

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

IN THE MATTER OF THE CLAIM OF

ROZIN OPTICAL EXPORT CORPORATION

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -2731

Decision No. CU -3388

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amended amount of \$24,333.74, was presented by ROZIN OPTICAL EXPORT CORPORATION based upon the asserted loss of payment for merchandise shipped to consignees 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.

Claimant corporation, by an authorized officer, has certified that claimant was organized under the laws of New York and that at all pertinent times all of claimant's outstanding capital stock was owned by two persons, Aron Rozin, president of claimant, and his wife, Annette Rozin. The record shows that both stockholders have been nationals of the United States at all pertinent times. 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 invoices to the Cuban consignees, extracts from claimant's accounts receivable ledger and statements from an officer of claimant concerning the shipments.

The following is a listing of the invoices, consignees, dates of shipment, and the amounts due on account of these transactions. In the case of open accounts in which a number of charges were made for merchandise shipped on various dates and payments were made from time to time, the last date of shipment only is shown with respect to the balance due claimant.

<u>Consignee</u>	<u>Invoice or Shipping Date</u>	<u>Amount</u>
Optica Baya, S.A.	August 2, 1960	\$ 1,953.93
Centram Optical, S.A.	August 22, 1960	4,316.47
Luis Samuell	September 26, 1960	1,312.62
Optica Cuba	November 6, 1959	287.16
Cia. Importadora Paris, S.A.	October 13, 1960	2,962.12
Distribuidora Optica Cuba, S.A.	September 14, 1960	7,120.00
Optica Lopez	June 9, 1959	3,923.07
Dr. Blas Oyarzon	March 30, 1959	411.00
R. L. Yanes & Cia.	September 6, 1960	1,352.45
I. Yawitz Optica Orbe	May 23, 1959	694.92

Accordingly, the Commission finds that the aggregate amount due claimant from Cuban consignees was \$24,333.74. Claimant states that it has not received these monies.

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 in 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, 1967 FCSC Ann. Rep. 46.)

The Commission finds that claimant's property was lost as a result of the intervention by the Government of Cuba. In the absence of evidence to the contrary, the Commission further finds that claimant's losses occurred thirty days after the date of shipment or thirty days after the last date of shipment in the case of open accounts. With respect to transactions in which the thirty-day period would be prior to September 29, 1959, the effective date of Law 568, the Commission finds that claimant's losses occurred on September 29, 1959.

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 respective dates of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered, as follows:

<u>FROM</u>	<u>ON</u>
September 29, 1959	\$ 5,028.99
December 6, 1959	287.16
September 1, 1960	1,953.93
September 21, 1960	4,316.47
October 6, 1960	1,352.45
October 14, 1960	7,120.00
October 26, 1960	1,312.62
November 12, 1960	<u>2,962.12</u>
	\$24,333.74

CERTIFICATION OF LOSS

The Commission certifies that ROZIN OPTICAL EXPORT CORPORATION 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 Twenty-four Thousand Three Hundred Thirty-three Dollars and Seventy-four Cents (\$24,333.74) 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

**DEC 18 1968**

*Leonard v. B. Sutton*

Leonard v. B. Sutton, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*Sidney Freidberg*

Sidney Freidberg, 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).)