

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

IN THE MATTER OF THE CLAIM OF

CHEMWAY CORPORATION
and
TILDEN-YATES LABORATORIES, INC.

**Under the International Claims Settlement
Act of 1949, as amended**

Claim No. CU -3031

Decision No. CU 5010

Counsel for claimants:

Debevoise, Plimpton, Lyons & Gates
By George N. Lindsay, 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 amended amount of \$252,197.85 plus interest, was presented by CHEMWAY CORPORATION based upon a stock interest in a Cuban enterprise. TILDEN-YATES LABORATORIES, INC. its wholly-owned subsidiary organized in Delaware which had a stock interest in the same enterprise is joined as co-claimant. The record shows that the former name of TILDEN-YATES LABORATORIES, INC. was Crookes-Barnes Laboratories, Inc.

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 CHEMWAY CORPORATION has certified that it was organized under the laws of the State of Delaware and that in September, 1967 all but 17 per cent of the stockholders were United States nationals. Inasmuch as CHEMWAY CORPORATION owns all of the outstanding capital stock of TILDEN-YATES 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 \$273,901.03 by claimants for the intervention of Productos Forhan's-Zonite de Cuba, S.A., hereafter called the Cuban subsidiary. The record shows and the Commission finds that claimants are the owners of the outstanding capital stock of the Cuban subsidiary and that it was intervened by the Government of Cuba on November 8, 1961. Of the 14,452 outstanding shares of capital stock of the Cuban subsidiary, CHEMWAY CORPORATION owns 14,331 shares and TILDEN-YATES LABORATORIES, INC. owns 121. Since the Cuban subsidiary was not organized under the laws of the United States, or of any State, the District of Columbia, or the

Commonwealth of Puerto Rico, it does not qualify as a corporate "national 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 the value of his ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

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 asserted value, the record includes a copy of the balance sheet of Productos Forhan's-Zonite de Cuba, S.A., as of July 31, 1961; a copy of its bank statement with the Havana branch of The First National Bank of Boston, showing its balance of \$56,757.94 as of October 31, 1961 and nothing as of November 23, 1961; a letter from CHEMWAY CORPORATION to Banco Nacional de Cuba dated February 14, 1962 concerning the debiting of the bank balance of the account of Productos Forhan's-Zonite de Cuba, S.A.; and a letter to CHEMWAY CORPORATION dated November 7, 1960 acknowledging a loan in the amount of \$55,000.00 from Productos Forhan's-Zonite de Cuba, S.A.

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 balance sheet as of July 31, 1961, which reflects the following, the peso being on a par with the United States dollar:

A S S E T S

CURRENT ASSETS:

Cash		\$ 50,171.94
Receivable:		
Bristol Myers Co.	\$ 3.22	
Hermanos Tello Distribuidores, S.A.	91,360.07	
Interest	928.12	
Claim	<u>18.25</u>	92,309.66
Inventories, at cost on FIFO basis:		
Finished goods	7,441.36	
Raw and packing materials	51,098.06	
In transit	<u>8.10</u>	58,547.52
Prepaid Expenses		<u>72.83</u>
Total Current Assets		\$201,101.95
LOAN RECEIVABLE (parent company)		55,000.00
CHEMWAY CORPORATION (parent company)		84,974.31
INVESTMENTS, at cost:		
Stock of Ferrocarriles Occidentales de Cuba		700.00
EQUIPMENT AND FURNITURE, at cost, less depreciation of \$1,806.63		<u>8,649.89</u>
		<u>\$350,426.15</u>

L I A B I L I T I E S

CURRENT LIABILITIES:

Dividend Payable		\$ 2,031.23
Account Payable		753.98
Accrued Expenses		
Audit Fees and Legal Fees	\$ 775.00	
Advertising	<u>1,867.98</u>	2,642.98
Accrued Taxes		<u>12,954.13</u>
Total Current Liabilities		\$ 18,382.32

STOCKHOLDER'S EQUITY:

Capital Stock		
Issued and outstanding, 14,452 shares	144,520.00	
Surplus November 30, 1960	135,343.05	
Profit or (loss) December 1, 1960 to date	<u>52,180.78</u>	<u>332,043.83</u>
		\$350,426.15

The balance sheet discloses that the items of \$84,974.31 and \$55,000.00 are accounts receivable from claimant, CHEMWAY CORPORATION, and that the item of \$3.22 is an account receivable from Bristol Myers Co., a United States corporation. These items totalling \$139,977.53 could not have been taken by the Government of Cuba and are therefore deducted from \$350,426.15, the value of the assets of the Cuban subsidiary as shown on the balance sheet. On the other hand, the record discloses that the actual cash taken was \$56,751.94 instead of the \$50,171.94 as shown on the balance sheet. Adding the increase of \$6,580.00 to the foregoing adjusted value of the assets results in \$217,028.62 as the total value of the assets of the Cuban subsidiary; and deducting its total liabilities of \$18,382.32 as shown on the balance sheet, results in a net worth for the Cuban subsidiary of \$198,646.30.

Since the balance sheet also discloses that \$2,031.23 represents dividends payable to the claimants as sole stockholders of the Cuban subsidiary, this sum is added to the subsidiary's net worth to arrive at \$200,677.53 as the total loss suffered by the stockholders. Therefore, since there were 14,452 shares outstanding, each share had a value of \$13.8858. The Commission concludes that claimant, CHEMWAY CORPORATION, suffered a loss of \$198,997.40 and that claimant, TILDEN-YATES LABORATORIES, INC., suffered a loss of \$1,680.18 within the meaning of Title V of the Act by reason of their respective ownership of 14,331 and 121 shares in the Cuban subsidiary.

Land in Havana

Claimant, CHEMWAY CORPORATION, also includes as an item in its claim the sum of \$56,869.19 which is based on the loss of certain realty in Havana of which it asserts it was the beneficial owner.

The record includes an agreement of February 7, 1961 between CHEMWAY CORPORATION, the Cuban subsidiary, and a third party in which it is recited that the realty in question, which was acquired by the third party from Compania Alfarera Azorin, S.A., pursuant to contract dated October 25, 1960, had been acquired by him in a fiduciary capacity for CHEMWAY CORPORATION,

and that the third party agrees to transfer his right, title and interest in this property in accordance with the direction of CHEMWAY CORPORATION. The record also includes a copy of the aforementioned contract of sale dated October 25, 1960.

Claimant states that this realty was apparently seized by the Government of Cuba and that it has been denied all access to it. The record, however, includes no evidence that this realty was actually taken by the Government of Cuba and if so, the date of such taking. Moreover, so far as the record is concerned, it is conceivable that the third party may still hold title in trust for CHEMWAY CORPORATION. Accordingly, this portion of the claim is denied for failure of proof.

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.

CERTIFICATIONS OF LOSS

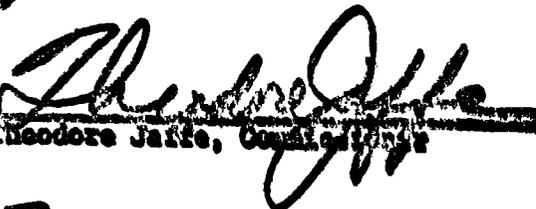
The Commission certifies that CHEMWAY CORPORATION suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Ninety-eight Thousand Nine Hundred Ninety-seven Dollars and Forty Cents (\$198,997.40) with interest thereon at 6% per annum from November 8, 1961 to the date of settlement; and

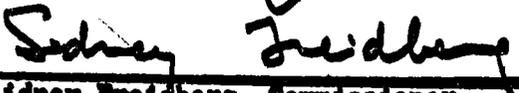
The Commission certifies that TILDEN-YATES LABORATORIES, INC. suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Thousand Six Hundred Eighty Dollars and Eighteen Cents (\$1,680.18) with interest thereon at 6% per annum from November 8, 1961 to the date of settlement.

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

JUN 17 1970


John S. Carlisle, Chairman


Theodore Jaffe, Commissioner


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 claimants establish retention of the securities or 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).)