

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

IN THE MATTER OF THE CLAIM OF

CYANAMID DEL CARIBE, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2966

Decision No. CU

4557

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 CYANAMID DEL CARIBE, INC. in the amount of \$222,027.57 based upon the asserted taking of claimant's property 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 Delaware and that at all pertinent times all of claimant's outstanding capital stock was owned by American Cyanamid Company, a corporation organized in Maine. An authorized officer of American Cyanamid Company has certified that as of April 28, 1967, 99.385% of the parent's outstanding stock was owned by nationals of the United States. The Commission holds that claimant corporation is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Based on the evidence of record including a copy of an Act issued by the Ministry of Labor of Cuba and an affidavit of the executive secretary to the manager of claimant's business in Havana, Cuba, the Commission finds that claimant's assets in Cuba were intervened by the Government of Cuba on May 29, 1961 and that claimant thereby sustained a loss within the meaning of Title V of the Act.

The record establishes that claimant's business in Cuba was to promote and sell Lederle pharmaceutical products.

Claimant has computed its claim as follows:

Personal Property - located in Havana:

Bank Account in Havana Branch of the First National Bank of New York		\$176,936.97
Office Petty Cash Fund		200.00
Inventory		9,629.53
Furniture, Fixtures and Leasehold Improvements	\$102,414.77	
Less: Depreciation to April 30, 1961	<u>88,364.34</u>	<u>14,050.43</u>
Total		<u>\$200,816.93</u>

Credits

Trade Accounts Receivable	\$ 18,525.79
Claims Pending	1,941.80
Service Deposits	700.00
Prepaid Metered Postage	<u>43.05</u>
Total	\$ <u>21,210.64</u>
Total Amount of Claim	<u>\$222,027.57</u>

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.

In support of the asserted value, the record includes a copy of the balance sheet of claimant's Havana branch as of April 30, 1961, a copy of the original balance sheet from the Havana branch as of this date, a copy of the trial balance of the Havana branch as of this date, and a copy of the reconciliation of the differences between the "Cash" and "Due Home Office" balances shown on the balance sheets.

Upon 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 as of April 30, 1961, which reflects the following, the peso being on a par with the United States dollar:

ASSETS

Cash		\$177,136.97
Accounts Receivable - Trade	\$ 18,525.79	
Less: Reserve for Doubtful Accounts	<u>7,264.79</u>	11,261.00
Accounts Receivable - Others		4,530.52
Inventories		9,629.53
Loans to Employees		955.00
Other Investments		3,100.00
Plant, Property and Equipment	102,414.77	
Less: Reserve for Depreciation	<u>88,364.34</u>	14,050.43
Prepayments and Deferred Charges		<u>3,326.34</u>
 Total		 \$223,989.79

LIABILITIES AND NET WORTH

Accounts Payable	\$ 245.75	
Accrued Wages	12,037.46	
Accrued Taxes	5,770.58	
Bank Loan	<u>150,000.00</u>	
 Total Liabilities		 \$168,053.79
Due Home Office	\$192,683.02	
Branch Surplus (Loss 12/1/60-4/30/61)	<u>(136,747.02)</u>	
 Branch Net Worth		 <u>55,936.00</u>
 Total		 \$223,989.79

With regard to the cash item of \$177,136.97 shown on this balance sheet, the record discloses that this represents an adjusted cash balance of the \$121,087.88 reported by the Havana branch. The Havana branch's balance had been based on \$56,452.50 which was reported as having been transmitted to the Home Office but which was never received by the Home Office, and the sum of \$403.41 which had been received by the Home Office but which was not identified. Adding the figure \$56,452.50 to Havana branch's reported cash balance and subtracting \$403.41 results in the adjusted cash balance of \$177,136.97.

The balance sheet reflects among the liabilities, a bank loan of \$150,000.00. The Commission is informed that this was due to the First National City Bank of New York.

Upon consideration of the entire record, the Commission finds that the valuation most appropriate to the property and equitable to the claimant as regards the loss of its business in Cuba is that shown in the balance sheet as of April 30, 1961, which indicates the value of the assets of its Havana branch as \$223,989.79. The Commission in this regard has consistently not reduced the value of the assets of an American corporation doing business through a branch in Cuba by any liabilities in its determinations under Title V of the Act except those subject to set-off as debts owing to the Government of Cuba. The reason is that the claimant may remain liable for the debts. (See Claim of Simmons Company, Claim No. CU-2303, 1968 FCSC Ann. Rep. 77.)

Accordingly, no deduction is made for the items of liabilities shown on the balance sheet except for the item of \$5,770.58 for accrued taxes presumably owed the Government of Cuba. The Commission therefore finds that the aggregate value of claimant's assets in Cuba was \$223,989.79 less \$5,770.58 or \$218,219.21, on May 29, 1961, the date of loss.

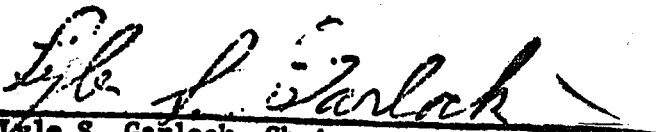
The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

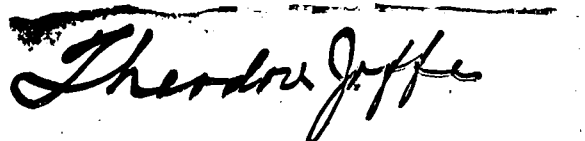
CERTIFICATION OF LOSS

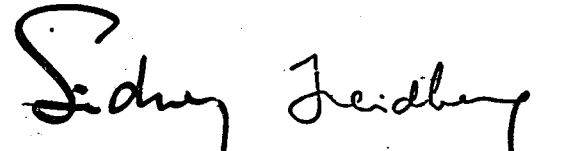
The Commission certifies that CYANAMID DEL CARIBE, INC. suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Two Hundred Eighteen Thousand Two Hundred Nineteen Dollars and Twenty-one Cents (\$218,219.21) with interest thereon at 6% per annum from May 29, 1961 to the date of settlement.

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

MAR 4 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner


Sidney Feidberg, 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).)

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