

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

IN THE MATTER OF THE CLAIM OF

WARNER-LAMBERT, S.A.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-2126

Decision No. CU 3681

Counsel for claimant:

Matthew W. Perry, Jr., 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 \$1,667,901.00, was presented by WARNER-LAMBERT, S.A., based upon asserted losses of real and personal property at its branch office in Havana, 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 Delaware, and that at all pertinent times all of claimant's outstanding capital stock was owned by Warner-Lambert Pharmaceutical Company, also organized under the laws of Delaware. An authorized officer of claimant has certified that at all pertinent times more than 50% of claimant's outstanding capital stock was owned by nationals of the United States. The transfer agent and dividend disbursing agent of the parent corporation has stated that its records show that as of October 20, 1967, approximately 2.7% of the parent corporation's outstanding capital stock was registered in the names of nonresident aliens. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The Commission finds on the basis of the evidence of record that claimant maintained a branch office in Havana, Cuba, where it carried on the business of manufacturing and distributing pharmaceuticals, cosmetics and toiletries. In connection with these operations in Cuba, claimant owned certain real and personal property, discussed hereafter.

The record establishes and the Commission finds that claimant's branch office was intervened by the Cuban Ministry of Industries on June 23, 1961. Accordingly, the Commission finds that claimant sustained a loss within the meaning of Title V of the Act on June 23, 1961.

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". The Commission has concluded that this phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property and that it is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider; i.e., fair market value, book value, going concern value, or cost of replacement.

The evidence includes a copy of a document listing most of the real and personal property claimed, registered with the Cuban authorities under date of October 3, 1960; a copy of an audited consolidated balance sheet as of December 31, 1960, relating to claimant's Cuban branch office; a copy of a balance sheet for the Cuban branch office as of March 31, 1961, prepared by claimant's Cuban accountant; a letter from the parent corporation, dated April 11, 1962, to the Department of State, setting forth the assets of claimant's Cuban branch office in accordance with the balance sheet of March 31, 1961; a copy of a certificate, evidencing claimant's ownership of 14 shares of stock of Ferrocarriles Occidentales de Cuba, S.A., a Cuban corporation; a detailed appraisal of the values of the land and building of claimant's Cuban branch office, prepared by an engineer who had considerable experience in evaluating properties in Cuba and was personally familiar with claimant's real property; and statements from officials of claimant concerning this claim.

Claimant has computed its claim as follows on the basis of the asset values appearing in the branch's balance sheet as of March 31, 1961, except for the land and building which claimant estimated:

Land	\$183,540.00	
Building	<u>349,217.00</u>	\$ 532,757.00
Personal property		857,776.00
14 shares of stock of Ferrocarriles Occidentales de Cuba, S.A.		1,400.00
Accounts receivable (local)		<u>275,968.00</u>
Total		<u>\$1,667,901.00</u>

The balance sheet as of March 31, 1961 sets forth the following values for the assets of claimant's Cuban branch office, the peso being on a par with the United States dollar:

Cash		\$ 523,744.56
Accounts receivable:		
Domestic	\$281,434.44	
Miscellaneous	<u>4,533.79</u>	
Reserve for doubtful accounts	285,968.23	
	<u>10,000.00</u>	275,968.23
Inventories (at lower cost or market):		
Raw materials	\$ 41,998.81	
Finishing supplies	89,173.24	
Finished goods	<u>49,339.48</u>	180,511.53
Deferred charges		68,879.24
Ferrocarriles Occidentales de Cuba, S.A.		1,400.00
Fixed Assets:		
Land	\$ 68,000.00	
Building	<u>349,216.98</u>	417,216.98
Machinery, furniture and fixtures	84,640.37	
Less depreciation reserve	<u>48,753.13</u>	<u>35,887.24</u>
Total Assets		<u>\$1,503,607.78</u>

Upon careful consideration of the entire record, the Commission finds that the valuation most appropriate to the property and equitable to the claimant is that shown in the balance sheet of March 31, 1961, except for the land and building, the value of which is best reflected in the appraisals. Accordingly, the Commission finds that the values of the assets owned by claimant at its branch office in Cuba were as follows on June 23, 1961, the date of loss:

Cash	\$ 523,744.56
Accounts receivable	275,968.23
Inventories	180,511.53
Deferred charges	68,879.24
14 shares of stock of Ferrocarriles Occidentales de Cuba, S.A.	1,400.00
Land	200,000.00
Building	380,000.00
Machinery, furniture & fixtures	<u>35,887.24</u>
Total	<u>\$1,666,390.80</u>

A portion of the claim is based on the asserted loss of 63 trademarks in Cuba. Claimant has submitted a list of the trademarks, but has not furnished any proof as to their value on the date of loss. Counsel for claimant stated in a letter, dated May 8, 1968, that the value of the trademarks "must be tied to the prevention of doing business and loss of good will" suffered by claimant, and that the loss is indicated by the sales of products identified by these trademarks in 1957, 1958, 1959 and 1960. Although the Commission suggested the submission of evidence respecting the value of the trademarks on several occasions, no such proof has been filed, nor has claimant asserted any amount on account

of the loss of the trademarks. It is noted, moreover, that trademarks are not included among the Cuban branch's assets in the balance sheets submitted by claimant.

The Commission finds that claimant has failed to meet the burden of proof with respect to the portion of the claim based upon trademarks in that it has failed to establish that the trademarks had any value on the date of loss. Accordingly, this portion of the claim is denied.

The balance sheet of March 31, 1961 shows that claimant was indebted to Cuba on account of certain taxes in the amounts of \$29,769.43 and \$45,483.85, respectively, or in the aggregate amount of \$75,253.28. The Commission consistently has not reduced the value of a corporate claimant's branch office assets in Cuba by any of its liabilities in determinations under Title V of the Act, except for debts due the Republic of Cuba. (See Claim of Simmons Company, Claim No. CU-2303.)

The Commission, therefore, finds that the aggregate amount of claimant's losses within the meaning of Title V of the Act was \$1,591,137.52.

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.

CERTIFICATION OF LOSS

The Commission certifies that WARNER-LAMBERT, S.A. 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 Million Five Hundred Ninety-one Thousand One Hundred Thirty-seven Dollars and Fifty-two Cents (\$1,591,137.52) with interest at 6% per annum from June 23, 1961 to the date of settlement.

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

JUN 4 1969

*Leonard v. B. Sutton*  
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Leonard v. B. Sutton, Chairman

*Theodore Jaffe*  
\_\_\_\_\_  
Theodore Jaffe, Commissioner

*Sidney Freidberg*  
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Sidney Freidberg, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities for the loss here certified.

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].)