

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

IN THE MATTER OF THE CLAIM OF

W. R. GRACE & CO.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-3489

Decision No. CU

3660

PROPOSED DECISION

This claim against the Government of Cuba for \$2,592,152.00 under Title V of the International Claims Settlement Act of 1949, as amended, was presented by W. R. GRACE & CO. based upon the nationalization of its subsidiaries in Cuba, and upon debts owed to a subsidiary of this claimant (subsequently dissolved) at the time of their nationalization.

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.

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.

An officer of claimant corporation has certified that the claimant was organized under the laws of the State of Connecticut and that at all times between March 31, 1960 and presentation of this claim on May 25, 1967, more than 95% 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 evidence of record establishes that claimant corporation wholly owned Grace y Cia Puerto Rico, a Delaware corporation, and Grace International, S.A. (hereinafter referred to as GISA), a Panamanian corporation. The record reflects that GISA wholly owned Envases Industriales y Comerciales, S.A. (hereinafter referred to as ENICO), which was engaged in the manufacture and sale of paper products, and Papelera Camagueyana, S.A. (hereinafter referred to as Papelera), engaged in the distribution and sale of paper products. These companies were organized under the laws of Cuba on October 31, 1956 and August 15, 1956, respectively.

On October 13, 1960, the Government of Cuba published Law 890 in its Official Gazette, listing ENICO as nationalized. By Resolution No. 60-616 published in the Official Gazette on December 2, 1960, the Cuban Government

declared the nationalization of Papelera, pursuant to Law No. 890 of October 13, 1960. The Commission finds that ENICO and Papelera were taken by the Government of Cuba on October 13, 1960 and December 2, 1960, respectively, within the meaning of Title V of the Act.

Subsequently, on December 31, 1962, GISA, the sole shareholder of ENICO and Papelera, was placed in liquidation and dissolution. Pursuant to an Instrument of General Conveyance, Assignment and Transfer dated December 31, 1962, all of the outstanding shares of stock of ENICO and Papelera held by GISA were sold, transferred and assigned to claimant, W. R. GRACE & CO., which assumed all of the liabilities and obligations of GISA and succeeded to its assets including the claims which arose when ENICO and Papelera were nationalized by the Government of Cuba.

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 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.

Claimant has asserted a loss of \$2,315,897.00 resulting from the nationalization of the assets of ENICO and Papelera. Claimant asserts that this amount is based upon the total investment made prior to the date of loss by

these Cuban companies in various properties (before depreciation and contingency reserves) less the outstanding indebtedness at the time of loss.

Claimant has submitted detailed audited Balance Sheets for the two companies dated June 30, 1960, and unaudited updated reconciliations of those Sheets dated October 14, 1960. The latter show the following:

For ENICO:

ASSETS

Cash	\$ 45,000
Notes and accounts receivable	575,000
Inventories	885,000
Land, buildings and equipment	<u>1,785,000</u>
Total	\$3,290,000

LIABILITIES

Loans payable to banks	\$ 500,000
Accounts payable	<u>481,000</u>
Total	\$ 981,000

For Papelera:

ASSETS

Notes and accounts receivable	\$ 141,000
-------------------------------	------------

LIABILITIES

Accounts payable	\$ 134,000
------------------	------------

It has been noted that several of the changes made by claimant in the October reconciliations are in effect admissions against interest but the amount of \$50,695.18 owed by ENICO for "Profits Tax" was excluded. The Commission believes that the October 14, 1960 compilations, with the additional liability of ENICO for taxes owed the Government of Cuba, afford a better and fairer statement and proof of the companies' status and chooses to utilize them in the instant case. Accordingly, the Commission finds that ENICO and Papelera had the respective values of \$2,258,304.82 and \$7,000.00 at the time of nationalization.

The Commission further finds that claimant, as indirect owner through GISA of ENICO and Papelera at the times of loss and until the dissolution of GISA on December 31, 1962, and as direct owner thereafter of the claims for loss through nationalization, suffered a loss on October 13, 1960 in the amount of \$2,258,304.82 and on December 2, 1960 of \$7,000.00, within the meaning of Title V of the Act, as a result of the nationalization of these companies by the Government of Cuba.

Another portion of the claim in the amount of \$276,255.00 is based upon certain debts owing to Grace y Cia Puerto Rico by ENICO and Papelera. The record reflects that Grace y Cia Puerto Rico was incorporated in Delaware on September 2, 1955, that it also was engaged in the manufacture and sale of paper products, and that it was wholly owned by claimant until it was dissolved on December 28, 1966. The record contains a copy of the Instrument of General Conveyance, Assignment and Transfer whereby all of the assets of Grace y Cia Puerto Rico were transferred to W. R. GRACE & CO. on December 30, 1966, including the debts specifically set forth in the amounts of \$129,067.00 owed by Papelera and \$147,187.94 owed by ENICO.

The Commission finds that Grace y Cia Puerto Rico was a national of the United States from October 13, 1960 until its dissolution on December 28, 1966 within the meaning of Section 502(1)(B) of the Act, and that claimant corporation is the legal successor in interest of this company and invested with the claims which arose in its favor.

Among the documentation submitted is an affidavit in which the former treasurer of Grace y Cia Puerto Rico certified that merchandise was sold and delivered by Grace y Cia Puerto Rico to ENICO during August 1959 amounting to \$147,187.94, and to Papelera between September and December 1959 amounting to \$129,067.00. The treasurer also stated that neither claimant nor its predecessor in interest received payment for these goods.

The record contains a copy of the balance sheet dated June 30, 1960 of Grace y Cia Puerto Rico and a separate listing of the accounts receivable due from affiliated companies on that date. The balance sheets of ENICO and Papelera for the period ending June 30, 1960, referred to above, reflect debts owed to affiliated companies. Based upon all the evidence of record, the Commission finds that ENICO and Papelera owed Grace y Cia Puerto Rico \$147,187.94 and \$129,067.00,

respectively, and that these debts were outstanding when ENICO and Papelera were nationalized by the Government of Cuba on October 13, 1960 and December 2, 1960, respectively.

The Commission finds that Grace y Cia Puerto Rico sustained losses in the amounts of \$147,187.94 and \$129,067.00 within the meaning of Title V of the Act as a result of the nationalization of ENICO and Papelera by the Government of Cuba on October 13, 1960 and December 2, 1960, and that claimant, W. R. GRACE & CO., succeeded to the claim for these amounts. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

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.

Accordingly, the Commission concludes that claimant's total loss amounted to \$2,541,559.76, and that it shall be increased by interest thereon at the rate of 6% per annum from October 13, 1960 as to \$2,405,492.76, and from December 2, 1960 as to \$136,067.00, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that W. R. GRACE & CO. 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 Five Hundred Forty-one Thousand Five Hundred Fifty-nine Dollars and Seventy-six Cents (\$2,541,559.76), with interest thereon at 6% per annum from the dates of loss to the date of settlement.

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

MAY 21 1969

*Leonard v. B. Sutton*

Leonard v. B. Sutton, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*Sidney Feidberg*

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).)