

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

IN THE MATTER OF THE CLAIM OF

CLARA SOUVIRON SCHULTZ,
EXECUTRIX OF THE ESTATE OF
ALFRED H. SCHULTZ, DECEASED

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0373

Decision No. CU 4966

Counsel for claimant:

Regosin, Edwards & Freeman
By Andrew Freeman, 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 \$1,237,600.00, based on loss of stock interests, debt and anticipated profits, was presented by ALFRED H. SCHULTZ, a national of the United States since birth. Upon his death thereafter, CLARA SOUVIRON SCHULTZ was appointed Executrix of his Estate, and is substituted as claimant in this matter.

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.

The claim is based on \$902,600.00 for an asserted investment in Anuncios Cuba Trafico, S.A., and asserted loss of anticipated profits on 244 shares for eighteen years subsequent to cancellation in 1959 of its concession to install bus stop signs; \$300,000.00 for asserted losses in connection with Productos Sanitarios, S.A.; and \$35,000.00 for personal property.

Anuncios Cuba Trafico, S.A.

In our decision entitled the Claim of Philip A. Lukin (Claim No. CU-0854 which we incorporate herein by reference), we held that the properties owned by the Company were nationalized or otherwise taken by the Government of Cuba on April 22, 1959 and that this type of claim is compensable to an American national under the facts and conditions set forth therein. We need not again detail here the reasons or the method used in determining the value per share of \$19.2944.

On the basis of evidence in the record in the instant case, the Commission finds that this decedent came within the terms of the Lukin decision; that he was an American national at the requisite times; that he had been the owner of 244 shares of stock in Anuncios since prior to April 22, 1959, and that he suffered a loss in the amount of \$4,707.83 in that connection.

There is for consideration the item of claim based on anticipated profits for the remaining eighteen years of the concessions to Anuncios. The decedent did not set forth the method of estimating this asserted profit, but it appears from a related claim (Claim of Harry J. Louis, Claim No. CU-0261) that it was figured at the rate of approximately \$200,000 per year.

The authority of the Commission in these cases is limited by Section 503(a) of Title V to claims against the Government of Cuba which arose after January 1, 1959 "resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property . . ."

A claim for the loss of profits under the statute therefore must be supported by evidence which brings it within the above-quoted provision. The nationalization or other taking of Anuncios on April 22, 1959, in and of itself is not proof of loss of anticipated profits. Moreover, the concession or franchise of 1957, was not in any way irrevocable. No evidence has been submitted to support a finding that the asserted loss of profits was caused by any action of the Government of Cuba within the purview of the statute. On the other hand, the record includes a letter written by Harry J. Louis (now deceased) on December 31, 1959, in which he discussed the circumstances concerning Anuncios, and specifically stated that all their clients have cancelled.

In view of the foregoing, the portion of the claim based upon the loss of profits must be and is hereby denied. (See Claim of Ford Motor Company, Claim No. CU-3072.)

Productos Sanitarios, S.A.

With respect to the item of claim of \$300,000.00 for an asserted 100% interest in Productos Sanitarios, S.A. (hereafter referred to as Productos), described as a Cuban enterprise engaged in the import and distribution of automotive and household chemical specialties, the decedent asserted that he owned it 100%, that a decree issued prohibiting imports, which amounted to confiscation, that his earnings were from \$40,000 to \$50,000 a year from this Company and he estimated his loss at \$300,000.00.

The record contains decedent's report of July, 1960, but this entity is not mentioned therein. In addition, the Executrix of the decedent's estate has submitted income tax papers reflecting that for 1958 the decedent reported his salaries from three companies, including Productos, as \$22,000.00; that for 1959 he reported \$4,200.00 as income from Productos; and in 1963 he reported his 1948 investment as \$20,000.00. The Commission, however, is obliged to ascertain the value at time of loss. The decedent stated the Company was confiscated by a Resolution of August 6, 1960. The Commission's records do not reflect this, but only show for that date the taking of

26 sugar companies. In connection with the last income tax report, the decedent had attached thereto copy of an affidavit by the former Secretary and Chief Bookkeeper, stating that when the decedent left Cuba on August 6, 1960 this stock had lost its entire value due to action of the Cuban Government.

Claimant refers to an affidavit of one Mario Saladrigas, who does not, however, refer to circumstances prevailing at the time of the asserted loss of Productos, but on the contrary, indicates that he had no interest in the corporation after 1951-52. He states that he knows the corporation thrived. He does not, however, give any basis for this opinion. The record also includes several statements as to sales made to Productos in 1956, 1957 and 1958. These items do not, however, permit a finding by the Commission as to the extent of any loss which the decedent may have suffered in connection with Productos.

Accordingly, the Commission is constrained to deny this item of claim.

Personalty

Claim has been made for personalty in the amount of \$35,000.00.

The Commission finds that the decedent, and his spouse, under the Community Property Law, owned certain personalty which was taken by the Cuban Government when they left Cuba on August 7, 1960.

The record includes a listing showing costs totaling \$35,745.00 and fair market values totaling \$29,575.00. Claimant has discussed some of these items in her affidavit of January 30, 1968. The Commission has examined this list and finds the asserted market values

of \$29,575.00 fair and reasonable, and concludes that the decedent suffered a loss of \$14,787.50 within the meaning of Title V of the Act.

Inasmuch as CLARA SOUVIRON SCHULTZ was not a United States national on the date of loss, her interest is not certifiable under the Act. Accordingly, so much of the claim as is based on her interest must be and is denied.

Accordingly, the Commission holds that CLARA SOUVIRON SCHULTZ, AS EXECUTRIX OF THE ESTATE OF ALFRED H. SCHULTZ, DECEASED, succeeded to a loss within the meaning of Title V of the Act, in the aggregate amount of \$19,495.33.

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>
CLARA SOUVIRON SCHULTZ AS EXECUTRIX OF THE ESTATE OF ALFRED H. SCHULTZ, DECEASED	April 2, 1959	\$ 4,707.83
	August 7, 1960	<u>14,787.50</u>
		\$19,495.33


CERTIFICATION OF LOSS

The Commission certifies that CLARA SOUVIRON SCHULTZ AS EXECUTRIX OF THE ESTATE OF ALFRED H. SCHULTZ, DECEASED, 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 Nineteen Thousand Four Hundred Ninety-five Dollars and Thirty-three Cents (\$19,495.33) with interest thereon at 6% per annum from the aforesaid dates to the date of settlement.

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

JUN 10 1970


Lytle S. Carlock, Chairman


Theodore Jaffe, Commissioner


Sidney Friedman, 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 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. 31.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)