

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

IN THE MATTER OF THE CLAIM OF

OWEN L. EAGAN  
and  
VIRGINIA C. EAGAN

Claim No. CU -1348

Decision No. CU **5855**

Under the International Claims Settlement  
Act of 1949, as amended

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 OWEN L. EAGAN and VIRGINIA C. EAGAN for \$158,564.62 based upon the asserted ownership and loss in Cuba of personal property, a stock interest, bank balance and similar items. 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.

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) (1969).)

Claimants describe their losses as follows:

Personal Property	\$ 8,352.00
Security	2,500.00
Bank Balance	16.37
Salary	10,656.25
Insurance	18,000.00
Pension	<u>119,040.00</u>
	\$158,564.62

Bank Account

Based upon a bank statement in the record the Commission finds that claimants had a bank account in The Chase Manhattan Bank, Vedado Branch, with a balance of 16.37 pesos.

On December 6, 1961, the Cuban Government published its Law 989 which effectively confiscated all assets, personal property and real estate, rights, shares, stocks, bonds and securities of persons who had left the country.

In the absence of evidence to the contrary, the Commission finds that claimants' above-described bank account, totalling 16.37 pesos (which were on a par with United States dollars) 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].)

Personal Property

Claimants have presented their claim for personalty as follows:

1) Furniture and furnishings in storage for shipment - cost	\$5,472.00
2) House furnishings abandoned - cost	1,960.00
3) Loss on household items sold	<u>434.00</u>
	\$7,866.00
4) Cash given away	<u>486.00</u>
	\$8,352.00

On the basis of the record including affidavits and photographs the Commission finds that claimants owned certain personal property in Cuba, further discussed below.

Claimant OWEN L. EAGAN was an employee in Cuba of the Cuban Electric Company, a Florida corporation whose properties were taken over by the Government of Cuba on August 6, 1960. On August 7, 1960, the services of claimant, as well as a number of other employees, were terminated abruptly and definitely and he was separated from employment and salary as of that date.

The record establishes that claimants packed certain goods, referred to as List 1, but efforts to have them transferred to Florida were in vain. Further, other goods, List 2, were necessarily left behind by claimants.

With respect to goods in List 3, which were sold for less than claimants consider appropriate, resulting in an asserted loss, and with respect to the cash - item 4 given away, the record does not reflect that these asserted losses resulted from nationalization or other taking by the Government of Cuba and these items of claim are denied.

As claimants were obliged to leave Cuba in short order, the Commission finds that title to the personal property was taken by Cuba on August 7, 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 record includes affidavits of persons familiar with claimants' home expressing opinions of value varying from 10 to 15 thousand dollars; photographs; and lists furnished by claimants. In this connection it is noted that claimants resubmitted the lists with year of acquisition, and increased valuations in some cases. Thus the new itemization for List 1 appears to total \$6,880.00 and for List 2 appears to total \$2,220.00.

The Commission has examined these lists, and finds the original lists to be appropriate for finding value on date of loss. Accordingly, except for items not subject to depreciation, and considering that many of the items appear to have been acquired in and around 1957, the Commission finds the value of the personalty in Lists 1 and 2 on the date of loss as \$6,317.80 and finds that claimants suffered an aggregate loss in that amount for this item of their claim.

Havana Biltmore Yacht & Country Club

Based upon the record including affidavits and considering the status of the claimants, the Commission finds they jointly owned one share of stock in Havana Biltmore Yacht & Country Club.

The Commission has found that the Havana Biltmore Yacht & Country Club was nationalized on March 19, 1960. (See Claim of Arman E. Becker, Jr., Claim No. CU-1094.)

On the basis of the record, the Commission finds that the value of claimants' interest in Havana Biltmore Yacht & Country Club was \$2,500.00 and concludes claimants suffered a loss in that aggregate amount on March 19, 1960.

Salary and Pension

Claimant contends that he was entitled to his monthly salary of \$687.50, plus his vacation and Christmas bonuses, until December 18, 1961 when he contends he would have been entitled to commence receiving his pension from Caja de Retiro de Trabajadores de Plantas Electricas, Gas y Agua (Retirement Fund for Workers of Electric, Gas, and Water Works).

However, the Commission finds that he was automatically entitled to receive his pension commencing on August 7, 1960, the date the Cuban authorities separated him from his employment and salary in the Cuban branch of Cuban Electric Company. Accordingly, he was not owed salary nor was any salary taken from him by the Government of Cuba. The Commission is constrained to and does deny the claim for salary.

The claim for pension is calculated by claimant OWEN L. EAGAN as follows:

- |  |                  |
|--|------------------|
| 1. \$4,800 annually X 18.2 life expectancy   | \$ 87,360.00     |
| 2. At death, VIRGINIA C. EAGAN assertedly would be entitled to one-half X 13.2 life expectancy | <u>31,680.00</u> |
|  | \$119,040.00     |

However, OWEN L. EAGAN is not deceased and the Commission holds that VIRGINIA C. EAGAN has no interest in the pension item. Accordingly her asserted interest based on the aforesaid 13.2 life expectancy is hereby denied.

Although claimant OWEN L. EAGAN has not been able to document this item of claim fully, on the evidence of record and evidence available in other pension claims before it, the Commission finds that claimant OWEN L. EAGAN was entitled to a pension of \$400.00 a month. (See Claim of A. M. Joy de Pardo, Claim No. CU-1906; and Claim of Lawrence A. Soper, Jr., et ux, Claim No. CU-0054.)

On May 29, 1959, Law No. 351 was enacted which provided for the establishment of the Banco de Seguros Sociales de Cuba (Social Insurance Bank of Cuba) as an agency of the Government of Cuba to supervise and administer social insurance, as well as to direct the policy concerning all social security matters. The law also provided for the transfer of the assets and liabilities of all pension funds to the Banco de Seguros Sociales de Cuba (BANSESCU). Information available to the Commission shows that retired employees after departure from Cuba received no pension benefits.

The Commission has adopted as a basis for the valuation of annuities the Makehamized mortality table, appearing as Table 38 of United States Life Tables and Actuarial Tables 1939-41, and a 3-1/2% interest rate, compounded annually, as prescribed by United States Treasury Department regulations of June 24, 1958, for the collection of gift and estate taxes, respectively.

(See 23 F. R. 4547, 26 C.F.R. 2031-7.) According to that method of valuation, the value of the annuity for a person of the age of 59 amounts to 11.6960 times \$4,800.00, the yearly sum of the annuity. Since on August 7, 1960, claimant was 59 years of age (according to his nearest birthday) the value of his discounted annuity on that date amounted to \$4,800.00 (the peso being on a par with the United States dollar) times 11.6960, or \$56,140.80, and the Commission finds that claimant OWEN L. EAGAN sustained a loss within the purview of Title V of the Act in that amount.

#### Insurance

Claimant OWEN L. EAGAN asserts that under a contributory group insurance plan he was covered in the amount of \$18,000.00. It has been said that this insurance plan was originally in Sun Life of Canada, but due to Cuban Government pressure, was transferred to a Cuban Company, "El Sol de Cuba", said to have been expropriated. The premium was to be paid by the Cuban Electric Company after retirement of the insured, until his death. Thereafter the principal amount was to be paid to the widow, and in case of her predecease, to the estate of the insured. Claimant stated in his letter of April 5, 1968, that the insurance was for \$20,000.00 and that to the best of his recollection the first \$800.00 was paid by the Company, the balance contributed or paid by him through payroll deductions, but that the policy had no cash value. It appears from a statement of payroll deductions for July 31, 1960, submitted by claimant, that a deduction was made for the insurance.

However, the record does not reflect that the policy was paid up, that it was taken by the Government of Cuba or that in fact OWEN L. EAGAN had any interest in it during his life, and certainly VIRGINIA C. EAGAN had no interest in it during his life.

Under these circumstances the Commission is constrained to and does hereby deny this item of claim.

Claimants' losses may be summarized as follows:

OWEN L. EAGAN:

<u>Item</u>	<u>Date of Loss</u>	<u>Value</u>
Bank Account	December 6, 1961	\$ 8.18
Personal Property	August 7, 1960	3,158.90
Havana Biltmore stock	March 19, 1960	1,250.00
Pension	August 7, 1960	<u>56,140.80</u>
		<u>\$60,557.88</u>

VIRGINIA C. EAGAN:

Personal Property	August 7, 1960	\$ 3,158.90
Bank Account	December 6, 1961	8.19
Havana Biltmore stock	March 19, 1960	<u>1,250.00</u>
		<u>\$ 4,417.09</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:

	<u>FROM</u>	<u>ON</u>
OWEN L. EAGAN	December 6, 1961	\$ 8.18
	August 7, 1960	59,299.70
	March 19, 1960	<u>1,250.00</u>
		<u>\$60,557.88</u>
VIRGINIA C. EAGAN	December 6, 1961	\$ 8.19
	August 7, 1960	3,158.90
	March 19, 1960	<u>1,250.00</u>
		<u>\$ 4,417.09</u>

CERTIFICATIONS OF LOSS

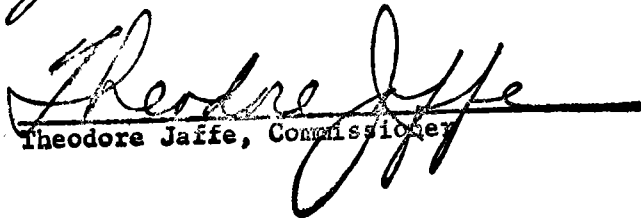
The Commission certifies that OWEN L. EAGAN sustained a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Sixty Thousand Five Hundred Fifty-seven Dollars and Eighty-eight Cents (\$60,557.88) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that VIRGINIA C. EAGAN 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 Four Thousand Four Hundred Seventeen Dollars and Nine Cents (\$4,417.09) 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

SEP 23 1970

  
Lyle S. Carlock, 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).)