

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

IN THE MATTER OF THE CLAIM OF

MILES LABORATORIES PAN AMERICAN, INC.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -0493

Decision No. CU 243

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 MILES LABORATORIES PAN AMERICAN, INC., in the amount of \$91,788.14, 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 both Miles Laboratories, Inc., and of the claimant, MILES LABORATORIES PAN AMERICAN, INC., has certified that claimant corporation was organized in the State of Indiana and that all of its outstanding stock is held by Miles Laboratories, Inc.; that Miles Laboratories, Inc. was organized in the State of Indiana and that at all times between May 20, 1960 and the presentation of this claim on October 13, 1965, more than 50% of the outstanding stock of Miles Laboratories, Inc. 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.

Claimant states that 57 of the 6,328 stockholders of Miles Laboratories, Inc., holding 37,332 shares out of 4,152,695 issued, were not United States nationals.

The record contains copies of claimant's invoices and bills of lading reflecting the sale of goods to Adolph Kates & Son, Havana, Cuba, and the charges for freight, shipping and other attendant fees, in the total amounts as follows:

P- 957	due August 31, 1960	\$ 34,119.56
P- 958	due September 3, 1960	34,119.56
P-1010	due September 10, 1960	34,119.31
P-1011	due September 30, 1960	<u>34,117.55</u>
		\$136,475.98

The deduction of certain commissions and credits in the amount of \$44,687.84, per claimant's statements, reduces the net balance due claimant, subject of this claim, to \$91,788.14. For purposes of the instant claim, each of the balances due in the above amounts will be reduced by \$11,171.96 to reflect the application of such deduction. Claimant states that it has not received the funds.

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 on August 31, 1960 as to \$22,947.60, on September 3, 1960 as to \$22,947.60, on September 10, 1960 as to \$22,947.35, and on September 30, 1960 as to \$22,945.59.

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 American Cast Iron Pipe Company, FCSC Claim No. CU-0249).

CERTIFICATION OF LOSS

The Commission certifies that MILES LABORATORIES PAN AMERICAN, 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 Ninety-One Thousand Seven Hundred Eighty-Eight Dollars and Fourteen Cents (\$91,788.14) 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

SEP 6 1967

*Edward D. Re*

Edward D. Re, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*LaVern R. Dilweg*

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).)

COMMUNICATION

This is a true and correct copy of the decision of the Commission which was entered as the final decision on 6 OCT 1967

*Travis Nathan*  
Travis Nathan  
FCU-02493  
Secretary of the Commission