

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

IN THE MATTER OF THE CLAIM OF

E.B. OGDEN, JR.
and
NANCY A. OGDEN

Claim No. **CU** -3392

Decision No. **CU** - 6296

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

Rufus King, Esq.

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 E.B. OGDEN, JR. for \$786,969.00, based upon the loss of business interests and personal property. Inasmuch as pursuant to the community property law of Cuba, NANCY A. 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 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.

Claimants assert the following losses:

	<u>Asserted Value</u>
1. Interest in a partnership	\$500,000.00
2. Household furnishings, fixtures; and automobile	18,063.00
3. Stocks, bonds and mineral concessions, as follows:	
(a) Cia. Petrolera Aventura - 60 shares (30% of capital stock)	240,600.00
(b) Cia. Petrolera Arabia, S.A. - 108 shares at \$83.34	9,000.00
(c) Inversiones Petroleras Cubana, S.A. - 5 shares at \$500	2,500.00
(d) Cia. Cubana de Electricid - 2 bonds at \$500	1,000.00
(e) Havana Biltmore Yacht & Country Club - 1 Class "A" share	5,000.00
(f) "Motembo" Mineral Concession, Las Villas Province, 5 per cent interest	5,403.00
(g) "Santo Tomas" Mineral Concession, Las Villas Province, 5 per cent interest	<u>5,403.00</u>
Total	\$786,969.00

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 and State Department correspondence.

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

The Commission finds that claimant, E.B. OGDEN, JR. and his brother, Carter H. Ogden, were engaged since 1937 in the merchandise brokerage business in Havana, Cuba under the name of Ogden & Company, later changed to Ogden & Ogden. Claimant, E.B. OGDEN, JR. owned a 50% interest in the business, which had originally been established by claimant's father in 1922.

The firm represented approximately twenty-five (25) manufacturers, processors and exporters of food products from the United States and other countries, cotton and jute bags and burlap, lard and meat products, flour, rice and other items. Sales were made for the account of the firms represented to the wholesale importers and industrialists of Cuba. The firm did not buy or sell any merchandise for its own account and owned no inventory of stock.

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 in August, 1960 and his brother left on April 26, 1961.

Based on the foregoing, the Commission finds that the subject brokerage business 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].)

In determining the value of the partnership the Commission has considered the affidavits and statements of former customers of the partnership concerning the number of years the partnership existed in Cuba, the commodities handled, the firms represented, the gross and net brokerage commissions earned by the partnership particularly during the period 1949 to 1959 inclusive; and the asserted going concern value of the partnership. Claimant has also submitted a copy of a 1955 balance sheet.

CU-3392

From the foregoing it appears that during the period 1954-1959, the average gross brokerage received by the firm was \$200,000.00 per year and the net income of the partnership was \$80,000.00 per year.

Upon consideration of the entire record, the Commission finds that the valuation most appropriate to the property and equitable to the claimant is the amount resulting from capitalizing the average annual net earnings for the five-year period, 1954-1959 (\$80,000.00), at 10% to arrive at the going concern value of the partnership. Accordingly, the value at the time of loss, was \$800,000.00.

In addition, the Commission finds that the partnership owned certain furniture and fixtures necessary to the conduct of its business. Claimants have stated that its value was \$20,000.00. This value is not supported by the evidence. The Commission finds that in the absence of specific evidence to the contrary the furniture and fixtures, as depreciated, had a value of \$10,000.00. Accordingly, the overall value of the said partnership is found to be \$810,000.00, and each claimant sustained a loss in the amount of \$202,500.00.

2) Household Furnishings and Fixtures; and Automobile

With respect to the personalty in claimants' apartment, claimants have submitted a list of furniture and fixtures with asserted values for each item. It is not stated if the value represents the cost price or the replacement value. It appears from the record that claimants had lived many years in Cuba and that the date of acquisition of this personalty was at least 1950, thus having an age of 10 years at the time of loss. 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 owned by claimant and his spouse, had a value of \$5,024.00 on the date of loss, and that each claimant thereby suffered a loss of \$2,512.00 within the meaning of Title V of the Act.

Claimants have asserted that their Opel automobile had a value of \$2,000.00. The record does not support this value. However, in the absence of specific evidence of value the Commission has considered values reflected in the Guide of

the National Automobile Dealers Association. It finds that at the time of loss, December 6, 1961, the Opel had a value of \$1,025.00 and that each claimant sustained a loss in the amount of \$512.50.

- 3) 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.; 108 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, \$8,999.64 for Arabia, and \$1,500 for Inversiones Petroleras, or \$125,249.82 each with regard to these items.

- (d) Cia. Cubana de Electricidad
- (e) Havana Biltmore Yacht and Country Club

The Commission finds that claimants owned two \$500 Mortgage bonds (Nos. DD 1004 and DD 1005) issued by the Cuban Electric Company and one Class A share of the Havana Biltmore Yacht and Country Club.

The properties of the Cuban Electric Company securing the debt were taken by the Government of Cuba on August 6, 1960. Pursuant to the provisions of Section 502(3) of the Act these bonds are certifiable under the Act and the Commission finds that each claimant suffered a loss of \$500 on that date.

CU-3392

The properties of the Havana Biltmore Yacht and Country Club were intervened on March 19, 1960 and the Commission has determined that a share of stock therein had a value of \$3,500 (see Claim of Arman E. Becker, Jr., Claim No. CU-1094). Accordingly each claimant suffered a loss of \$1,750 in this connection.

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

In our decision entitled the Claim of John H. Parker (supra, 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.

Recapitulation

The losses of each claimant are summarized as follows:

<u>Item</u>	<u>Value of Interest</u>	<u>Date of Loss</u>
L. Partnership	\$202,500.00	December 6, 1961
2. Household furnishings and automobile	2,512.00 512.00	December 6, 1961 December 6, 1961
3. Stock, bonds, mineral concessions		
(a) Petrolera Aventura	120,000.00	November 23, 1959
(b) Petrolera Arabia	4,499.82	November 23, 1959
(c) Inversiones Petroleras	750.00	November 23, 1959
(d) Cuban Electric	500.00	August 6, 1959
(e) Havana Biltmore Yacht Club	1,750.00	March 19, 1960
(f) and (g) Motembo and Santo Tomas	<u>1,012.16</u>	November 23, 1959
	\$334,036.48	

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:

<u>Each Claimant</u>	
<u>FROM</u>	<u>ON</u>
November 23, 1959	\$126,261.98
March 19, 1960	1,750.00
August 6, 1960	500.00
December 6, 1961	<u>205,524.50</u>
	\$334,036.48

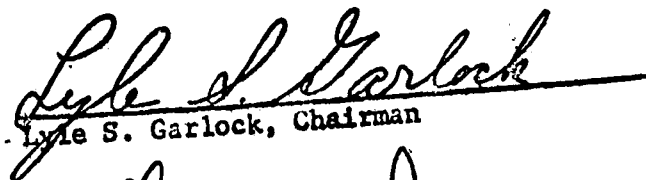
CERTIFICATIONS OF LOSS

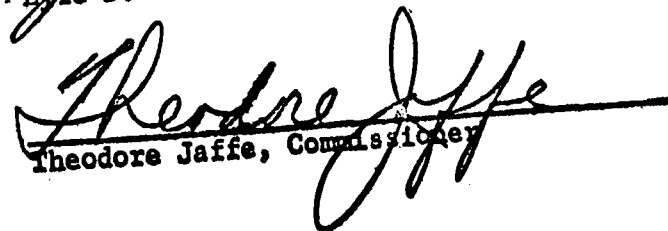
The Commission certifies that E. B. OGDEN, JR. suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Three Hundred Thirty-Four Thousand Thirty-Six Dollars and Forty-Eight Cents (\$334,036.48) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that NANCY A. 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 Thirty-Four Thousand Thirty-Six Dollars and Forty-Eight Cents (\$334,636.48) 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

AUG 4 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.

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. 1.5(e) and (g), as amended (1970).)

CU-3392