

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

IN THE MATTER OF THE CLAIM OF

CUTLER-HAMMER, INC.

Claim No. CU - 1299

Decision No. CU
2991

Under the International Claims Settlement
Act of 1949, as amended

Counsel for Claimant:
By:

Michael, Best & Frederick
Robert A. Schnur, 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 \$34,645.54, was presented by CUTLER-HAMMER, INC. and is 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.

Claimant corporation, by an authorized officer, has certified that claimant was organized in Delaware in 1928 and that at all times between that date and the presentation of this claim more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. Claimant states that 99% of its stock is 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 contains copies of bills of lading, invoices, and bank letters which reflect the sale and delivery of merchandise to Independent Electric Company of Cuba, S.A., of Havana, which claimant certifies does not qualify as a United States national. In most transactions, payment was to have been effected by bank draft; several shipments were made on open account. The transactions total \$38,430.64

The record reflects that claimant had received credits totalling \$5,433.14, although it is unclear as to the date or dates on which payment was received, and to which transactions the payment had been applied. Deducting the total amount of the credit from the above total leaves a net balance due claimant of \$32,997.50. In the absence of evidence to the contrary, the Commission will apply the credit to the amounts which became due or were paid on or before September 29, 1959.

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 the Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966] and the Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46)

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 on the dates shown further below.

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).)

In addition to the transactions set out above, the claimant asserts that other sales and shipments were made to the Cuban consignee. However, the evidence submitted in support of this contention is of insufficient probative value to warrant further findings favorable to claimant, and this portion of the claim is therefore 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 the Claim of Lisie Corporation, Claim No. CU-0644.)

Accordingly, the Commission concludes that the amounts of loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the respective dates of loss shown below to the date on which provision is made for the settlement thereof:

<u>From</u>	<u>On</u>
November 13, 1959	\$ 27.27
November 20, 1959	2,628.23
December 17, 1959	1,609.10
December 29, 1959	742.35
January 5, 1960	2,489.10
January 14, 1960	1,406.98
January 15, 1960	1,388.05
January 30, 1960	1,072.18
February 5, 1960	851.62
March 3, 1960	2,427.61
April 19, 1960	2,542.71
May 13, 1960	105.57
May 19, 1960	163.90
May 27, 1960	4,589.93
June 8, 1960	196.76
June 13, 1960	540.00
July 27, 1960	1,295.18
August 22, 1960	153.56
August 25, 1960	3,364.12
September 5, 1960	<u>1,922.96</u>
	\$32,997.50

CERTIFICATION OF LOSS

The Commission certifies that CUTLER-HAMMER, INC, succeeded to and suffered a loss, as a result of the 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-two Thousand Nine Hundred Ninety-seven Dollars and Fifty Cents (\$32,997.50) with interest thereon at the rate of 6% per annum from the dates of loss to the date of settlement.

Dated at Washington, D.C.,
and entered as the Proposed
Decision of the Commission

SEP 4 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Feinberg

Sidney Feinberg, 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).)