

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20577

IN THE MATTER OF THE CLAIM OF

SHULTON, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2981

Decision No. CU - 5942

Counsel for claimant:

John K. Bangs, Esq.

PROPOSED DECISION

This claim against the Government of Cuba under Title V of the International Claims Settlement Act of 1949, as amended, was presented by SHULTON, INC., in the amount of \$717,351.00 based upon asserted losses of bank accounts, branch assets and stock interests in 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 the State of New Jersey. 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 December 31, 1960 there were outstanding 1,265,676 shares of claimant's stock, 1,271 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 had a branch office, Shulton Incorporada, in Havana, Cuba; that it owned all the outstanding shares of Distribuidora Shulton, S.A.; and owned a 100% interest in Shulton of Canada, Ltd., a Canadian corporation, which in turn owned all the outstanding shares of Productos Shulton de Cuba, S.A.

The evidence of record further shows and the Commission also finds that Distribuidora Shulton, S.A., and Productos Shulton de Cuba, S.A., both corporations organized under the laws of Cuba, and the assets of claimant's branch office in Havana were taken by the Government of Cuba on October 25, 1960, when Cuban militia occupied the premises.

Since the Cuban firms were organized under the laws of Cuba, they do not qualify as corporate "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 and profit and loss statements for the year 1960, and other information pertaining to the value of the two Cuban corporations and its Havana branch office, now in question.

Distribuidora Shulton, S.A.

The balance sheet of December 31, 1960, for Distribuidora Shulton, S.A., reflects the following in Cuban pesos, which were on a par with the United States dollar:

Assets

Current assets:	
Cash	\$ 48,603.44
Prepaid insurance	<u>495.70</u>
Total current assets	\$ 49,099.14
Property, plant and equipment - at cost:	
Land and improvements	\$ 77,093.54
Buildings	145,804.82
Machinery and equipment	<u>5,491.00</u>
	228,389.36
Less accumulated depreciation	<u>6,515.84</u>
Net property, plant and equipment	<u>221,873.52</u>
Total assets	\$270,972.66

Liabilities and
Stockholders' Equity

Current liabilities:	
Dividends payable on capital stock	-
Tax on income	\$ <u>291.80</u>
Total current liabilities	291.80
Stockholders' equity:	
Capital stock - Authorized 3,000 shares of \$100.00 par value each; issued and outstanding 2,700 shares	270,000.00
Income retained for use in the business	<u>680.86</u>
Total stockholders' equity	<u>270,680.86</u>
	\$270,972.66

Distribuidora Shulton, S.A., had a limited range of activities. It was holding title to the real property in Havana, Cuba, which was rented to Productos Shulton de Cuba, S.A., and claimant's Havana branch and was used by the latter as their business office and manufacturing plant. Having deducted the \$291.80 liabilities, the Commission finds that Distribuidora had a net worth of \$270,680.86 on the date of loss.

Productos Shulton de Cuba, S.A.

The balance sheet of December 31, 1960, for Productos Shulton de Cuba, S.A., shows the assets and liabilities of that corporation as follows:

Assets

Current assets:		
Cash		\$ 56,034.72
Accounts receivable - trade		122,790.49
Prepaid insurance and other expenses		<u>695.01</u>
Total current assets		179,520.22
Furniture and equipment - at cost	\$ 21,379.99	
Less accumulated depreciation	<u>5,024.85</u>	16,355.14
Other assets and deferred charges		<u>4,779.51</u>
		<u>\$200,654.87</u>

Liabilities and
Stockholders' Equity

Current liabilities:		
Accrued liabilities:		
Taxes on income	\$ 4,428.07	
Other taxes	5,488.74	
Salaries, wages and other compensation	1,897.95	
Other accrued expenses	<u>2,057.55</u>	
		13,872.31
Taxes withheld from employees		<u>1,545.32</u>
Total current liabilities		\$ 15,417.63
Account payable to affiliated company - Shulton, Inc. (Havana Branch)		42,957.64
Stockholders' equity:		
Capital stock - authorized 3,000 shares of \$100.00 par value each; issued and outstanding 500 shares	\$ 50,000.00	
Income retained for use in the business	<u>92,279.60</u>	
Total stockholders' equity		<u>142,279.60</u>
		<u>\$200,654.87</u>

After the deduction of the total of current liabilities and the amount payable to the Havana branch of the claimant, the Commission finds that Productos Shulton de Cuba, S.A., had a net worth of \$142,279.60 on the date of loss.

Branch Office

The balance sheet of December 31, 1960, for claimant's Havana branch, known as Shulton Incorporada, shows the assets which were taken by the Government of Cuba on October 25, 1960, as follows:

Assets

Current assets:		
Cash	\$ 52,586.51	
Inventories - at latest cost:		
Finished stock	20,731.58	
Work in process	2,167.80	
Raw materials	<u>43,298.95</u>	
Total inventories	66,198.33	
Prepaid insurance and other expenses	<u>363.93</u>	
Total current assets		\$119,148.77
Machinery and equipment - at cost	24,299.32	
Less accumulated depreciation	<u>5,569.78</u>	
Net machinery and equipment		18,729.54
Other assets and deferred charges:		
Advances to affiliated company - Productos Shulton de Cuba, S.A.	42,957.64	
Other	<u>1,681.30</u>	
Total other assets and deferred charges		<u>44,638.94</u>
		\$182,517.25
		<u><u> </u></u>

Untransferred Dividends

Statements by Cuban bank, copies of applications for the transfer of currency outside of Cuba on June 10, 1960, and contemporary correspondence show that Distribuidora Shulton, S.A., and Productos Shulton de Cuba, S.A., made an attempt to transfer declared dividends to claimant in the United States. In the course of such attempt the following amounts were deposited in Cuban banks:

Havana branch office of The First National City Bank by Productos Shulton de Cuba, S.A. 40,000.00 pescs

Havana branch office of The Chase Manhattan Bank by Distribuidora Shulton, S.A. 80,884.89 pesos

Claimant states that it has not received the funds.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded transfers of funds, in this and similar cases, 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 into 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, FCSC Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966].)

Accordingly, in the instant claim the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the loss occurred on June 11, 1960, the day after the payments were acknowledged by the above-mentioned banks.

From the evidence of record, the Commission finds that the net worth as calculated above and the book value of the assets owned by claimant's branch in Cuba are the most appropriate measure of the value of the corporations and assets, respectively, at the time of loss. Therefore, claimant's losses may be summarized as follows:

Distribuidora Shulton, S.C., net worth	\$270,680.86
Productos Shulton de Cuba, S.A., net worth	142,279.60
Assets of the branch office in Havana	182,517.25
Dividends, untransferred, total	<u>120,884.89</u>
	\$716,362.60

In view of the foregoing, the Commission concludes that claimant sustained a loss within the purview of Title V of the Act in the total amount of \$716,362.60

The Commission has decided that in certifications of loss 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:

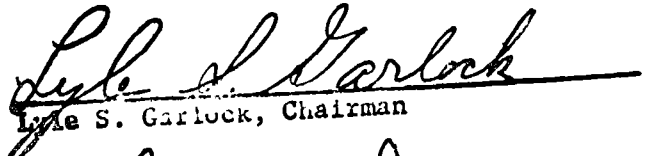
June 11, 1960	\$120,884.89
October 25, 1960	<u>595,477.71</u>
	\$716,362.60

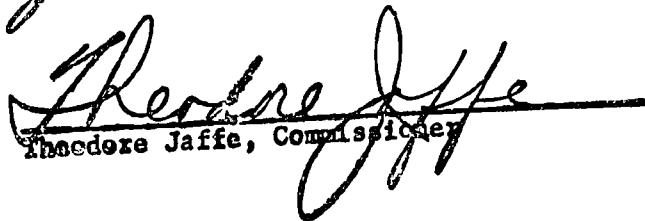
CERTIFICATION OF LOSS

The Commission certifies that SHULTON, INC. 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 Seven Hundred Sixteen Thousand Three Hundred Sixty-two Dollars and Sixty Cents (\$716,362.60) with interest thereon 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

NOV 4 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, 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).)