

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

IN THE MATTER OF THE CLAIM OF

WALDES KOHINOOR, INC.

Claim No. CU-0414

Decision No. CU 4542

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

John G. Lexa, Esquire

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 \$47,493.49, was presented by WALDES KOHINOOR, INC. based upon the asserted loss of certain personal property in Cuba and debts due from a Cuban corporation.

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 and that at all pertinent times more than 50% of claimant's outstanding capital stock was owned by nationals of the United States. An officer of claimant has certified under date of September 2, 1965 that 100% 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 two agreements concluded on September 8, 1955 and a third on January 21, 1957, between claimant and Industrias Lumar, S.A., a Cuban corporation hereafter referred to as Lumar. Pursuant to these agreements claimant leased six sewing machines with related equipment to Lumar and granted Lumar a license, ending on December 31, 1967, to sell claimant's fabric covered slide fasteners in Cuba in consideration of certain rentals and royalties. Lumar was required to pay claimant an annual rental of \$120.00 for each machine in advance on the first day of each quarter of each year of the agreement. Title to the leased machinery was to reside in claimant, and the machines were to be returned at the end of the lease, December 31, 1967. Lumar was also required to pay royalties to claimant at the rate of 10% of the gross sales of the fasteners or \$300.00 per month, whichever was greater. These royalties were to be paid on the last day of the third month after commencement of operations and quarterly thereafter.

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The record shows that claimant shipped six machines to Lumar on three different dates, and that operations began pursuant to the agreements. Included in the record is a letter dated April 16, 1962, from an official of Lumar to claimant, setting forth the amounts due claimant on account of rentals and royalties for 1960 and 1961. In an affidavit, dated December 12, 1962, a former Vice President of Lumar stated that he left Cuba in January 1962 because the Cuban Ministry had then "taken over for nationalization" all of Lumar's assets as well as claimant's six sewing machines and related equipment. On the basis of the foregoing, the Commission finds that claimant's six sewing machines and related equipment were taken by the Government of Cuba on January 15, 1962. The Commission further finds that by virtue of the nationalization or other taking of Lumar and claimant's properties, the Government of Cuba succeeded to the obligations of Lumar pursuant to the written agreements. (See Claim of Pilgrim Plastics Corporation, Claim No. CU-1979.)

Valuation

1. Sewing Machines and Related Equipment

Copies of three shipping orders included in the record disclose that each of the six machines and related equipment had a value of \$1,000.00, or an aggregate value of \$6,000.00 for all of said property. It further appears that all the machines were used, that two of them were shipped on September 8, 1955, two on January 21, 1957, and two on April 4, 1957.

The Commission holds that these machines and the related equipment should be depreciated at the rate of 5% per year, customarily applied to such property by the Commission in determining the value of property on the date of loss. Inasmuch as the machines were not to be returned to claimant until the end of the lease, the Commission finds that the machines should be depreciated until December 31, 1967. Accordingly, the Commission finds that the first shipment should be depreciated to the extent of 62%, the second 55%, and the third 54%. Therefore the amounts of depreciation applicable to the three shipments were \$1,240.00, \$1,100.00 and \$1,080.00, respectively. The Commission finds that the aggregate value of claimant's six machines and related equipment on January 15, 1962, the date of loss, was \$2,580.00.

2. Rentals

As indicated above, the terms of the agreements were to end on December 31, 1967. The record shows that no rentals were paid to claimant for the period beginning with the fourth quarter of 1960. According to the said affidavit of the former Vice President of Lumar, Cuban authorities precluded Lumar from paying claimant by virtue of its currency controls and refusal to permit the transfer of funds outside of Cuba.

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.)

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 rentals. (See Claim of Jantzen, Inc., Claim No. CU-1531.)

As noted above, the rental agreements provided for payment in advance on the first day of each quarter of each year at the rate of \$120.00 for each machine on lease. Since Lumar had leased six machines from claimant, the amount due on the first day of each such quarter-year was \$180.00. The Commission finds, in the absence of evidence to the contrary, that claimant's losses, each in the amount of \$180.00, occurred on October 1, 1960 and on the first day of each quarter-year thereafter, the last such loss having occurred on October 1, 1967. Accordingly, the Commission concludes that the aggregate loss of rental was \$5,220.00.

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3. Royalties

The Commission holds that the implementation of Law 568 also constituted an intervention by the Government of Cuba in the contractual rights of claimant with respect to the royalties. (See Claim of Jantzen, Inc., supra.)

Pursuant to the said agreements, royalties were to be paid to claimant on the last day of the third month of each year at the rate of 10% of the gross sales or \$300.00 per month, whichever was greater. The record shows that the following amounts were due claimant, based upon 10% of gross sales:

<u>Due Date</u>	<u>Amount</u>
March 31, 1960	\$ 3,120.00
June 30, 1960	1,241.17
September 30, 1960	2,003.98
December 31, 1960	1,785.10
March 31, 1961	1,407.76
June 30, 1961	1,629.57
September 30, 1961	1,531.61
December 31, 1961	<u>1,954.30</u>
Total	<u>\$14,673.49</u>

The Commission finds, in the absence of evidence to the contrary, that claimant sustained the foregoing losses, aggregating \$14,673.49, on the above due dates, and further losses, each in the amount of \$900.00, on March 31, 1962 and on the last day of each subsequent quarter-year, the final loss occurring on December 31, 1967. Accordingly, the Commission concludes that the aggregate loss of royalties was \$36,273.49.

Claimant's losses within the meaning of Title V of the Act may be summarized as follows:

<u>Item of Property</u>	<u>Amount</u>
Sewing Machines and Related Property	\$ 2,580.00
Rentals	5,220.00
Royalties	<u>36,273.49</u>
Total	<u>\$44,073.49</u>

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>	
March 31, 1960	\$ 3,120.00	
June 30, 1960	1,241.17	
September 30, 1960	2,003.98	
December 31, 1960	1,785.10	
March 31, 1961	1,407.76	
June 30, 1961	1,629.57	
September 30, 1961	1,531.61	
December 31, 1961	1,954.30	
January 15, 1962	<u>2,580.00</u>	\$17,253.49
and from October 1, 1960 through October 1, 1967 at \$180.00 for each of the 29 quarter-years in this period;		5,220.00
and from March 31, 1962 through December 31, 1967 at \$900.00 for each of the 24 quarter-years in this period		<u>21,600.00</u>
	Total	<u>\$44,073.49</u>

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CERTIFICATION OF LOSS

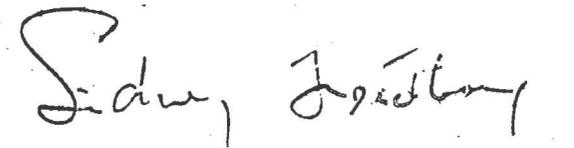
The Commission certifies that WALDES KOHINOOR, INC. suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Forty-four Thousand Seventy-three Dollars and Forty-nine Cents (\$44,073.49) with interest 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).)