

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

IN THE MATTER OF THE CLAIM OF

CARTER H. OGDEN
ZELMA OGDEN

Claim No. CU -2339

Decision No. CU-1261

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Rufus King, Esquire

Petition to reopen; Proposed Decision dated and entered February 14, 1968.
Final Decision entered September 22, 1971.

AMENDED FINAL DECISION

On February 14, 1968 the Commission issued a Proposed Decision denying the claim of CARTER H. OGDEN for lack of evidence. Subsequently satisfactory evidence was submitted and in the Final Decision of September 22, 1971 the Commission added as claimant ELMA OGDEN, whose correct name is now shown to be Zelma, claimant's first wife, who during her marriage acquired a one-half interest in the property subject of this claim under the community property law of Cuba. The losses of CARTER H. OGDEN and ZELMA OGDEN, were determined as follows:

<u>Item</u>	<u>Value of Each Claimant's Interest</u>	<u>Date of Loss</u>
1. Partnership in Ogden & Ogden	\$202,500.00	December 6, 1961
2. Improved real property	30,000.00	December 6, 1961
3. Unimproved real property	5,000.00	December 6, 1961
4. Personal property of residence	5,802.50	December 6, 1961
5. Stocks, bonds, concessions:		
(a) Petrolera Aventura	120,000.00	November 23, 1959
(b) Petrolera Arabia	4,458.16	November 23, 1959
(c) Inversiones Petroleras	750.00	November 23, 1959
(d) Republic of Cuba bonds	4,090.00	December 31, 1960
(e) and (f) Motembo and Santo Tomas concessions	1,012.16	November 23, 1959
6. Currency	<u>3,400.00</u>	August 9, 1961
	\$377,012.82	

After the issuance of the Final Decision, claimant CARTER H. OGDEN advised the Commission that he was divorced from his first wife Zelma Ogden since August 22, 1957 and that he married his present wife Dorothy M. Moore on

April 29, 1960. He also presented evidence that all properties acquired by him during his first marriage to Zelma Ogden remained his exclusive property after the divorce was granted. He submitted evidence that his second wife was a national of the United States since birth and petitioned the Commission to reopen the claim and to change the Certification of Loss from ELMA OGDEN as it then was entered, to Dorothy M. Ogden.

Due consideration having been given to the petition, the Commission finds that under the community property law of Cuba upon dissolution of the marriage the community property comes to an end, but if both spouses agree that the property shall remain in the ownership of one of the spouses, no separation of the property takes place. On the basis of the record in the instant case the Commission further finds that by an agreement submitted to the appropriate court in Cuba in 1957, ZELMA OGDEN received a lump sum of \$25,000.00 and an alimony allowance of \$500.00 per month during her lifetime or her remarriage, and that she asserted no further claim to the assets of the marriage partnership. The Commission therefore concludes that these assets remained the exclusive property of CARTER H. OGDEN.

All the circumstances surrounding this claim indicate that on April 29, 1960, at the time of the second marriage, certain portions of the property involved in this claim had already been taken by the Government of Cuba and that no additional property in Cuba was acquired by either CARTER H. OGDEN or Dorothy M. Ogden from the date of their marriage to the date of the loss. Consequently, the entire loss, previously determined as having been sustained by CARTER H. OGDEN and ZELMA OGDEN was, in fact, sustained by CARTER H. OGDEN alone, inasmuch as his property owned prior to his second marriage under the provisions of Cuban law did not become community property of his second marriage partnership.

It is therefore concluded that CARTER H. OGDEN suffered the following losses:

<u>Item</u>	<u>Value</u>	<u>Date of Loss</u>
1. Partnership in Ogden & Ogden	\$405,000.00	December 6, 1961
2. Improved real property	60,000.00	December 6, 1961
3. Unimproved real property	10,000.00	December 6, 1961
4. Personal property at Marianao residence	11,605.00	December 6, 1961
5. Stocks, bonds and concessions:		
(a) Petrolera Aventura	240,000.00	November 23, 1959
(b) Petrolera Arabia	8,916.32	November 23, 1959
(c) Inversiones Petroleras	1,500.00	November 23, 1959
(d) Republic of Cuba bonds	8,180.00	December 31, 1960
(e) and (f) mineral concessions	2,024.32	November 23, 1959
6. Currency	<u>6,800.00</u>	August 6, 1961
	\$754,025.64	

The accrued interest is to be computed as follows:

<u>FROM</u>	<u>ON</u>
November 23, 1959	\$252,440.64
December 31, 1960	8,180.00
August 6, 1961	6,800.00
December 6, 1961	<u>486,605.00</u>
	\$754,025.64

Accordingly, the claim of ~~ZELMA~~ OGDEN is hereby dismissed; the Certifications of Loss in the Final Decision of September 22, 1971 are set aside; the following Certification of Loss solely in favor of CARTER H. OGDEN will be entered; and in all other respects the Final Decision, as amended herein, is affirmed.

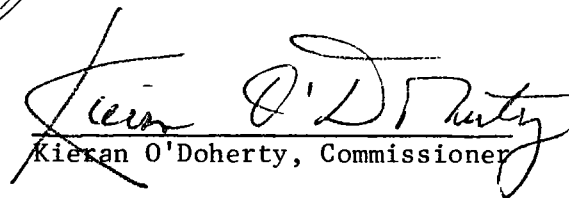
CERTIFICATION OF LOSS

The Commission certifies that CARTER H. OGDEN 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 Seven Hundred Fifty-Four Thousand Twenty-Five Dollars and Sixty-Four Cents (\$754,025.64) 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 Amended Final
Decision of the Commission

JUN 30 1972


Lyle S. Garlock, Chairman


Kieran O'Doherty, 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.

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

IN THE MATTER OF THE CLAIM OF

CARTER H. OGDEN
ELMA OGDEN

Claim No. CU-2339

Decision No. CU-1261

**Under the International Claims Settlement
Act of 1949, as amended**

Counsel for claimants:

Rufus King, Esq.

Appeal and objections from a Proposed Decision entered February 14, 1968.
No oral hearing requested.

Hearing on the record held September 22, 1971.

FINAL DECISION

In its Proposed Decision the Commission denied this claim in its entirety for claimant CARTER H. OGDEN's failure to establish his ownership of the asserted properties, a taking by the Government of Cuba, and the value of said properties at the time of taking.

In support of the objections new evidence has been submitted and the Commission has considered evidence in other related claims. The Commission now finds as follows.

This claim in the amended amount of \$929,133.38 is based upon the loss of improved and unimproved real property, personal property of a residence, interest in a partnership, and other personal property consisting of bonds, stock interests and interests in mineral concessions. Inasmuch as pursuant to the Community Property Law of Cuba, ELMA OGDEN has an interest in the property subject of the claim, she is added as claimant herein. Both claimants have been nationals of the United States at all pertinent times under the Act.

Claimants assert the following losses:

1. Interest in a partnership	\$ 500,000.00
2. Improved and unimproved real property	130,000.00
3. Personal property of a residence	28,310.00
4. Stocks, bonds and mineral concession interests, as follows:	
(a) Cia. Petrolera Aventura - 60 shares (30% of capital stock)	240,600.00
(b) Cia. Petrolera Arabia, S.A. - 107 shares at \$83.34	8,917.38
(c) Inversiones Petroleras Cubana, S.A. - 5 shares at \$500	2,500.00
(d) Republic of Cuba Bonds (8)	8,000.00
(e) "Motembo" Mineral Concession, Las Villas Province, 5 per cent interest	5,403.00
(f) "Santo Tomas" Mineral Concession, Las Villas Province, 5 per cent interest	<u>5,403.00</u>
Total	\$ 929,133.38

The evidence of record consists of affidavits and statements of former customers of the partnership involved, affidavits of stockholders in the subject stock companies, stock certificates, affidavits regarding the household furnishings and fixtures, State Department correspondence and deeds for real property.

Based on the entire record the Commission finds that claimants were owners of the properties as asserted. The extent of the ownership, the date of loss of the properties and the values are discussed more fully below.

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 evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

(1) Partnership of Ogden & Ogden

In its decision entitled the Claim of E. B. Ogden, Jr., et al. (Claim No. CU-3392 which is incorporated herein by reference), the Commission held that the said brokerage business and certain furniture and fixtures appropriate to the conduct of the business were taken by the Government of Cuba on December 6, 1961 pursuant to the provisions of Law 989 and that at said time of taking the overall value of the partnership was \$810,000.00. The Commission now finds that claimant CARTER H. OGDEN owned a 50% interest in said partnership and each claimant herein sustained a loss in the amount of \$202,500.00.

(2) Real Property

The Commission finds that claimant CARTER H. OGDEN was the owner of improved real property known as 1303 Calle 190, Marianao, Havana, with certain household furniture and personal effects therein, hereinafter more fully described; and unimproved real property known as lot #19, section 51, Siboney, Marianao, Havana.

On December 6, 1961, the Cuban Government published its Law 989, which provided for confiscation of all assets, personal property and real estate, rights, shares, stocks, bonds and securities of persons who left Cuba. The record shows that claimant left Cuba on April 26, 1961.

Based on the foregoing, the Commission finds that the subject real properties and certain personal property, described further below, were taken by the Government of Cuba on December 6, 1961, pursuant to the provisions of Law 989. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

The real property measured 1,842.81 square meters, improved by a two-story building of concrete construction. It was a three-bedroom family residence with 2-1/2 baths, terrace, balcony, garage, and servants' quarters. The property was purchased on February 25, 1954 for 47,000 pesos and claimant states he spent \$12,000 for permanent improvements.

The unimproved lot consisted of 1704.75 square meters. It was purchased on April 3, 1951 for \$4,261.87. Claimant states that in 1958 he had an offer of purchase for this lot for \$34,000.00. There is no evidence to substantiate this offer.

In determining the value of the properties the Commission has considered the descriptions contained in the deeds, affidavits of persons familiar with claimants' property, their location and the Commission's own knowledge of the value of comparable property. It has also considered how property appreciated in the ensuing years since purchase. The Commission finds that at the time of loss the improved real property had a value of \$60,000.00 and the unimproved lot a value of \$10,000.00.

Accordingly, each claimant sustained a loss in the amount of \$35,000.00.

(3) Personal Property

Claimants have submitted a list of the furniture, appliances and furnishings for each room of the residence totalling \$28,310.00. The list does not indicate if the asserted value is based on cost when new or replacement value of the property. In the absence of evidence to the contrary the Commission will consider the length of time claimants have been in Cuba and, also, the time the residence was purchased. It thus appears from the record that the personalty had an average age of 10 years at the time of loss. A breakdown of the items reflects that claimants allocated the sum of \$23,210.00 to furniture and appliances and \$5,100.00 to furnishings and clothing. The Commission has determined that apart from antiques not subject to depreciation, furniture and appliances must be depreciated at a rate of 5 per cent per annum; and furnishings including drapes, lamps, clothing, must be depreciated at 10 per cent per year. Accordingly, the Commission finds that the personalty at La Coronela, owned equally by claimants, had a value of \$11,605.00 on the date of loss, and that each claimant thereby suffered a loss of \$5,802.50 within the meaning of Title V of the Act.

(4) Stocks, Bonds and Mineral Concessions

(a) Cia. Petrolera Aventura, S.A.

(b) Cia. Petrolera Arabia, S.A.

(c) Inversiones Petroleras Cubana, S.A.

The Commission has previously held that the properties of these three companies, (a), (b) and (c) were taken by the Government of Cuba on November 23, 1959 (see Claim of William A. Powe, Claim No. CU-0502, and Claim of John H. Parker, Claim No. CU-0041, which we incorporate here by reference) and that these types of claims are 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 of one share of the items (a), (b) and (c) above at \$4,000, \$83.33 and \$300.00, respectively.

On the basis of evidence in the record in the instant case, the Commission finds these claimants come within the terms of the above-cited decisions, that they were American nationals at the requisite times; that they had been the owners of 60 shares of Cia. Petrolera Aventura, S.A.; 107 shares of Cia. Petrolera Arabia, S.A. and 5 shares of Inversiones Petroleras Cubana, S.A. since prior to November 23, 1959; and that they suffered aggregate losses of \$240,000 for Aventura, \$8,916.32 for Arabia, and \$1,500 for Inversiones Petroleras, or \$125,208.16 each with regard to these items.

(d) Republic of Cuba Bonds

The Commission finds that claimants owned eight 4-1/2% Bonds of the External Debt of the Republic of Cuba. The non-payment of the obligation constituted a taking of the property on December 31, 1960 and the value per \$1,000 bond including interest to December 31, 1960 was \$1,022.50 (see Claim of Clemens R. Maise, Claim No. CU-3191). Accordingly the total loss is \$8,180.00 and each claimant's share of the loss is \$4,090.00.

(e) and (f) "Motembo" and "Santo Tomas" Mineral Concessions

In our decision entitled the Claim of John H. Parker, Claim No. CU-0041 (Final Decision), we held that the "Motembo" and "Santo Tomas" concessions were nationalized or otherwise taken by the Government of Cuba on November 23, 1959.

On the basis of the record in the instant case and the Parker case (supra), the Commission finds that these claimants had been the owners of a 5 per cent interest in both above concessions since prior to November 23, 1959; and that they each suffered a loss in the amount of \$1,012.16 within the meaning of Title V of the Act.

Currency

The record also contains evidence that claimant delivered 6,800.00 pesos to the American Embassy in Havana, Cuba. These were turned over to a private depository which later surrendered them under Cuban Law 963 of August 4, 1961, but nothing was received in return. In its decision, Claim of Dorothy G. O'Kieffe, CU-1242, the Commission held that said deposits were taken by the Government of Cuba pursuant to Law 964 effective August 9, 1961. Accordingly, the Commission finds that each claimant sustained a loss in the amount of \$3,400.00 (the peso being equivalent to the dollar) on this date.

Recapitulation

The losses of each claimant are summarized as follows:

<u>Item</u>	<u>Value of Interest</u>	<u>Date of Loss</u>
1. Partnership	\$202,500.00	December 6, 1961
2. Improved real property	30,000.00	December 6, 1961
3. Unimproved real property	5,000.00	December 6, 1961
4. Personal property of residence	5,802.50	December 6, 1961
5. Stock, bonds, mineral concessions		
(a) Petrolera Aventura	120,000.00	November 23, 1959
(b) Petrolera Arabia	4,458.16	November 23, 1959
(c) Inversiones Petroleras	750.00	November 23, 1959
(d) Republic of Cuba Bonds	4,090.00	December 31, 1960
(e) and (f) Motembo and Santo Tomas	1,012.16	November 23, 1959
6. Currency	<u>3,400.00</u>	August 9, 1961
	\$377,012.82	

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 claim it is so ordered as follows:

- 7 -

Each Claimant

<u>FROM</u>	<u>ON</u>
November 23, 1959	\$126,220.32
December 31, 1960	4,090.00
December 6, 1961	243,302.50
August 9, 1961	<u>3,400.00</u>
	\$377,012.82

Accordingly, the following Certifications of Loss will be entered and the remainder of the Proposed Decision, as amended herein, is affirmed.

CERTIFICATIONS OF LOSS


The Commission certifies that CARTER H. OGDEN 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 Three Hundred Seventy-Seven Thousand Twelve Dollars and Eighty-Two Cents (\$377,012.82) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

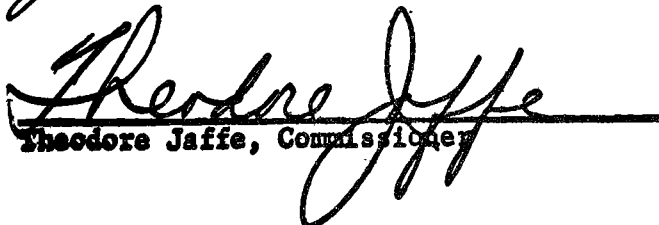
CU-2339

The Commission certifies that ELMA OGDEN 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 Three Hundred Seventy-seven Thousand Twelve Dollars and Eighty-two Cents (\$377,012.82) with interest 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 22 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 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.

CU-2339

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

IN THE MATTER OF THE CLAIM OF

CARTER HARRISON OGDEN

Claim No. CU - 2339

Decision No. CU - 1261

**Under the International Claims Settlement
Act of 1949, as amended**

Counsel for claimant:

Rufus King, Esquire

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 \$923,906.00, was presented by CARTER HARRISON OGDEN and is based upon the asserted loss of certain real property, personal property, securities and mineral concessions in Cuba. Claimant states that he has been a national of the United States since his 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 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:

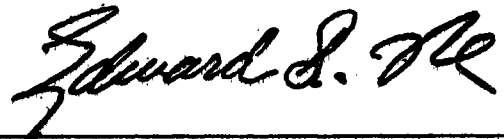
The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

This claim is based upon the asserted loss of real property consisting of a residence, and building lot and personal furnishings. In addition, claimant asserts the loss of stocks, bonds, mineral interests, and the loss of a one-half interest in the partnership of Ogden & Ogden, an import merchandise brokerage business. The evidence of record in this claim consists solely of claimant's own statements. By Commission letter of June 13, 1967, claimant was advised, through counsel, as to the type of evidence proper for submission to establish this claim under the Act. In that letter, the Commission made certain suggestions to claimant, through counsel, concerning the submission of supporting evidence in this matter. However, no evidence in response to this correspondence has been received to date. On October 4, 1967, counsel was invited to submit any evidence available to him within 45 days from that date, and he was informed, that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. No evidence has since been submitted.

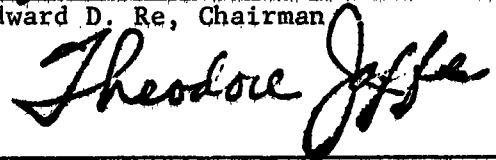
The Commission finds that claimant has not met the burden of proof in that he has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this claim is denied. The Commission deems it unnecessary 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

FEB 14 1968



Edward D. Re, Chairman



Theodore Jaffe, Commissioner

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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).)

CU- 2339