

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

IN THE MATTER OF THE CLAIM OF

COLGATE-PALMOLIVE COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. **CU** -0730

Decision No. **CU** -4547

Counsel for claimant:

LeRoy H. Hurlbert, Esq.

Appeal and objections from a Proposed Decision entered on March 4, 1970;
oral hearing requested.

Oral hearing held on January 12, 1971.

FINAL DECISION

Under date of March 4, 1970, the Commission issued its Proposed Decision certifying a loss in favor of claimant in the amount of \$5,427,581.84 plus interest. The certification of loss represented losses sustained by claimant in connection with its interest in

Crusellas y Cia., S.A. (Crusellas)	\$3,529,603.62
Detergentes Cubanos, S.A. (Detergentes)	1,781,572.82
Debt owed by Detergentes	<u>116,405.40</u>
Total	<u>\$5,427,581.84</u>

Claimant's objections were based on two grounds; namely: (1) that the evidence established that claimant owned 35,858 shares of stock in Crusellas and 94,636 shares of stock in Detergentes; and (2) that the Commission erred in evaluating said stock interests by capitalizing the average annual net earnings of the two Cuban corporations for the years 1957 through 1959 at 10%, and should have given more weight to an opinion from Dillon, Reed & Company that the aggregate value of both corporations was \$40,000,000.00.

At the oral hearing held on January 12, 1971, testimony was presented by Mr. James Henry Carpenter, an officer of claimant, by Mr. Mortimer Collins who had prepared the opinion for Dillon, Reed & Company; and by Mr. Norman M. Mintz, an economist; and counsel argued on behalf of claimant.

Mr. Carpenter testified that claimant had commenced a vigorous sales campaign in Cuba in 1953, promoting its detergents which were sold to the Cuban public through the two Cuban corporations. He had remained in Cuba until 1957, at which time the results of these efforts were being evidenced by increased earnings of the two corporations.

Mr. Collins testified that his study of the operations of a number of American concerns as compared with claimant's operations led him to the conclusion that the aggregate value of the two corporations should be determined by applying a multiple within the range between 18 and 43 to the average net earnings of the two corporations for the year 1959.

Mr. Mintz testified that he had made an independent study of a number of American concerns, including claimant, which led him to conclude that the two Cuban corporations were showing a high growth potential as shown by progressively increasing earnings, thereby justifying a valuation of 20 times the net earnings for 1959. His testimony was supported by his written opinion introduced in evidence at the oral hearing.

Counsel for claimant urged an increase in the multiple used by the Commission in its Proposed Decision and a resultant increase in the Certification of Loss based on the established extent of claimant's stock interests in the two Cuban corporations.

Upon consideration of the oral testimony and the evidence and arguments presented at the hearing in the light of the entire record, the Commission now finds that claimant owned 35,858 shares of stock in Crusellas and 94,636 shares of stock in Detergentes on October 13, 1960, when both corporations were nationalized by the Government of Cuba.

The evidence shows that the two corporations each had a good growth potential on the date of loss judging from the steady rise in net earnings in

the years immediately prior to 1960. Accordingly, it is concluded that the application of a higher multiple than was employed in the Proposed Decision is warranted.

It would appear from the evidence presented that the growth potential of the two corporations would normally level off at or about the rate prevailing in 1959. The Commission therefore finds that the net earnings of the two corporations for 1959 represent, in effect, their average annual net earnings.

Considering the entire record, the Commission finds that the valuations most appropriate in this case and equitable to the claimant are the results obtained from applying a multiple of 15 to the net earnings of the two corporations for 1959 to arrive at the going concern values of the corporations.

Since the record shows that the net earnings of Crusellas and Detergentes in 1959 were \$1,105,002.36 and \$257,871.36, respectively, the Commission finds that their going concern values were \$16,575,035.40 and \$3,868,070.40. Considering the fact that the excess of cash plus current accounts receivable over current accounts payable of the two corporations were \$4,475,773.77 for Crusellas and \$270,625.73 for Detergentes, the Commission finds that the overall values of the two corporations were \$21,050,809.17 and \$4,138,696.13, respectively.

Inasmuch as Crusellas and Detergentes had 63,023 and 162,228 shares of outstanding capital stock, respectively, on the date of loss, the Commission finds that the values of each share of such stock were \$334.0179 and \$25.5116, respectively. Therefore, the values of claimant's stock interests were \$11,977,213.86 and \$2,414,315.78, respectively.

The finding in the Proposed Decision as to the debt of \$116,405.40 owed claimant by Detergentes is affirmed.

Accordingly, the Certification of Loss in the Proposed Decision is set aside and the following Certification of Loss will be entered, and the Proposed Decision is affirmed in all other respects.

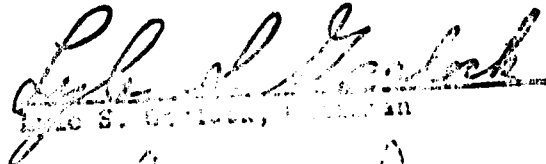
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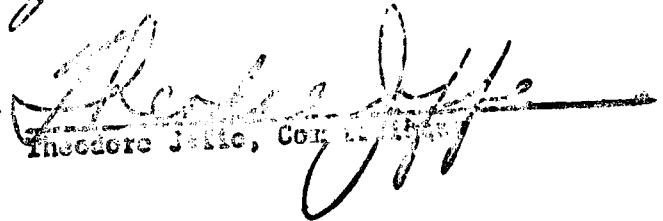
CERTIFICATION OF LOSS

The Commission certifies that COLGATE-PALMOLIVE 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 Fourteen Million Five Hundred Seven Thousand Nine Hundred Thirty-Five Dollars and Four Cents (\$14,507,935.04) with interest at 6% per annum from October 13, 1960 to the date of settlement.

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

FEB 3 1971


John S. Carlson, Chairman


Theodore Jelic, Comptroller

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
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IN THE MATTER OF THE CLAIM OF

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Claim No. CU -0730

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Counsel for claimant:

LeRoy H. Hurlbert, 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 amount of \$29,293,109.78, was presented by the COLGATE-PALMOLIVE COMPANY, based upon the asserted loss of its stockholder interest in the Cuban companies Crusellas y Cia., S.A., and Detergentes Cubanos, S.A. because of the nationalization of these companies by the Government of Cuba.

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 of entity.

The record shows that claimant was organized under the laws of the State of Delaware. Further, the record discloses that at all pertinent times more than 50% of claimant's outstanding capital stock was owned by nationals of the United States. An authorized officer of claimant stated that on January 24, 1966 there were outstanding 15,218,588 shares of claimant's stock, 2.4% of which were registered in the names of stockholders who are presumed to be nonnationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The evidence establishes and the Commission finds that claimant herein owned a 100% interest in Norwood International, Inc., which in turn owned 16,355 shares of Crusellas y Cia., S.A. stock, and 114,139 shares of Detergentes Cubanos, S.A. stock, both latter corporations organized under the laws of Cuba. The evidence of record further shows and the Commission finds that Crusellas y Cia., S.A., and Detergentes Cubanos, S.A., were nationalized by the Government of Cuba on October 13, 1960, by virtue of Law No. 890, published in the Cuban Official Gazette on that date. Since the Cuban firms were organized under the laws of Cuba, they do not qualify as corporate

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"nationals of the United States" within the meaning of 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 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 "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.

The claimant has submitted balance sheets, profit and loss statements for the years of 1955-1959, and other information pertaining to the value of the two Cuban corporations in question. In addition, the Commission has taken into consideration the August 31, 1960, balance sheets of the two Cuban corporations submitted by Frank J. Carbon, Executive Vice President of Crusellas y Cia., S.A. at the time of its nationalization, in connection with his claim (Claim No. CU-0172) which, in part, is based upon stockholder interests in the two Cuban corporations now in question. These two balance sheets are included in the record by reference.

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Crusellas y Cia., S. A.

The balance sheet of August 31, 1960, for Crusellas y Cia., S.A., reflects the following in Cuban pesos, which were on a par with the United States dollar:

Assets

Current Assets

Cash		\$ 2,343,183.29
Accounts Receivable (less Reserve \$549,141.00)		2,561,482.79
Inventories		<u>3,277,426.11</u>

Total Current Assets 8,182,092.19

Prepaid Expenses		148,584.08
Miscellaneous Investments (less Reserve \$37,597.00)		2,003.00
Property, Plant & Equipment		
Gross	\$ 4,387,541.00	
Less Reserve	<u>2,444,552.00</u>	1,942,989.00
Goodwill		1,260,000.00
Inter-Company Accounts - Net		<u>396,010.73</u>

Total Assets \$11,931,679.00

Liabilities & Capital

Current Liabilities

Accounts Payable	\$ 428,892.31	
Misc. Accruals & Reserves	<u>966,033.78</u>	
Total Current Liabilities		\$ 1,394,926.09
Deferred Liabilities & Reserves		<u>145,388.84</u>
		1,540,314.93

Capital Stock & Surplus

Capital Stock (63,023 shares at \$100.00)	\$ 6,302,300.00	
Surplus	<u>3,931,727.90</u>	10,234,027.90

Inter-Company Account Detergentes Cubanos, S.A.		<u>157,336.17</u>
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Total Liabilities & Capital \$11,931,679.00

Additional evidence, submitted by claimant, shows and the Commission finds that the asset "Goodwill" was purchased by Crusellas y Cia., S.A., in the amount stated in the balance sheet above.

The claimant argues that Crusellas y Cia., S.A. had a going concern value in the amount of 40 times the company's earnings in 1959 after Cuban taxes, or \$41,560,000.00.

In support of its argument, claimant submitted an opinion dated October 7, 1968, by Dillon, Read & Co., Inc., in which Crusellas y Cia., S.A. is valued at \$40,000,000.00 on the basis of its asserted going concern value.

The record shows that Crusellas y Cia., S.A. had annual earnings after Cuban taxes in the amounts of 737,500.00, 895,100.00 and 1,105,002.36 pesos for the years ending December 31, 1957, through December 31, 1959, amounting to an annual average of 912,534.12 pesos. Thus the company's profits had been increasing progressively, indicating that the value of the business in Cuba had risen. However, the Commission does not share the view that a prudent buyer would have paid \$40,000,000.00 for Crusellas y Cia., S.A. in 1960, when the previous years' profits indicated a return of \$1,105,002.36 only. In the Commission's opinion the going concern value of Crusellas y Cia., S.A. in 1960 may be arrived at by capitalizing the average net earnings after Cuban taxes at 10%, instead of 2.5% as suggested by claimant. Inasmuch as the average annual earnings of Crusellas y Cia., S.A. was 912,534.12 pesos, its going concern value would be 10 times that amount, or 9,125,341.20 pesos.

It is noted that Crusellas y Cia., S.A., owned cash and accounts receivable in the amounts of \$2,343,183.29 and \$2,561,482.79, respectively. Cash and accounts receivable are corporate assets which increase the shareholder's equity but are not the type of assets which create the going concern value or, for such reason, would be sold to and paid for by a purchaser of the enterprise. Accordingly, the assets of cash and accounts receivable, diminished by the accounts payable, should be added to the going concern value in order to arrive at the amount of loss which the stockholders of Crusellas y Cia., S.A. sustained by the nationalization of the corporation by the Government of Cuba.

The balance sheet of August 31, 1960, includes in its assets an item entitled "Inter-Company Accounts - Net" in the amount of 396,010.73 pesos. A comparison with previous balance sheets shows and the Commission finds that the 396,010.73 pesos in question were due from the parent COLGATE-PALMOLIVE COMPANY, the claimant herein. Inasmuch as it is obvious that no

amount due from the claimant corporation was taken by the Government of Cuba in connection with the nationalization of Crusellas y Cia., S.A., this sum should be disregarded in arriving at the amount of loss.

Accordingly, the loss may be calculated as follows:

Going concern value		9,125,341.20 pesos
Cash	2,343,183.29	
Accounts receivable	<u>2,561,482.79</u>	
	4,904,666.08	
Less: Accounts Payable	<u>428,892.31</u>	<u>4,475,773.77</u>
		13,601,114.97 pesos

Inasmuch as Crusellas y Cia., S.A., had 63,023 shares of its stock outstanding on the date of its nationalization, a date when the Cuban peso was on par with the United States dollar, the Commission finds that the amount of loss sustained with respect to the ownership of one share of Crusellas y Cia., S.A. stock amounted to \$215.8119. Accordingly, the Commission holds that claimant's 16,355 shares of Crusellas y Cia., S.A., had a value of \$3,529,603.62 at the time of loss.

In view of the foregoing, the Commission concludes that claimant sustained a loss within the purview of Title V of the Act in connection with its shares of stock in Crusellas y Cia., S.A., in the amount of \$3,529,603.62.

Detergentes Cubanos, S.A.

The balance sheet of August 31, 1960, reflects the following in Cuban pesos, which were on a par with the United States dollar:

Assets

Current Assets

Cash		\$ 270,469.78
Accounts Receivable		19,014.09
Inventories		<u>378,403.49</u>

Total Current Assets \$ 667,887.36

Prepaid Expenses		99,945.00
Miscellaneous Investments	\$ 5,400.00	
Less Reserve	<u>5,399.00</u>	1.00

Property, Plant & Equipment		
Gross	\$2,094,893.40	
Less Reserve	<u>1,295,876.56</u>	799,016.84
Inter-Company Account		
Crusellas y Cia., S.A.		<u>157,336.17</u>

Total Assets \$1,724,186.37

Liabilities & Capital

Current Liabilities

Accounts Payable	\$ 176,194.31	
Miscellaneous Accruals & Reserves	<u>145,409.93</u>	
Total Current Liabilities		\$ 321,604.24
Deferred Liabilities & Reserves		<u>28,588.27</u>
		350,192.51

Capital Stock & Surplus

Capital Stock (162,228 shares at \$5.00)	811,140.00	
Surplus	<u>446,448.46</u>	1,257,588.46
Inter-Company Accounts		<u>116,405.40</u>
Total Liabilities & Capital		<u>\$1,724,186.37</u>

The record shows that Detergentes Cubanos, S.A. had annual earnings after Cuban taxes in the amounts of 193,785.27, 226,813.95 and 257,871.36 pesos for the years ending December 31, 1957, through December 31, 1959, amounting to an annual average of 226,156.86 pesos. The steadily increasing profits show that it was a growth operation.

The Commission has considered the contents of the document entitled "Cuban Plant Evaluation" prepared by the claimant's Central Engineering Department on March 7, 1963. In this appraisal the value of the real property, plant, and equipment, owned by the two corporations in question and taken by the Government of Cuba, is calculated on the basis of the estimated cost of replacement as reduced by depreciation. The properties of the two companies have not been separated in this appraisal. The property, plant, and equipment of the two corporations is estimated at \$11,717,493.00, about 80.7% more than the original cost of \$6,482,434.40, as shown by the balance sheets above. Even the depreciated value of \$8,382,170.00 is about 29.3% more than the original cost. The Commission is not convinced that use of the appraisal values is appropriate and finds that the value of the property taken by the Government of Cuba may be more correctly and equitably computed by the method stated above than by relying upon the valuation indicated in the document entitled "Cuban Plant Evaluation".

Accordingly, the Commission finds that Detergentes Cubanos, S.A., had a going concern value amounting to 10 times its annual average earnings of 226,156.86 pesos or 2,261,568.60. Adding to that amount the cash and accounts receivable, and diminishing it by the accounts payable, the amount of loss sustained by the stockholders of Detergentes Cubanos, S.A., may be calculated as follows:

Going concern value		2,261,568.60 pesos
Cash	270,469.78	
Accounts receivable	19,014.09	
Inter-Company account Crusellas y Cia., S.A.	<u>157,336.17</u>	
	446,820.04	
Less: Accounts payable	<u>176,194.31</u>	<u>270,625.73</u>
		2,532,194.33 pesos

Inasmuch as Detergentes Cubanos, S.A., had 162,228 shares of stock outstanding on the date of its nationalization, a date when the Cuban peso was on par with the United States dollar, the Commission finds that the amount of loss sustained with respect to the ownership of one share of Detergentes Cubanos, S.A., stock amounted to \$15.6088.

Accordingly, the value of claimant's 114,139 shares of Detergentes Cubanos, S.A., stock amounted to \$1,781,572.82.

It is noted by the Commission that one of the liabilities, identified as "Inter-Company Accounts" in the sum of 116,405.40 pesos was an amount due to the parent COLGATE-PALMOLIVE COMPANY, the claimant herein. Since Section 502(3) defines "property", among other things, as "debts owed by the Government of Cuba or enterprises which have been nationalized, . . . by the Government of Cuba", the Commission finds that claimant is entitled to a certification of loss on such account in the sum of \$116,405.40.

S U M M A R Y

16,355 shares of Crusellas y Cia., S.A., stock at \$215.8119 per share	\$3,529,603.62
114,139 shares of Detergentes Cubanos, S.A. stock at \$15.6088 per share	1,781,572.82
Debt owed by Detergentes Cubanos, S.A.	<u>116,405.40</u>
	\$5,427,581.84

The Commission concludes that the aggregate amount of claimant's losses, sustained within the purview of Title V of the Act, amounted to \$5,427,581.84.

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.

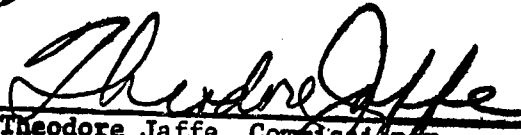
CERTIFICATION OF LOSS

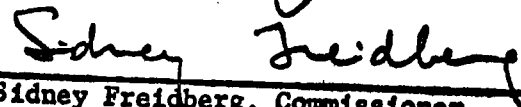
The Commission certifies that COLGATE-PALMOLIVE COMPANY sustained a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Five Million Four Hundred Twenty-seven Thousand Five Hundred Eighty-one Dollars and Eighty-four Cents (\$5,427,581.84) 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

MAR 4 1970


Lytle S. Garlock, 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 claimant establishes 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).)

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