

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

IN THE MATTER OF THE CLAIM OF

ELI LILLY INTERNATIONAL CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2827

Decision No. CU 2035

Counsel for claimant:

Baker & McKenzie

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 ELI LILLY INTERNATIONAL CORPORATION in the amount of \$10,000.00 based upon the asserted loss of its wholly-owned Cuban subsidiary, Eli Lilly y Compania de Cuba, S.A.

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 the claimant corporation has certified that the claimant was organized in the State of Indiana on September 20, 1943 and that at all times between that date and the presentation of this claim on April 24, 1967, 100% of the outstanding capital stock of the claimant has been owned by a United States national, to wit, Eli Lilly and Company. An officer of the parent corporation, Eli Lilly and Company, has certified that as of April 27, 1967, 99.6% of the outstanding capital stock of Eli Lilly and Company was owned by United States nationals and 0.4% by foreign nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

An officer of ELI LILLY INTERNATIONAL CORPORATION has certified, and the Commission finds that claimant was the holder of all 106 issued and outstanding shares of Compania de Difusion e Informacion Cientifica Lilly, S.A.; that Compania de Difusion e Informacion Cientifica Lilly, S.A. was organized under the laws of the Republic of Cuba on October 16, 1948; and that on June 7, 1960 the name of Compania de Difusion e Informacion Cientifica Lilly, S.A. was changed to Eli Lilly y Compania de Cuba, S.A.

On March 27, 1962 the Cuban Government published in its Official Gazette a list of companies which were nationalized through forced expropriation pursuant to Law 890 of October 13, 1960. The list included the name of Eli Lilly y Compania de Cuba, S.A.

Accordingly, the Commission finds that Eli Lilly y Compania de Cuba, S.A. was nationalized on March 27, 1962.

Claimant has stated its loss in the amount of \$10,000.00, which amount represents the amount paid for the original issue of capital stock in Compania de Difusion e Informacion Cientifica Lilly, S.A.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and values 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.

In support of the valuation claimed, claimant has submitted copies of an audit report furnished by an established firm of accountants and auditors for Eli Lilly y Compania de Cuba, S.A. as of November 30, 1960; copies of the December 31, 1960 trial balance, together with supporting workpapers, of Eli Lilly y Compania de Cuba, S.A. furnished to claimant by its subsidiary; and a certification by an officer of the claimant in which a statement of financial condition for the Cuban subsidiary as of December 31, 1960 is set forth. These documents reflect that the assets and liabilities of Eli Lilly y Compania de Cuba, S.A. on December 31, 1960 were as follows:

BALANCE SHEET - ELI LILLY Y COMPANIA DE CUBA, S.A. - December 31, 1960

ASSETS:	Current Assets:	Cash	\$ 8,785.00
		Receivables	<u>3,974.00</u>
		TOTAL	\$ <u>12,759.00</u>
	Fixed Assets:	Equipment	\$ 5,196.00
		Less Depreciation	<u>3,218.00</u>
		Other Assets	<u>1,978.00</u>
			<u>6,198.00</u>
			<u>8,176.00</u>
		TOTAL ASSETS	\$ <u><u>20,935.00</u></u>

LIABILITIES: Current Liabilities:

	Accrued Expenses	\$ 3,831.00
	Taxes on Income	<u>3,974.00</u>
	TOTAL	\$ <u>7,805.00</u>
Capital:	Common Stock	\$ 53,000.00
	Earnings Reinvested in the Business	(50,161.00)
	Dividends Payable to Eli Lilly International Corp.	<u>10,291.00</u>
	TOTAL LIABILITIES	\$ <u><u>20,935.00</u></u>

The balance sheet enumerates the assets, tangible and intangible, and the liabilities of the enterprise. The liabilities consist of creditors' claims, which are contractual in nature, and those of the owner, which are residual in nature. The excess of assets over contractual liabilities represents the owner's equity, or net worth. The same result may be reached by adding the capital investment, appropriate surplus reserves (not including reserves for depreciation, taxes, and the like), and any undivided profit, as appropriate, and subtracting any outstanding deficit. Accordingly, the calculation of the net worth of Eli Lilly y Compania de Cuba, S.A. as of December 31, 1960 is as follows:

Total Assets	\$ 20,935.00
Less Current Liabilities	<u>7,805.00</u>
NET WORTH	\$ <u>13,130.00</u>

Claimant has stated that it lost all contact with and control over Eli Lilly y Compania de Cuba, S.A. in December of 1960, and that to the best of its knowledge and belief, Eli Lilly y Compania de Cuba, S.A. ceased operations at that time. Claimant further states that if any business which would have altered the value of the company was carried on past December of 1960, then it was done outside the Lilly organization and without the consent of Lilly officials.

The Commission has considered all of the evidence of record and claimant's statements with respect thereto, and concludes that the value of Eli Lilly y Compania de Cuba, S.A. on March 27, 1962, the official date of nationalization of Eli Lilly y Compania de Cuba, S.A., was \$13,130.00. Accordingly, the Commission finds that claimant sustained a loss in the amount of \$13,130.00 as a result of the taking of its wholly-owned Cuban subsidiary on March 27, 1962.

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.)

Accordingly, the Commission concludes that the amount of loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from March 27, 1962, the date of loss, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that ELI LILLY INTERNATIONAL CORPORATION suffered a loss, as a result of the 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 Thirteen Thousand One Hundred Thirty Dollars (\$13,130.00) with interest thereon at 6% per annum from March 27, 1962 to the date of settlement.

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

26 JUN 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).)