

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

IN THE MATTER OF THE CLAIM OF

HENRY R. JAHN & SON, INC.

Claim No. CU-3467

Decision No. CU 4170

Under the International Claims Settlement
Act of 1949, as amended

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 \$16,087.00, was presented by HENRY R. JAHN & SON, INC. based upon the asserted loss of a stock interest in a Cuban corporation.

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 New York. An authorized officer of claimant has certified that at all pertinent times all of claimant's outstanding capital stock was owned by nationals of the United States. 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 further shows that the asserted stock interest which is the subject of this claim was owned by Jason Products Corporation, organized under the laws of New York, all of the outstanding stock of which was at all times owned by a United States national. The Commission holds that Jason Products Corporation qualifies as a national of the United States within the meaning of Section 502(1)(B) of the Act. On December 23, 1964, Jason Products Corporation merged into claimant, as a result of which all of the assets of Jason Products Corporation, including the claim herein, as well as its liabilities were acquired by claimant.

The record establishes and the Commission finds that claimant's predecessor in interest owned a 63.75% stock interest in Industria de Acero Camaguey, S.A., a Cuban corporation. It further appears from the evidence of record that this Cuban corporation was nationalized by the Government of Cuba on March 27, 1962.

Since this corporation was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States" defined under

Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. In this type of situation, it has been held previously that a stockholder in such a corporation is entitled to file a claim based upon the stock in question which represents an ownership interest in the assets of a nationalized enterprise within the purview of Section 502(3) of the Act. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

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 its claim, claimant has submitted a balance sheet for the Cuban corporation as of October 31, 1960. Apparently, no other financial statements or other evidence respecting the value of the Cuban corporation is available. The balance sheet shows the financial condition of the Cuban corporation as of October 31, 1960 as follows, in pesos, the peso being on a par with the United States dollar:

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ASSETS

Current Assets:

Cash in banks		\$ 12,477.06
Accounts Receivable	\$ 7,920.50	
Employee loans	<u>607.44</u>	8,527.94

Inventories:

Finished products	\$ 6,406.12	
Raw materials	3,352.85	
Coffee grinders	2,489.63	
Chemical products	574.85	
In-transit merchandise	<u>491.28</u>	13,314.73

Prepaid Expenses

2,793.44

Other Assets:

Other Accounts Receivable	\$ 12,535.17	
Deposits	1,958.89	
Hoesch Export G.m.b.H.	9,760.01	
American Smelting & Refining Co.	<u>9,592.22</u>	33,846.29

Fixed Assets (depreciated):

Machinery & equipment	\$ 54,072.59	
Furniture & fixtures	4,420.76	
Tools	928.21	
Machinery being installed	27,678.73	
Construction in process	<u>15,751.20</u>	102,851.49

Organization expenses (amortized)

2,410.10

Total Assets

\$ 176,221.05

LIABILITIES AND CAPITAL

Current Liabilities:

Accounts payable to suppliers	\$ 1,856.08	
Henry R. Jahn & Son, Inc. -		
Draft Account	50,720.79	
Bank expenses payable	2,899.25	
Commissions payable	831.48	
Taxes & expenses payable	3,004.32	
Salaries payable	41.75	
Compensation payable	<u>830.58</u>	\$ 60,184.25

Other Liabilities:

Cia. Importadora	\$ 52,669.12	
Henry R. Jahn & Son, Inc.	<u>38,132.02</u>	90,801.14

Capital: (Authorized \$100,000.00)

Issued	\$ 40,000.00	
Deficit: 1959 - \$8,723.93		
1960 - <u>6,040.41</u>	<u>14,764.34</u>	<u>25,235.66</u>

Total Liabilities & Capital

\$ 176,221.05

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 of October 31, 1960, with certain adjustments based upon the evidence of record, including statements of an officer of claimant.

In a letter to the Commission, dated March 14, 1968, that officer of claimant stated that the account receivable in the amount of \$9,760.01, due from Hoesch Export G.m.b.H., a German supplier, was paid, and that the amount of \$9,592.22 constituted a deposit with American Smelting & Refining Company for the purchase of goods, which were delivered subsequently. Accordingly, the Commission finds that on March 27, 1962, the date of loss, these two items, aggregating \$19,352.23, did not constitute assets of the Cuban corporation.

A related claim filed by the same claimant (Claim No. CU-2872) establishes that the debt due claimant from the Cuban corporation herein aggregated \$77,583.35, whereas, the balance sheet herein shows the debt as \$88,852.81. The Commission, therefore, finds that on March 27, 1962, the date of loss, the debt due claimant was \$77,583.35.

Accordingly, the Commission finds that on the date of loss, the aggregate value of the assets of the Cuban corporation was \$156,868.82, and its liabilities were \$139,715.93. The Commission, therefore, concludes that the net worth or value of the Cuban corporation, on the date of loss was \$17,152.89, and that claimant's loss within the meaning of Title V of the Act was \$10,934.97, representing its 63.75% stock interest.

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 HENRY R. JAHN & SON, INC. 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 Ten Thousand Nine Hundred Thirty-four Dollars and Ninety-seven Cents (\$10,934.97) with interest thereon at 6% per annum from March 27, 1962 to the date of settlement.

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

NOV 7 1969

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

NOTICE TO TREASURY DEPARTMENT: This claimant may be the subject of another certification of loss in Claim No. CU-2872.

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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