

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

IN THE MATTER OF THE CLAIM OF

ABEL ALEXANDER SHUFORD

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2374

Decision No. CU **5840**

Counsel for claimant:

Patrick, Harper & Dixon
By Bailey Patrick, Esquire;
Pedro A. Villoldo, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$834,276.04, was presented by ABEL ALEXANDER SHUFORD based upon the asserted loss of certain personal property in Cuba. Claimant has been a national of the United States since birth.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 980 (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.

Based upon a copy of the minutes of a stockholders' and directors' meeting held on November 17, 1959, the Commission finds that claimant was and continues to be the sole stockholder of North Atlantic Securities and Trust Company, Inc., a corporation organized under the laws of Panama. It further appears from the evidence of record that the Panamanian corporation owned all of the outstanding capital stock of Fabrica Cubana de Tejidos, S.A., a Cuban corporation, which owned and operated a cotton mill in Cuba.

The evidence includes a copy of an agreement, dated May 26, 1954, pursuant to which the Panamanian corporation acting through claimant as its agent sold all of the stock of the said Cuban corporation to a Cuban businessman. The consideration of the sale consisted of the following:

a) The issuance of 4% first mortgage bonds by the Cuban corporation in the aggregate amount of \$250,000.00, the Cuban peso being on a par with the United States dollar, secured by its textile mill. There were to be 5 bonds of \$50,000.00 each, due on December 15, 1955 through December 15, 1959.

b) The issuance of 2% second mortgage bonds by the Cuban corporation in the aggregate amount of \$560,000.00. There were to be 20 bonds in denominations of \$29,500.00 and \$26,500.00, aggregating \$560,000.00 due on December 15 of each year from 1960 through 1969, with interest for the period beginning December 15, 1955.

c) A debt of the Cuban corporation in the amount \$216,800.00, for which its entire capital stock was to be pledged as security, payable in 5 annual installments each in the amount of \$43,360.00, due on December 15 of each year

from 1970 through 1974, with interest at 2% per year for the period beginning June 15, 1954.

The record includes copies of receipts and contemporary correspondence from the Trust Company of Cuba at Havana, acknowledging receipt of the said first and second mortgage bonds on behalf of claimant. From time to time thereafter, payments were made by the Cuban corporation to claimant's Cuban agent on account of some of the obligations herein.

On March 18, 1960, the Government of Cuba published in its Official Gazette Resolution 3074, which listed as nationalized Fabrica Cubana de Tejidos, the Cuban corporation.

The Commission has held that a claim based on debts due from a nationalized Cuban corporation indirectly owned through another foreign corporation, such as a Panamanian corporation, is within the purview of Title V of the Act. (See Claim of Avon Products, Inc., Claim No. CU-0072, Amended Proposed Decision, 1967 FCSC Ann. Rep. 35; and Claim of United Merchants & Manufacturers, Inc., Claim No. CU-0759, Amended Proposed Decision, id at 52.)

Claimant has asserted the following losses:

4% First Mortgage Bonds	\$ 50,000.00
2% Second Mortgage Bonds	560,000.00
2% Debt Secured by Pledge of Stock	216,800.00
Bank Account in Cuba	<u>7,476.04</u>
Total	<u>\$834,276.04</u>

Debts of the Cuban Corporation

The evidence includes detailed affidavits and certified schedules indicating the various debts herein, the due dates thereof, the applicable interest rates and amounts, and the principal amounts and interest that remain unpaid; an affidavit from claimant's Cuban agent through whom payments on account of the debts were made by the Cuban corporation; and submitted copies of claimant's

income tax returns showing that he was allowed deductions for his Cuban losses.

The evidence establishes that for the period ending December 15, 1958 all payments of principal and interest on the first four 4% bonds were duly made, as well as payments of interest only for the same period with respect to the 2% bonds. No payments were made with respect to the 2% debt secured by the Cuban corporation's pledge of its stock. It further appears from the evidence of record that on December 15, 1959, the last 4% bond obligation was paid to claimant's Cuban agent as well as interest on the 2% bonds due on that date. However, the funds were retained in an account for the benefit of claimant, but Cuba's currency restrictions precluded the remittance of the proceeds outside of Cuba. According to the affidavit of claimant's Cuban agent, those funds were confiscated by Cuba shortly thereafter. In the absence of evidence to the contrary, the Commission finds that the taking of those funds occurred on March 18, 1960, when other properties belonging to the Panamanian corporation were taken.

On the basis of the entire record, the Commission finds that on March 18, 1960, the date the Cuban corporation was nationalized resulting in losses to claimant, the Cuban corporation owed the Panamanian corporation the following debts, including for the purpose of this decision the payments made to claimant's Cuban agent that were never remitted to the claimant or the Panamanian corporation:

1. 4% bond of \$50,000.00 plus interest of \$2,000.00 for the period ending December 15, 1959, less tax of \$120.00 \$ 51,880.00
2. Interest on said 4% bond from December 16, 1959 to March 18, 1960 516.67
3. Interest on 2% bonds for period ending December 15, 1959, less tax of \$672.00 10,528.00

4. Principal of \$560,000.00 plus interest at 2% per year from December 16, 1959 to March 18, 1960	\$562,893.33
5. 2% debt of \$216,800.00 plus interest from June 15, 1954 to March 18, 1960	<u>241,780.16</u>
Total	<u>\$867,598.16</u>

Bank Account

Based upon a copy of a statement from the First National City Bank of New York, Havana Branch, the Commission finds that as of January 31, 1961 claimant had a credit balance with that bank in the amount of \$7,476.04.

On December 6, 1961, Cuba published Law 989 in its Official Gazette, which effected a confiscation of all goods and chattels, property rights, shares, stocks, bonds, bank accounts and other securities of persons who left Cuba. The Commission finds that this law applied to claimant who had left Cuba before that date. In the absence of evidence to the contrary, the Commission finds that claimant's bank account was taken by the Government of Cuba on December 6, 1961. (See Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966].)

The Commission finds that on December 6, 1961, the date of loss, the value of claimant's bank account was \$7,476.04.

Recapitulation

Claimant's losses within the meaning of Title V of the Act are summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
Debts due from Cuban corporation	March 18, 1960	\$867,598.16
Bank Account	December 6, 1961	<u>7,476.04</u>
	Total	<u>\$875,074.20</u>

It will be noted that the total amount of the losses found herein is in excess of the amount asserted by claimant. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amounts which may be asserted by claimant as the extent thereof. (See Claim of Eileen M. Smith, CU-3038.)

The Commission has decided that in certifications of loss 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 it is so ordered as follows:


<u>FROM</u>	<u>ON</u>
March 18, 1960	\$867,598.16
December 6, 1961	<u>7,476.04</u>
Total	<u>\$875,074.20</u>

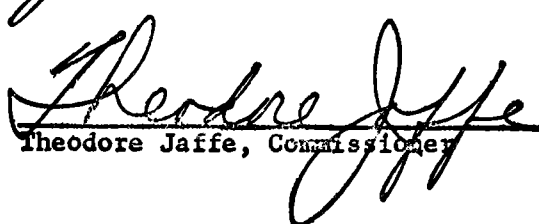
CERTIFICATION OF LOSS

The Commission certifies that ABEL ALEXANDER SHUFORD 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 Seventy-five Thousand Seventy-four Dollars and Twenty Cents (\$875,074.20) with interest at 6% per annum from March 18, 1960 on \$867,598.16 and from December 6, 1961 on \$7,476.04 to the date of settlement.

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

SEP 16 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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).)