

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

IN THE MATTER OF THE CLAIM OF

ABBOTT LABORATORIES
and
ABBOTT LABORATORIES INTERNATIONAL
COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2666

Decision No. CU-5641

Counsel for claimants:

Baker & McKenzie
By Walter A. Slowinski, Esquire

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amended amount of \$207,754.00, was presented by ABBOTT LABORATORIES based upon a debt due from a Cuban subsidiary.

During the course of processing this claim, it appeared that ABBOTT LABORATORIES INTERNATIONAL COMPANY had an interest in this matter. Accordingly, that corporation has been added as party 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.

The record shows that both claimants were organized under the laws of Illinois and that at all pertinent times more than 50% of the outstanding capital stock of both corporations was owned by nationals of the United States. It further appears that ABBOTT LABORATORIES, hereafter called the parent, owned at all pertinent times all of the outstanding capital stock of ABBOTT LABORATORIES INTERNATIONAL COMPANY, hereafter called the American subsidiary. An authorized officer of the parent has certified that as of December 14, 1959, in excess of 98% of the outstanding capital stock of the parent was owned by nationals of the United States. The Commission holds that both claimants are nationals of the United States within the meaning of Section 502(1)(B) of the Act.

The parent asserts the loss of a debt due from Abbott Laboratories de Cuba, S.A., a Cuban corporation, to Tobal Products Incorporated, a Panamanian corporation. The record (Exhibit E) establishes and the Commission finds that the Panamanian corporation had 1,250 shares of outstanding capital stock, of which the parent owned 1,249 shares and the American subsidiary owned one share.

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The evidence includes a copy of a consolidated balance sheet as of November 30, 1959, covering the Cuban corporation and another affiliated Cuban entity, and extracts from the parent's books and records (Exhibit F), which establish that as of November 30, 1959 the Cuban corporation owed the Panamanian corporation a debt in the amount of \$218,792.00. On the basis of an affidavit (Exhibit M) from the former Chief Accountant for the Cuban corporation who was present at the time, the Commission finds that the Cuban corporation was intervened by the Government of Cuba on December 14, 1959.

The Commission has held that debts of an intervened or nationalized Cuban corporation owed to an American claimant constitute losses occurring on the date of intervention or nationalization within the meaning of Title V of the Act (see Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-December 1966]), and this is so even though the debtor Cuban corporation was insolvent. (See Claim of Honeywell, Inc., Claim No. CU-2678, and Claim of The Goodyear Tire & Rubber Company, Claim No. CU-0887.) It is therefore concluded that both claimants sustained losses encompassed by Title V of the Act.

The Commission finds that on December 14, 1959, the date of loss, the Cuban corporation was indirectly indebted to the claimants in the aggregate amount of \$218,792.00, representing \$218,616.97 due the parent and \$175.03 due the American subsidiary, by virtue of their respective stock interests in the Panamanian corporation.

Claimants state that the Cuban corporation and another affiliated Cuban entity, in which they owned interests, were insolvent on the date of loss, and that their aggregate deficit was \$11,038.00. Accordingly, claimants have reduced their claim by that amount, and are claiming a loss of \$207,754.00.

The Commission finds that these circumstances do not constitute a valid basis for any reduction in the claim because the debts of the two Cuban corporations, which exceeded their respective assets resulting in deficits, were not obligations of the claimants. The fact that the claimants owned stock interests in the two Cuban corporations does not render the debts of the two Cuban corporations obligations for which the claimants are legally responsible.

The Commission finds that the parent and the American subsidiary sustained losses in the amounts of \$218,616.97 and \$175.03, respectively.

It will be noted that the total amount of 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 amounts 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 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

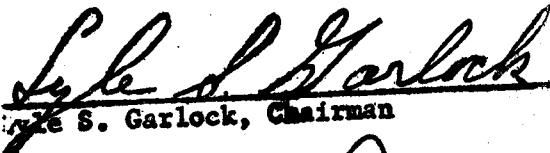
The Commission certifies that ABBOTT LABORATORIES suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Two Hundred Eighteen Thousand Six Hundred Sixteen Dollars and Ninety-seven Cents (\$218,616.97) with interest thereon at 6% per annum from December 14, 1959 to the date of settlement; and

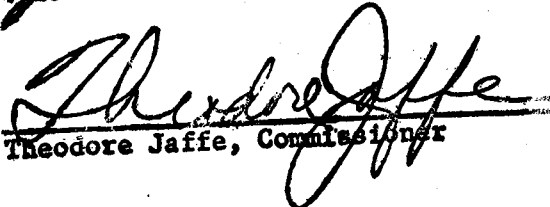
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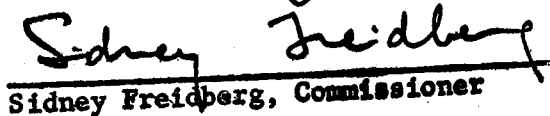
The Commission certifies that ABBOTT LABORATORIES INTERNATIONAL COMPANY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Seventy-five Dollars and Three Cents (\$175.03) with interest at 6% per annum from December 14, 1959 to the date of settlement.

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

AUG 6 - 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).)

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