

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

IN THE MATTER OF THE CLAIM OF

KEM MANUFACTURING COMPANY, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2230

Decision No. CU-1896

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 KEM MANUFACTURING COMPANY, INC. in the amount of \$19,170.46 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 has submitted a copy of its Certificate of Incorporation verifying that KEM MANUFACTURING COMPANY, INC. was organized in the State of New Jersey in 1947 and an officer of the claimant corporation has certified that all times between the date of its incorporation and presentation of this claim on April 24, 1967, all 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 includes copies of correspondence from banks and other data 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 many instances, paid by the consignees to local Cuban banks, and that the dollar reimbursement releases or authorizations were never granted by Cuban government officials. Other drafts for shipments made by claimant was not paid to the collecting banks by the consignees. Claimant states that it has not received any of the funds for such shipments.

There follows hereafter data concerning the shipments made to Cuban consignees, including information on paid and unpaid drafts, with the dates on which payments were paid or acknowledged, or dates when the unpaid drafts were due and payable:

<u>CONSIGNEE</u>	<u>DUE DATE OR DATE PAID OR ACKNOWLEDGED</u>	<u>AMOUNT</u>
Andrade Motor Co.	August 7, 1959	\$ 442.05
Angel Martin y Hermanos	December 2, 1959 January 2, 1960	598.55 598.55
Arosa Supply Company	May 8, 1959	450.95
Lopez y Leira	December 9, 1959 January 12, 1960	304.24 304.24
Com. de Autos Johnnie Rodriguez	January 4, 1960 February 4, 1960 March 4, 1960	914.04 914.04 914.04
J.M. Rodriguez Arias	January 8, 1960 January 20, 1960 February 26, 1960	654.99 654.98 654.98
Jose Diaz Herrera	January 15, 1960 April 20, 1960	641.75 641.75
Pedro Martin Betancourt	January 15, 1960 February 14, 1960	372.18 372.18
Carlos Mesa, S.A.	January 28, 1960	394.52
Candido Gonzalez	February 8, 1960 April 12, 1960	493.86 493.86
Antonio Perez Munoz	February 29, 1960 March 31, 1960	421.96 421.95
Otero y Hermano	March 1, 1960 March 18, 1960 March 18, 1960	404.25 404.25 404.25
Sireno Garcia	March 14, 1960 May 30, 1960	2,210.51 1,868.88
Sucs. de Jose F. Cepero, S. en C.	March 14, 1960	341.70
Compania Parmo, S.A.	March 15, 1960	205.50
Real Motors, S.A.	April 22, 1960	918.75
Infanta Automobile Service	February 16, 1961	752.71
	TOTAL	<u>\$19,170.46</u>

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]; and Claim of Etna Pozzolana Corporation, 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>
September 29, 1959	\$ 893.00
December 2, 1959	598.55
December 10, 1959	304.24
January 2, 1960	598.55
January 5, 1960	914.04
January 9, 1960	654.99
January 13, 1960	304.24
January 16, 1960	1,013.93
January 21, 1960	654.98
January 29, 1960	394.52
February 5, 1960	914.04
February 15, 1950	372.18
February 8, 1960	493.86
February 27, 1960	654.98
March 1, 1960	421.96

<u>ON</u>	<u>AS TO</u>
March 2, 1960	\$ 404.25
March 5, 1960	914.04
March 15, 1960	2,552.21
March 16, 1960	205.50
March 19, 1960	808.50
April 1, 1960	421.95
April 13, 1960	493.86
April 21, 1960	641.75
April 23, 1960	918.75
May 31, 1960	1,868.88
February 17, 1961	752.71

being the date of Law 568 as to the amount of \$893.00, the dates payment was due as to the unpaid drafts, and the dates after the days on which the other drafts were paid or acknowledged as having been paid.

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 claimant 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 the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that KEM MANUFACTURING COMPANY, 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 One Hundred Seventy Dollars and Forty-Six Cents (\$19,170.46) 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

MAY 29 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffo

Theodore Jaffo, Comptroller

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).)