

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

IN THE MATTER OF THE CLAIM OF

HAROLD SCOTT, INC.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -0589

Decision No. CU 3130

Counsel for claimant:

Debevoise, Plimpton, Lyons & Gates

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 HAROLD SCOTT, INC., in the amount of \$30,724.00 based upon the asserted loss of payment for merchandise shipped to Cuba and personal property located in 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 record shows that claimant corporation was organized in the State of New York. An officer of claimant has certified that at all pertinent times all of the outstanding stock of claimant was owned by Harold B. Scott. Evidence of record establishes that Mr. Scott has been a national of the United States since birth. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The evidence includes copies of various records, showing the aggregate amount due claimant from its debtor in Cuba was \$28,842.33. Claimant states that it never received payment on account of this debt.

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 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 Semiann. Rep. 58 [July-Dec. 1966]; Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

Accordingly, the Commission finds that claimant's accounts receivable were lost as a result of intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the losses occurred in each case thirty days following the date of delivery as follows:

October 30, 1960 as to	\$ 8,942.68;
November 30, 1960 as to	766.08; and
December 30, 1960 as to	19,133.57.

The remainder of this claim is asserted for the loss of raw materials, finished goods, machinery and equipment. The record contains inventories of raw materials and stocks on hand, a list of equipment and ledger entries reflecting that the following items of personalty were maintained in the warehouse of Cia. Cubana de Almacenes:

Raw materials on hand	\$1,323.74
Finished goods on hand	231.37
Machinery and equipment	<u>324.23</u>
Total	\$1,879.34

On September 13, 1961 the Cuban Government listed as nationalized Cia. Cubana de Almacenes pursuant to Law 890, published in the Official Gazette on October 13, 1960. The Commission finds that claimant's property situated on the premises of Cia. Cubana de Almacenes was taken by the Government of Cuba on September 13, 1961.

Based on the entire record the Commission finds the personal property had a value of \$1,879.34.

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 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 dates on which the losses occurred, to the date on which provision is made for the settlement thereof, as follows:

From October 30, 1960 on \$ 8,942.68;  
From November 30, 1960 on 766.08;  
From December 30, 1960 on 19,133.57; and  
From September 13, 1961 on 1,879.34.

CERTIFICATION OF LOSS

The Commission certifies that HAROLD SCOTT, 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 Thirty Thousand Seven Hundred Twenty-one Dollars and Sixty-seven Cents (\$30,721.67) 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

25 SEP 1968

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

*Theodore Jaffe*  
Theodore Jaffe, Commissioner

*Sidney Frolberg*  
Sidney Frolberg, 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).)

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.