

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

IN THE MATTER OF THE CLAIM OF

LEVITON MANUFACTURING COMPANY

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU - 2786

Decision No. CU - 792

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 LEVITON MANUFACTURING COMPANY in the amended amount of \$44,099.36 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 of 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 New York in 1929 and that all times between the dates on which the claims originated and presentation of this claim on April 27, 1967, 100% 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 contains a letter to claimant, dated June 22, 1967, from Bankers Trust Company, New York, New York, confirming their previous reports to claimant that the following drafts had been paid by the consignees in Cuba, but that due to Cuban monetary restrictions, dollar reimbursements had not been made:

| <u>Drawee</u>   | <u>Amount</u> | <u>Collecting Bank</u>                                | <u>Date Paid</u>  |
|---|---------------|---|-------------------|
| P.I. Zayas, Cia.<br>Mercantil, S.A.,<br>Havana              | \$1,043.37    | The Trust Company<br>of Cuba, Havana,<br>Cuba         | January 19, 1960  |
| P.I. Zayas, Cia.<br>Mercantil, S.A.,<br>Havana              | 1,043.38      | The Trust Company<br>of Cuba, Havana,<br>Cuba         | March 25, 1960    |
| Ernesto Parces,<br>Havana                                   | 662.70        | The Trust Company<br>of Cuba, Havana,<br>Cuba         | February 29, 1960 |
| Cia. Comercial<br>Winston, S.A.,<br>Havana                  | 2,831.05      | The First National<br>Bank of Boston,<br>Havana, Cuba | March 8, 1960     |
| Internacional<br>Electricia J. Barreiro<br>and Cia., Havana | 3,519.83      | Banco Gelats,<br>Havana, Cuba                         | March 8, 1960     |

| <u>Drawee</u>                                      | <u>Amount</u> | <u>Collecting Bank</u>                             | <u>Date Paid</u>  |
|--|---------------|--|-------------------|
| Radio Azcue, Havana                                | \$ 747.26     | First National City Bank of New York, Havana, Cuba | April 12, 1960    |
| Radio Azcue, Havana                                | 747.26        | First National City Bank of New York, Havana, Cuba | January 27, 1960  |
| Radio Azcue, Havana                                | 747.28        | First National City Bank of New York, Havana, Cuba | April 12, 1960    |
| Electro Sales Co., Inc., Havana                    | 1,598.50      | The Royal Bank of Canada, Havana, Cuba             | February 3, 1960  |
| Electro Sales Co., Inc., Havana                    | 2,951.00      | The Royal Bank of Canada, Havana, Cuba             | April 27, 1960    |
| Lamparas Quesada Industrial, Havana                | 984.47        | Banco Gelats, Havana, Cuba                         | February 11, 1960 |
| Radio Mundo Electricos, (Juan Jimenez), Camaguey   | 1,348.35      | Bank of Nova Scotia, Camaguey, Cuba                | March 24, 1960    |
| Cia. Importadora de Effectos Electros, Havana      | 554.54        | Banco Gelats, Havana, Cuba                         | January 8, 1960   |
| Lumar Electric, Marcelino Ponte y Cia., Havana     | 5,656.50      | Banco Gelats, Havana, Cuba                         | May 21, 1960      |
| The Independent Electric Co. of Cuba, S.A., Havana | 2,121.50      | Banco Continental Cubano, Havana, Cuba             | January 15, 1960  |
| La Luz B. Fernandez y Cia., Havana                 | 7,000.25      | The Trust Company of Cuba, Havana, Cuba            | March 28, 1960    |
| Casa Anton, Anton E. Hijos, Camaguey               | 1,337.92      | Bank of Nova Scotia, Camaguey, Cuba                | February 6, 1961  |
| Delta Electric de Isabel Alciturry Saez, Havana    | 1,435.53      | Banco Continental Cubano, Havana, Cuba             | December 30, 1959 |

The record also contains another letter to claimant from Bankers Trust Company dated June 22, 1967, confirming that drafts S-750 and S-750A drawn on Universal Electrica R. Neira y Cia., Havana, Cuba, both in the amount of \$1,741.64 had been partially paid in local currency to the

Banco Gelats, Havana, Cuba, and that as of June 20, 1960, a balance of \$1,350.00 remained unpaid.

The record further contains two additional letters to claimant from Bankers Trust Company dated June 22, 1967, confirming that drafts 1433/15234 for \$1,624.21 and 1443/15233 for \$1,624.22 both drawn on Kress Electric, S.A., Importadores, Havana, Cuba, as well as draft 1726/A15647 for \$1,036.96 drawn on Lamparas Quesada Industrial, Havana, Cuba, had not been paid by the consignees. Claimant states that it has not received the funds due on any of these drafts.

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, FCSC Claim No. CU-0019; and the Claim of Etna Pozzolana Corporation, FCSC 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:

| <u>On</u>         | <u>As to</u> |
|-------------------|--------------|
| December 31, 1959 | \$1,435.53   |
| January 3, 1960   | 1,624.21     |
| January 9, 1960   | 554.54       |

| <u>On</u>         | <u>As to</u> |
|-------------------|--------------|
| January 16, 1960  | \$2,121.50   |
| January 20, 1960  | 1,043.37     |
| January 28, 1960  | 747.26       |
| February 2, 1960  | 1,624.22     |
| February 4, 1960  | 1,598.50     |
| February 7, 1960  | 1,337.92     |
| February 12, 1960 | 984.47       |
| March 1, 1960     | 662.70       |
| March 9, 1960     | 6,350.88     |
| March 25, 1960    | 1,348.45     |
| March 26, 1960    | 1,043.38     |
| March 29, 1960    | 7,000.25     |
| April 13, 1960    | 1,494.54     |
| April 19, 1960    | 1,036.96     |
| April 28, 1960    | 2,951.00     |
| May 22, 1960      | 5,656.50     |
| June 21, 1960     | 3,483.28     |

The Commission has decided that in the 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, FCSC 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.

CERTIFICATION OF LOSS

The Commission certifies that LEVITON MANUFACTURING 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 Forty-Four Thousand Ninety-Nine Dollars and Thirty-Six Cents (\$44,099.36) 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

6 DEC 1967

*Edward D. Re*  
Edward D. Re, Chairman

*Theodore Jaffe*  
Theodore Jaffe, Commissioner

*LaVern R. Dilweg*  
LaVern R. Dilweg, Commissioner

COMMISSION OF THE GOVERNMENT OF CUBA

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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).)