

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

IN THE MATTER OF THE CLAIM OF

ARMOUR AND COMPANY
and
ARMOUR PHARMACEUTICAL COMPANY

Claim No. CU -2567

Decision No. CU

3748

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

Walter E. Trittipo, 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 \$2,296,725.00, was presented by ARMOUR AND COMPANY, based upon asserted losses of a branch house in Havana, Cuba, a fertilizer mixing plant in Matanzas, Cuba, and royalties and accounts receivable due from Cuban nationals.

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 the losses claimed herein were sustained by Armour and Company, organized under the laws of Illinois, and that effective October 29, 1960, this Illinois corporation merged into claimant, ARMOUR AND COMPANY, organized under the laws of Delaware, hereafter called the parent. As a result of that merger, the parent succeeded to all the rights and interests of the Illinois corporation. It further appears from the record that the debts due from royalties and the trade accounts receivable were due to divisions, not separate entities, of the former Illinois corporation, but that after the said merger the trade accounts receivable, not including the debts due for royalties, were assigned to the ARMOUR PHARMACEUTICAL COMPANY, a corporation organized under the laws of Delaware and a wholly-owned subsidiary of the parent.

The record establishes that at all pertinent times more than 50% of the outstanding capital stock of the former Illinois corporation, of the parent, and of ARMOUR PHARMACEUTICAL COMPANY were owned by nationals of the United States. An authorized officer of the parent has certified on the basis of records of the parent's transfer agent that as of January 6, 1967, 99.16% of the parent's outstanding capital stock was owned by persons having registered addresses in the United States. The Commission holds that the former Illinois corporation, the parent, and the ARMOUR PHARMACEUTICAL COMPANY qualify as nationals of the United States within the meaning of Section 502(1)(B) of the Act.

Section 505(a) of the Act provides, inter alia, that a claim under Section 503(a) of the Act based upon an ownership interest in a corporation which is a national of the United States shall not be considered. Since the parent's claim is based in part upon its 100% ownership interest in ARMOUR PHARMACEUTICAL COMPANY, a national of the United States, that part of its claim is denied. (See Claim of Mary F. Sonnenberg, Claim No. CU-0014, 25 FCSC Semiann. Rep. 48 [July-Dec. 1966].) ARMOUR PHARMACEUTICAL COMPANY, however, has been added as party claimant with respect to the portion of the claim based upon trade accounts receivable.

The Commission finds on the basis of the evidence of record that the former Illinois corporation owned a branch house in Havana, Cuba, where it operated a meat processing and distribution plant, and leased property in Matanzas, Cuba, where it operated a large fertilizer mixing plant. In addition, a division of the former Illinois corporation was due a debt from Productos Besto, S.A., a Cuban corporation, as a result of an agreement granting the Cuban corporation a license to sell Dial soap in Cuba.

On October 24, 1960, the Cuban Government published in its Official Gazette Resolution 3, pursuant to Law 851, which listed as nationalized Armour and Company, the former Illinois corporation. The Commission, therefore, finds that the former Illinois corporation sustained a loss within the meaning of Title V of the Act on October 24, 1960, and that the parent succeeded to the claim for the loss as a result of the merger, effective on October 29, 1960.

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 record includes affidavits, balance sheets, appraisals, blueprints, a complete description of the properties, surveys and statements from officials having personal knowledge of the facts, as well as photographs of the properties at Havana and Matanzas, Cuba.

Havana Branch House

In an affidavit, dated November 3, 1967, Jose Garcia Lopez, who had been employed by the parent's predecessor in interest for 38 years in connection with its Cuban operations, states that the Havana facilities were located on a main commercial boulevard near the waterfront, that they included a railroad siding and a switch from the main line of Havana Central Railroad to the siding directly into the Havana Branch House. It further appears from a document designated as Amendment Number 1 to the original claim, dated November 10, 1967, that the cost of the Havana Branch House construction and the equipment installed prior to 1921 before depreciation was \$640,331.00, and that improvements thereon made prior to 1932 cost \$94,547.00.

The parent's Assistant Controller and its own appraiser have evaluated the Havana facilities as follows:

Land		\$ 200,000.00
Buildings:		
Main building	\$925,474.00	
Car loading	10,419.00	
Lard plant	110,524.00	
Garage	32,347.00	
Warehouse	21,118.00	
Railroad siding with electric power	4,005.00	
Sanitary sewers	<u>5,130.00</u>	
Total structures		1,109,017.00
Machinery and equipment		<u>25,400.00</u>
Total		<u>\$1,334,417.00</u>

The foregoing amount is stated to constitute replacement costs less depreciation.

The record also includes detailed appraisals by the American Appraisal Company as of April 27, 1935 and June 30, 1957, based upon physical inspections of the property. This appraisal company stated that the cost of replacing the Havana facilities with new ones as of June 30, 1957 was \$800,000.00 for the buildings and \$320,000.00 for the machinery and equipment. It also stated in letters dated March 9, 1968 and April 3, 1968 that as of July 13, 1960, the cost of new facilities had risen by 10%, resulting in a valuation of \$880,000.00 for the buildings and \$352,000.00 for the machinery and equipment.

The Commission holds, however, that replacement cost less depreciation is not the "basis of valuation most appropriate to the property and equitable to the claimant" in this case.

The American Appraisal Company, in the documents hereinabove referred to, appraised the fair market value of the Havana facilities at \$245,000.00 for 3,274.94 square meters of land at \$75.00 per square meter, \$292,500.00 for the five contiguous buildings which had been constructed between 1915 and 1925, and \$80,000.00 for the machinery and equipment, or the aggregate amount of \$617,500.00. The appraisal of the land took into consideration sales of comparable parcels, as well as the size, location and utility of the plot. The appraisal also weighed the sale prices of comparable improved property and the income derived from this property.

Upon consideration of the entire record, the Commission finds that the valuation most appropriate to the Havana property and equitable to the parent is the fair market value shown in the appraisal of June 30, 1957 by the American Appraisal Company, adjusted appropriately to take into consideration the increased value of the property in 1960, three years after the date of the appraisal. Accordingly, the Commission finds that the values of the Havana facilities were as follows on October 24, 1960, the date of loss:

Land	\$245,000.00
Buildings	321,750.00
Machinery & equipment	<u>88,000.00</u>
Total	<u>\$654,750.00</u>

Matanzas Plant

The record shows that the Matanzas land had been leased originally in 1916, and that prior to 1921 the parent's predecessor in interest constructed on said land 17 industrial buildings, 7 dwellings, a railroad siding, a mole and ship berth, bridges, tramways, trestles, derricks, ponds, reservoirs and tanks, piping, sanitary sewers, electric service, machinery and equipment, delivery equipment and miscellaneous spare parts appurtenant to the operations of its constructed fertilizer mixing plant.

The evidence includes detailed appraisals by the American Appraisal Company as of April 27, 1935 and July 13, 1960, based upon physical inspections of the property, the later one having taken place in April 1957. The last appraisal indicates that the cost of reproducing new facilities as of July 13, 1960 was \$2,108,220.00, and that the fair market value of the Matanzas facilities on July 13, 1960 was \$975,000.00. It appears from the record that the appraisals did not include inventory, spare parts, uninstalled equipment, or current assets shown in the balance sheet as of September 3, 1960 for the Matanzas plant.

Upon consideration of the entire record, the Commission finds that the valuation most appropriate to the Matanzas plant and most equitable to the parent is that shown in the appraisal of July 13, 1960, and that as to the items of property not included in that appraisal, the most appropriate and

equitable valuation is that shown by claimant's records including the balance sheet as of September 3, 1960. Accordingly, the Commission finds that the value of the Matanzas plant on October 24, 1960, the date of loss, was as follows:

Plant property and equipment (appraisal of July 13, 1960)		\$ 975,000.00
Property not included in appraisal:		
Batching and shipping machinery	\$ 16,000.00	
2 shovel tractors	8,040.00	
Supplies & spare parts	10,000.00	
Delivery equipment	<u>6,099.00</u>	40,139.00
Total current assets (balance sheet of September 3, 1960)		<u>374,297.36</u>
Total		<u>\$1,389,436.36</u>

The parent has reduced the amount of its claim by liabilities of the Matanzas plant. The Commission has held consistently that with respect to a Cuban branch, as opposed to a Cuban entity, a corporate claimant's loss should not be reduced by any of the branch's liabilities, except for taxes owing to the Government of Cuba (see Claim of Simmons Company, Claim No. CU-2303), the reason being that the parent is or may be liable for the debts of the Cuban branch. The balance sheet of September 3, 1960 shows that the Matanzas plant owed taxes to Cuba in the amounts of \$1,855.02, \$1,549.57, and \$24,272.90, or the aggregate amount of \$27,677.49. The Commission, therefore, concludes that the net loss sustained with respect to the Matanzas plant was \$1,361,758.87.

Royalties

The evidence includes extracts from the parent's books and records which establish that as of October 24, 1960, the date of loss, the parent's predecessor in interest was the creditor of Productos Besto, S.A. in the amount of \$20,399.17 and sustained a loss in that amount within the meaning of Title V of the Act.

Recapitulation

The losses to which the parent succeeded may be summarized as follows:

Havana plant	\$ 654,750.00
Matanzas plant	1,361,758.87
Royalties	<u>20,399.17</u>
Total	<u>\$2,036,908.04</u>

Trade Accounts Receivable

The record includes copies of invoices, bills of lading, shipping records, waybills, bank statements and extracts from the books and records of ARMOUR PHARMACEUTICAL COMPANY which establish that it was owed debts by four Cuban consignees to whom this claimant's predecessor in interest had shipped merchandise. With respect to three of the consignees, the evidence discloses that they had paid for their purchases by deposits in local Cuban banks but that dollar reimbursement to ARMOUR PHARMACEUTICAL COMPANY's predecessor in interest was denied. This claimant states that neither it nor its predecessor in interest had received the funds representing payments made to the local banks by the three Cuban consignees, nor any payments on account of the debt due from the other Cuban consignee.

The following information concerning the shipments made to the Cuban consignees, supported by the evidence of record, shows the paid and the unpaid accounts, and the dates on which payments were made or acknowledged by the local banks; and with respect to the one unpaid open account, the date of the last debit entry, and the amounts due in all cases.

Paid Accounts

<u>Consignee</u>	<u>Date Paid or Acknowledged</u>	<u>Net Amount</u>
Drogueria de Johnson	June 30, 1960	\$ 9,085.30
Drogueria Reyes, S.A.	November 5, 1959	2,243.20
Instituto Dietetico Nacional	March 25, 1960	<u>870.55</u>
Total		<u>\$12,199.05</u>

Unpaid Account

<u>Consignee</u>	<u>Date of Last Entry</u>	<u>Net Amount</u>
Drogueria Taquechel	November 13, 1959	\$ 5,896.65

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.)

Accordingly, the Commission finds that ARMOUR PHARMACEUTICAL COMPANY's predecessor in interest sustained a loss 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 days after payment was received or acknowledged by the local banks, and 30 days after the date of the last debit entry in the case of the unpaid account.

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:

ARMOUR AND COMPANY

<u>FROM</u>	<u>ON</u>
October 24, 1960	\$2,036,908.04

ARMOUR PHARMACEUTICAL COMPANY

<u>FROM</u>	<u>ON</u>
November 6, 1959	\$ 2,243.20
December 13, 1959	5,896.65
March 26, 1960	870.55
July 1, 1960	<u>9,085.30</u>
Total	\$ 18,095.70

CERTIFICATION OF LOSS

The Commission certifies that ARMOUR AND COMPANY succeeded to and 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 Two Million Thirty-six Thousand Nine Hundred Eight Dollars and Four Cents (\$2,036,908.04) with interest at 6% per annum from October 24, 1960 to the date of settlement; and

The Commission certifies that ARMOUR PHARMACEUTICAL COMPANY succeeded to and 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 Eighteen Thousand Ninety-five Dollars and Seventy Cents (\$18,095.70) with interest 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

JUL 23 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].)