

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

IN THE MATTER OF THE CLAIM OF

HARRY W. GOLDING
SIDNEY GOLDING
MELVILLE J. GOLDING
LAWRENCE GOLDING
HENRY W. GOLDING
JULIUS H. GOLDING
ALFRED GOLDING

Claim No. CU -0118

Decision No. CU -2054

Under the International Claims Settlement
Act of 1949, as amended

AMENDED PROPOSED DECISION

By Proposed Decision of July 3, 1968, the Commission denied this claim submitted by Golding Bros. Company, Inc., for failure to sustain the burden of proof. Additional evidence has subsequently been submitted in support of the claim. Upon consideration of this matter, it is

ORDERED that the Proposed Decision be and it is amended.

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.

Golding Bros. Company, Inc., by an authorized officer, has certified that the corporation was organized in the State of New York, and that at all times between the dates of loss and the date on which the claim was filed, 100% of its outstanding capital stock was owned by nationals of the United States. The Commission holds that Golding Bros. Company, Inc. was a national of the United States within the meaning of Section 502(1)(B) of the Act. On April 25, 1968, Golding Bros. Company, Inc. changed its name to G. Brothers Holding Corp.

G. Brothers Holding Corp. was dissolved on April 30, 1968. Upon the dissolution of G. Brothers Holding Corp., the following individuals, all nationals of the United States, succeeded to the assets of the corporation, each party taking the indicated percentage of the assets:

HARRY W. GOLDING	8%
SIDNEY GOLDING	10%
MELVILLE J. GOLDING	17%
LAWRENCE GOLDING	17%
HENRY W. GOLDING	17%
JULIUS H. GOLDING	16%
ALFRED GOLDING	15%

Accordingly, said individuals are substituted as claimants in this matter.

Golding Bros. Company, Inc., shipped merchandise to consignees in Cuba. The record includes copies of invoices and bank correspondence establishing the following transactions:

<u>Consignee</u>	<u>Due Date</u>	<u>Amount</u>
Abellas y Barrerio	January 10, 1960	\$ 1,389.15
Colchoneria O.K., S.A.	July 29, 1959	2,480.43
	August 19, 1959	4,063.61
Collazo Hnos.	December 26, 1959	1,782.44
Jose Gonzalez Diez	October 7, 1959	1,111.74
Fabricantes De Colchones Americanos, S.A.	August 3, 1959	2,063.82
Fernandes y Cia.	December 9, 1959	847.08
	January 13, 1960	933.30
Konfort, S.A.	November 23, 1959	506.67
	December 9, 1959	2,153.03
R. A. Lavin & Hno.	January 10, 1960	1,381.41
Miguel y Bacardi, S.A.	January 3, 1960	1,205.05
Productora de Colchones, S.A.	November 8, 1959	933.20
	October 24, 1959	1,100.91
F. A. Viuda De Puron	December 22, 1959	1,208.57
	August 2, 1959	1,575.23
Jorge Monne Serio	May 16, 1959	<u>888.13</u>
		\$ 25,623.77

Claimants state that neither the corporation nor they have received the funds.

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 claimants 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 claimants, 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 claim the Commission finds that claimants' property was lost as a result of intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the losses occurred on the dates further shown below.

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 dates of loss to the date of settlement. (See Claim of Lisle Corporation, Claim No. CU-0644.)

Accordingly, the Commission concludes that interest shall be paid from dates below to date of settlement, September 29, 1959 being used for all items due prior to that date, the date of Law 568:

<u>FROM</u>	<u>ON</u>
September 29, 1959	\$ 11,071.22
October 7, 1959	1,111.74
October 24, 1959	1,100.91
November 8, 1959	933.20
November 23, 1959	506.67
December 9, 1959	3,000.11
December 22, 1959	1,208.57
December 26, 1959	1,782.44
January 3, 1960	1,205.05
January 10, 1960	2,770.56
January 13, 1960	<u>933.30</u>
	\$ 25,623.77

CERTIFICATION OF LOSS

The Commission certifies that claimants each succeeded to 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 amounts shown below, with interest thereon at 6% per annum from the respective dates of loss to the date of settlement:

HARRY W. GOLDING	\$2,049.90
SIDNEY GOLDING	\$2,562.38
MELVILLE J. GOLDING	\$4,356.04
LAWRENCE GOLDING	\$4,356.04
HENRY W. GOLDING	\$4,356.04
JULIUS H. GOLDING	\$4,099.80
ALFRED GOLDING	\$3,843.57

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

JAN 29 1969

Leonard v. B. Sutton

~~Leonard v. B. Sutton, Chairman~~

Theodore Jaffe

~~Theodore Jaffe, Commissioner~~

Sidney Feidberg

~~Sidney Feidberg, 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 Amended 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].)

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

IN THE MATTER OF THE CLAIM OF

GOLDING BROS. COMPANY, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0118

Decision No. CU-2054

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$25,623.77, was presented by GOLDING BROS. COMPANY, INC. and is 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 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 Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

Claimant has submitted considerable evidence in support of the claim.

The record includes copies of invoices, letters from banks advising claimant that payment had been made on its shipments, and similar documentation which would seem to substantiate claimant's assertions. However, the evidence of record does not reflect whether claimant is a national of the United States within the meaning of the Act. Specifically, it has not been demonstrated that 50% or more of the claimant's outstanding capital stock has been owned by United States nationals from the date of loss to the date the claim was filed.

By Commission letter of December 14, 1967, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act. Thereafter, by letter of March 28, 1968, the Commission made additional suggestions to claimant concerning the submission of supporting evidence in this matter. However, no responsive evidence has been received

date.

On May 8, 1968, claimant was invited to submit any evidence available to it within 45 days from that date, and claimant was informed, that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. No evidence has since been submitted.

The Commission finds that claimant has not met the burden of proof in that it has failed to establish ownership by a United States national of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

3 JUL 1968

Leonard v. B. Sutton
Leonard v. B. Sutton, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

Sidney Freidberg
Sidney Freidberg, Commissioner

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).)

CU-0118