

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

IN THE MATTER OF THE CLAIM OF

OWENS-ILLINOIS, INC.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -2644

Decision No. CU 3701

Counsel for claimant:

Fuller, Seney, Henry & Hodge  
By Patrick A. McGraw, 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 \$10,577,821.66, was presented by OWENS-ILLINOIS, INC., based upon the asserted loss of a stock interest in a Cuban corporation and debts due from that corporation as well as other Cuban nationals. Of the amount claimed, \$4,650,000.00 represents claimant's stock interest, \$2,616,519.60 represents debts due from said Cuban corporation, \$343,424.11 represents debts due from other Cuban nationals, and the amounts of \$1,813,500.00 and \$1,154,378.05, respectively, represent interest on the asserted value of claimant's stock interest and on the aggregate debts, at 6% per annum until April 24, 1967. In addition, claimant has asserted a claim for interest accruing after April 24, 1967 without indicating the amount thereof.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§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 Ohio, and that on April 28, 1965, its name was changed from Owens-Illinois Glass Company to OWENS-ILLINOIS, INC. 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. Another officer of claimant has certified that as of August 20, 1967, .17% of claimant's outstanding preferred shares of stock was owned by nonnationals of the United States, and that as of August 11, 1967, .41% of claimant's outstanding common shares was owned by 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.

#### Stock Interest

The evidence establishes and the Commission finds that claimant owned a 100% stock interest in Owens-Illinois Glass Company of Cuba, S.A., a Cuban

corporation, incorporated in 1955 as Compania de Vidrios Owens-Illinois de Cuba, S.A., hereafter called the subsidiary. It further appears from the record that on August 23, 1960, the Cuban Minister of Labor issued Resolution No. 16784, pursuant to Law 647 of November 24, 1959, intervening the subsidiary. The Commission therefore finds that the subsidiary was taken by the Government of Cuba on August 23, 1960.

The subsidiary was organized under the laws of Cuba and does not qualify as a corporate "national of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia, or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. In this type of situation, it has been held previously that a stockholder in such a corporation is entitled to file a claim based upon his ownership interest therein. (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". 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.

The evidence includes statements and affidavits from officials of claimant to the Department of State and to the Commission concerning this claim; certificates for 46,500 shares of stock of the subsidiary, representing all of the subsidiary's outstanding stock; copies of balance sheets and profit and loss statements for the subsidiary as of December 31, 1959 and for each of the following months in 1960, the last financial statement being as of August 31, 1960; and a copy of a detailed inventory of the tangible assets of the subsidiary as of July 31, 1960, prepared for the benefit of the Cuban intervenor.

Upon consideration of the entire record, the Commission finds that the valuation most appropriate to the claimant is that shown in the subsidiary's balance sheet as of August 31, 1960. That balance sheet indicates the financial condition of the subsidiary as follows, the peso being on a par with the United States dollar:

ASSETS

CURRENT ASSETS

Cash		\$ 386,999.79
Accounts & notes receivable:		
Customer - accounts	\$1,213,754.79	
Other - accounts	<u>48,004.81</u>	
	1,261,759.60	
Less reserves:		
Doubtful accounts	<u>21,004.10</u>	1,240,755.50
Inventories:		
Work in proc. & finished goods	243,189.37	
Packages & fittings	136,584.08	
Raw materials	152,652.45	
Mfg. supplies & repair parts	139,041.01	
Materials in transit	<u>46,218.37</u>	717,685.28
Prepaid expenses		<u>11,570.63</u>
TOTAL CURRENT ASSETS		\$ 2,357,011.20

INVESTMENTS & OTHER ASSETS

Other invest. deposits & rec.		6,950.00
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FIXED ASSETS

Buildings & equipment	7,784,503.55	
Construction in progress	<u>38,607.91</u>	
	7,823,111.46	
Less accumulated deprec.	<u>882,161.71</u>	
	6,940,949.75	
Land	<u>50,446.70</u>	6,991,396.45

DEFERRED CHARGES

Organization expense	395,524.48	
Other deferred items	<u>688,592.62</u>	<u>1,084,117.10</u>

TOTAL ASSETS \$10,439,474.75

LIABILITIES

CURRENT LIABILITIES

Accounts pay. & accrued exp.	\$ 200,904.69
Due to affil. not consol.	2,520,470.94
Notes payable within 1 yr.	583,000.00
Withholdings from employees	12,055.83
Salaries and wages	70,212.80
Accrued misc. taxes	15,616.20
Accrued Fed. inc. taxes	<u>111,834.22</u>

TOTAL CURRENT LIABILITIES \$ 3,514,094.68

LONG TERM DEBT

Banfaic-6% mortgage bonds due 1966	1,500,000.00	
Trust Co. of Cuba-5% mortgage bonds due 1961	<u>334,000.00</u>	1,834,000.00

RESERVES

Contingencies & inventories	124,428.66	
Sickness benefits	<u>12,083.66</u>	136,512.32

SHAREHOLDERS' EQUITY

Common shares -P.\$100 par value 50,000 shares authorized Outstanding 46,500 shares	4,650,000.00	
Retained earnings	<u>304,867.75</u>	<u>4,954,867.75</u>

TOTAL LIABILITIES & EQUITY \$10,439,474.75

The evidence of record establishes that the subsidiary was indebted to claimant in the amount of \$2,616,519.60, rather than \$2,520,470.94, as shown in the foregoing balance sheet of the subsidiary. (The portion of this claim based upon said debt is discussed below.) Claimant has stated in a note appearing at the bottom of said balance sheet that the difference between the balance sheet figure and the books and records of claimant represents cash in pesos deposited in a local Cuban bank for the purchase of United States dollars which, apparently, did not materialize. Accordingly, the Commission finds that the subsidiary's asset "Cash" and the subsidiary's liability to claimant should both be increased by \$96,048.66.

The Commission further finds that the account designated in the balance sheet as reserve for contingencies and inventories was a surplus reserve and did not constitute a liability on the date of loss. Giving effect to

the foregoing adjustments, the subsidiary's balance sheet as of August 31, 1960 appears, in summary form, as follows:

Total Assets	\$10,535,523.41
Less Total Liabilities	<u>5,456,227.00</u>
Stockholder's Equity	<u>\$ 5,079,296.41</u>

The Commission, therefore, finds that on August 23, 1960, the date of loss, the value of claimant's stock interest in the subsidiary was \$5,079,296.41, and concludes that claimant sustained a loss in that amount within the meaning of Title V of the Act.

#### Debt Due From The Subsidiary

On the basis of the evidence of record including, inter alia, certified extracts of claimant's accounts receivable ledger, the Commission finds that on August 23, 1960, the subsidiary was indebted to claimant in the amount of \$2,616,519.60. The Commission, therefore, concludes that claimant sustained a loss in that amount within the meaning of Title V of the Act. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

#### Debts Due From Other Cuban Nationals

The record includes certified extracts of claimant's accounts receivable ledger, as well as statements from claimant's officials, indicating that various Cuban consignees were indebted to claimant for merchandise shipped to Cuba. Claimant states that it never received any payment on account of the said debts.

The following information concerning the debts, supported by the evidence of record, shows the consignees, the date of the last debit entry in these open accounts, and the net amounts due:

<u>Consignee</u>	<u>Date of Last Entry</u>	<u>Net Amount</u>
Drogueria Alegret, S.A.	September 8, 1959	\$ 237.60
Suministros Quimicos Farmaceuticos y Anezos, S.A.	September 9, 1959	1,288.20
Henri de Bienvenu	April 5, 1960	1,205.81
Instituto Biologico Cubano	January 29, 1960	7,485.91
Instituto Bioquimico de Cuba	November 10, 1959	484.46
Biosante Chemical Specialties, S.A.	October 19, 1960	877.89
Canada Dry de Cuba, S.A.	November 17, 1959	2,250.73
Cerveceria Central, S.A.	December 15, 1959	53,765.59
Cia. Cubana de Alcohol, S.A.	December 4, 1959	2,334.53
Electro Sales Co., Inc.	November 11, 1959	243.68
Equipos de Bar y Cafeteria, S.A.	October 29, 1958	6,548.78
Ferro Electrica	August 22, 1958	349.49
Dr. Sergio Herrera	January 29, 1960	6,193.60
Cia. Cerveceria International, S.A.	September 20, 1960	113,958.93
Gloria Jimenez	July 8, 1960	29.98
Liquid Carbonic Co.	September 2, 1960	69.11
Lozano y Burguera	December 31, 1959	30.60
Master Electric	November 6, 1959	1,975.15
Embottelladora Oasis, S.A.	December 9, 1959	21,763.89
Drogueria Reyes, S.A.	August 2, 1960	2.40
Ribot y Cia., S.A.	April 27, 1960	1,918.39
Destileria San Juan	January 8, 1960	52.75
Drogueria Sarra	February 19, 1960	824.01
Perfumeria Sayco, S.A.	December 7, 1959	1,489.66
Dr. F. Taquechel	December 16, 1959	1,351.06
Cerveceria Modelo, S.A.	December 8, 1959	115,875.51
Nueva Fabrica de Alimentos, S.A.	August 1, 1960	<u>816.40</u>
	Total	<u>\$ 343,424.11</u>

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter, the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba in the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

The Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba. In the absence of evidence to the contrary, the Commission finds that the losses occurred 30 days after the date of the last debit entry in the foregoing open accounts; except that with respect to those items that would otherwise be deemed lost prior to September 29, 1959, the effective date of Law 568, the loss is found to have occurred on September 29, 1959.

Accordingly, the aggregate loss sustained by claimant was \$8,039,240.12.

#### Interest

Claim has also been made for interest in the amount of \$1,813,500.00 on the value of claimant's stock interest in the subsidiary, and in the amount of \$1,154,378.05 on the value of the debts due to claimant, at the rate of 6% per annum until April 24, 1967. Interest in an unspecified amount has also been claimed for the period after April 24, 1967.



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 respective dates 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>
September 29, 1959	\$	6,898.27
October 8, 1959		237.60
October 9, 1959		1,288.20
December 6, 1959		1,975.15
December 10, 1959		484.46
December 11, 1959		243.68
December 17, 1959		2,250.73
January 3, 1960		2,334.53
January 6, 1960		1,489.66
January 7, 1960	115,875.51	
January 8, 1960	21,763.89	
January 14, 1960	53,765.59	
January 15, 1960	1,351.06	
January 30, 1960	30.60	
February 7, 1960	52.75	
February 28, 1960	13,679.51	
March 21, 1960	824.01	
May 5, 1960	1,205.81	
May 27, 1960	1,918.39	
August 7, 1960	29.98	
August 23, 1960	7,695,816.01	
August 31, 1960	816.40	
September 1, 1960	2.40	
October 2, 1960	69.11	
October 20, 1960	113,958.93	
November 18, 1960	877.89	
Total	\$8,039,240.12	

CERTIFICATION OF LOSS

The Commission certifies that OWENS-ILLINOIS, 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 Eight Million Thirty-nine Thousand Two Hundred Forty Dollars and Twelve Cents (\$8,039,240.12) with interest at 6% per annum from the respective dates of loss to the date of settlement.

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

JUN 19 1969

*Leonard v. B. Sutton*

Leonard v. B. Sutton, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*Sidney Freidberg*

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 for 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).)