

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

IN THE MATTER OF THE CLAIM OF

KERMAC CONTRACTORS, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0610

Decision No. CU 6801

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 KERMAC CONTRACTORS, INC., in the total amount of \$309,099.48, based upon the asserted ownership and loss of property in Cuba, including cash, equipment, oil concessions and unproduced crude oil.

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) (1970).)

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The evidence of record establishes that claimant was organized under the laws of Delaware and that at all pertinent times more than 50 percent of its outstanding capital stock was owned by nationals of the United States. An authorized officer of the claimant corporation has certified that at the time of filing of this claim all of the shares of claimant were owned by Kerr McGee Corporation, organized under the laws of Delaware; and that over 99% of the outstanding capital stock of Kerr McGee was owned by persons whose addresses were in the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The claimant has submitted copies of agreements, inventories, balance sheets and other data which disclose that claimant purchased oil concessions at the Dos Estrellas land tract in Camaguey Province to explore for and exploit petroleum products; and that claimant, with a Cuban enterprise known as Corporacion General de Petroleo de Cuba, S.A., had agreed with Refineria Cabaiguan, S.A. to permit said refinery to drill and exploit such products as the operator of the venture.

The claimant asserted that the property, subject of the claim, includes the following:

| | |
|--|-------------------|
| 1. Casing, Tubing, lease and other equipment | \$ 14,324.70 |
| 2. Warehouse equipment | 1,742.22 |
| 3. Drilling equipment and automobiles | 4,295.63 |
| 4. Cash in Trust Company of Cuba | 35,246.28 |
| 5. Debt owed by Refineria Cabaiguan | 2,325.65 |
| 6. Value of unproduced crude oil | <u>251,165.00</u> |

\$309,099.48

In addition to the agreements and other data, as discussed above, claimant has submitted several banking statements, including one showing a balance of \$35,650.22 in the Trust Company of Cuba as of October 22, 1959, schedules and itemized lease and well equipment, inventories, affidavits, correspondence and a balance sheet prepared as of June 30, 1960. Based on the entire record, the Commission finds that claimant owned items 1-5, inclusive, but that the bank account had a balance of \$35,650.22 at or about the time of loss, as discussed hereafter.

The rights of claimant in the property which it controlled were substantially curtailed by the Cuban Government under Law 635, of November 23, 1959. This law effectively cancelled all applications for exploration and exploitation of concessions, regardless of the status thereof. (See Claim of Felix Heyman, Claim No. CU-0412, 1967 FCSC Ann. Rep. 51.) Thereafter, when claimant or its associates in the enterprise in question filed applications for further drilling operations and other activities such applications were not approved by the Cuban Government. Accordingly, the Commission finds that the rights of claimant and associates with respect to the property which it controlled were effectively nationalized or otherwise taken by the government of Cuba on November 23, 1959; and that the interest of claimant herein was taken on that date.

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 Commission finds on the basis of the foregoing that property included in items 1 through 5, inclusive, had a total value of \$58,338.42, at the time of loss. However, there remains for determination the item of claim based on value of asserted unproduced crude oil said to have been owned by claimant.

The claimant has submitted no evidence to establish the extent of such crude oil or the loss and value of such property included in this portion of the claim. In Commission correspondence, including letters of July 25, 1966, October 23, 1969, and November 7, 1969, the Commission made suggestions to claimant with respect to the type of evidence proper for submission in establishing the claim for loss of such oil reserves. While claimant has responded in part to Commission correspondence, it has not submitted evidence of probative value to establish this portion of the claim. The Commission is constrained to deny this part of the claim and it is hereby denied.

The claimant has, however, submitted the agreements whereby the oil concessions were purchased in 1955 showing that a consideration of \$67,201.83 was paid for the concessions which, being in operation in 1959, were taken by the Government of Cuba under the provisions of Law No. 635 and similar measures. The claimant advised that this purchase price included the sum of \$7,034.30 as depreciable equipment, leaving a balance of \$60,167.53 as the cost of the concessions but the sum of \$2,500.00 was added thereto as the cost of legal and recording fees necessary to acquire such interests, resulting in the sum of \$62,667.53; and that the latter sum is that figure shown on a June 1960 balance sheet as the cost of the concessions in question.

The Commission concludes that claimant suffered a loss in the amount of \$62,667.53 when the concessions were nationalized or otherwise taken by the Government of Cuba; and that claimant suffered a loss in the total amount of \$121,005.95 within the meaning of Title V of the Act.

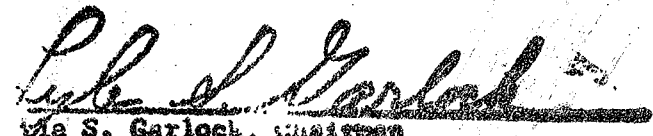
The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

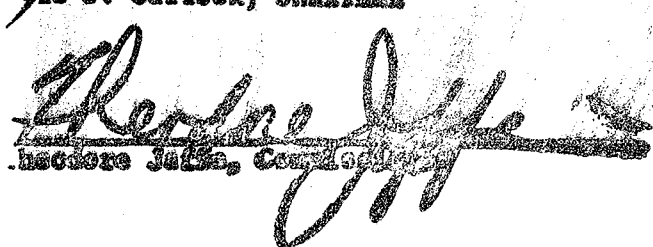
CERTIFICATION OF LOSS

The Commission certifies that KERMAC CONTRACTORS, INC., 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 Twenty-One Thousand Five Dollars and Ninety-Five Cents (\$121,005.95) with interest thereon at 6% per annum from November 13, 1959, to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

SEP 7 1960


Lyle S. Garlock, 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 (1970).)