

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

IN THE MATTER OF THE CLAIM OF

ESTRELLA VAUGHN
MATTIE E. WHITMARSH
and
GLORIA M. VAUGHN

Claim No. CU -1213

Decision No. CU-2011

Under the International Claims Settlement
Act of 1949, as amended

AMENDED PROPOSED DECISION

Under date of June 19, 1968, the Commission issued its Proposed Decision denying this claim for lack of proof. The claim, in the amount of \$194,641.00, had been filed originally by ESTRELLA VAUGHN, a national of the United States since February 23, 1922. Subsequently, additional supporting evidence was filed. During the course of processing the new evidence, it appeared that the original claimant's two children, MATTIE E. WHITMARSH and GLORIA M. VAUGHN, nationals of the United States at all pertinent times, had interests in the claim. Accordingly, they have been added as party claimants.

Upon consideration of the new evidence in the light of the entire record, it is

ORDERED that the Proposed Decision be amended as follows:

Claimants assert the following losses:

Land	\$ 7,500.00
Buildings	143,000.00
Tangible personal property	32,046.00
Life insurance policy	2,495.00
Pension	<u>9,600.00</u>
Total	<u>\$194,641.00</u>

The evidence now includes reports from abroad; pertinent files of the State Department; copies of material submitted by ESTRELLA VAUGHN and her late husband to the Internal Revenue Service concerning tax deductions for their Cuban losses; affidavits from individuals who had known ESTRELLA VAUGHN and her late husband in Cuba; and statements of claimants to the Commission respecting the properties in question. On the basis of the entire record, including the new evidence, and considering the community property laws of Cuba, the Commission now finds that ESTRELLA VAUGHN and her husband, Jeremiah C. Vaughn, a national of the United States from birth until his death on April 27, 1967, jointly owned certain properties in Cuba, discussed in detail below. (See Claim of Robert L. Cheaney and Marjorie L. Cheaney, Claim No. CU-0915.) Upon the intestate death of Jeremiah C. Vaughn in Georgia, claimants inherited his interests in equal shares. Therefore, ESTRELLA VAUGHN, MATTIE E. WHITMARSH, and GLORIA M. VAUGHN had interests in the whole claim of 2/3, 1/6 and 1/6, respectively.

Real Property

Based upon the evidence of record, the Commission finds that ESTRELLA VAUGHN and her late husband each owned a 1/2 interest in the following items of real property:

1. A 2-story brick house and lot at Calle 70 No. 1706, Marianao, Havana, Cuba.
2. A 4-story brick house at Calle "B" No. 14, Vedado, Havana, Cuba.
3. A 3-story duplex, brick apartment house at 5th "F" No. 9614, Miramar, Marianao, Havana, Cuba.
4. A vacant lot at Calle 70 No. 1704, Marianao, Havana, Cuba.

On October 14, 1960, the Government of Cuba published in its Official Gazette, Special Edition, its Urban Reform Law. Under this law the renting of urban properties and all other transactions or contracts involving transfer of the total or partial use of urban properties were outlawed (Article 2). The law covered residential, commercial, industrial and business office properties (Article 15).

The record shows that the above three items of improved real property were under leases to tenants, except the ground floor of the house at Calle 70 No. 1706 which was occupied by ESTRELLA VAUGHN and her family. It further appears that the Urban Reform Authorities of Cuba sold all of the apartments in the three said houses, except the one occupied by the Vaughn family, to the tenants in possession.

The Commission therefore finds that the said properties which were under lease to tenants were taken by the Government of Cuba on October 14, 1960 pursuant to the Urban Reform Law. (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39.)

On December 6, 1961, the Cuban Government published in its Official Gazette its Law 989, which effected the confiscation of all assets, personal property and other rights of persons who had left the country. The Commission finds that this law applied to the Vaughn family who had left Cuba in September 1961, and that the Vaughn apartment and the vacant lot were taken by the Government of Cuba on December 6, 1961 pursuant to Law 989. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semi-ann. Rep. 53 [July-Dec. 1966].)

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

The record includes a detailed statement of December 12, 1960 prepared by ESTRELLA VAUGHN in Cuba and submitted to the American Embassy at Havana, Cuba. In that statement Mrs. Vaughn described the four items of real property in question and set forth descriptions thereof as well as the values of each item as of December 1958. Those valuations conform in all respects with Mr. and Mrs. Vaughn's statements to the Internal Revenue Service which allowed them tax deductions for their Cuban losses.

Upon consideration of the entire record, the Commission finds that the valuations most appropriate to the real properties and equitable to the claimants are those set forth in Mrs. Vaughn's statement to the American Embassy at Havana, Cuba. Accordingly, the Commission finds that the real properties had the following values on the indicated dates of loss:

a.	Second floor apartment and lot at Calle 70 No. 1706, Marianao on October 14, 1960	\$ 28,000.00
b.	First floor apartment at same address, on December 6, 1961	20,000.00
c.	House and lot at Calle "B" No. 14, Vedado, on October 14, 1960	45,000.00
d.	Duplex house and lot at 5th "F" No. 9614, Miramar, on October 14, 1960	50,000.00
e.	Vacant lot at Calle 70 No. 1704, Marianao, on December 6, 1961	<u>7,500.00</u>
	Total	<u>\$150,500.00</u>

Therefore, the losses amounted to \$123,000.00 on October 14, 1960 and \$27,500.00 on December 6, 1961. Accordingly, the interests of ESTRELLA VAUGHN (2/3), MATTIE E. WHITMARSH (1/6), and GLORIA M. VAUGHN (1/6) had values of \$82,000.00, \$20,500.00, and \$20,500.00, respectively, in the losses of October 14, 1960; and \$18,333.34, \$4,583.33 and \$4,583.33, respectively, in the losses of December 6, 1961.

Tangible Personal Property

Claimants assert the following losses of tangible personal property:

Furniture and fixtures	\$ 5,500.00
Tools	500.00
Old Cuban currency	23,546.00
1956 Dodge Coronet automobile	<u>2,500.00</u>
Total	<u>\$32,046.00</u>

The record shows and the Commission finds that ESTRELLA VAUGHN and her late husband each owned a 1/2 interest in the contents of their home at Calle 70 No. 1706, Marianao, Havana, Cuba, as well as equal interests in certain tools and a 1956 automobile maintained on the premises. The Commission further finds that all of said personal property was taken by the Government of Cuba on December 6, 1961 when their home was taken.

On the basis of the entire record, including the material submitted to the Internal Revenue Service, the Commission finds that on the date of loss the furniture and fixtures had a value of \$5,500.00; the tools had a value of \$500.00; and that the 1956 automobile had a value of \$625.00 after depreciation at the rate of 15% per year for 5 years. Therefore, the aggregate value of the above items of personal property was \$6,625.00, and the values of the interests of ESTRELLA VAUGHN (2/3), MATTIE E. WHITMARSH (1/6), and GLORIA M. VAUGHN (1/6), in the claim arising from the loss, were \$4,416.66, \$1,104.17, and \$1,104.17, respectively.

Claimants also assert the loss of \$23,546.00 in old Cuban currency. On several occasions it was suggested that claimants submit evidence in support of this portion of their claim. Under date of August 4, 1968, ESTRELLA VAUGHN stated, "With respect to the loss of cash, I can only state that my husband had a regular account with the First National Bank of the City of New York, in Havana, but I do not know the balance of this account." The material submitted to the Internal Revenue Service includes a listing by the deceased as follows: "Old Cuban Currency - \$23,546.00." No further details are set forth and no other evidence in support of this portion of the claim is of record.

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) (1970).)

The Commission finds that claimants have failed to sustain the burden of proof with respect to the portion of their claim based upon old Cuban currency. Accordingly, this portion of the claim is denied.

Life Insurance Policy

Claimants assert a loss of \$2,495.00, representing the value of an insurance policy issued by the Pan American Life Insurance Company on the life of Jeremiah C. Vaughn. The evidence includes a copy of the insurance policy, and a copy of a letter of May 8, 1967 from Pan American Life Insurance Company, the insurance carrier, to claimant in response to a request for payment by ESTRELLA VAUGHN, the beneficiary under the policy. The carrier states in that letter that all payments on the policy including premiums and claims are payable in Cuba and that its position is that the Government of Cuba assumed the obligations of the carrier upon nationalization of the carrier's assets in Cuba. The carrier therefore disclaimed any responsibility under the policy on the life of Jeremiah C. Vaughn.

In the Claim of Pan American Life Insurance Co. (Claim No. FCSC CU-3651), the company asserted claim for the loss of the net assets of its branch in Cuba. Thereafter when it appeared to the claimant that it would be held liable in the courts of the United States under its policies issued in Cuba, the claim was increased by the addition of its formerly subtracted reserves for such losses. The Commission, in its Decision No. CU-4212 on this claim, and consistent with its practice in claims of American corporate claimants operating through branches in Cuba, did not deduct such liabilities, because an American corporation is or may be liable for the debts contracted by its Cuban branch. Claimant (in Claim CU-3651) has filed certain objections which remain to be heard, but no objection was made specifically to the holding on its liabilities.

By letter of February 3, 1970, the Commission advised ESTRELLA VAUGHN that generally the United States courts have upheld suits filed on the basis of life insurance policies issued in Cuba, and suggested the submission of evidence to establish that the proceeds of the policy were taken by Cuba. The suggestion was repeated in a letter of March 2, 1970, but to date no further evidence has been submitted.

The Commission finds that claimants have failed to meet the burden of proof with respect to the portion of the claim based on the life insurance policy in that the evidence does not establish that any proceeds of the policy were taken by the Government of Cuba. Accordingly, this portion of the claim is denied.

Pension

Claimants assert a loss of \$9,600.00 for a pension of \$150.00 a month which the late Jeremiah C. Vaughn had been receiving since April 30, 1957 pursuant to the laws of Cuba. It appears from the record that the deceased had been employed as a sales manager for a concern in Cuba from March 1920 until the date of his retirement. The Commission finds that the deceased was entitled to a pension of \$150.00 a month, and that this pension had been paid until September 1961.

The Commission has held that the refusal of the Government of Cuba to pay retirement benefits under such circumstances constituted a taking of property within the meaning of Title V of the Act. (See Claim of A. M. Joy de Pardo, Claim No. CU-1906.) Accordingly, the Commission finds that a claim for this loss arose on September 1, 1961. The record shows that the deceased was born in 1898 and was 63 years of age on the date of loss.

The Commission has adopted as a basis for the valuation of annuities the Makehamized mortality table, appearing as Table 38 of the 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 63 amounts to 10.2604 times \$1,800.00, the yearly sum of the annuity. The Commission therefore finds that the value of the annuity on September 1, 1961, the date of loss, was \$18,468.72. Therefore the values of the interests of ESTRELLA VAUGHN (2/3), MATTIE E. WHITMARSH (1/6), and GLORIA M. VAUGHN (1/6) in the loss sustained were \$12,312.48, \$3,078.12, and \$3,078.12, respectively.

RECAPITULATION

Claimants' losses are summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
<u>ESTRELLA VAUGHN</u>		
Real property	October 14, 1960	\$ 82,000.00
Real property	December 6, 1961	18,333.34
Tangible personal property	December 6, 1961	4,416.66
Pension	September 1, 1961	<u>12,312.48</u>
	Total	<u>\$117,062.48</u>
<u>MATTIE E. WHITMARSH</u>		
Real property	October 14, 1960	\$ 20,500.00
Real property	December 6, 1961	4,583.33
Tangible personal property	December 6, 1961	1,104.17
Pension	September 1, 1961	<u>3,078.12</u>
	Total	<u>\$ 29,265.62</u>
<u>GLORIA M. VAUGHN</u>		
Real property	October 14, 1960	\$ 20,500.00
Real property	December 6, 1961	4,583.33
Tangible personal property	December 6, 1961	1,104.17
Pension	September 1, 1961	<u>3,078.12</u>
	Total	<u>\$ 29,265.62</u>

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:

FROM

ON

ESTRELLA VAUGHN

October 14, 1960	\$ 82,000.00
September 1, 1961	12,312.48
December 6, 1961	<u>22,750.00</u>
Total	<u>\$117,062.48</u>

MATTIE E. WHITMARSH

October 14, 1960	\$ 20,500.00
September 1, 1961	3,078.12
December 6, 1961	<u>5,687.50</u>
Total	<u>\$ 29,265.62</u>

GLORIA M. VAUGHN

October 14, 1960	\$ 20,500.00
September 1, 1961	3,078.12
December 6, 1961	<u>5,687.50</u>
Total	<u>\$ 29,265.62</u>

CERTIFICATIONS OF LOSS

The Commission certifies that ESTRELLA VAUGHN succeeded to and 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 Seventeen Thousand Sixty-two Dollars and Forty-eight Cents (\$117,062.48) with interest at 6% per annum from the respective dates of loss to the date of settlement;

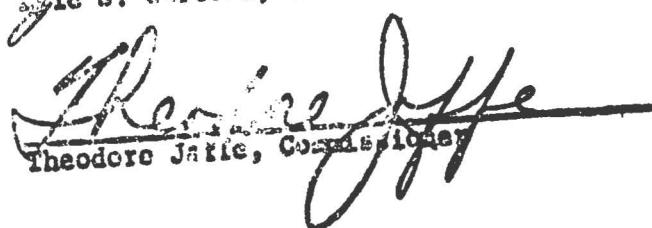
The Commission certifies that MATTIE E. WHITMARSH succeeded to and suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Twenty-nine Thousand Two Hundred Sixty-five Dollars and Sixty-two Cents (\$29,265.62) with interest at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that GLORIA M. VAUGHN succeeded to and 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 Two Hundred Sixty-five Dollars and Sixty-two Cents (\$29,265.62) 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 Amended
Proposed Decision of the
Commission

MAR 31 1971


Lyle S. Gramlich, Chairman


Theodore Jatke, 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 Amended 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, (1970).)

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

IN THE MATTER OF THE CLAIM OF

ESTRELLA VAUGHN

Claim No.CU-1213

**Decision No.CU
2011**

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

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 \$194,641.00, was presented by ESTRELLA VAUGHN, and is based upon the asserted loss of certain real property, personal property and security interests. Claimant has been a national of the United States since her marriage to Jeremiah C. Vaughn on February 23, 1922.

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 losses assertedly sustained to certain unimproved real property including two residential houses, an apartment house and a vacant lot. An additional asserted loss includes furniture and fixtures, a Life Insurance Policy, a car, and a Cuban Commercial Retirement Income. Claimant has submitted her statements on the claim form filed March 27, 1967 and an additional description of the claimed loss. No evidence of probative value has been submitted to establish ownership, value or loss of the subject property. By Commission letter of March 29, 1967, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act. Specifically, the Commission suggested that claimant submit evidence in support of her ownership, the value and the loss of the subject property. No evidence in response to this correspondence has been received to date.

On January 17, 1968, claimant was invited to submit any evidence available to her within 45 days from that date, and she 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 she has failed to establish ownership of rights and interest in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this claim is hereby 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

JUN 19 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

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).)

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