

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

IN THE MATTER OF THE CLAIM OF

TEXFEL PETROLEUM CORPORATION

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-1671

Decision No. CU 3563

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$48,000.00, was presented by TEXFEL PETROLEUM CORPORATION based upon the asserted loss of a stock interest in a Cuban corporation.

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 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 record shows that claimant was organized under the laws of Delaware. An authorized officer of claimant has certified that at all pertinent times between January 1, 1959 and April 20, 1967, all of claimant's outstanding capital stock was owned by one person (shown by the record to have been a United States national since 1912), except for the period January 1963 to December 1963, when 250,000 shares, out of a total of 728,500 shares, were owned by a foreign banking institution. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The evidence establishes and the Commission finds that claimant owned 145,000 shares of capital stock of Cuban Colombian Petroleum Company, hereafter referred to as Colombian, which was organized under the laws of Cuba. Accordingly, Colombian does not qualify as a corporate "national of the United States" as defined by Section 502(1)(B) of the Act, summarized above. In this type of situation, it has been held previously that a stockholder in such a corporation is entitled to file a claim based upon his ownership interest therein. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

It appears from the record that Colombian was organized in 1954 for the purpose of acquiring oil concessions in Cuba, and exploring and exploiting such concessions. It further appears that Colombian had acquired such concessions in the Cuban provinces of Matanzas and Las Villas, according to a report made in January 1956, a copy of which is included in the record.

The Cuban Government enacted Law No. 635 on November 23, 1959, which cancelled all rights with respect to exploration and exploitation of concessions in land. The Commission finds that the property rights of Colombian were effectively nationalized or otherwise taken by the Government of Cuba on November 23, 1959, as a result of which claimant sustained a loss within the meaning of Title V of the Act. (See Claim of Felix Heyman, Claim No. CU-0412.)

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". The Commission has concluded that this phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property and that it is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider; i.e., fair market value, book value, going concern value, or cost of replacement.

Claimant has asserted a loss of \$48,000.00 with respect to its 145,000 shares of Colombian, based upon its cost of acquisition.

The evidence includes copies of balance sheets of Colombian as of June 30, 1955 and November 30, 1955. Claimant states that it has no other financial statements concerning Colombian, and does not know whether Colombian published any annual reports for years closer to the date of loss, such as 1958, 1959 or 1960.

It is noted that the two balance sheets show total assets of \$1,250,043.96 and \$1,250,348.04, respectively, of which the item "Intangible Assets", apparently representing the estimated value of the concessions, is listed on

each balance sheet in the amount of \$935,000.00. The record indicates that this amount was a mere estimate, based upon the concessions in land to explore and exploit owned by Colombian but without any real knowledge as to the amount of oil and/or gases contained in the land. No evidence has been submitted to establish that these concessions had a value of \$935,000.00, as shown in the balance sheets. Moreover, in view of the lapse of time between the dates of the balance sheets and the date of loss, and in the absence of evidence substantiating the value of these concessions, the Commission finds that the balance sheet figure cannot be considered appropriate for evaluating the concessions.

The record, however, does contain a copy of a report to the stockholders of Colombian in which it is stated that "Since the discovery of the Jatibonico field in 1954, little additional oil has been encountered in Cuba." It appears that Colombian had concessions in the Jatibonico area, but the amount of oil available to Colombian and the value thereof is not established by the record.

Upon careful consideration of the entire record and in the absence of evidence to the contrary, the Commission finds that the valuation most appropriate to the property and equitable to the claimant is that found for stock interests in other Cuban entities having concessions in the same general area as in this case. Accordingly, the Commission finds that on the date of loss, November 23, 1959, the value of one share of stock of Colombian was \$.12. Therefore, the Commission finds that claimant's stock interests in Colombian had a value of \$17,400.00 on November 23, 1959.

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.

CERTIFICATION OF LOSS

The Commission certifies that TEXFEL PETROLEUM CORPORATION 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 Seventeen Thousand Four Hundred Dollars (\$17,400.00) with interest at 6% per annum from November 23, 1959 to the date of settlement.

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

**MAR 18 1969**

*Leonard v. B. Sutton*  
\_\_\_\_\_  
Leonard v. B. Sutton, Chairman

*Theodore Jaffe*  
\_\_\_\_\_  
Theodore Jaffe, Commissioner

*Sidney Freidberg*  
\_\_\_\_\_  
Sidney Freidberg, 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 for 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. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)