

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

IN THE MATTER OF THE CLAIM OF

S. B. PENICK AND COMPANY

Claim No. CU -0436

Decision No. CU- 738

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, was presented by S. B. PENICK AND COMPANY in the amount of \$13,401.35, based upon the asserted loss of payment for merchandise shipped to Cuba.

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) 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 Delaware and that all times between December 22, 1931, and presentation of this claim on September 16, 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 99% of its common stockholders are nationals of the United States.

The record contains copies of claimant's invoices to the following consignees, all of Cuba, reflecting sales to those consignees as stated (including freight, shipping, and other attendant fees). The record also contains copies of correspondence from collecting banks in Cuba in which it is stated that drafts covering many of the above invoices (as indicated) were paid in local currency to those banks, which were awaiting dollar reimbursement releases from the Cuban Exchange Authorities.

<u>Invoice Date</u>	<u>Consignee</u>	<u>Amount</u>	<u>Date of Payment</u>
July 30, 1960	Brandiere y Cia.	\$ 30.23	August 24, 1960
May 24, 1960	Drogueria de Johnson	526.53	July 12, 1960
January 11, 1960	Drogueria Reyes	1,246.52	April 20, 1960
August 1, 1960	Drogueria Sarra	436.36	None
August 1, 1960	Drogueria Sarra	573.33	None
November 3, 1959	Herederos Del Dr. Sergio Herrera	211.67	March 22, 1960
		211.68	March 4, 1960

<u>Invoice Date</u>	<u>Consignee</u>	<u>Amount</u>	<u>Date of Payment</u>
April 8, 1960	Herederos Del Dr. Sergio Herrera	\$ 924.50	April 30, 1960
March 21, 1960	Laboratorios Farmacologicos Apotek, S.A.	707.25	April 6, 1960
May 27, 1960	Laboratorios Giol, S. A.	510.47	August 31, 1960
August 1, 1960	Laboratorios Lemar, S. A.	30.45	None
October 7, 1959	Laboratorios De Immuno Seraterapia Lissa, S. A. ((\$702.73 less \$527.06 paid)	175.67	February 10, 1960
December 8, 1959	Laboratorios Medix, S. A.	412,55	July 27, 1960...
August 18, 1960	Laboratorios "Om" Sociedad General De Farmacia	297.76	September 8, 1960
December 21, 1959	Laboratorios Vieta Plasencia, S. A.	591.64	May 5, 1960
September 17, 1959	Laboratorios Vieta Plasencia, S. A.	546,59	November 19, 1959
September 30, 1960	J. Pauly Sus Hijos Cia, S.A. (net amount due claimant)	1,074.14	October 28, 1960
February 4, 1960	Representaciones Farmaceuticas Fonso, S. A.	460.28	June 28, 1960
July 21, 1959	Suministros Quimicos	145.12	December 14, 1959
September 2, 1960	Suministros Quimicos	2,914.81	April 11, 1961
July 28, 1958	Pancar, S. A.	307.44 307.44	November 27, 1959 None
January 10, 1959	Pancar, S. A.	473.85	None
December 16, 1958	Pancar, S. A.	273.99	None

Additionally, the record supports claimant's item of \$11.08 owing from Pancar, S.A. as incurred expenses when drafts drawn on that consignee were dishonored as of March 10, 1959.

Claimant states that it has not received the funds.

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 into 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:

<u>On</u>	<u>As To</u>
September 29, 1959	\$1,066.36
November 20, 1959	546.59
November 28, 1959	307.44
December 15, 1959	145.12
February 11, 1960	175.67
March 5, 1960	211.68
March 23, 1960	211.67
April 7, 1960	707.25
April 21, 1960	1,246.52
May 1, 1960	924.50
May 6, 1960	591.64
June 29, 1960	460.28

<u>On</u>	<u>As To</u>
July 13, 1960	\$ 526.53
July 28, 1950	412.55
August 8, 1960	1,009.69
August 11, 1960	30.45
August 25, 1960	30.23
September 1, 1960	510.47
September 9, 1960	297.76
October 29, 1960	1,074.14
April 12, 1961	2,914.81

these dates being the date of publication of Law 568 (for the first item), the days following acknowledgment of payment of drafts in local currency to Cuban collecting banks, or the dates by which invoices in those amounts should have been paid.

The Commission has decided that in the 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 the Claim of Lisle Corporation, FCSC Claim No. CU-0644).

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 the dates on which the losses occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that S. B. PENICK AND 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 Thirteen Thousand Four Hundred One Dollars and Thirty-Five Cents (\$13,401.35) 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 Proposed
Decision of the Commission

30 NOV 1967

CERTIFICATION

THIS IS A TRUE AND CORRECT COPY OF THE DECISION WHICH WAS ENTERED AS THE PROPOSED DECISION OF THE COMMISSION ON NOV 19 1967

[Handwritten signature]
CLERK OF THE COMMISSION

Edward D. Re
Edward D. Re, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

LaVern R. Dilweg
LaVern R. Dilweg, 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).)