

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

IN THE MATTER OF THE CLAIM OF

JOHNSON & HIGGINS

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0769

Decision No. CU-3992

Counsel for claimant:

Kirlin, Campbell & Keating
By William F. Fallon, Esq.

Appeal and objections from a Proposed Decision entered on October 8, 1969;
hearing on the record requested.

Hearing on the record held on September 8, 1971.

FINAL DECISION

Under date of October 8, 1969, the Commission issued its Proposed
Decision certifying a loss in favor of claimant in the amount of
\$477,286.03, as follows:

Johnson & Higgins, S.A., a wholly-owned Cuban subsidiary, net worth	\$ 40,226.24
Debts due from the Cuban subsidiary	137,059.79
Value in the nature of good will	<u>300,000.00</u>
Total	<u>\$477,286.03</u>

Claimant objected to the Proposed Decision on two grounds; namely:
(1) that the accounts receivable of the subsidiary on the date of loss
should be found as \$315,893.75, rather than \$267,020.76 as found in the
Proposed Decision inasmuch as a deleted item of \$48,872.99 in fact was not
an account receivable; and (2) that the value of the subsidiary's good will
was \$600,000.00, rather than \$300,000.00 as found in the Proposed Decision.
Claimant submitted affidavits from the former Assistant Treasurer of the sub-
sidiary and from an insurance appraiser in support of its objections.

Upon consideration of the new evidence in the light of the entire record, the Commission now finds that on October 24, 1960, the date of loss, the subsidiary's accounts receivable, within the scope of the Act, aggregated \$315,893.75. Therefore, the subsidiary's assets and liabilities on the date of loss were \$562,910.66 and \$473,811.43, respectively, and the net value of the subsidiary, apart from good will, was \$89,099.23.

The insurance appraiser indicates that a conservative guide for evaluating an insurance brokerage concern is to apply a multiple of 2 to the annual gross income from commissions. In his opinion, this multiple should be applied to 1959, the last full year of operations by the Cuban subsidiary. Inasmuch as the gross income from commissions for 1959 was \$303,567.61, the appraiser, in effect, finds that claimant's evaluation of \$600,000.00 for good will is justified.

The evidence shows that the subsidiary's net earnings rose steadily from \$108,400.32 in 1955 to \$188,863.30 in 1958, and declined to \$157,840.25 in 1959. A similar pattern is observed with respect to its gross income from commissions. In 1955, the gross commissions were \$229,114.13 and increased to \$335,417.25 in 1958, with a dip to \$303,567.61 in 1959.

It is clear therefore that the subsidiary owned an asset in the nature of good will not reflected in its balance sheet. In its Proposed Decision, the Commission found that this asset had a value of \$300,000.00.

Considering the entire record, the Commission now finds that the valuation most appropriate to that asset and equitable to the claimant is the result obtained from applying a multiple of 2 to the average annual gross income from commissions for the period 1955 to 1959.

Since the record shows that the subsidiary's average annual gross income from commissions was \$273,206.40, the Commission finds that the value of the asset in the nature of good will was \$546,412.80.

The finding in the Proposed Decision as to a net debt of \$137,059.79 owed claimant by the subsidiary is affirmed.


Accordingly, the Certification of Loss in the Proposed Decision is set aside and the following Certification of Loss will be entered, and the Proposed Decision is affirmed in all other respects.

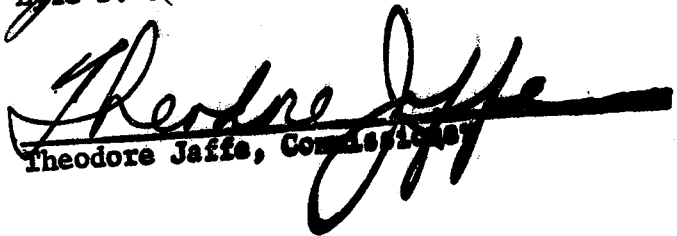
CERTIFICATION OF LOSS

The Commission certifies that JOHNSON & HIGGINS 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 Seven Hundred Seventy-Two Thousand Five Hundred Seventy-One Dollars and Eighty-Two Cents (\$772,571.82) with interest thereon at 6% per annum from October 24, 1960 to the date of settlement.

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

SEP 8 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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

IN THE MATTER OF THE CLAIM OF

JOHNSON & HIGGINS

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0769

Decision No. CU 3992

Counsel for claimant:

Kirlin, Campbell & Keating
By William F. Fallon, Esq.

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 \$848,767.95, was presented by JOHNSON & HIGGINS, based upon the loss resulting from the nationalization of its subsidiary 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.

The record shows that claimant was organized under the laws of New Jersey and that at all pertinent times more than 50% of claimant's outstanding capital stock was owned by nationals of the United States. An authorized officer of claimant has certified under date of February 24, 1967 that all of claimant's outstanding capital stock was 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 evidence establishes that claimant had been conducting an insurance business in Cuba as a partnership, JOHNSON & HIGGINS, until May 30, 1931 when the business was incorporated under the laws of Cuba as Johnson & Higgins, S.A. All of the assets, including good will, and all the liabilities of the partnership were transferred to the newly created corporation.

On October 24, 1960, the Cuban Government published in its Official Gazette Resolution 3, pursuant to Law 851, which listed as nationalized Johnson & Higgins, S.A. The Commission finds that claimant's subsidiary in Cuba was nationalized on October 24, 1960.

Since the subsidiary was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States" as defined by Section 502(1)(B), supra. In this type of situation, it has been held previously that a stockholder in such a corporation is entitled to file a claim based upon his ownership interest therein. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

Claimant has computed its claim as follows:

Net worth of subsidiary as of October 27, 1960	\$ 90,517.95
Dividend declared but not paid	158,250.00
Good will	<u>600,000.00</u>
Total	<u>\$848,767.95</u>

Stock Interest

The evidence includes trial balances for the Cuban subsidiary as of September 30, 1960 and October 27, 1960 and balance sheets as of those dates prepared on the bases of the trial balances. The record also includes statements made to the Department of State and to the Commission by officials of claimant. It appears that claimant invested \$15,000.00 in its Cuban subsidiary in 1931. This sum consisted of a cash investment of \$5,000.00 and \$10,000.00 constituting the assets and liabilities of the partnership. Among the assets transferred to the subsidiary in 1931 was good will in the amount of \$8,434.60, which has been carried on the books of the subsidiary in that amount during all the years of the subsidiary's existence.

Upon consideration of all the evidence of record, the Commission finds that the valuation most appropriate in this case and equitable to the

claimant is that shown in the subsidiary's balance sheet as of October 27, 1960. That balance sheet discloses the financial condition of the subsidiary as follows, the Cuban peso being on a par with the United States dollar:

<u>Assets</u>		
Cash in banks	\$188,904.73	
Cash in trustee bank account	16,727.04	
Petty cash	<u>100.00</u>	\$205,731.77
Accounts receivable		316,490.69
Miscellaneous accounts receivable		82.03
Note receivable - Johnson & Higgins, N.Y.		31,000.00
Furniture & fixtures	7,274.82	
Less depreciation	<u>4,789.15</u>	2,485.67
Prepaid travel advance		104.62
Good will		<u>8,434.60</u>
Total Assets		<u>\$564,329.38</u>

<u>Liabilities and Capital</u>		
Accounts payable (Underwriters)		\$284,271.41
Accounts payable - trustee bank account		17,667.15
Accounts payable - Johnson & Higgins, N.Y.		19,304.79
Accounts payable - miscellaneous		3,605.32
Dividend payable to New York	\$158,250.00	
Less 6% tax paid to Cuba	<u>9,495.00</u>	148,755.00
Taxes Payable - housing fund		<u>207.76</u>
Total Liabilities		\$473,811.43
Capital stock - 150 shares	\$ 15,000.00	
Surplus, after deduction of dividends payable	157.34	
Earnings, January 1, 1960 to October 27, 1960 before taxes	<u>75,360.61</u>	
Total Capital		<u>90,517.95</u>
Total Liabilities and Capital		<u>\$564,329.38</u>

The items in the balance sheet showing debts due to claimant from the subsidiary and vice versa are discussed below under the heading "Debts Due From Subsidiary". It appears that certain other adjustments are required with respect to the accounts receivable of the subsidiary. Pursuant to Section 505(a) of the Act, debts due from American entities may not be

considered unless the debts were charges on property taken by the Government of Cuba. (See Claim of Anaconda American Brass Co., Claim No. CU-0112, 1967 FCSC Ann. Rep. 60.)

The record shows that the following American entities owed debts to the subsidiary as indicated, and fails to establish that these debts were charges on property taken by Cuba:

International Standards Products Corporation	\$ 576.26
General Motors Acceptance Corporation	20.68
Cuban Telephone Company	<u>48,872.99</u>
Total	<u>\$49,469.93</u>

The Commission, therefore, finds that the value of the subsidiary's accounts receivable, which are allowable under Title V of the Act, was \$267,020.76 on the date of loss.

Moreover, claimant's counsel has stated under date of September 8, 1969, in response to Commission inquiries, that the subsidiary owned a bank account in the United States with a credit balance of \$821.78. The Commission finds that this bank account was not taken by Cuba and that the aggregate value of the subsidiary's asset, cash in banks and on hand, was \$204,909.99 on the date of loss.

Giving effect to the foregoing adjustments, the Commission finds that the aggregate amounts of the subsidiary's assets and liabilities on October 24, 1960, the date of loss, were \$514,037.67 and \$473,811.43, exclusive of the said receivables due claimant and the subsidiary, respectively, and the claim for good will in the amount of \$600,000.00 which is discussed below. It is, therefore, concluded that the value of the subsidiary, or the excess of its assets over its liabilities on October 24, 1960, was \$40,226.24.

Debts Due From Subsidiary

As noted above, the record shows that the subsidiary was indebted to claimant in the net amounts of \$148,755.00 for dividends and \$19,304.79 for

other obligations, or the aggregate amount of \$168,059.79. The Commission has held that debts due from nationalized Cuban enterprises are within the purview of Title V of the Act. (See Claim of Kramer, Marx, Greenlee & Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].) On the other hand, the record shows that claimant owed its subsidiary \$31,000.00, which must be deducted on the theory of set-off. (See Claim of Simmons Company, Claim No. CU-2303.) The Commission, therefore, finds that the net amount due claimant from its subsidiary on October 24, 1960, the date of loss, was \$137,059.79.

Good Will

Claimant has asserted that its subsidiary owned another asset, good will, in the amount of \$600,000.00, not shown in the subsidiary's balance sheet.

As indicated above, the subsidiary's balance sheet already carried the asset, good will, in the amount of \$8,434.60, which the subsidiary had purchased upon commencement of operations, and which is being allowed herein. In support of its claim for good will over and above the \$8,434.60, claimant has submitted: (a) copies of the subsidiary's balance sheets and profit and loss statements for the years ending December 31, 1955 through December 31, 1959; (b) an affidavit from Mr. Luis Parajon, dated February 26, 1969, who is an expert appraiser; (c) an affidavit, dated February 18, 1969, from one of claimant's officers; and (d) an extract from a recent bulletin of the United States Internal Revenue Service, suggesting the use of a certain formula for determining the value of good will for taxation purposes.

Claimant has offered two methods for determining the subsidiary's good will; namely, the average annual gross income (using 1958, 1959 and 1960, as projected) multiplied by 2, and the average annual net profit (using the same years) multiplied by 3. Claimant's computations result in the respective amounts of \$558,398.00 and \$695,995.00, which assertedly justify the allowance of \$600,000.00.

It is noted that while claimant has stated that the Internal Revenue Service formula is appropriate to its claim, it has not applied that formula

in its own computations. According to the formula, "which should not be used if there is better evidence available," the average annual earnings (using a period of 5 years) is determined for tangible assets, including the excess of accounts and bills receivable over accounts and bills payable. The result is then deducted from the total average annual earnings for the same period, and the remainder is considered the average annual earnings from the intangibles. This remainder, if any, is capitalized at 15% for an ordinary business and 20% for a hazardous business.

Claimant states that the subsidiary's average annual earnings for the period 1955 to 1959 was \$175,455.74, which would result in a valuation for good will in the amount of \$877,278.70 at a 20% rate of capitalization and the amount of \$1,170,290.00 at a 15% rate. Beyond this statement there is nothing in the record to show precisely how these amounts were determined, and as already stated, it appears that the results thus obtained were not computed by the application of the formula. In any event, the formula is applicable only for the purposes of Federal taxation, whereas the governing statute requires the Commission to determine the value of property in Cuba. For these reasons, the Commission finds claimant's method of computing good will inappropriate.

In making determinations under Title V of the Act, the Commission has often relied upon appraisals of tangible assets by Mr. Luis Parajon, an expert appraiser. Here his affidavit of February 26, 1969 contains the statement that in his opinion the going concern value of the subsidiary on the date of loss was not less than \$600,000.00. Inasmuch as the issue herein is the value of the subsidiary's good will and not the value of some tangible item of its property, the Commission finds Mr. Parajon's affidavit insufficient to support claimant's assertions.

The affidavit of February 18, 1969 from one of claimant's officers includes the statements that he is and has been familiar with the valuations of insurance agencies and insurance brokerage firms for about eight years, and that he has written and spoken extensively on the subject since 1963.

Based upon his experience and considering the subsidiary's financial statements from 1955 to 1959, and the fact that the subsidiary's clients included a number of large accounts and had a growth potential, this officer stated that the value of the good will was between \$600,000.00 and \$700,000.00 on the date of loss. The affiant has not set forth precisely how he arrived at his opinion, except in general terms. Moreover, while he has stated that the subsidiary was an extremely well run and profitable operation, he has not shown nor does the record establish, for example, that the subsidiary's net profits after Cuban taxes exceeded the net earnings for similar business concerns in Cuba.

Clearly this record demonstrates that the claimant is entitled to some value based upon the earnings generated from its services as a broker although it is not "goodwill" in the usual sense. Actually, the item is more in the nature of a "going concern" value. Thus the formulas applied by the claimant do not fairly reflect that this service business, in a foreign country where it was subject to high risks of loss, controls or outright confiscation, had the worth claimed. Based upon the entire record the Commission finds that the most equitable value of the business is \$477,286.03 which consists of:

(1) A net worth of	\$ 40,226.24
(2) Debts due from subsidiary	137,059.79
(3) Value in the "nature of" goodwill	<u>300,000.00</u>
	\$477,286.03

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), and in the instant case it is so ordered.

CU-0769

CERTIFICATION OF LOSS

The Commission certifies that JOHNSON & HIGGINS 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 Four Hundred Seventy-seven Thousand Two Hundred Eighty-six Dollars and Three Cents (\$477,286.03) with interest thereon at 6% per annum from October 24, 1960 to the date of settlement.

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

OCT 8 1969

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).)