

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

IN THE MATTER OF THE CLAIM OF

DAVID COE EXPORT CORPORATION

Claim No. CU -549

Decision No. CU  
1995

Under the International Claims Settlement  
Act of 1949, as amended

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 DAVID COE EXPORT CORPORATION in the amount of \$26,023.54, 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 claimant was organized in New York and the record shows that all times between 1952 and presentation of this claim all of the outstanding capital stock of the claimant has been owned by one person who is a United States national. 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 reflects that claimant shipped goods totalling \$25,490.35 in value, after deduction of agents' commissions, to Cuban enterprises in Cuba, which made payments of their accounts to banks. The consignees were:

Auto Lizman, S.A.	\$ 800.53
Berenthal, S.A.	11,267.11
Auto Infanta, S.A.	395.50
Cia. de Piezas y Accesorios Santiago	296.28
Cia. Ferretera Los Aliados, S.A.	461.06
Cia. Nacional de Espejos, S.A.	1,781.41
Alvaro Fernandez	922.27
Oscar Garcia	352.51
Juan B. Herrera	150.88
Importadora El Cristal S.A.	1,334.16
Jean Kirou	4,343.78
Motor Auto Co., Ltd.	1,239.70
Muebles de Aluminio Macias, S.A.	199.43
Jose Saladrigas	811.08
Servipiezas Alonso	610.00
Trans-America, S.A.	523.95
	<u>\$25,490.35</u>

Claimant states that it has not received these funds.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded transfers of funds in this and similar cases, 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 Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semmiann.Rep. 58 [July-Dec. 1966]).

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 as to the amounts below, on the dates specified, one day after payment to the bank of collection:

November 18, 1959	\$1,945.92
December 5, 1959	461.06
December 6, 1959	296.28
December 10, 1959	5,200.12
December 18, 1959	500.89
January 12, 1960	1,334.16
February 11, 1960	687.01
February 23, 1960	1,872.47
March 1, 1960	500.89
March 2, 1960	523.95
March 9, 1960	1,094.40
March 11, 1960	199.43
March 18, 1960	922.97
March 23, 1960	150.88
March 24, 1960	352.51
March 31, 1960	1,239.70
April 1, 1960	395.50
April 6, 1960	4,230.18
April 7, 1960	1,970.42
June 4, 1960	800.53
June 11, 1960	811.08
	<u>\$25,490.35</u>

As to another item in the net amount of \$533.19, claimant has been unable to furnish evidence as to when it acquired this account which apparently was paid to the bank of collection on January 28, 1960, nor the nationality of the original consignor as would be necessary if the account were acquired by claimant after the date of loss. Accordingly, this item is denied.

The Commission has decided that in payment of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be allowed 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.)

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 date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that DAVID COE EXPORT CORPORATION 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 Twenty-Five Thousand Four Hundred Ninety Dollars and Thirty-Five Cents (\$25,490.35) 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

JUN 19 1968

*Leonard v. B. Sutton*

Leonard v. B. Sutton, Chairman

*Theodore Jaffe*

Theodore Jaffe, 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).)