29 on the basis of contracts entered into with the consignee. The basic contract was concluded in Cuba on April 16, 1959 and contained, inter alia, the following provisions (copies of the contracts having been submitted by claimant):

1. Claimant agreed to furnish the consignee with certain necessary equipment to be used by the consignee in manufacturing and producing plastic heels, and to give the consignee all technical knowledge, advice and supervision as aids to such production.

2. The consignee agreed to pay claimant 7-1/2¢ for each pair of heels made with the molds, accessories and equipment furnished by claimant, and guaranteed a minimum payment for the duration of the contract based upon a production of at least 375,000 pairs of heels per year at 7-1/2¢ per pair for each machine furnished by claimant.

3. The contract was to remain in force for ten years.

4. The consignee agreed to submit to claimant monthly reports of production, indicating amounts due claimant.

5. Claimant agreed not to furnish equipment to any other manufacturer in Cuba so long as the consignee satisfied all of its contract obligations.

Another contract between claimant and the consignee was executed on January 28, 1960 for the purpose of clarifying the original contract and provided, in pertinent part, as follows:

a. The consignee was obliged to pay claimant royalties only for heels made with claimant's equipment and not on the basis of the number of pairs of heels sold by the consignee.

b. The consignee was required to make monthly payments to claimant for royalties due for the previous month, and to make such payments to a bank designated by claimant.

c. The consignee was authorized to enter into agreements with a subcontractor in Cuba for the manufacture of said plastic heels, but the consignee was to remain bound by the terms of the agreements with claimant.

d. The consignee was authorized to purchase any equipment from claimant and if it did, the royalties due with respect to production from such purchased equipment was to be computed at the rate of 5¢ per pair of heels, while production from claimant's equipment was to remain at the 7-1/2¢ per pair rate.

The record contains copies of monthly reports furnished to claimant by the consignee for the period May 11, 1959 to September 17, 1960, showing that the consignee produced 1,130,730 pairs of heels during that period.

Claimant asserts that its claim for royalties amounts to \$565,005.29 on the basis of two machines at the guaranteed minimum rates for the duration of the contract according to its express provisions. Accordingly, claimant's computations are as follows:

April 1959 to March 31, 1960 - 847,326 pairs of heels were produced - at 7-1/2 cents =	\$ 63,549.45
Less amounts paid by the consignee in 1959	<u>4,794.16</u>
	\$ 58,755.29

Contract minimum of 375,000 pairs per year for two machines:
April 1, 1960 to March 31, 1961 = 750,000 pairs
Less amount above produced during this period 283,404 "
466,596 pairs

Consequently, minimum charge applies 750,000 pairs at 7-1/2 cents =	56,250.00
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Minimum charge for 8 more years from April 1, 1961 to March 31, 1969	<u>450,000.00</u>
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Total	<u>\$565,005.29</u>
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The record indicates that the consignee stopped production on September 17, 1960 and the record failed to indicate the reason for the termination of production on that date. The Commission, therefore, communicated with counsel for claimant under date of November 6, 1968, and suggested appropriate explanations as well as evidence to establish that the claim for royalties covering the period ending March 31, 1969 fell within the purview of Title V of the Act. When no response was received either to that letter or a follow-up letter of January 2, 1969, the Commission communicated with claimant directly to afford it another opportunity to support its claim for royalties. Claimant's response of March 20, 1969 related to the issue of nationality, which was also mentioned in the Commission's letters, although by its terms it purported to include all matters referred to in the Commission's communication of November 6, 1968. No response was made to the Commission's inquiry as to the major portion of the claim based upon royalties.

The Commission holds that the implementation of Law 568 constituted an intervention by the Government of Cuba in the contractual rights of claimant with respect to the royalties. (See Claim of Jantzen, Inc., Claim No. CU-1531.) The record indicates the consignee-company was not actually nationalized but that it sold the equipment furnished to it by claimant to the Cuban Government sometime after the adoption of Law 568. The written contract and its later amendment between the claimant and the consignee, as above mentioned, not only required the payment of one of two different types of royalties depending on whether the machines had been purchased by the Cuban company, but also required the original consignee to remain liable for royalties and other payments when permission was granted it to transfer these assets to a new company. Obviously the consignee could not alter claimant's rights to royalties either by stopping production or by disposing of the equipment in question. The Commission finds that by virtue of the purchase of the equipment, Cuba succeeded to the obligations of the consignee pursuant to the written contract, as amended, with claimant.

The record shows, as indicated above, that the equipment thus acquired by Cuba included appropriate machinery, etc. for manufacturing plastic heels. In the absence of evidence establishing precisely how many pairs of plastic heels were made with claimant's machinery and how many with the consignee's machinery, the Commission finds that claimant is entitled to an allowance based upon 5¢ per pair of heels on the minimum basis provided in the contract for the period from April 1, 1960 to March 31, 1969.

Based upon the terms of the contracts and in the absence of evidence to the contrary, the Commission finds that claimant's losses for each month of production occurred on the 15th day of the following month when payment became due, except that with respect to losses that would otherwise be found to have occurred prior to September 29, 1959, the effective date of Law 568, the Commission finds that such losses occurred on September 29, 1959.

The record includes statements made by an officer of claimant to the Department of State under date of May 3, 1962, in which claimant's asserted losses as of March 31, 1962 were set forth. It appears from those statements

that the consignee paid claimant on account of royalties due the amounts of \$2,675.78 and \$2,118.38 in August 1959 and December 1959, respectively. In the absence of evidence to the contrary, the Commission finds that the payment made in August 1959 should be credited against losses found to have occurred on September 29, 1959 and October 15, 1959, respectively. (See Claim of Richard G. Milk and Juliet C. Milk, Claim No. CU-0923, 1967 FCSC Ann. Rep. 63.) Accordingly, claimant's losses of royalties aggregated \$396,255.29 which together with the balance due on the purchase of equipment of \$5,500.00 totals \$401,255.29.

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 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:

<u>FROM</u>	<u>ON</u>	
September 29, 1959	\$28,870.79	
October 15, 1959	4,824.37	
November 15, 1959	8,457.30	
November 28, 1959	1,650.00	
December 15, 1959	11,081.63	
January 15, 1960	1,755.00	
January 16, 1960	1,650.00	
March 26, 1960	550.00	
April 15, 1960	<u>5,416.20</u>	\$ 64,255.29
and from May 15, 1960 through April 15, 1969 at \$3,125.00 for each of the 108 months in this period		<u>337,500.00</u>
Total		<u>\$401,755.29</u>

CERTIFICATION OF LOSS

The Commission certifies that PILGRIM PLASTICS CORPORATION 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 Four Hundred One Thousand Seven Hundred Fifty-five Dollars and Twenty-nine Cents (\$401,755.29) 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

SEP 11 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).)