

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

IN THE MATTER OF THE CLAIM OF

E. R. SQUIBB & SONS INTER-
AMERICAN CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2469

Decision No. CU

3672

Counsel for claimant:

Ruth E. White
Attorney at Law

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$1,608,029.43 plus interest, was presented by E. R. SQUIBB & SONS INTER-AMERICAN CORPORATION based upon the nationalization of its assets by the Government of 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 shows that claimant was organized under the laws of Delaware, and that at all pertinent times all of the outstanding capital stock of claimant was owned by Olin Mathieson Chemical Corporation, organized under the laws of Virginia. An authorized officer of Olin Mathieson Chemical Corporation has certified that as of April 25, 1967, approximately 99% of the outstanding capital stock of Olin Mathieson Chemical Corporation was owned by nationals 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.

The evidence of record establishes that claimant owned a branch office in Havana, Cuba, where it maintained certain personal property which is the subject of this claim. It further appears from the record that by virtue of Resolution No. 20037 of September 7, 1960, the Cuban Ministry of Labor intervened claimant's branch office pursuant to Law 647 of November 24, 1959. The Commission, therefore, finds that claimant's assets in Cuba were intervened on September 7, 1960, as a result of which claimant sustained a loss within the meaning of Title V of the Act.

Claimant has computed its claim as follows:

Cash in Banks and on Hand	\$ 362,511.82
Accounts Receivable-Trade	240,692.53
Accounts Receivable-Affiliates	291.78
Other Accounts Receivable	14,412.46
Inventories	273,711.70
Investments and Advances	6,825.00
Property, Plant and Equipment	<u>609,584.14</u>
Total Assets	<u>\$1,508,029.43</u>

In addition, claimant has asserted a loss of interest from the date of loss, and costs and expenses, including attorney's fees, in the amount of \$100,000.00. The record indicates that this portion of the claim is based upon expenditures involving an appeal from the order intervening claimant's branch, which appeal was rejected by the highest court of Cuba.

Upon careful consideration of this portion of the claim, the Commission holds that it does not involve a loss of property as a result of actions of the Government of Cuba within the meaning of Title V of the Act. Accordingly, this portion of the claim is denied.

The record contains a copy of a balance sheet from claimant's branch office in Havana, Cuba, as of July 25, 1960, bank statements, as well as other statements from officials of claimant concerning the assets claimed herein.

The bank statements disclose that as of September 9, 1960, claimant's branch owned a bank account with the Royal Bank of Canada, Havana, Cuba Branch, with a credit balance of \$344,096.15 (the Cuban peso being on a par with the United States dollar); and other bank accounts with the First National City Bank of New York, Havana, Cuba Branch, in the amounts of \$89,630.42 and \$3,255.14, respectively. The aggregate amount of all bank accounts in favor of claimant's Cuban branch was, therefore, \$436,981.71. Claimant has stated that its claim was based upon its July 25, 1960 balance sheet which did not reflect normal operating transactions between that date and the date of loss, except for the sum of \$52,250.41 which was received at the Home Office after July 25, 1960. Accordingly, the Commission finds that on September 7, 1960, the date of loss, claimant's branch in Cuba owned bank accounts with an aggregate credit of \$384,731.30.

Claimant has stated that all of the branch's accounts receivable, as shown in the balance sheet of July 25, 1960, were due from Cubans except for the sums of \$22.75 and \$29.16, due from American concerns, and the sum of \$291.78 due from a former affiliate, also an American concern. Therefore, the aggregate amount due from American concerns was \$343.69.

Section 505(a) of the Act provides:

A claim under section 503(a) of this title based upon an ownership interest in any corporation, association, or other entity which is a national of the United States shall not be considered. A claim under section 503(a) of this title based upon a debt or other obligation owing by any corporation, association, or other entity organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico shall be considered, only when such debt or other obligation is a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Accordingly, the portion of the claim for \$343.69 can be considered only if these claimed debts were charges upon property nationalized, expropriated, intervened or taken by the Government of Cuba.

In the absence of evidence establishing that these debts were charges upon property taken by Cuba, the Commission is without authority to consider this portion of the claim, and it is hereby denied. (See Claim of Anaconda American Brass Company, Claim No. CU-0112, 1967 FCSC Ann. Rep. 60.)

The Commission, therefore, finds that on September 7, 1960, the date of loss, the aggregate amount of debts owing to claimant's branch was \$255,053.08.

The Commission further finds that claimant's branch owned other assets on the date of loss; namely, "Investments and Advances" in the

amount of \$6,825.00, representing secured and unsecured debts from Cubans in the amount of \$3,625.00 and Cuban securities in the amount of \$3,200.00; "Property, Plant and Equipment" in the amount of \$609,584.14; and "Inventories" in the amount of \$273,711.70.

Claimant has amended its claim to include "Prepaid Expenses and Deferred Charges" in the amount of \$31,425.76, as shown in the branch's balance sheet of July 25, 1960. On the basis of the evidence of record, the Commission finds that claimant's branch owned this asset, having a value of \$31,425.76 on the date of loss.

The Commission, therefore, finds that the aggregate value of the assets owned by claimant's branch in Cuba was \$1,561,330.98.

It is noted that claimant is an American corporation and the claim is for the nationalization of its assets in Cuba and not for the taking of a Cuban corporation. The claimant is therefore entitled to recover in full for the seizure of its assets less the value of setoffs such as taxes due to the Cuban Government or valid liens against its Cuban assets.

Claimant has stated that its Cuban branch was indebted to Cuba for taxes in the aggregate amount of \$38,001.97. The Commission, therefore, finds that claimant sustained losses within the meaning of Title V of the Act in the amount of \$1,523,329.01.

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.

CERTIFICATION OF LOSS

The Commission certifies that E. R. SQUIBB & SONS INTER-AMERICAN CORPORATION sustained 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 One Million Five Hundred Twenty-three Thousand Three Hundred Twenty-nine Dollars and One Cent (\$1,523,329.01) with interest thereon at 6% per annum from September 7, 1960 to the date of settlement.

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

28 MAY 1969

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].)