

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

IN THE MATTER OF THE CLAIM OF

HARRY SEMEL, INCORPORATED

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU - 2162

Decision No. CU

**807**

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 HARRY SEMEL, INCORPORATED in the amount of \$48,716.15 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) 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."

An officer of the claimant corporation has certified that the claimant was organized in New York in 1929 and that at all times between 1929 and the presentation of this claim on April 24, 1967, 100% of the outstanding capital stock of the claimant has been owned by United States nationals. 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 claimant's invoices to the consignees listed below reflecting the sale to these consignees of goods totalling \$49,572.39, which sum was reduced by subsidy deductions and payments on account, bringing the total amount owed to \$48,716.15. Claimant says it has not received the funds. The consignees were as follows:

CU-2162

<u>Invoice Date</u>	<u>Invoice Number</u>	<u>Name</u>	<u>Amount</u>	<u>Total</u>
November 6, 1959	907	Almacen de Tejidos Universal	\$4,885.97	
November 18, 1959	992	Almacen de Tejidos Universal	<u>1,203.44</u> 6,089.41	
		Less subsidy deduction	<u>5.76</u>	\$ 6,083.65
November 20, 1959	1005	Almacenes Ultra	2,539.79	2,539.79
November 30, 1959	1049	Finkleman & Cia	575.90	
December 1, 1959	1053	Finkleman & Cia	<u>1,967.63</u>	2,543.53
September 28, 1959	601	Facundo Gutierrez Caso	2,482.20	
		Less subsidy deduction	<u>229.12</u>	2,253.08
September 29, 1959	615	R. Lewis	1,218.14	
October 26, 1959	791	R. Lewis	<u>1,235.33</u> 2,453.47	
		Less subsidy deduction	<u>301.86</u>	
			2,151.61	
		Less payment on a/c	<u>320.00</u>	1,831.61
November 16, 1959	959	M. Llano & Co.	1,817.80	
December 1, 1959	1062	M. Llano & Co.	<u>3,145.24</u>	4,963.04
October 26, 1959	817	Lopez, Paz & Co.	3,285.16	
November 2, 1959	852	Lopez, Paz & Co.	1,452.72	
November 2, 1959	853	Lopez, Paz & Co.	1,351.91	
November 16, 1959	953	Lopez, Paz & Co.	5,144.54	
November 16, 1959	961	Lopez, Paz & Co.	1,581.24	
November 18, 1959	974	Lopez, Paz & Co.	1,205.93	
December 1, 1959	1054	Lopez, Paz & Co.	<u>2,349.15</u>	16,370.65
October 15, 1959	739	Manuel Menendez	1,673.48	1,673.48
December 12, 1959	1117	Prado, Gracia y Cia.	2,690.70	2,690.70
November 2, 1959	857	Villar, Pica y Cia.	2,867.05	
December 8, 1959	1099	Villar, Pica y Cia.	<u>4,899.57</u>	<u>7,766.62</u>
		Total		\$48,716.15

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, FCSC Claim No. CU-0019; and the Claim of Etna Pozzolana Corporation, FCSC Claim No. CU-0049).

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

<u>ON</u>	<u>AS TO</u>
October 28, 1959	\$ 2,253.08
November 15, 1959	1,673.48
November 29, 1959	1,218.14
December 2, 1959	2,867.05
December 6, 1959	4,885.97
December 16, 1959	1,817.80
December 18, 1959	1,197.68
December 20, 1959	2,539.79
December 26, 1959	3,898.63
January 1, 1960	3,145.24
January 2, 1960	2,804.63
January 8, 1960	4,899.57
January 12, 1960	2,690.70
January 16, 1960	6,725.78
January 18, 1960	1,205.93
January 20, 1960	575.90
January 21, 1960	1,976.63
February 1, 1960	2,349.15
	<u>\$48,716.15</u>

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 the Claim of Lisle Corporation FCSC Claim No. CU-0664).


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.

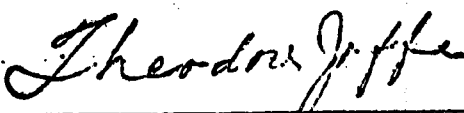
CERTIFICATION OF LOSS

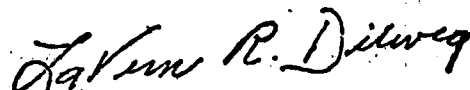
The Commission certifies that HARRY SEMEL, INCORPORATED, suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Forty-Eight Thousand Seven Hundred Sixteen Dollars and Fifteen Cents (\$48,716.15) 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

14 DEC 1967

  
Edward D. Re, Chairman

  
Theodore Jaffe, Commissioner

  
LaVern R. Dilweg, 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.

VERIFIED  
this is a true and correct copy of the decision  
of the Commission which was entered as the final  
decision on -----  
JAN 15 1957

*Francis Anderson*  
Chairman of the Commission