

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

IN THE MATTER OF THE CLAIM OF

STERLING DRUG, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2646

Decision No. CU

3715

Counsel for claimant:

Andrew P. Power, 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 \$1,218,409.91, was presented by STERLING DRUG, INC., based upon the asserted loss of certain real and personal property in 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 evidence establishes that claimant was organized under the laws of Delaware. An authorized officer of claimant has certified that at all pertinent times more than 50% of claimant's outstanding capital stock was owned by nationals of the United States, and that during the period June 21, 1961 to September 6, 1967, over 99% of claimant's outstanding capital stock 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 record establishes that Sterling Products International, Incorporated, a wholly-owned subsidiary of claimant, was organized under the laws of New Jersey. The Commission holds that this subsidiary is a national of the United States within the meaning of Section 502(1)(B) of the Act. This subsidiary owned a branch in Cuba where it manufactured and distributed pharmaceutical products. It further appears from the record that this subsidiary was dissolved on August 27, 1963, and all its assets and liabilities were transferred to claimant. The evidence includes blueprints for the Havana branch plant; a photograph of the property; a copy of a statement of net assets for the Cuban branch as of February 28, 1961; copies of certificates evidencing the subsidiary's ownership of 5,000 shares of stock in Laboratorios Bayer, S.A., a Cuban corporation; a copy of a balance sheet for the Cuban branch as of November 1960; a copy of a document registering with

Cuban authorities a copy of the branch's balance sheet as of October 31, 1960, and a copy of its profit and loss statement for the year ending October 31, 1960; as well as statements of officials of claimant concerning this claim.

On the basis of all the evidence of record, the Commission finds that the subsidiary owned certain real and personal property in Cuba; namely, a building and land at 810 Maloja Street, Havana, where it maintained certain personal property used in the plant and certain other items of personal property, indicated hereafter.

On June 21, 1961, the Cuban Government published in its Official Gazette a notice listing Sterling Products International, Incorporated as nationalized pursuant to Law 890. The Commission finds that claimant's subsidiary sustained a loss of its assets at its Cuban branch on June 21, 1961, within the meaning of Title V of the Act, and that claimant succeeded to the rights of its subsidiary when the subsidiary was dissolved on August 27, 1963.

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 has computed its claim on the basis of its statement of net assets in Cuba as of February 28, 1961, as follows:

<u>Assets</u>			
Cash in Bank and on Hand			\$ 642,627.71
Accounts Receivable - Customers		\$263,542.18	
Less: Reserve for Bad Debts	\$ 12,677.11		
" " " Cash Discounts	<u>8,745.36</u>	<u>21,422.47</u>	242,119.71
Miscellaneous Accounts Receivable			11,113.43
Inventories:			
Raw Materials		50,484.19	
Packing Materials		88,701.34	
Process Stock		8,240.41	
Finished Stock		<u>110,527.56</u>	257,953.50
Fixed Assets, at cost less depreciation:			
Land	\$ 29,459.30		
Building	67,545.68		
Building Equipment	<u>29,726.70</u>		
	126,731.68		
Less: Accumulated Deprec. Bldg. & Equip.	<u>81,005.99</u>	45,725.69	
Machinery and Equipment	135,404.82		
Miscellaneous Construction	1,805.05		
Furniture & Fixtures	50,200.70		
Office Machines	76,256.34		
Automobiles and Trucks	<u>16,931.50</u>		
	280,598.41		
Less: Accumulated Depreciation	<u>239,092.62</u>	<u>41,505.79</u>	
Fixed Assets (Net)			87,231.48
Investment in Laboratorios Bayer, S.A. (Cuba)			5,000.00
Prepaid and Deferred Expenses:			
Advertising Materials		\$ 16,431.02	
Unexpired Insurance		10,025.66	
Advances for Travel Expense		7,105.00	
Deferred Factory Expense		10,902.00	
Prepaid Payroll		6,174.31	
Deferred Vacation Expense		18,906.02	
Other Prepaid & Deferred Expenses		<u>4,435.69</u>	73,979.70
Other Assets:			
Deposits		4,670.14	
Prepaid Duties		<u>1,779.18</u>	6,449.32
Total Assets			<u>\$1,326,474.85</u>

Liabilities

Accounts Payable	\$ 68,066.43	
Accrued Expense	<u>39,998.51</u>	108,064.94
Total Net Assets		<u>\$1,218,409.91</u>

Upon consideration of the entire record, the Commission finds that the valuation most appropriate to the property and equitable to the claimant is that shown in the statement of net assets as of February 28, 1961.

However, in making determinations under Title V of the Act, the Commission consistently has not reduced the value of a corporate claimant's branch in Cuba by any of the branch's liabilities, except for taxes owing to the Government of Cuba (see Claim of Simmons Company, Claim No. CU-2303), the reason being that the claimant is or may be liable for the debts of the branch. Accordingly, the Commission finds no valid basis for reducing the value of the assets in the Cuban branch by the liabilities. The Commission, therefore, finds that the aggregate amount of the loss sustained by claimant's subsidiary was \$1,326,474.85.

It will be noted that the total amount of the loss found herein is in excess of the amount asserted by claimant. However, in determining the amount of loss sustained, 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 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.

CERTIFICATION OF LOSS

The Commission certifies that STERLING DRUG, INC. 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 One Million Three Hundred Twenty-six Thousand Four Hundred Seventy-four Dollars and Eighty-five Cents (\$1,326,474.85) with interest at 6% per annum from June 23, 1961 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].)