

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

IN THE MATTER OF THE CLAIM OF

THE SHERWIN-WILLIAMS COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0133

Decision No. CU -31

Counsel for Claimant:

Jones, Day, Cockley & Reavis
By William V. Kane, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$4,596,343.37 was presented by THE SHERWIN-WILLIAMS COMPANY, based upon the nationalization of its wholly owned subsidiary, The Sherwin Williams Company of Cuba, S.A., by the Government of Cuba.

Under Section 503 of the International Claims Settlement Act of 1949, as amended (64 Stat. 12; 69 Stat. 562; 72 Stat. 527; 78 Stat. 1110; 79 Stat. 988) the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. That section 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

(a) . . . 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 504 of the Act provides, as to Ownership of Claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

Section 502(1) of the Act defines the term "national of the United States" as . . . (B) 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 claimant corporation was organized in the State of Ohio. An officer of the corporation has certified that at all times between August, 1886 and presentation of this claim, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. Therefore, the Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant states that more than 99% of its stockholders are United States residents and so far as it can ascertain the large majority thereof are United States citizens, and that less than 1% of the stock is listed to non United States residents.

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 . . .

The Commission finds on the basis of evidence of record that claimant was the sole shareholder of "The Sherwin-Williams Company of Cuba, S.A.," which was organized in Cuba on August 8, 1930, under the name of "Bredell Paint Company of Cuba, S.A.," and which name was changed on April 7, 1943 to the said "The Sherwin-Williams Company of Cuba, S.A."

On October 13, 1960, the Government of Cuba published in its Official Gazette Law No. 890 which listed as nationalized "The Sherwin-Williams Company of Cuba, S.A." Accordingly the Commission finds that "The Sherwin-Williams Company of Cuba, S.A.," wholly owned by claimant herein, was nationalized by the Government of Cuba on October 13, 1960, within the meaning of Title V of the Act.

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.

Claimant has itemized its asserted loss as follows:

1. Cash	\$1,715,588.96
2. Trade Receivables	454,556.34
3. Merchandise Inventories	656,130.76
4. Investments and other Assets	70,341.03
5. Real Estate	61,608.94
6. Buildings and Equipment	899,656.91
7. Fixtures, Tools and Trucks	
\$73,389.80, intended to be	73,390.80
8. Deferred Charges	590,070.62
9. Goodwill	75,000.00
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	\$4,596,344.37

Among the documentation submitted are balance sheets for The Sherwin-Williams Company of Cuba, S.A., for August 31, 1960 and for September 30, 1960. The latter balance sheet reflects the following:

Assets

Current Assets

Cash		\$1,715,588.96
Trade Accounts Receivable		454,556.35
Merchandise		656,130.76
Investments and other Assets		70,341.03
<u>Property, Plant & Equipment</u>		
Land		61,608.94
Buildings	\$223,529.05	
Machinery	141,181.43	
Tools	1,500.00	
Furniture & Fixtures	125,006.71	
Autos & Trucks	16,045.48	
Less Reserve for Depreciation	(231,551.80)	275,710.87
<u>Deferred Charges</u>		590,070.62
<u>Good Will</u>		75,000.00
		<hr/>
		\$3,899,007.53

Liabilities

<u>Capital Stock</u>		\$1,284,000.00	
<u>Surplus</u>			
Unchanged	\$ 75,000.00		
Earned prior	866,195.14		
Current year	<u>4,383.68</u>	<u>945,578.82</u>	\$2,229,578.82
<u>Payable to parent company</u>			
Intercompany account	870,581.08		
Dividend Payable	<u>307,960.89</u>		<u>1,178,541.97</u>
<u>Accrued Profits Tax</u>		390,348.44	
<u>Current Liabilities</u>			
Accounts Payable	10,439.29		
Income Tax Withheld	2,042.27		
Freight Payable	58.95		
Taxes Payable	5,134.84		
Maternity Tax Payable	505.25		
Stenographers Insurance			
Payable	55.74		
Medical Retirement Fund	10.80		
Nurses Retirement Fund	9.57		
Accrued Customs House			
Duties	3,296.64		
Annual Gratuity Bonus			
Account	21,621.81		
Representatives'			
Bonuses Accrued	3,500.00		
Annual Sickness Bonus			
Account	5,933.50		
Laborers Vacation Payable	7,573.82		
Accrued Weekly Payroll	998.31		
Vouchers Payable	24,702.51		
Commercial Retirement	2,371.21		
Longevity Bonus Accrued	10,050.10		
Law No. 762 (4%)	<u>2,233.69</u>	<u>100,538.30</u>	<u>490,886.74</u>
			<u>\$3,899,007.53</u>

It is noted that the items Tools, Furniture & Fixtures, and Autos & Trucks, which are listed under assets, total \$142,552.19. From this item claimant has deducted a depreciation figure of \$69,161.39 taken from the balance sheet of August 31, 1960. This leaves the claimed figure for that item as \$73,390.80. It is also noted that the Balance Sheet for August 31, 1960 reflects a depreciation reserve of \$229,256.62, which is apportioned as follows:

<u>Item and Value</u>	<u>Depreciation</u>	<u>Balance</u>
Buildings \$223,529.05	(29.2285%) \$ 67,008.32	\$156,520.73
Machinery 141,181.43	(40.6038%) 93,086.91	48,094.52
Tools 1,500.00	---	1,500.00
Furniture and Fixtures 125,006.71	(27.9893%) 64,167.37	61,839.34
Autos & Trucks 16,045.48	(2.1784%) 4,994.02	11,051.46
	<u>\$229,256.62</u>	<u>\$278,006.05</u>
	<u>\$507,262.67</u>	

Similarly it appears that the September 30, 1960, depreciation reserve of \$231,551.80 could be apportioned as follows:

<u>Item and Value</u>	<u>Depreciation</u>	<u>Balance</u>
Buildings	\$ 67,679.12	\$155,849.93
Machinery	94,018.83	47,162.60
Tools	---	1,500.00
Furniture and Fixtures	64,809.73	60,196.98
Autos & Trucks	5,044.12	11,001.36
<u>\$507,262.67</u>	<u>\$231,551.80</u>	<u>\$275,710.87</u>

The depreciated value of buildings and machinery, for September 30, 1960, appears to be \$203,012.53.

With respect to the claimed figure of \$899,956.91 for buildings and equipment, claimant asserts that the replacement value of buildings and replacement value of equipment for insurance purposes was appraised at \$415,768.18 and \$483,888.73 respectively; and that while company accounting procedures show lesser valuations for buildings and equipment on the balance sheet, such figures are based on tax considerations and do not reflect replacement costs.

In support of the value claimed for buildings and equipment, claimant has relied on reports and appraisals by West Brothers, described as insurance appraisers of Cleveland, Ohio, and has submitted a letter report and appraisal certificate with summaries of an appraisal made on August 20, 1954. Stating that this plant appraisal has been kept up to date by revisions and adjustments for depreciation, claimant has submitted a letter report dated September 8, 1960 on revision of appraisals and recapitulations of the revised appraisal as of May 31, 1960. These figures give replacement values, and "sound" values, the latter having been reached by deduction from the replacement values of depreciation to reflect the appraiser's opinion of the worth of the property in relation to a going concern having use therefor. The figures have been carefully examined and appear to reflect the following:

	Replacement Value		Sound Value	
August 20, 1954:				
Buildings	\$348,893.57	\$	\$292,172.28	\$
Equipment	<u>346,617.82</u>	695,601.39	<u>271,204.32</u>	563,376.60
Land		78,660.00		78,660.00
Tools		3,232.33		3,182.45
Autos		<u>17,545.00</u>		<u>14,715.00</u>
		\$795,038.72		\$659,934.05
May 31, 1960:				
Buildings	\$415,768.18	\$	\$328,227.11	\$
Equipment	<u>479,784.12</u>	895,552.30	<u>319,733.91</u>	647,961.02
Tools		<u>4,104.61</u>		<u>2,553.16</u>
		\$899,656.91		\$650,514.18

It clearly appears from the above that whereas the asserted "sound" value for May 31, 1960, for buildings and equipment alone is \$647,961.02, the September 30, 1960 figure for the same items, depreciated according to claimant's method, is \$203,012.53. The replacement value claimed for these items alone, apart from tools found in the tabulations, is \$895,552.30, a figure 4.4113 times the September 30, 1960 balance sheet value of \$203,012.53 for these items, properly depreciated.

The Commission has carefully considered all of the evidence, taking into account the basis of valuation most appropriate to the property and equitable to the claimant including the evidence submitted as to book value, going concern value and cost of replacement. The Commission finds no reason to alter the value of the buildings and equipment by substituting replacement figures, particularly when claimant has, to within thirteen days of nationalization, relied on figures utilized in tax considerations and which have permitted profits to the claimant, some of which still appear on the balance sheet. The Commission holds that the value of The Sherwin-Williams Company of Cuba, S.A., as reflected by the balance sheet of September 30, 1960, is the most appropriate basis of evaluation in this case. Accordingly, the Commission finds that the value of The Sherwin-Williams Company of Cuba, S.A., at the time of nationalization was \$2,229,578.82 and concludes that claimant suffered a loss in that

amount within the meaning of Title V of the Act as a result of the nationalization of its wholly owned subsidiary, The Sherwin-Williams Company of Cuba, S.A., by the Government of Cuba on October 13, 1960.

However, the liabilities listed in the balance sheet of September 30, 1960 include the following:

Payable to parent company:

Intercompany account	\$ 870,581.08
Dividend Payable	<u>307,960.89</u>
	\$1,178,541.97

The Commission finds that \$1,178,541.97 was the total amount of debts due and payable to THE SHERWIN-WILLIAMS COMPANY from The Sherwin-Williams Company of Cuba, S.A., at the time of its nationalization by the Government of Cuba on October 13, 1960, and concludes that claimant also suffered a loss in that amount within the meaning of Title V of the Act as a result of the nationalization of the debtor company by the Government of Cuba on October 13, 1960 (See In the Matter of the Claim of American Cast Iron Pipe Company, FCSC Claim No. CU-0249.)

In summary, the Commission concludes that claimant suffered the following losses within the meaning of the Act as a result of actions by the Government of Cuba:

Nationalization of subsidiary	\$2,229,578.82
Debt due from nationalized company	<u>1,178,541.97</u>
	\$3,408,120.79

The Commission has decided that in payment of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be allowed at the rate of 6% per annum from the date of loss to the date of settlement (See the Claim of American Cast Iron Pipe Company, FCSC Claim No. CU-0249.)

Accordingly the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from October 13, 1960, the date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that THE SHERWIN-WILLIAMS 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 Three Million Four Hundred Eight Thousand One Hundred Twenty Dollars and Seventy-nine Cents (\$3,408,120.79), with interest thereon at 6% per annum from October 13, 1960 to the date of settlement.

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

FEB 1 1967

Edward D. Re

Edward D. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

LaVern R. Dilweg

LaVern R. Dilweg, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 20 days after service or receipt of notice of this Proposed Decision upon the expiration of 30 days after such service or receipt of notice, the decision will be entered as the Final Decision of the Commission, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) (1964))

CERTIFICATION

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on 3-9-67

Francis MacKerrow
Clerk of the Commission