

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

IN THE MATTER OF THE CLAIM OF

HENRY R. JAHN & SON, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2872

Decision No. CU

3749

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 \$216,525.04, was presented by HENRY R. JAHN & SON, INC., based upon the asserted loss of payment for merchandise shipped to Cuban consignees.

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 record shows that claimant was organized under the laws of New York. An authorized officer of claimant has certified that at all pertinent times all of claimant's outstanding capital stock was owned by nationals of 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.

The record includes copies of invoices, extracts from claimant's accounts receivable ledger, copies of bank statements, and statements from an official of claimant concerning the debts claimed. The evidence discloses that in some instances the consignees paid for their purchases from claimant by deposits in local banks and that dollar reimbursement to claimant was denied by Cuban officials. Claimant states that it has received neither the funds representing payments made to local banks by consignees nor any payments for the outstanding debts due from the other Cuban consignees.

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 or acknowledged by the banks; and with respect to the unpaid accounts, the dates on which the accounts were due, or the dates of last entries in the case of open accounts:

Paid Accounts

<u>Consignee</u>	<u>Date Paid or Acknowledged</u>	<u>Amount</u>
Severino Gonzalez L.	January 22, 1960	\$ 5,676.57
Carlos Corbomata	January 25, 1960	313.00
Pedro Lopez	February 16, 1960	569.99
Cuban Agricultural Services, Inc.	March 7, 1960	<u>29,715.06</u>
Total		<u>\$ 36,274.62</u>

Unpaid Accounts

Cia. Importadora Ancira, S.A.:

<u>Due Date</u>	<u>Open Account</u>	<u>Amount</u>
	August 25, 1960	\$ 80,569.31
November 3, 1960		<u>22,097.76</u>
Total		<u>\$102,667.07</u>

Industria de Acero Camaguey, S.A.:

<u>Due Date</u>	<u>Open Account</u>	<u>Amount</u>
	September 6, 1960	\$ 32,862.69
September 20, 1960		<u>44,720.66</u>
Total		<u>\$ 77,583.35</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 claimant's property was lost 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 banks, or on the due dates where shown, or 30 days from the last entries in open accounts.

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 this case it is so ordered as follows:

<u>FROM</u>	<u>ON</u>
January 23, 1960	\$ 5,676.57
January 26, 1960	313.00
February 17, 1960	569.99
March 8, 1960	29,715.06
September 20, 1960	44,720.66
September 25, 1960	80,569.31
October 6, 1960	32,862.69
November 3, 1960	<u>22,097.76</u>
Total	\$216,525.04

CERTIFICATION OF LOSS

The Commission certifies that HENRY R. JAHN & SON, 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 Two Hundred Sixteen Thousand Five Hundred Twenty-five Dollars and Four Cents (\$216,525.04) 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

JUL 23 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

NOTICE TO TREASURY DEPARTMENT: This claimant may be the subject of another certification of loss in Claim No. CU-3467.

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].)