

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

IN THE MATTER OF THE CLAIM OF

RICHARDSON-MERRELL, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 3057

Decision No. CU - 1109

AMENDED PROPOSED DECISION

By Proposed Decision issued January 31, 1968, this claim was denied for failure of claimant to sustain the burden of proof. Additional evidence having been submitted, and the matter considered, it is

ORDERED that the Proposed Decision be and it is hereby amended as follows:

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.

Claimant corporation by an authorized officer, has certified that the claimant was organized in the State of Delaware in 1933 as Vick Chemical Company, that the corporate name was changed in 1960 to RICHARDSON-MERRELL, INC., and that at all times between 1933 and presentation of this claim more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record shows that claimant made sales and shipments of merchandise to various Cuban firms during 1959 and 1960. Payment in each transaction was to have been made by bank draft. A summary of these transactions is set out below, showing the net amount due claimant on each transaction, and either the date payment became due or the date upon which collection was made by a Cuban correspondent bank. Where applicable, credits have been deducted in determining the net amount due claimant. An officer of the claimant corporation has stated that the corporation has never received the funds.

<u>Consignees</u>	<u>Amount</u>	<u>Date Paid or Due</u>
Drog. Irostorza, S.A.	\$2,156.13	March 30, 1960
Drog. Rex, Gomez Colon y Cia	3,383.42	August 9, 1960
	3,341.84	June 14, 1960
Farm. y Drog. Santa Rita	2,534.52	June 28, 1960
Drog. Mut. de Cuba, S.A.	3,097.12	August 30, 1960
Drog. de Johnson S.A.	3,722.71	August 9, 1960
	6,795.50	September 28, 1960
Drog. Mestre y Espinosa	1,709.07	December 8, 1959
	1,354.50	November 16, 1959
	2,492.83	November 16, 1959
Drog. Alvarez Fuentes	4,457.36	September 12, 1960
Drog. Sarra	6,158.77	September 12, 1960
Drog. F. Taquechel	9,148.07	September 30, 1959
Ignacio Sanchez Leal:		
\$34,803.91		
Less credit 22,445.72	<u>12,358.19</u>	November 15, 1960
	<u>\$62,710.03</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 the Claim of The Schwarzenbach Huber Company, FCSC Claim No. CU-0019; and the Claim of Etna Pozzolana Corporation, FCSC Claim No. CU-0049).

Accordingly, in the instant claim the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the loss occurred on the dates shown further below.

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.

The Commission concludes that the amount of loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the dates on which the losses occurred to the date on which provision is made for the settlement thereof as follows:

<u>From</u>		<u>On</u>
September 30, 1959		\$9,148.07
November 16, 1959		3,847.33
December 8, 1959		1,709.07
March 30, 1960		2,156.13
June 14, 1960		3,341.84
June 28, 1960		2,534.52
August 9, 1960		
	\$3,722.71	
	<u>3,383.42</u>	7,106.13
August 30, 1960		3,097.12
September 12, 1960		
	\$4,457.36	
	<u>6,158.77</u>	10,616.13
September 28, 1960		6,795.50
November 15, 1960		<u>12,358.19</u>
		\$62,710.03

CU-3057

CERTIFICATION OF LOSS

The Commission certifies that RICHARDSON-MERRELL, 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 Sixty-two Thousand Seven Hundred Ten Dollars and Three Cents (\$62,710.03) 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 Amended
Proposed Decision of the
Commission.

2 OCT 1980

Leonard v. B. Nathan

Leonard v. B. Nathan, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney J. Feinberg

Sidney J. Feinberg, 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).)

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

IN THE MATTER OF THE CLAIM OF

RICHARDSON-MERRELL INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -3057

Decision No. CU -1109

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$62,764.13, was presented by RICHARDSON-MERRELL INC. and is based upon the asserted loss of payment for merchandise shipped to Cuba. Claimant asserts it is a national of the United States within the meaning of Section 502(1)(B) of the Act.

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 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

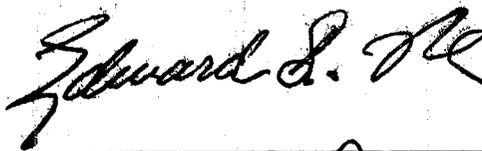
Claimant asserts that it, or its predecessor in interest, the Vick Chemical Company, shipped goods to various Cuban purchasers, and that payment for these goods has never been received. No evidence in support of the claim has been submitted since May 1, 1967, when the claim form and copies of ledger cards were received by the Commission.

By Commission letter of October 2, 1967, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act. However, no evidence in response to this correspondence has been received to date. Thereafter, by letter of November 2, 1967, claimant was invited to submit any evidence available to it within 45 days from that date, and it was informed that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. No evidence has since been submitted.

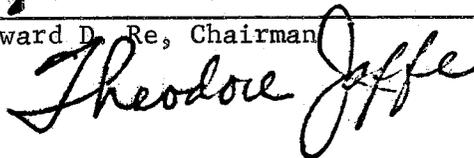
The Commission finds that claimant has not met the burden of proof in that it has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba, or that the asserted debt was owed to a national of the United States. Thus, the Commission is constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

JAN 31 1968



Edward D. Re, Chairman



Theodore Jaffe, Commissioner

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