

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

IN THE MATTER OF THE CLAIM OF

JOHNSON & JOHNSON

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0462

Decision No. CU

3372

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 JOHNSON & JOHNSON, in the amount of \$36,427.48, and is 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)(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 discloses that Chicopee Manufacturing Corporation, organized under the laws of Massachusetts, was a wholly-owned subsidiary of JOHNSON & JOHNSON, claimant, from January 1, 1955 to December 31, 1962. As of the latter date, the subsidiary was dissolved and its assets and business were transferred to claimant.

JOHNSON & JOHNSON was organized under the laws of New Jersey. Officers of claimant have stated that at all pertinent times more than 50% of its outstanding capital stock has been owned by nationals of the United States, and that as of February 21, 1967 at least 80% of its outstanding capital stock was held by nationals of the United States. The Commission holds that both claimant and its former subsidiary qualify as nationals of the United States within the meaning of Section 502(1)(B) of the Act.

The record includes invoices as well as statements showing sales of goods by the claimant's subsidiary to Cuban enterprises and copies of correspondence from banking institutions indicating the receipt of payment therefor, and the banks' inability to effect transfer of such funds to the subsidiary, as follows:

<u>Consignee</u>	<u>Due Date</u>	<u>Date of Payment or Acknowledgment</u>	<u>Amount</u>
Almacenes Egido City (Klepach y Hono)	Sept. 8, 1959		\$ 1,068.75
	Sept. 4, 1959		1,691.80
		Dec. 17, 1959	3,633.75
		June 15, 1960	106.50
Angel Martinez y Cia.		Sept. 14, 1960	1,557.78
Bosch Corrio y Cia.		Feb. 17, 1960	1,509.97
		April 8, 1960	1,506.85
Cosio Puente	Sept. 7, 1958		450.00
Distribuidora Govil	Oct. 29, 1959		1,019.09
A. Garcia y Canella		March 10, 1960	2,415.37
Garcia y Hernandez	June 4, 1959		634.71
Lopez y Cia.		April 29, 1960	3,339.18
	April 29, 1960		18.02
Martinez y Cia.		Sept. 12, 1960	1,434.32
		Aug. 23, 1960	518.36
Meano E Hijos	July 8, 1959		3,950.11
	Oct. 30, 1959		940.14
Oscar del Portal y Gonzalez	Nov. 13, 1959		659.92
Raimundo Alonso		Oct. 3, 1960	2,728.20
		Oct. 3, 1960	3,829.89
Suarez y Sanchez	Dec. 29, 1960		214.29
Villar Pica y Cia.		Dec. 17, 1959	<u>3,200.48</u>
			\$36,427.48

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 in 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 Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

Accordingly, the Commission finds that the drafts paid to banks and the unpaid accounts were lost as a result of intervention by the Government of Cuba, and that in the absence of evidence to the contrary, such losses occurred as follows:

With respect to all of the paid drafts except the last item, the dates of loss were the dates of the bank letters since no dates of receipt of the funds by the banks were indicated, and that in the case of the last item thereof, in the amount of \$3,200.48, the date of loss was December 18, 1959, one day after receipt of the funds by the bank.

With respect to the unpaid accounts, the date of loss for invoices on which payment was due prior to September 29, 1959, was September 29, 1959, the effective date of Law 568. In the instant case the aggregate amount of \$8,814.46 was lost as of September 29, 1959. The dates of loss of the other unpaid accounts were the dates when payments were due according to the terms of the sales, as follows:

October 30, 1959	as to	\$940.14
November 13, 1959	as to	659.92
December 29, 1960	as to	214.29
April 29, 1960	as to	18.02

The last item, \$18.02, represents freight charges in connection with paid draft No. 490E for which the consignee paid the sum of \$3,339.18, whereas he should have paid the sum of \$3,357.20.

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 respective dates 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:

<u>FROM</u>	<u>ON</u>
September 29, 1959	\$ 8,814.46
October 30, 1959	940.14
November 13, 1959	659.92
December 17, 1959	3,633.75
December 18, 1959	3,200.48
February 17, 1960	1,509.97
March 10, 1960	2,415.37
April 8, 1960	1,506.85
April 29, 1960	3,357.20
June 15, 1960	106.50
August 23, 1960	518.36
September 12, 1960	1,434.32
September 14, 1960	1,557.78
October 3, 1960	6,558.09
December 29, 1960	<u>214.29</u>
	\$36,427.48

CERTIFICATION OF LOSS

The Commission certifies that JOHNSON & JOHNSON 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 Thirty-six Thousand Four Hundred Twenty-seven Dollars and Forty-eight Cents (\$36,427.48) 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

DEC 11 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, 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).)