

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

IN THE MATTER OF THE CLAIM OF

THE DENTISTS' SUPPLY
COMPANY OF NEW YORK

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2824
Claim No. CU-3132

Decision No. CU 4548

PROPOSED DECISION

These claims against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, were presented by THE DENTISTS' SUPPLY COMPANY OF NEW YORK in the aggregate amount of \$39,813.36 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 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.

The evidence of record establishes that claimant, THE DENTISTS' SUPPLY COMPANY OF NEW YORK, was organized in New York and on July 31, 1963 became the successor to The L. D. Caulk Company, a Delaware corporation, by statutory merger.

A former officer of The L. D. Caulk Company has certified that from 1960 to 1963 more than 50% of the outstanding capital stock of this corporation had been owned by United States nationals. An officer of claimant corporation has certified that at all pertinent times more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals, and that 14,308 shares of the 1,917,506 shares of claimant's common stock were owned by persons having addresses outside the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant claims a debt due from Hernandez y Obregon, S.A., a Cuban corporation, in the amount of \$16,696.03 based on promissory notes and an open account balance, and \$23,117.33 for nonpayment of goods shipped by The L. D. Caulk Company to Hernandez y Obregon, S.A.

In support of its claim on promissory notes claimant has submitted the originals of 9 non-interest bearing promissory notes signed by the president of the Cuban corporation made to the order of claimant. The notes bore due

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dates from March 30, 1959 to June 30, 1959 and total \$16,473.31. In addition claimant submitted a copy of a statement which shows an open account balance owing the claimant by the Cuban corporation in the amount of \$222.72, due November 1, 1960.

In support of its claim for nonpayment for goods shipped to the Cuban corporation claimant submitted copies of purchase orders and corresponding invoices totaling \$23,117.33 prepared by The L. D. Caulk Company in 1959 and 1960.

The following is a listing of the notes, and open account item covering merchandise shipped by claimant to the Cuban corporation, which gives the amounts and the dates payment was due:

<u>Number</u>	<u>Date Due</u>	<u>Amount</u>
2658	March 30, 1959	\$ 4,652.34
2667	April 20, 1959	1,341.89
2668	May 20, 1959	1,341.88
2669	June 19, 1959	1,341.88
2670	July 19, 1959	1,341.88
2671	August 18, 1959	1,341.88
2672	September 18, 1959	1,341.88
2675	April 30, 1959	2,428.54
2679	June 30, 1959	1,341.14
	November 1, 1960	<u>222.72</u>
		\$ 16,696.03

The following is a listing documented by claimant covering merchandise shipped by The L. D. Caulk Company to the Cuban corporation, which gives the amounts and the dates payment was due:

<u>Date Due</u>	<u>Amount</u>
June 28, 1959	\$1,088.64
July 25, 1959	1,537.92
July 26, 1959	1,995.56
August 9, 1959	4,063.09
September 6, 1959	39.73
September 20, 1959	1,088.64
October 17, 1959	1,431.20
November 2, 1959	688.20
November 13, 1959	226.18
November 14, 1959	1,548.28
June 5, 1960	933.12
June 30, 1960	1,985.96
July 15, 1960	1,512.00
July 24, 1960	384.00
July 28, 1960	1,391.04

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<u>Date Due</u>	<u>Amount</u>
August 21, 1960	\$ 1,278.00
November 4, 1960	416.52
November 13, 1960	1,391.04
November 14, 1960	<u>118.21</u>

\$23,117.33

Claimant states that neither it nor The L. D. Caulk Company received the funds due.

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, in the instant claims, the Commission finds that the aforesaid sums totalling \$39,813.36 were lost as a result of intervention by the Government of Cuba, and that in the absence of evidence to the contrary, such losses occurred on the respective maturity dates with regard to unpaid drafts or notes maturing after September 29, 1959. However, with respect to the dates of loss as to those goods sold prior to September 29, 1959, the Commission finds that the losses occurred on September 29, 1959, the effective date of Law 568.

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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 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	\$26,286.89
October 17, 1959	1,431.20
November 2, 1959	688.20
November 13, 1959	226.18
November 14, 1959	1,548.28
June 5, 1960	933.12
June 30, 1960	1,985.96
July 15, 1960	1,512.00
July 24, 1960	384.00
July 28, 1960	1,391.04
August 21, 1960	1,278.00
November 1, 1960	222.72
November 4, 1960	416.52
November 13, 1960	1,391.04
November 14, 1960	<u>118.21</u>
	\$39,813.36

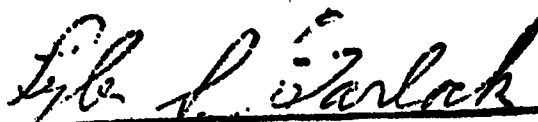
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CERTIFICATION OF LOSS

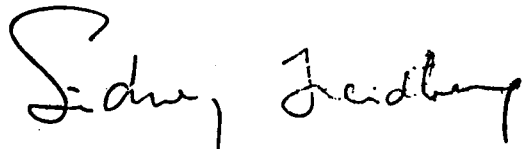
The Commission certifies that THE DENTISTS' SUPPLY COMPANY OF NEW YORK suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Thirty-nine Thousand Eight Hundred Thirteen Dollars and Thirty-six Cents (\$39,813.36) 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

MAR 4 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner


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).)

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