

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

IN THE MATTER OF THE CLAIM OF

PARKE, DAVIS & COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0180

Decision No. CU-27

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$406,100.00 was presented by PARKE, DAVIS & COMPANY, based upon the intervention of its wholly owned subsidiary by the Government of Cuba.

Under Section 503 of the International Claims Settlement Act of 1949, as amended (64 Stat. 12; 69 Stat. 562; 72 Stat. 527; 78 Stat. 1110; 79 Stat. 988) the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. That section 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

(a) . . . 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 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) of the Act defines the term "national of the United States" as . . . (B) 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 the claimant corporation has certified that the claimant was organized in the State of Michigan and that at all times between May 16, 1962 and presentation of this claim on July 6, 1965, 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.

Claimant states that 68,000 of its 68,601 stockholders were residents of the United States and assumes that substantially all of them were United States nationals; and that 600 stockholders were residents of foreign countries and assumed to be citizens of those countries.

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 . . .

An officer of PARKE, DAVIS & COMPANY has certified, and the Commission finds that claimant was the sole shareholder of "Laboratorios Parke Davis de Cuba, S.A." which was organized in Cuba on October 12, 1955, under the name of "Compania de Productos P. D. de Cuba, S.A." and which name was changed on December 8, 1955 to the said "Laboratorios Parke Davis de Cuba, S.A."

On November 25, 1959, the Government of Cuba published in its Official Gazette Law No. 647 which authorized the Minister of Labor, in such cases as he deemed it necessary, to order the intervention of enterprises or working centers. Law 843, published in the Official Gazette of July 6, 1960 gave the Labor Ministry unilateral authority to

extend the period of its intervention of any establishment beyond the six months period provided in Law 647. Resolution 2797, of April 13, 1962, of the Ministry of Labor, provided for the Minister of Industries to intervene "Laboratorios Parke Davis de Cuba, S.A." Resolution 95-62, of May 16, 1962 of the Ministry of Industries, intervened the said "Laboratorios Parke Davis de Cuba, S.A.", located at Avenida 20 de Mayo No. 540, Havana, Cuba, appointing an administrator who delivered the Resolution to the firm on that date. Thereafter, the company was nationalized by Resolution of the Central Planning Board, published in the Cuban Official Gazette on May 28, 1962.

Based on the foregoing the Commission finds that claimant suffered a loss within the meaning of Title V of the Act on May 16, 1962 when its wholly-owned subsidiary, "Laboratorios Parke Davis de Cuba, S.A.", was intervened 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.

Claimant has stated its loss in the amount of \$406,100.00 which is the figure it assigns to capital stock on a balance sheet of May, 1962. No other figure is urged by claimant and it has not submitted evidence in support of any other figure.

An examination of the balance sheet reveals that it accurately enumerates the assets, tangible or intangible, and all the liabilities of the enterprise. The liabilities consist of outside creditors' claims, which are contractual in nature, and those of the owner, which are residual in nature. The excess of assets over contractual liabilities represents the owner's equity, or net worth. It may be observed that the same result is reached by adding the capital investment, appropriate surplus reserves (not including reserves for

depreciation, taxes and the like), and any undivided profit, as appropriate, and subtracting any outstanding deficit. The book value of stock is the value per share of capital stock based on proprietorship.

The balance sheet of Laboratorios Parke Davis de Cuba, S.A., at the time of intervention in May, 1962 is summarized below:

| <u>ASSETS</u> | |
|-------------------------------|------------------|
| Current assets | \$ 68,376 |
| Miscellaneous accounts | 3,147 |
| Land | 83,770 |
| Buildings and Improvements | \$283,561 |
| Machinery and equipment | 99,334 |
| Furniture and fixtures | 67,338 |
| | <u>\$450,233</u> |
| Less Accumulated Depreciation | <u>145,892</u> |
| | <u>304,341</u> |
| | \$459,634 |

| <u>LIABILITIES</u> | |
|--------------------------|----------------|
| Current Liabilities | \$103,857 |
| Capital Stock Investment | \$406,100 |
| Earnings | \$ 3,152 |
| Deficit | 53,475 |
| | <u>50,323</u> |
| | <u>355,777</u> |
| | \$459,634 |

The Commission has considered the evidence submitted by claimant in support of its evaluation of loss, and concludes that the book value is the most appropriate basis of valuation. The Commission finds that the net loss of \$50,323.00 must be deducted from \$406,100.00, representing the investment or asserted value of the capital stock, and concludes that at the time of intervention the value of Laboratorios Parke Davis de Cuba, S. A., was \$355,777.00 and further concludes that claimant suffered a loss of \$355,777.00 within the meaning of Title V of the Act.

The Commission has decided that in payment of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be allowed at the rate of 6% per annum from the date of loss to the date of settlement (See the Claim of American Cast Iron Pipe Company, FCSC Claim No. CU-0249).

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from May 16, 1962, the date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that PARKE, DAVIS & COMPANY 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 Three Hundred Fifty-five Thousand Seven Hundred Seventy-seven Dollars (\$355,777.00), with interest thereon at 6% per annum from May 16, 1962 to the date of settlement.

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

JAN 4 1967

Edward D. Re

Edward D. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

LaVern R. Dilweg

LaVern R. Dilweg, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 20 days after service or receipt of notice of this Proposed Decision upon the expiration of 30 days after such service or receipt of notice, the decision will be entered as the Final Decision of the Commission, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) (1964))

CERTIFICATION

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on MAR 9 1967

Janis Mackerson
Clerk of the Commission

CU-0180