

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

IN THE MATTER OF THE CLAIM OF

AIR REDUCTION COMPANY, INCORPORATED

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0244

Decision No. CU
3716

Counsel for claimant:

Shearman & Sterling

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amended amount of \$3,232,672.75; was presented by AIR REDUCTION COMPANY, INCORPORATED, based upon the asserted loss of stock interests in two Cuban corporations and debts due from these two corporations.

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.

Claimant, by an authorized officer, has certified that it was organized under the laws of the State of New York and that more than 50% of its outstanding capital stock was owned by nationals of the United States at all pertinent times. Another officer has certified that as of December 31, 1960, 0.5229% of claimant's outstanding capital stock was owned by nonnationals 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.

On the basis of the evidence of record, including copies of stock certificates and other competent evidence, the Commission finds that claimant owned 100% stock interests in two Cuban corporations, Cuban Air Products Corporation and Cuban Oxygen Company, hereafter referred to as Air and Oxygen, respectively. Each of the two subsidiaries owned various items of real and personal property in Cuba.

The record shows that on October 24, 1960 the Cuban Government published in its Official Gazette Resolution 3, pursuant to Law 851, which listed as nationalized the Cuban Air Products Corporation. It further appears from the record that on October 24, 1960 the Cuban Government intervened the Cuban Oxygen Company.

Since Air and Oxygen were organized under the laws of Cuba neither qualifies 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". 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 first computed its claim on the basis of its investment in the two subsidiaries as follows:

Cuban Air Products Corporation	\$1,372,921.10
Cuban Oxygen Company	93,839.54
Debts:	
Cuban Air Products Corporation	113,548.32
Cuban Oxygen Company	<u>2,933.31</u>
Total	<u>\$1,583,242.27</u>

Subsequently claimant amended its claim by asserting amounts based upon the net worth of the two subsidiaries, as follows:

Cuban Air Products Corporation	\$2,728,594.07
Cuban Oxygen Company	387,597.05
Debts:	
Cuban Air Products Corporation	113,548.32
Cuban Oxygen Company	<u>2,933.31</u>
Total	<u>\$3,232,672.75</u>

The evidence includes copies of balance sheets of the two subsidiaries as of September 30, 1960; copies of balance sheets and profit and loss statements of Air and Oxygen as of October 26, 1960 and October 31, 1960, respectively; and statements from officials of claimant concerning this claim.

Upon consideration of the entire record, the Commission finds that the valuations most appropriate to the properties and equitable to the claimant are those shown in the said balance sheets as of October 26, 1960 and October 31, 1960 for Air and Oxygen, respectively, as follows (the Cuban peso being on a par with the United States dollar):

CUBAN AIR PRODUCTS CORPORATION

ASSETS

Current Assets

Cash

Cash in banks	\$ 687,880.26	
Petty Cash	<u>21,517.91</u>	\$ 709,398.17

Notes and Accounts Receivable

Customers	1,052,466.78	
Miscellaneous	<u>147,065.12</u>	
	1,199,531.90	
Less: Allowance for doubtful accounts	<u>143,025.00</u>	1,056,506.90
Miscellaneous claims		2,925.92

Inventories

423,161.30

Prepaid Taxes, Insurance and Other Expenses

30,278.27

Total Current Assets

\$2,222,270.56

Property, Plant & Equipment

Land		\$ 83,929.54
Buildings & Improvements	\$ 203,440.08	
Less Depreciation	<u>72,486.64</u>	130,953.44
Plant Equipment	706,648.88	
Less Depreciation	<u>388,401.25</u>	318,247.63
Incomplete additions and Improvements		43,721.44
Autos, Trucks & Equip.	61,419.14	
Less Depreciation	<u>27,481.14</u>	33,938.00
Containers and other distribution equipment	1,228,732.97	
Less Depreciation	<u>1,037,519.11</u>	191,213.86
Office Equipment	97,927.41	
Less Depreciation	<u>54,469.50</u>	<u>43,457.91</u>

Total Property, Plant & Equipment

845,461.82

Investments & Miscellaneous Receivables

Non-marketable investments		1.00
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Intercompany Accounts Receivable

Cuban Oxygen Company		<u>67,350.89</u>
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Total

\$3,135,084.27

LIABILITIES

Current Liabilities

Accounts Payable		\$ 110,477.02	
Accruals			
Local taxes, insurance, etc.		58,110.01	
Accrued Federal taxes on income		<u>85,837.78</u>	
<u>Total Current Liabilities</u>			\$ 254,424.81

Reserves

Reserve for administration expenses	\$ 11,028.27		
Reserve for salesmen's expenses	2,790.45		
Reserve for contingencies	<u>7,500.00</u>	21,318.72	
Deposits to insure cylinder returns	49,808.92		
Reserve for cylinder deposits	<u>285.70</u>	<u>50,094.62</u>	
<u>Total Reserves</u>			71,413.34

Intercompany Accounts Payable

Air Reduction Company, Inc.		\$ 27,674.57	
Airco Company International		45,709.54	
Airco Company International (Special Account)		<u>7,267.94</u>	
<u>Total Intercompany Accounts Payable</u>			80,652.05

Capital and Surplus

Capital stock-Common \$40.00 each par value			
Authorized 50,000 shares \$2,000,000.00			
Issued 48,150 shares		\$1,926,000.00	

Earned Surplus

Balance, December 31, 1959	\$380,449.15		
Profit and Loss through			
October 26, 1960	<u>113,780.94</u>	494,230.09	
Revaluation of Property and Investment		<u>308,363.98</u>	
<u>Total Capital and Surplus</u>			<u>2,728,594.07</u>

Total \$3,135,084.27

CUBAN OXYGEN COMPANY

ASSETS

Current Assets

Cash

Cash in banks	\$125,725.18	
Petty Cash	<u>175.00</u>	\$125,900.18

Notes and Accounts Receivable

Customers	283,238.67	
Miscellaneous	<u>(5,163.11)</u>	
	278,075.56	
Less: Allowance for doubtful accounts	<u>50,941.29</u>	227,134.27

Inventories

	80,728.21	
Less: Allowance for inventory valuation & adjustment	<u>6,765.40</u>	73,962.81

Prepaid Taxes, Insurance and Other Expenses

3,357.61

Total Current Assets

\$430,354.87

Property, Plant & Equipment

Land		\$ 13,431.26
Buildings & Improvements	\$ 55,427.72	
Less Depreciation	<u>13,797.30</u>	41,628.42
Plant Equipment	1,201.26	
Less Depreciation	<u>456.31</u>	744.95
Incomplete additions and improvements		2,346.91
Automobiles, trucks and equipment	16,065.45	
Less Depreciation	<u>8,436.77</u>	7,628.68
Customers and other distribution equipment	103,381.60	
Less Depreciation	<u>82,399.62</u>	20,981.98
Office Equipment	20,034.76	
Less Depreciation	<u>14,378.27</u>	5,656.48
Rental Equipment	48,800.81	
Less Depreciation	<u>25,329.36</u>	<u>23,471.45</u>

Total Property, Plant & Equipment

115,890.13

Investments & Miscellaneous Receivables

Non-Marketable Investments		68.00
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Deferred Charges

1,856.75

Total

\$548,169.75

LIABILITIES

Current Liabilities

Accounts Payable	\$ 13,832.12	
Accruals		
Local taxes, insurance and various expenses	13,293.91	
Accrued Profit tax on income	<u>8,100.77</u>	
<u>Total Current Liabilities</u>		\$ 35,226.80

Reserves

Reserve for contingencies	\$ 4,026.88	
Deposits to insure cylinder returns	<u>10,505.05</u>	
<u>Total Reserves</u>		14,531.93

Intercompany Accounts Payable

Air Reduction Company	\$ 30,991.22	
Airco Company International	1,960.70	
Ohio Chemical & Surgical	9,266.50	
West Indies Chemical Co.	67.00	
Cuban Air Products Corporation	<u>68,528.55</u>	110,813.97

Capital and Surplus

Capital Stock-Common \$110.00 par value each		
Authorized 3,000 shares \$330,000.		
Issued 2,174 shares	\$239,140.00	

Earned Surplus

Balance, December 31, 1959	\$131,294.57	
Profit and Loss through October 1960	<u>18,924.13</u>	
	150,218.70	
Surplus at acquisition of West Indies Chemical April 1951	<u>1,761.65</u>	<u>148,457.05</u>
<u>Total Capital and Surplus</u>		<u>387,597.05</u>
Total		<u>\$548,169.75</u>

The record indicates the need for certain adjustments of some of the figures appearing in the foregoing balance sheets. The balance sheet for Air shows a receivable due from Oxygen in the amount of \$67,350.89, whereas the corresponding debt in the balance sheet of Oxygen appears as \$68,528.55. An official of claimant has stated in a letter, dated April 14, 1969, that any

difference between the two balance sheets represent transactions in transit which could not be given effect under the then prevailing conditions in Cuba. Since the balance sheet for Oxygen bears a later date than the one for Air, the Commission finds that the receivable due Air from Oxygen was \$68,528.55 on the date of loss.

Claimant's letter of April 14, 1969 also advises that all of the concerns listed in the two balance sheets as either intercompany receivables or payables are divisions of claimant corporation, with the exception of Air, and the West Indies Chemical Company, a wholly-owned subsidiary of Oxygen since 1951. It further appears from said letter that claimant's books and records disclose that on the date of loss Air owed claimant a debt of \$113,548.32, and Oxygen owed claimant a debt of \$2,933.51. Claimant explained that any differences between its records and the latest balance sheets for Air and Oxygen are the result of intercompany transactions that were not communicated to the subsidiaries in time to be given effect in their records. Accordingly, the Commission finds that on the date of loss Air's intercompany accounts payable were \$113,548.32, and that Oxygen's intercompany accounts payable were: \$2,933.51 to claimant, \$67.00 to West Indies Chemical Company, and \$68,528.55 to Air.

With respect to the reserves appearing in the two balance sheets, claimant stated that the reserves for deposits to insure cylinder returns, for administration expenses, and for salesmen's expenses were liabilities, but that all of the other reserves were surplus reserves.

The balance sheets for the two subsidiaries therefore appear as follows after all of the foregoing adjustments:

CUBAN AIR PRODUCTS CORPORATION

Assets

Current Assets	\$2,222,270.56
Plant, Property & Equipment	845,461.82
Investments	1.00
Cuban Oxygen Company (Receivable)	<u>68,528.55</u>
Total Assets	<u>\$3,136,261.93</u>

Liabilities and Capital

Current Liabilities	\$318,338.15
Air Reduction Co., Inc. (Payable)	<u>113,548.32</u>
Total Liabilities	431,886.47
Capital and Surplus	<u>2,704,375.46</u>
Total Liabilities and Capital	<u>\$3,136,261.93</u>

CUBAN OXYGEN COMPANY

Assets

Current Assets	\$ 430,354.87
Plant, Property & Equipment	115,890.13
Investments	68.00
Deferred Charges	<u>1,856.75</u>
Total Assets	<u>\$ 548,169.75</u>

Liabilities and Capital

Current Liabilities	\$35,226.80
Deposits Reserve	<u>10,505.05</u>
Air Reduction Co., Inc. (Payable)	2,933.51
West Indies Chemical Co. (Payable)	67.00
Cuban Air Products Corp. (Payable)	<u>68,528.55</u>
Total Liabilities	\$ 117,260.91
Capital and Surplus	<u>430,908.84</u>
Total Liabilities and Capital	<u>\$ 548,169.75</u>

The Commission, therefore, finds that on the date of loss the net worth or the excess of the assets over the liabilities of Air and Oxygen were \$2,704,375.46 and \$430,908.84, respectively.

The Commission has held that debts of nationalized Cuban corporations are within the purview of Title V of the Act. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

As indicated above, the record shows that Air and Oxygen were indebted to claimant on the date of loss in the amounts of \$113,548.32 and \$2,933.51, respectively, aggregating \$116,481.63.

Accordingly, the Commission concludes that claimant sustained the following losses within the meaning of Title V of the Act:

Stock Interest (Air)	\$2,704,375.46
Stock Interest (Oxygen)	430,908.84
Debt due from Air	113,548.32
Debt due from Oxygen	<u>2,933.51</u>
Total	<u>\$3,251,766.13</u>

It will be noted that the total amount of loss found herein is in excess of the amount asserted by claimant. In determining the amount of loss sustained, however, the Commission is not bound by any lesser or greater amount which may be asserted by claimant as the extent thereof.

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 this case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that AIR REDUCTION COMPANY, INCORPORATED 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 Million Two Hundred Fifty-one Thousand Seven Hundred Sixty-six Dollars and Thirteen Cents (\$3,251,766.13) with interest thereon at 6% per annum from October 24, 1960 to the date of settlement.

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

JUN 26 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities for the loss here certified.

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].)