

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

IN THE MATTER OF THE CLAIM OF

JOHN S. DUMOIS

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -2832

Decision No. CU 4392

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 JOHN S. DUMOIS, for \$18,742.00 based upon the asserted loss of two retirement pensions. Claimant has been a national of the United States since his birth on January 21, 1897.

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.

It is asserted by claimant that he was entitled to a pension of 163.00 pesos per month from the Caja General de Retiro de Trabajadores del Petroleo (General Retirement Fund of Petroleum Workers) and another pension of 88.25 pesos per month from the Savings Plan of Esso Standard Oil, S. A., a Panamanian corporation.

On the basis of evidence of record, the Commission finds that the above mentioned Funds awarded to claimant retirements pensions in the asserted amounts.

The General Retirement Fund of Petroleum Workers was established by Decree No. 749 of February 23, 1951, as amended by Law-Decree No. 1780 of November 10, 1954.

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. Information also shows that retired employees received their monthly retirement benefits (pensions) from the Banco de Seguros Sociales de Cuba up to the time of their departure from Cuba. After their departure from Cuba the benefits remained unpaid.

The Savings Plan of Esso Standard Oil, S. A. provided for an annuity fund to which the employees as members of the plan made regular contributions. The annuity provisions of the plan were specifically designed to complement the annuity benefits due from the General Retirement Fund of Petroleum Workers. The Commission also finds that the assets of the Savings Plan of Esso Standard Oil, S. A., were in part on deposit with the Havana branch office of the First National City Bank of New York and in part in the possession of Esso Standard Oil, S. A., and that they were taken by the Government of Cuba on July 1, 1960, in connection

with the intervention of Esso Standard Oil, Sa. A., on that date by Resolution No. 33 issued by the Instituto Cubano de Petroleo, an agency of the Government of Cuba.

Claimant retired from Esso Standard Oil, S. A., on October 1, 1960, and never received any pension benefits from the General Retirement Fund of Petroleum Workers.

Pursuant to his retirement, the claimant received retirement annuities from the Savings Plan of Esso Standard Oil, S. A. for the months of October, November, and December, 1960. Beginning with January 1, 1961, no further benefits had been received by claimant from the company Savings Plan, then already owned by the Government of Cuba.

In our decision entitled the Claim of A. M. Joy de Pardo (Claim No. CU-1906 which we incorporate herein by reference), we held that the refusal of the Government of Cuba to transfer retirement benefits to claimant constituted a taking of her property within the purview of section 503(a) of the Act. Therefore, the Commission finds that claimant's claim for the loss based upon such taking in the instant claim arose on October 1, 1960, with respect to the pension due from the General Retirement Fund of Petroleum Workers and on January 1, 1961, with respect to the pension due from the Savings Plan of Esso Standard Oil, S. A.

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 64 amounts to 9.9036 times the yearly sum of the annuity. Since on October 1, 1960, as well as on January 1, 1961, for the purposes of this claim, the claimant was 64 years of age, the value of his discounted annuity on such dates amounted to 9.9036 times the yearly sum of his annuities (the peso being on a par with the United States dollars) as follows:

\$163.00 times 12 or \$1,956.00, the yearly sum of the annuity due from the General Retirement Fund of Petroleum Workers, times 9.9036 \$19,371.44

\$88.25 times 12 or \$1,059.00 the yearly sum of the annuity due from the Savings Plan of Esso Standard Oil, S. A., times 9.9036 \$10,487.91  
\$29,859.35

In view of the foregoing, the Commission concludes that claimant sustained losses within the purview of Title V of the Act in the total amount of \$29,859.35.

It will be noted that the total amount of loss found herein is in excess of the amount asserted by claimant. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amount which may be asserted by the claimant as the extent thereof.

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. as follows:

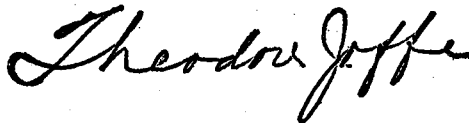
<u>FROM:</u>	<u>ON:</u>
October 1, 1960	\$19,371.44
January 1, 1961	<u>\$10,487.91</u>
	\$29,859.35

CERTIFICATION OF LOSS

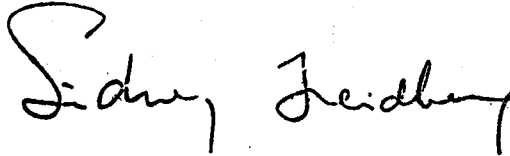
The Commission certifies that JOHN S. DUMOIS suffered a loss as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Twenty-nine Thousand Eight Hundred Fifty-nine Dollars and Thirty-five Cents (\$29,859.35) 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

7 JAN 1970



Theodore Jaffe, Commissioner



Sidney Freidberg, 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).)