

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

IN THE MATTER OF THE CLAIM OF

ALLIED CHEMICAL CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2169

Decision No. CU -4163

Counsel for Claimant:

C. E. Sorapure, Jr., Esq.

Appeal and objections from a Proposed Decision entered November 7, 1969;
No oral hearing requested; hearing on the record.

Hearing on the record held on January 8, 1970

FINAL DECISION

Under date of November 7, 1969, the Commission issued its Proposed Decision on this claim, certifying a loss in favor of claimant in the amount of \$882,684.62 plus interest for the loss of indirect stock interests in two Cuban corporations. The amount thus proposed represented claimant's indirect equity in the said shares of stock after deduction of \$500,000.00, representing the unpaid principal outstanding on account of the purchase price of the stock by claimant's Panamanian subsidiary.

Claimant objected to the Proposed Decision asserting that it was improper to reduce the amount of its losses in Cuba by the unpaid portion of the purchase price of the stock because neither claimant nor its Panamanian subsidiary was personally liable for the unpaid amount. It was further contended that since the shares of stock, which had been pledged as security for the unpaid purchase price, were the sole means that the sellers could employ to recoup the unpaid purchase price, the deduction of such amount could constitute a double penalty if conditions stabilized in Cuba and the sellers of the shares of stock attempted to recover the amounts due them.

The Commission's duty under Title V of the Act is to determine the validity and amount of all claims filed thereunder, including this claim. Having determined that this claim is valid, the sole remaining question is the amount of claimant's loss.

It is undisputed that the unpaid portion of the purchase price of the shares of stock indirectly owned by claimant was \$500,000.00 on the date of loss. In determining the amount of claimant's loss, it is immaterial to consider whether claimant or its Panamanian subsidiary was personally responsible for the unpaid purchase price because claimant's equity in the property taken by Cuba is not, thereby, affected. The fact that the sole remedy available to the sellers of the shares of stock was the pledge of the stock supports the Commission's holding that claimant's loss must be measured by its equity in the property claimed. (See Claim of Michael Leon, Claim No. CU-1465, in which the Commission held that the pledgee is the real party in interest to the extent of the unpaid contract price.) The same considerations would apply in determining the value of a mortgagor's interest in encumbered property that was taken by Cuba.

Upon consideration of the entire record, the Commission finds no valid basis for altering the decision previously entered on this claim. Accordingly, the Proposed Decision on this claim is affirmed in all respects.

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

22 JAN 1970

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

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C. E. Sorapure, Jr., 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 amount of \$1,382,685.62, was presented by ALLIED CHEMICAL CORPORATION based upon the loss of stock interests in two Cuban corporations.

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 claimant was organized under the laws of New York. 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 as of April 26, 1967 and May 2, 1967, less than 10% of claimant's outstanding capital stock was owned by nonnationals of the United States or persons with foreign addresses. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act. (See Claim of Allied Chemical Corporation, Claim No. CU-3213.)

The evidence establishes and the Commission finds that claimant owned a 100% stock interest in Allied Chemical de las Americas, S.A., organized in Panama, and that this Panamanian subsidiary of claimant, in turn, owned 50% stock interests in two Cuban corporations, Electroquimica del Caribe, S.A. and Silicatos Cubanos, S.A., hereafter referred to as Caribe and Silicatos, respectively.

The Commission has found that Caribe was nationalized by the Government of Cuba on October 13, 1960, pursuant to Law 890, and that Silicatos was nationalized by Cuba on December 2, 1960, pursuant to Resolution 60-613, (See Claim of Patricia F. Mederos, Claim No. CU-1592.)

Since Allied Chemical de las Americas, S. A. was organized in Panama, and Caribe and Silicatos were organized in Cuba, none qualifies as a corporate "national of the United States" as defined under Section 502(1)(B) of the Act, supra. In this type of situation, it has been held that an American stockholder is entitled to file a claim for the value of his direct or indirect ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

In the said Claim of Patricia F. Mederos, supra, the Commission found that the values of Caribe and Silicatos on the respective dates of loss were \$2,221,618.54 and \$543,752.70. Accordingly, the Commission finds that the values of claimant's 50% stock interests in Caribe and Silicatos on October 13, 1960 and December 2, 1960, respectively, the dates of loss, were \$1,110,809.27 and \$271,876.35, or the aggregate amount of \$1,382,685.62.

The record further shows that claimant's Panamanian subsidiary had pledged its stock interests in Caribe and Silicatos as collateral for a loan. An officer of claimant with personal knowledge of the facts has stated in an affidavit, dated October 16, 1969, and supported by extracts from the books and records of the Panamanian subsidiary, that as of the dates of loss, the Panamanian subsidiary was indebted to the extent of \$500,000.00 on account of said loan. Of that amount, \$352,956.51 applied to the Caribe stock and \$147,043.49 applied to the Silicatos stock. The Commission, therefore, finds that the values of claimant's indirect interests in Caribe and Silicatos should be reduced by \$500,000.00.

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Accordingly, it is concluded that claimant sustained the following losses within the meaning of Title V of the Act:

<u>Item of Property:</u>	<u>Date of Loss:</u>	<u>Net Amount:</u>
Caribe	10/13/60	\$757,852.76
Silicatos	12/2/60	<u>124,832.86</u>
	Total	<u>\$882,685.62</u>

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 as follows:

<u>FROM</u>	<u>ON</u>
10/13/60	\$757,852.76
12/2/60	<u>124,832.86</u>
Total	<u>\$882,685.62</u>

CERTIFICATION OF LOSS

The Commission certifies that ALLIED CHEMICAL 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 Eight Hundred Eighty-two Thousand Six Hundred Eighty-five Dollars and Sixty-two Cents (\$882,685.62) with interest at 6% per annum from October 13, 1960 on \$757,852.76, and from December 2, 1960 on \$124,832.86, to the date of settlement.

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

NOV 7 1969

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

NOTICE TO TREASURY: This claimant is the subject of another certification of loss in Claim No. CU-3213.

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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