

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

IN THE MATTER OF THE CLAIM OF

MEAD JOHNSON & COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1004

Decision No. CU

3797

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 \$22,103.94, was presented by MEAD JOHNSON & COMPANY based upon the asserted loss of payment for merchandise shipped to certain Cuban consignees.

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, including the evidence in the related claim of this claimant (Claim No. CU-1398), which will be decided on its own merits, shows that claimant was incorporated originally under the laws of Indiana and that at all pertinent times more than 50% of claimant's outstanding capital stock was owned by nationals of the United States. It further appears from the said record that on December 22, 1967, the Indiana corporation merged with Bristol Myers Company and that the Indiana corporation went out of existence on that date, all of its assets being transferred to MEAD JOHNSON & COMPANY, a corporation organized under the laws of Delaware as of September 29, 1967, subsequent to the filing of this claim. An authorized officer of claimant has certified that as of December 9, 1966, 99.67% of claimant's outstanding capital stock was owned by nationals of the United States. The Commission holds that claimant and its predecessor, MEAD JOHNSON & COMPANY, the former Indiana corporation, both qualify as nationals of the United States within the meaning of Section 502(1)(B) of the Act.

The evidence includes copies of invoices and bank letters, pertinent extracts from claimant's books and records, and statements from officials of claimant concerning this claim. It appears that one of the Cuban consignees had paid in part for the purchase from claimant by deposit in a local Cuban bank, but that dollar reimbursement to claimant was denied by the Cuban authorities. Claimant states that it has received neither the amount representing payment made to the local bank nor any payments on account of the other debts due from Cuban consignees.

The following information concerning the shipments made to the Cuban consignees, supported by the evidence of record, shows the paid and the unpaid accounts, the date on which payment was made or acknowledged by the local bank; and with respect to the unpaid accounts, the due dates where known or the invoice dates, and the amounts thereof:

<u>Paid Account</u>		
<u>Consignee</u>	<u>Date Paid or Acknowledged</u>	<u>Amount</u>
Drogueria Taquechel	5/21/60	\$ 4,228.46

<u>UnPaid Accounts</u>			
<u>Consignee</u>	<u>Due Date</u>	<u>Invoice Date</u>	<u>Net Amount</u>
Drogueria Alvarez			
Fuentes y Cia, S.L.	1/9/60		\$ 4,928.12
Drogueria Sarra		1/19/59	261.98
Drogueria Taquechel		4/29/60	12,685.38
	Total		<u>\$ 17,875.48</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 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 Etan Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

The Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba. In the absence of evidence to the contrary, the Commission finds that the losses occurred on the day after payment was made to or acknowledged by the local bank, or on the due date, where shown, or 30 days after the invoice date; except that with respect to the one item that would otherwise be deemed lost prior to September 29, 1959, the effective date of Law 568, the loss is found to have 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 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>
9/29/59	\$ 261.98
1/9/60	4,928.12
5/22/60	4,228.46
5/29/60	<u>12,685.38</u>
Total	<u>\$ 22,103.94</u>

CERTIFICATION OF LOSS

The Commission certifies that MEAD JOHNSON & COMPANY 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-Two Thousand One Hundred Three Dollars and Ninety-Four Cents (\$22,103.94) 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

AUG 20 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

NOTICE TO TREASURY: The claimant may be the subject of another certification of loss in Claim No. CU-1398.

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).)

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

IN THE MATTER OF THE CLAIM OF

PUERTO RICO TELEPHONE COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-8291

Decision No. CU-3798

Counsel for claimant:

Covington & Burling
by Stanley L. Temko, Esquire

AMENDED PROPOSED DECISION

By Proposed Decision issued August 20, 1969, the Commission denied this claim for a debt owed by a United States corporation since the debt was not a charge on property which had been nationalized, expropriated, intervened, or taken by the Government of Cuba. Further evidence having been submitted, and the matter considered, it is

ORDERED that the Proposed Decision be and it is hereby amended.

The Commission now finds that the Cuban Telephone was indebted to claimant in the amount of \$1,405.00 and the assets of the Cuban Telephone Company were nationalized by the Government of Cuba on August 6, 1960.

In its decision entitled the Claim of International Telephone and Telegraph Corporation (Claim No. CU-2615 which is incorporated herein by reference), the Commission held that debts of the Cuban Telephone Company were certifiable as losses under Title V of the Act, since the corporation was no longer in existence, to American nationals under the facts and conditions set forth therein.

On the basis of evidence in the record in the instant claim, the Commission finds that this claimant is an American national at the requisite time, that more than 50% of its outstanding capital stock was owned by United States nationals and that it sustained a loss in the amount of \$1,405.00 on August 6, 1960 as a result of the nationalization of the assets of the Cuban Telephone Company by the Government of Cuba within the meaning of Title V of the Act.

Accordingly, the following certification of loss will be entered and in all other respects the Proposed Decision is affirmed.

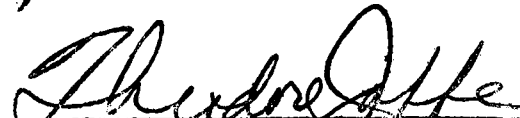
CERTIFICATION OF LOSS


The Commission certifies that PUERTO RICO TELEPHONE COMPANY 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 One Thousand Four Hundred Five Dollars (\$1,405.00) with interest at 6% per annum from August 6, 1960 to the date of settlement.

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

AUG 6 - 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner


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.

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