

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

IN THE MATTER OF THE CLAIM OF

Estate of DAVID SCHRAGE, Deceased
and
RIVA SCHRAGE

Claim No CU-0761

Decision No. CU -975

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

Abberley Kooiman Marcellino & Clay
By Henry J. Clay, Esquire

Appeal and objections from a Proposed Decision entered on January 17, 1968. Oral hearing was scheduled for September 9, 1971 at 10:00 a.m. at the offices of the Commission, 1111-20th Street, N.W., Washington, D.C., with due notice thereof given to counsel for claimants. No request for continuance was made and claimants failed to appear in person or by attorney at the scheduled time.

FINAL DECISION

Under date of January 17, 1968, the Commission issued its Proposed Decision denying this claim for lack of proof. By letter of August 12, 1971, counsel for the original claimants advised that DAVID SCHRAGE died on July 13, 1971. In the absence of evidence identifying the deceased's administrator, executor, heirs, next of kin or descendants, the Estate of DAVID SCHRAGE, deceased, has been substituted as party claimant in place of the deceased. (FCSC Reg., 45 C.F.R. §531.5(j) (1970).)

Subsequent to the issuance of the Proposed Decision, counsel for claimants submitted evidence in support of this claim. Upon consideration of the new evidence in light of the entire record, including the record in the related Claims of Harry Schrage and Rasa Schrage, Claim Nos. CU-1433 and CU-1434, the Commission makes the following findings:

GOMA

On the basis of stock certificates and considering the community property laws of Cuba, the Commission finds that the late DAVID SCHRAGE and his wife, RIVA SCHRAGE, jointly owned 500 shares of stock in Compania Industrial Cubana de Goma, S.A. (Goma), a Cuban corporation, said stock interest being equivalent to a 50% interest. (See Claim of Robert L. Cheaney, et ux, Claim No. CU-0915.) Based on the entire record, including pertinent files of the Department of State, the Commission finds that Goma was intervened by the Government of Cuba on December 17, 1959.

Since Goma was organized under the laws of Cuba, it 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, 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 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 record includes a balance sheet for Goma as of December 31, 1959 which the Commission finds, with certain adjustments, is the most appropriate basis for evaluating claimants' stock interests in Goma. That balance sheet shows that Goma's assets totaled \$757,536.73 and its liabilities totaled \$345,270.82, respectively.

Goma's assets include, inter alia, doubtful accounts receivable in the amount of \$21,042.91 and suspense or long overdue accounts receivable in the amount of \$2,344.58. In the absence of more persuasive evidence, the Commission finds that those two items were not assets of Goma that were taken by Cuba. The Commission further finds that the balance sheet item, goods in transit, in the amount of \$24,089.42 could not have been taken by Cuba.

It further appears that the balance sheet includes an account on the asset side, designated "Stockholders & Affiliates", in the amount of \$37,017.05. An accompanying schedule discloses that said account consists of certain accounts receivable in the aggregate amount of \$114,787.38 and certain accounts payable in the aggregate amount of \$77,770.33. These accounts receivable are composed of debts due from Compania Distribuidora de Calzado, S.A. (Calzado), a related Cuban corporation, in the amount of \$111,172.36 and amounts due from two members of the Schrage family aggregating \$3,615.02. The Commission finds that the receivables due from members of the Schrage family could not have been taken by Cuba and therefore did not represent assets of Goma within the meaning of Title V of the Act.

Accordingly, the Commission finds that Goma's assets on December 17, 1959, the date of loss, aggregated \$784,215.13 as follows:

Shown by balance sheet		\$757,536.73
<u>Deductions:</u>		
Doubtful accounts	\$21,042.91	
Suspense accounts	2,344.58	
Goods in transit	24,089.42	
Net Stockholders & Affiliates	<u>37,017.05</u>	<u>84,493.96</u>
		\$673,042.77
Plus debt due from Calzado		<u>111,172.36</u>
Total Assets		<u>\$784,215.13</u>

The Commission finds that Goma's liabilities aggregated \$423,041.15 as follows:

Shown by balance sheet	\$345,270.82
Stockholders & Affiliates	<u>77,770.33</u>
Total Liabilities	<u>\$423,041.15</u>

The Commission therefore finds that the net worth of Goma on December 17, 1959 was \$361,173.98. Accordingly, claimants' stock interests had a total value of \$180,586.99, and the deceased and RIVA SCHRAGE sustained losses in the amounts of \$90,293.50 and \$90,293.49, respectively.

The aforementioned schedule which accompanied the balance sheet shows that Goma owed the deceased a debt of \$6,000.00. Pursuant to the community property laws of Cuba, the deceased and RIVA SCHRAGE had equal interests in that amount. The Commission has held that debts of intervened Cuban corporations are within the purview of Title V of the Act. (See Claim of Kramer, Marx, Greenlee & Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].) The Commission therefore finds that the deceased and RIVA SCHRAGE each sustained a loss on December 17, 1959 in the amount of \$3,000.00

CALZADO

On the basis of stock certificates and considering the community property laws of Cuba, the Commission finds that the deceased and RIVA SCHRAGE jointly owned 250 shares of stock in Calzado, equivalent to a 50% stock interest. The Commission further finds on the basis of the evidence of record that Calzado was intervened by the Government of Cuba on March 15, 1959.

The record includes a balance sheet for Calzado as of March 31, 1959 which the Commission finds, after certain adjustments, is the most appropriate basis for evaluating claimants' stock interests in Calzado. That balance sheet shows that Calzado's assets totaled \$950,523.44 and its liabilities were \$746,381.32.

Calzado's assets include, inter alia, goods in transit in the amount of \$8,754.25 and receivables due from its stockholders in the amount of \$7,661.43. On the basis of the entire record and in the absence of evidence to the contrary, the Commission finds that the goods in transit could not have been taken by Cuba, and that the receivables due from stockholders did not constitute assets of Calzado within the meaning of Title V of the Act.

Accordingly, the Commission finds that Calzado's assets on March 15, 1959, the date of loss, aggregated \$934,107.76 as follows:

Shown by balance sheet \$950,523.44

Deductions:

Goods in transit	\$8,754.25	
Receivables due		
from stockholders	<u>7,661.43</u>	<u>16,415.68</u>
Total Assets		<u>\$934,107.76</u>

Calzado's liabilities are shown in the balance sheet as \$746,381.32.

Included in the liabilities is an item called "Different Creditors and Debtors" in the amount of \$21,671.62. In the absence of evidence establishing the nature and components of that item, the Commission finds that it represented a liability of Calzado.

The Commission therefore finds that the net worth of Calzado on March 15, 1959 was \$187,726.44. Accordingly, claimants' stock interests in Calzado had a total value of \$93,863.22, and the deceased and RIVA SCHRAGE each sustained a loss in the amount of \$46,931.61.

RECAPITULATION

Claimants' losses are summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
<u>Estate of DAVID SCHRAGE, Deceased</u>		
Goma	December 17, 1959	\$90,293.50
Debt due from Goma	December 17, 1959	3,000.00
Calzado	March 15, 1959	<u>46,931.61</u>
	Total	<u>\$140,225.11</u>
<u>RIVA SCHRAGE</u>		
Goma	December 17, 1959	\$90,293.49
Debt due from Goma	December 17, 1959	3,000.00
Calzado	March 15, 1959	<u>46,931.61</u>
	Total	<u>\$140,225.10</u>

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:

FROM

ON

Estate of DAVID SCHRAGE, Deceased

March 15, 1959	\$46,931.61
December 17, 1959	<u>93,293.50</u>
Total	<u>\$140,225.11</u>

RIVA SCHRAGE

March 15, 1959	\$46,931.61
December 17, 1959	<u>93,293.49</u>
Total	<u>\$140,225.10</u>

It may be noted, however, that upon receipt of evidence warranting a change in this matter, the Commission will reopen the matter provided, however, that such evidence is received by May 1, 1972, affording time for consideration thereof prior to the close of the program on June 30, 1972.

Accordingly, the following Certifications of Loss will be entered, and in all other respects the Proposed Decision of January 17, 1968 is affirmed.

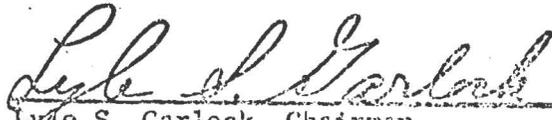
CERTIFICATIONS OF LOSS

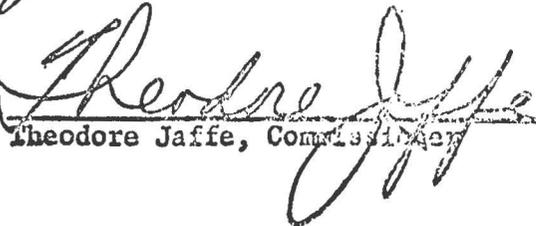
The Commission certifies that the Estate of DAVID SCHRAGE, Deceased, suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Forty Thousand Two Hundred Twenty-five Dollars and Eleven Cents (\$140,225.11) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that RIVA SCHRAGE 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 One Hundred Forty Thousand Two Hundred Twenty-five Dollars and Ten Cents (\$140,225.10) 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 Final
Decision of the Commission

SEP 28 1971


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.

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

IN THE MATTER OF THE CLAIM OF

DAVID SCHRAGE
RIVA SCHRAGE

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0761

Decision No. CU-975

Counsel for claimants:

Abberley, Kooiman, Amon, Marcellino
and Clay

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 \$500,000.00, was presented by DAVID SCHRAGE and RIVA SCHRAGE, and is based upon the asserted loss of stock interests in two Cuban companies. Claimants DAVID SCHRAGE and RIVA SCHRAGE have been nationals of the United States since their naturalization on June 8, 1948.

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 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

In support of this claim filed on June 16, 1966, claimants have submitted stock certificates evidencing their ownership of shares in Compania Distribuidora de Calzado, S. A. and in Compania Industrial Cubana de Goma, S. A. The file also contains records of the United States Department of State, including correspondence between claimant DAVID SCHRAGE and that Department; correspondence between claimant DAVID SCHRAGE's brother, Harry Schrage, and the Department of State; and official dispatches between the Department of State, Washington, D. C. and the United States Embassy, Havana, Cuba. However, the file contains no evidence to establish the value of the Cuban companies at the time of their asserted nationalization by the Government of Cuba.

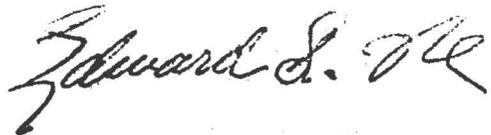
By Commission letter of August 3, 1966, it was suggested to claimants, through counsel, that they submit additional evidence to establish the value of the Cuban companies. No reply was received to the Commission's letter. Subsequently, by Commission letter of October 26, 1966, counsel was advised

that the requested additional evidence of value had not been received. In reply to this letter, counsel advised the Commission that no balance sheets were available to support the claimed value of the companies, but that claimants were hopeful of submitting additional evidence of value in due course. No additional evidence has been submitted since this letter from counsel.

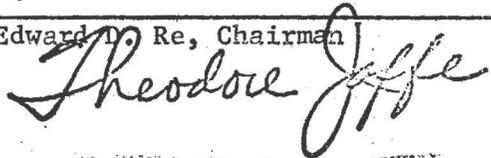
The Commission finds that claimants have not met the burden of proof in that they have failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this claim is denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

JAN 17 1968



Edward D. Re, Chairman



Theodore Jaffe, Commissioner

CERTIFICATION

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on _____



Clerk of the Commission

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).)