

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

IN THE MATTER OF THE CLAIM OF

RAYBESTOS-MANHATTAN, INC.,
AND
ALLIED ASBESTOS & RUBBER CO. (EXPORT) INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0563

Decision No. CU

1806

ORDER AND PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was originally presented by RAYBESTOS-MANHATTAN, INC., in the amount of \$22,550.69, based upon the asserted loss of payment for merchandise shipped to Cuba.

Subsequent to the filing of the original claim, the ALLIED ASBESTOS & RUBBER CO. (EXPORT) INC., petitioned to join in the claim. The record shows that the petitioner corporation is a wholly owned subsidiary of the original claimant, and is a party in interest in this matter.

Accordingly, it is

ORDERED that the petition be and the same is hereby granted.

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(3) of the Act defines the term "national of the United States" as "(B) 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."

Section 505(a) of the Act reads, in part:

A claim under section 503(a) of this title based upon an ownership interest in any corporation, association, or other entity which is a national of the United States shall not be considered.

An officer of RAYBESTOS-MANHATTAN, INC. has certified that the corporation was organized in the State of New Jersey in 1929 and that at all times between that date and the presentation of this claim on November 12, 1965, more than 50% of the outstanding capital stock of the corporation has been owned by United States nationals. The record shows that 99.73% of the outstanding capital stock of RAYBESTOS-MANHATTAN, INC. is held by United States nationals.

An officer of the ALLIED ASBESTOS & RUBBER CO. (EXPORT) INC. has certified that the corporation was organized in the State of New York in

1930, and that at all times between January 1, 1959 and November 12, 1965, 100% of the outstanding capital stock of ALLIED ASBESTOS & RUBBER CO. (EXPORT) INC. was owned by RAYBESTOS-MANHATTAN, INC. The Commission holds that both RAYBESTOS-MANHATTAN, INC. and ALLIED ASBESTOS & RUBBER CO. (EXPORT) INC. are nationals of the United States within the meaning of Section 502(1)(B) of the Act.

The record contains copies of invoices of both claimant corporations reflecting the sale and delivery of merchandise to various Cuban enterprises as follows:

RAYBESTOS-MANHATTAN, INC.

<u>CUSTOMER</u>	<u>INVOICE DATE</u>	<u>AMOUNT</u>
Accesorios Forche, S.A.	November 10, 1959	\$ 958.82
Casa Garcia	October 29, 1958	<u>1,683.08</u>
	TOTAL	<u>\$2,641.90</u>

ALLIED ASBESTOS & RUBBER CO. (EXPORT) INC.

<u>CUSTOMER</u>	<u>INVOICE DATE</u>	<u>AMOUNT</u>
Domenech & Co.	In 1959	\$19,422.39
Accesorios Forche, S.A.	In 1959	<u>123.88</u>
	TOTAL	<u>\$19,546.27</u>

In addition, the record contains copies of bank notifications, addressed to the ALLIED ASBESTOS & RUBBER CO. (EXPORT) INC. from the Bankers Trust Company of New York, advising that certain drafts had been paid provisionally in local currency. Claimants state that neither have ever received any of 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 into 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.)

Accordingly, in the instant claim the Commission finds that the property of ALLIED ASBESTOS & RUBBER CO. (EXPORT) INC. was lost as a result of intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the loss of \$19,546.27 occurred on:

December 31, 1959	as to	\$ 123.88
January 25, 1960	as to	3,243.01
January 28, 1960	as to	883.84
January 29, 1960	as to	569.88
February 10, 1960	as to	5,649.65
March 24, 1960	as to	1,256.93
March 25, 1960	as to	1,364.16
April 9, 1960	as to	1,378.74
July 7, 1960	as to	3,428.28, and on September 28,

1960 as to \$1,647.90, in each case either the day after the date of bank advice or on the 120th day after the invoice date, whichever is appropriate.

The Commission also finds that the property of RAYBESTOS-MANHATTAN, INC. 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 on September 29, 1959, the date of publication of Law 568, as to \$1,683.08 and on December 31, 1959 as to \$958.82.

Claimant, ALLIED ASBESTOS & RUBBER CO. (EXPORT) INC. also included a claim for interest due on the unpaid balance of its invoice No. EXB-8670, of March 18, 1955. This portion of the claim is barred by the Cuban statute

of Limitations (Cuban Civil Code, act. 167), and does not come within the time limitations as contemplated by Congress and set out in Section 501 of the Act. This portion of the claim is therefore denied.

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).

Accordingly, the Commission concludes that the amount of the loss sustained by each claimant shall be increased by interest thereon at the rate of 6% per annum from the aforesaid dates on which the losses occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that ALLIED ASBESTOS & RUBBER CO. (EXPORT) 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 Nineteen Thousand Five Hundred Forty-Six Dollars and Twenty-Seven Cents (\$19,546.27) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

the Commission certifies that RAYBESTOS-MANHATTAN, 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 Thousand Six Hundred Forty-One Dollars and Ninety Cents (\$2,641.90) 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 Order and
Proposed Decision of the Commission

MAY 1 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).)