

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

IN THE MATTER OF THE CLAIM OF

SCHERING CORPORATION
and
WHITE LABORATORIES, INC.

Claim No. CU -2621

Decision No. CU 4763

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

Reid & Priest
By Emilio Arango, Esq.

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 \$830,000.00 plus interest, was presented by SCHERING CORPORATION based upon a stock interest in a Cuban enterprise. WHITE LABORATORIES, INC. its wholly-owned subsidiary organized in New Jersey which had a stock interest in the same enterprise is joined as co-claimant.

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.

An officer of SCHERING CORPORATION has certified that it was organized under the laws of the State of New Jersey, that in March, 1960 all of the stockholders were United States nationals as required by the Certificate of Incorporation at that time, and that on March 10, 1967, after the Certificate was amended, 16,696 shares of the 7,944,732 shares outstanding were owned by non-residents of the United States and presumed not to be United States nationals. Inasmuch as SCHERING CORPORATION owns all of the outstanding capital stock of WHITE LABORATORIES, INC., the Commission holds that the two claimant corporations are nationals of the United States within the meaning of Section 502(1)(B) of the Act.

Claim is asserted herein for the loss of \$830,000.00 by claimants for the intervention of Schering Pharmaceutical Corporation of Cuba, S.A. The record shows and the Commission finds that claimants are the owners of the outstanding capital stock of Schering Corporation (Panama), S.A. which is the sole owner of the Cuban corporation Schering Pharmaceutical Corporation of Cuba, S.A. which was intervened by the Government of Cuba on August 9, 1960. Of the 4,990 outstanding shares of capital stock of Schering Corporation (Panama), S.A., SCHERING CORPORATION owns 4,989 shares and WHITE LABORATORIES, INC. owns 1. Since the Cuban and Panamanian firms were not

organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, they do not qualify as corporate "nationals of the United States" within the meaning of Section 502(1)(B) of the Act. In this type of situation, it has been held that an American stockholder is entitled to file a claim for his indirect ownership interest. (See Claim of Avon Products, Inc., Claim No. CU-0772, Amended Proposed Decision, 1967 FCSC Ann. Rep. 35.)

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 the "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

In support of the claimed value, claimants have submitted copies of a purchase agreement for land, an agreement for the construction of a factory, financial statements for the years 1955-1959, a balance sheet as of June 24, 1960 with attached schedules, and an estimated balance sheet for July 25, 1960 containing adjustments to reflect the changes resulting in the business for the period after June 24, 1960. However, the amount of loss claimed is the asserted value of the assets of the Cuban enterprise. The Commission has consistently held that losses through investments in Cuban companies are to be determined on the basis of their net worth, not merely the asset value.

The estimated balance sheet of July 25, 1960 as clarified by claimant's cost accountant in his letter of September 30, 1960, reflects the following:

ASSETS

Cash			\$ 40,000.00
Accounts Receivable			80,000.00
Inventories			323,000.00
Deposits in Guarantee			130,000.00
Prepaid Charges			30,000.00
Fixed Assets			
Land	\$152,000.00		
Building	26,000.00		
Machinery, Equipment	<u>55,000.00</u>	\$233,000.00	
Reserve for Depreciation		<u>8,000.00</u>	
Net Fixed Assets			<u>225,000.00</u>
	Total Assets		\$828,000.00

LIABILITIES AND CAPITAL

Bank Loans			460,000.00
Accounts Payable Trade			29,000.00
Inter-Co. Merchandise Payable			152,000.00
Amount Paid by Panama for the account of Bank Loan			18,000.00
Accrued Liabilities			13,000.00
Reserve			4,000.00
Capital			350,000.00
Accumulated Deficit			<u>(198,000.00)</u>
	Total Liabilities and Capital		\$828,000.00

Deducting the liabilities of \$676,000.00 from the assets as shown in the above balance sheet indicates a net worth or book value of \$152,000.00. However, it is noted among the other financial statements that the Cuban firm had an investment of \$800.00 for 8 shares of Ferrocarriles Occidentales de Cuba, S.A. which had been carried on the company's records at \$1.00. The Commission has held in the Claim of Ruth Anna Haskew, Claim No. CU-0849, that the shares of that railroad were valued at \$100.00 each, the original cost of the shares. Accordingly, the investment of \$800.00 is added to the amount of \$152,000.00, making the total net worth \$152,800.00.

The record also establishes an amount of \$18,000.00 due the Schering Corporation (Panama), S.A. for payment of a bank loan as set forth on the balance sheet. This amount representing a debt owed by a nationalized

Cuban enterprise will be added to the net worth of the Cuban firm in determining the losses sustained by Schering Corporation (Panama), S.A. in the taking of its Cuban subsidiary.

The Commission finds that the book value as calculated is the most appropriate measure of the value of the Cuban corporation at the time of loss and that the total loss sustained by the stockholders of the Panamanian parent corporation amounted to \$170,800.00. With 4,990 shares of stock outstanding, the amount of loss per share amounted to \$34.2284. The Commission concludes that by reason of their ownership interest, claimant WHITE LABORATORIES, INC. sustained a loss in the amount of \$34.23 and claimant SCHERING CORPORATION sustained a loss in the amount of \$170,765.77 on August 9, 1960 when the Cuban corporation was intervened by the Government of Cuba, within the meaning of Title V of the Act.

Claimant SCHERING CORPORATION suffered an additional loss because of the intervention of the Cuban firm as reflected in the balance sheet and other financial records for \$152,000.00 for inter-company merchandise payable. The records indicate the names of the creditors as of June, 1960, consisting of SCHERING CORPORATION and two of its wholly-owned subsidiaries which do not qualify as United States nationals, but the amount due each on August 9, 1960 is not established. However, inasmuch as the creditors are SCHERING CORPORATION and subsidiaries thereof, the Commission finds that it sustained a further loss in the amount of \$152,000.00 for debts of an intervened company on August 9, 1960, within the meaning of Title V of the Act, making a total loss for the claimant SCHERING CORPORATION of \$322,765.77.

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 SCHERING CORPORATION suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V

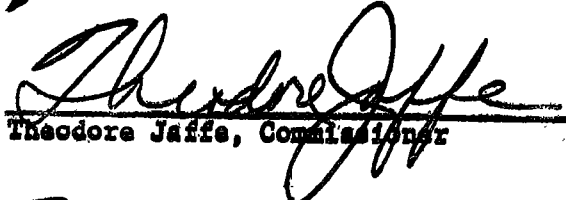
of the International Claims Settlement Act of 1949, as amended, in the amount of Three Hundred Twenty-two Thousand Seven Hundred Sixty-five Dollars and Seventy-seven Cents (\$322,765.77) with interest thereon at 6% per annum from August 9, 1960 to the date of settlement; and

The Commission certifies that WHITE LABORATORIES, INC. 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-four Dollars and Twenty-three Cents (\$34.23) with interest thereon at 6% per annum from August 9, 1960 to the date of settlement.

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

APR 22 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner


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).)