

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

IN THE MATTER OF THE CLAIM OF

HARRY E. HETSON  
MILTON D. SHULT  
ERNEST I. SHULT  
CLARENCE I. SHULT

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-1110  
Claim No. CU-1111  
**Claim No. CU-1112**  
Claim No. CU-1113

Decision No. CU - 4472

Counsel for claimants:

John E. Chapoton, Esq.

PROPOSED DECISION

These claims against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the aggregate amount of \$340,000.00, were presented by the above claimants for loss of their stock interests in a Cuban corporation known as Arrocería Texitas, S.A., doing business near Candelaria, Pinar del Río, Cuba. Claimants have been nationals of the United States since birth.

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 discloses that Arroceras Textitas, S.A. was organized under the laws of Cuba and does not qualify as a corporate "national of the United States", within the meaning of Section 502(1)(B) of the Act, supra. A claim filed on behalf of Arroceras Textitas, S.A., Claim No. CU-0718, was denied by the Commission pursuant to Final Decision dated November 30, 1966. However, in this type of situation it has been held previously that American stockholders in such a corporation are entitled to file claims for the value of their ownership interest. (See Claim of Farke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The evidence of record establishes that there were 1,424 shares of capital stock issued and outstanding on the asserted date of loss; and that these shares were owned by the stockholders listed below, claimants herein and United States nationals at all times pertinent to these claims:

<u>Stockholders</u>	<u>No. of Shares</u>
HARRY E. HUISON	285
MELTON D. SHULT	356
ERNEST L. SHULT	427
CLARENCE I. SHULT	<u>356</u>
	1,424

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The evidence of record discloses that Arrocerá Texitas, S.A. was listed as nationalized by the Government of Cuba in its Resolution 3 of October 24, 1960, pursuant to Law 851. Accordingly, the Commission finds that Arrocerá Texitas, S.A. was nationalized by the Government of Cuba on October 24, 1960.

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 evidence, including data submitted in Claim No. CU-0718, filed for Arrocerá Texitas, S.A., includes a detailed report, No. 22647, dated September 3, 1959, prepared by claimant HARRY E. HUISON for the Cuban National Institute of Agrarian Reform. Additionally, the record includes a United States State Department file, affidavits of claimants and officers of the Havana Branch of the Bank of China, financial data, inventories of machinery, sales for 1959-1960, equipment and cattle lists, as well as a complete description of fourteen (14) buildings on the land.

The evidence discloses that the property in question was known as "Las Playuelas", comprising about 50 caballerías of land, or, approximately 1,650 acres, near Candelaria, Pinar del Río, Cuba; that the corporation purchased the land for \$150,000.00 in July 1955; that the land was cleared, fenced and extensive improvements were made, including houses, sheds and

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auxiliary buildings, as well as the addition of machinery, equipment, irrigation projects and an airstrip. The corporation was primarily engaged in the operation of a rice plantation of over 30 caballerias, with other crops and approximately 160 head of cattle on the remainder of the land.

Based on the entire record, including reports to Cuban officials, correspondence to the State Department officials and affidavits, the Commission finds that the assets of Arroceras Textitas, S.A. were valued at \$350,000.00 at the time of loss, as follows:

Land	\$150,000.00
Buildings and other improvements	120,000.00
Farm machinery, other equipment	70,000.00
Cattle	<u>10,000.00</u>
Total	\$350,000.00

The Commission concludes that the most equitable determinations with respect to value of the assets of the Cuban firm are those set forth above, as taken from the above-described evidence of record. However, since the subject enterprise was a Cuban corporation, the Commission is required to determine its net worth and not merely its assets. The evidence of record discloses that the subject firm owed the Havana Branch of the Bank of China the sum of \$40,000.00, as the balance due on a mortgage. Thus, following the deduction of this indebtedness, the net value of Arroceras Textitas, S.A. was \$310,000.00. Accordingly, with 1,424 shares of stock outstanding, each share of stock of Arroceras Textitas, S.A. had a value of \$217.6967 at the time of loss.

The Commission concludes that the claimants' interests in the losses sustained by Arroceras Textitas, S.A., as a result of the nationalization of the said business enterprise by the Government of Cuba, are as set forth hereafter, in amounts commensurate with their stock ownership:

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<u>Claimant</u>	<u>No. of Shares</u>	<u>Value</u>
HARRY E. HUTSON	285	\$ 62,043.50
MILTON D. SHULT	356	77,500.00
ERNEST L. SHULT	427	92,956.50
CLARENCE I. SHULT	356	<u>77,500.00</u>
		\$310,000.00

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 HARRY E. HUTSON 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 Sixty-two Thousand Forty-three Dollars and Fifty Cents (\$62,043.50) with interest at 6% per annum from October 24, 1960, to the date of settlement;

The Commission certifies that MILTON D. SHULT 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 Seventy-seven Thousand Five Hundred Dollars (\$77,500.00) with interest at 6% per annum from October 24, 1960, to the date of settlement;

The Commission certifies that ERNEST L. SHULT 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 Ninety-two Thousand Nine Hundred Fifty-six Dollars and Fifty Cents (\$92,956.50) with interest at 6% per annum from October 24, 1960, to the date of settlement; and

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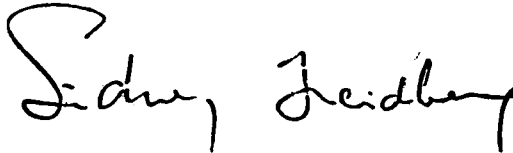
The Commission certifies that CLARENCE I. SHULT suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Seventy-seven Thousand Five Hundred Dollars (\$77,500.00) with interest at 6% per annum from October 24, 1960, to the date of settlement.

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

5 FEB 1970



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 claimants establish 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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