

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES

WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

HARRY HYMAN AND  
CHARLES B. HYMAN, DOING  
BUSINESS AS HARRY HYMAN  
& SON.

Claim No. CU-0865

Decision No. CU **1963**

Under the International Claims Settlement  
Act of 1949, as amended

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 \$2,093.77, was presented by HARRY HYMAN and CHARLES B. HYMAN, and is based on the asserted loss of payment for merchandise shipped to Cuba. Claimants have been nationals of the United States since their birth in the United States.

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.

The record includes copies of correspondence from banks and consignee business enterprises in Cuba, copies of invoices, and other documents concerning shipments of merchandise to Cuban business firms, listed hereafter as the consignees. This evidence discloses that the purchase price of the goods and accompanying charges for such shipments were, in several instances, paid by the consignees to local Cuban banks; and that the dollar reimbursement releases or authorization were never granted by Cuban governmental authorities. Claimants state that they have not received any of the funds for such shipments.

There follows hereafter a listing of collections for shipments made to three Cuban consignees, the amounts paid by the consignees to the local Cuban bank, and the dates that such payments were made or acknowledged:

<u>CONSIGNEE</u>	<u>AMOUNT</u>	<u>DATE PAID OR ACKNOWLEDGED</u>
Loceria La Republica de Ricardo Gomez y Gomez, S.A. Havana, Cuba	\$731.37	March 16, 1960
Lamparas Olmo, Havana, Cuba	\$349.75	March 21, 1960
Comercial R. Robayna, S.A., Havana, Cuba	\$587.28	September 22, 1960

Evidence of record discloses that on April 27, 1959, the amount of \$167.50 was due and owing claimants as interest on the principal amount due from Comercial R. Robayna, S.A. for a previous shipment to that consignee. Claimants state that they have not received this amount.

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 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 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 loss occurred on September 29, 1959, the effective date of Law 568, with respect to the \$167.50 amount due from Comercial R. Robayna, S.A. The Commission further finds that in those instances in which payments were made to the collecting banks by Cuban consignees, the losses occurred on the days after payments were made to the Cuban banks, where ascertained, or the days after notification of payments were made to claimants.

In addition to the above losses, claimants assert a loss of \$257.87 arising out of a shipment consigned to M. Coteria, "La Mariposa", Havana, Cuba. Evidence of record discloses that the merchandise never reached Cuba. Claimants assert that they resold the merchandise to a non-Cuban consignee at a discount and assert as their loss the amount of the discount, \$95.83, and shipping expenses of \$162.04 incurred with respect to this transaction.

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).)

With respect to this portion of the claim, the Commission finds that claimants have not met the burden of proof in that they have failed

to establish that the asserted loss of \$257.87 arose out of the nationalization, expropriation, intervention or other taking of American-owned property within the meaning of Section 503(a) of the Act.

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 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 loss sustained by claimants shall be increased by interest thereon at the rate of 6% per annum from the dates on which the loss occurred to the date on which provisions are made for settlement thereof, as follows:

On \$167.50	from	September 29, 1959
On 731.37	from	March 17, 1960
On 349.75	from	March 22, 1960
On <u>587.28</u>	from	September 23, 1960
TOTAL		\$1,835.90

CERTIFICATION OF LOSS

The Commission certifies that HARRY HYMAN AND CHARLES B. HYMAN, DOING BUSINESS AS HARRY HYMAN & SON 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 One Thousand Eight Hundred Thirty-Five Dollars and Ninety Cents (\$1,835.90) 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 Proposed  
Decision of the Commission

JUN 13 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).)