

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

IN THE MATTER OF THE CLAIM OF

PHELPS DODGE CORPORATION
PHELPS DODGE COPPER PRODUCTS CORPORATION
PHELDRAK INTERNATIONAL CORPORATION

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

Claim No. CU-2345

Claim No. CU -2346

Claim No. CU-2347

Decision No. CU

4949

PROPOSED DECISION

These claims against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the total amount of \$975,375.60, were presented by PHELPS DODGE CORPORATION, PHELPS DODGE COPPER PRODUCTS CORPORATION and PHELDRAK INTERNATIONAL CORPORATION for loss of stock interests in a Cuban corporation and for loss of merchandise and fees for services furnished to this Cuban enterprise.

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.

An officer of the PHELPS DODGE CORPORATION has certified that the claimant was organized under the laws of New York and that at all pertinent times more than 95% of the outstanding capital stock has been owned by United States nationals. Additionally, the PHELPS DODGE COPPER PRODUCTS CORPORATION, organized in Delaware, has been at all times pertinent to this claim a wholly-owned subsidiary of the PHELPS DODGE CORPORATION or Phelps Dodge Industries, a Delaware corporation, also a wholly-owned subsidiary of the PHELPS DODGE CORPORATION. Further, statements of corporate officials establish that PHELDRAK INTERNATIONAL CORPORATION was organized under the laws of Delaware and at all times pertinent to this claim 50% of the outstanding shares of stock were owned by the aforesaid PHELPS DODGE COPPER PRODUCTS CORPORATION, with the remaining 50% being owned by the Holland Insulated Wire & Cable Works, Ltd., of Amsterdam, Holland. The Commission holds that claimants herein are nationals of the United States within the meaning of Section 502(1)(B) of the Act.

The following losses have been asserted by the aforesaid claimants in these claims:

(1) The claim of PHELPS DODGE CORPORATION, in the amended amount of \$472,776.75, is based upon the loss of stock interests in the Cuban corporation Productos de Cobre de Cuba Pheldrak, S.A., hereafter referred to as

Productos de Cobre, including 625 shares of preferred and 3,500 shares of common, comprising 25% of all the outstanding shares of such preferred and common stock issued by that firm.

(2) The claim of PHELPS DODGE COPPER PRODUCTS CORPORATION, in the amount of \$425,320.85, is based upon the failure to receive payment for copper products shipped by this claimant to Productos de Cobre.

(3) The claim of PHELDRAK INTERNATIONAL CORPORATION in the amount of \$77,278.00 is based upon an unpaid debt for services rendered by this claimant to Productos de Cobre in 1959-1960.

The Commission finds that the Cuban firm, Productos de Cobre, was nationalized by the Government of Cuba on October 24, 1960, pursuant to Resolution 3 of Law 851, enacted by the Government of Cuba on July 6, 1960.

Based upon the entire record, including copies of stock certificates, the Commission finds that PHELPS DODGE CORPORATION owned 625 shares of preferred and 3,500 shares of common stock of Productos de Cobre, a total beneficial ownership interest in said firm of 25%.

In support of the claims, claimants have submitted an uncertified balance sheet pertaining to Productos de Cobre as of September 30, 1960, various statements of claim, correspondence, affidavits and invoices indicating shipment of merchandise to Productos de Cobre, as well as a copy of the 1956 "Agreement as to Technical Assistance and Training", executed by PHELDRAK INTERNATIONAL CORPORATION and Productos de Cobre. Additionally, the evidence of record includes a related State Department file.

Since the Cuban subsidiary was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States within the meaning of Section 502(1)(B) of the Act, supra. In this type of situation, it has been held that an American stockholder owning an interest in such a

corporation may file a claim for the value of his ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

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.

I. PHELPS DODGE CORPORATION, CU-2345:

In presenting this claim on April 27, 1967, PHELPS DODGE CORPORATION asserted that its stock interests of 625 preferred and 3,500 common in Productos de Cobre were valued at \$412,500.00, or at \$100.00 par value per share of each class of stock. Further, claimant included the sum of \$57,776.75, or a 25% interest in a book value equity in the surplus of the Cuban firm, which was assertedly a total of \$231,106.99 on September 30, 1960. By letter of December 10, 1969, claimant amended the total amount of the claim to \$472,776.75, which includes an additional \$2,500.00, or a 25% interest in dividends payable to preferred stockholders, included in the balance sheet in the total amount of \$10,000.00.

The balance sheet of Productos de Cobre for September 30, 1960, reflects the following:

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ASSETS

Current Assets

| | | | |
|---|----|-----------------|----------------|
| Cash in Banks | \$ | 271,264.43 | |
| Accounts Receivable (less reserve \$26,214.02) | | 362,853.10 | |
| Accrued Interest Receivable | | 188.02 | |
| Loans to Officers and Employees | | 12,122.75 | |
| Other Accounts Receivable | | 41,461.18 | |
| Taxes - Reimbursed | | 28,348.54 | |
| Inventories at Cost | | 816,027.58 | |
| Materials in Transit | | <u>1,900.66</u> | |
| Total Current Assets | | | \$1,534,166.26 |

Plant and Equipment

| | | | |
|--|----|-------------------|------------------|
| Land and Improvements | \$ | 61,812.57 | |
| Buildings | \$ | 384,760.94 | |
| Machinery and Equipment | | 947,157.25 | |
| Furniture and Fixtures | | 118,767.24 | |
| Delivery Equipment | | 5,332.00 | |
| Materials, Miscellaneous | | <u>29,853.15</u> | |
| | | \$1,485,870.58 | |
| Less: Reserve for Depreciation | | <u>271,682.74</u> | 1,214,187.84 |
| Construction in Progress | | | 27,210.41 |
| Movable Equipment (less amortization \$50,464.34) | | | <u>66,779.93</u> |
| Total Plant and Equipment | | | 1,369,990.75 |

Deferred Charges

| | | | |
|------------------------------|----|-----------------|------------|
| Prepaid Expenses | \$ | 18,135.21 | |
| Cost of Organization | | 66,746.59 | |
| Miscellaneous | | 18,055.30 | |
| Building of Office in Havana | | <u>4,746.72</u> | |
| Total Deferred Charges | | | 107,683.82 |

Other Assets

| | | | |
|-------------------------|----|--------------|------------------|
| Guaranteed Deposits | \$ | 16,209.00 | |
| Certificates of Savings | | 540.00 | |
| Patterns | | <u>13.00</u> | |
| | | | <u>16,762.00</u> |
| | | | \$3,028,602.83 |

PAYABLES AND CAPITAL

Current Payables

| | |
|---------------------------------|-----------------|
| Accounts Payable | \$ 401,491.38 |
| Accruals | 194,405.96 |
| Deposits from Customers | 58,348.50 |
| Dividends on Preferred Stock | 10,000.00 |
| Advances | <u>2,000.00</u> |

Total Current Payables \$ 666,245.84

Long Term Loans

| | | |
|----------------------------|-------------------|----------------|
| Mortgage Payable - BANFAIC | <u>481,250.00</u> | \$1,147,495.84 |
|----------------------------|-------------------|----------------|

Capital and Surplus

| | | |
|---|-------------------|-------------------|
| Common Stock Authorized 26,000 shares at \$100.00 - \$2,600,000 | | |
| Issued | \$1,400,000.00 | |
| Preferred Stock Authorized 2,500 shares at \$100.00 - \$250,000 8% cumulative dividend | | |
| Issued | <u>250,000.00</u> | \$1,650,000.00 |
| Surplus Balance at December 31, 1959 | \$ 21,846.98 | |
| Net Profit from operation | <u>209,260.01</u> | |
| | | <u>231,106.99</u> |

Total Capital and Surplus 1,881,106.99

3,028,602.83

The Commission finds that the most appropriate basis for an evaluation of Productos de Cobre is the balance sheet of September 30, 1960. However, the Commission has consistently held that losses through investments in Cuban companies, such as Productos de Cobre, are to be determined on the basis of their net worth, not merely the asset value.

The Commission finds that the evidence of record fails to establish that items included in the "Deferred Charges" can be identified as capitalized expenses or assets of the Cuban enterprise. On the contrary, the entries "Prepaid Expenses", "Cost of Organization" and "Miscellaneous" appear to be

in the nature of ordinary expenses incurred by the firm; and "Building of Office in Havana" is apparently already included under the plant and equipment assets of this firm. Accordingly, the Commission finds that such deferred charges, in the amount of \$107,683.82 must be deducted from the assets in reaching the net worth of this enterprise.

The Commission finds that the net worth or excess of the assets over the liabilities of Productos de Cobre was, therefore, \$1,773,423.17. The Commission further finds that the value of the preferred stock on the date of loss was \$250,000.00 and that on that date the preferred stockholders were owed dividends of \$10,000.00, an aggregate of \$260,000.00. Therefore, the balance of the net worth available for distribution to the common stockholders was \$1,513,423.70.

On the date of nationalization, Productos de Cobre had outstanding a total of 2,500 shares of preferred stock and 14,000 shares of common stock. Thus, the value of claimant's one-fourth interest in the preferred and common stock of the Cuban corporation on the date of loss was \$65,000.00 and \$378,355.79, respectively. Accordingly, the Commission concludes that PHELPS DODGE CORPORATION suffered a loss in the total amount of \$443,355.79 within the meaning of Title V of the Act.

II. PHELPS DODGE COPPER PRODUCTS CORPORATION, CU-2346:

The claimant submitted a statement of claim to the State Department, dated March 5, 1963, indicating that shipments of copper products were made in 1959-1960 to Productos de Cobre, Havana, Cuba, for which claimant did not receive payment. The record also includes invoices covering these shipments, on open accounts, in the total amount of \$428,459.17, as being due and payable at the time of loss. Claimant has submitted evidence to establish that certain adjustments were made in this outstanding account in November 1960 whereby the total balance due claimant was reduced to \$425,320.85. However, the evidence does not establish the exact dates on which the invoices were due and payable.

The Commission has held that debts of a nationalized Cuban corporation owed to an American claimant constitute losses occurring on the date of

nationalization within the meaning of Title V of the Act. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].) Accordingly, the Commission finds that claimant, PHELPS DODGE COPPER PRODUCTS CORPORATION, sustained a loss of \$425,320.85 on October 24, 1960, the date that Productos de Cobre was nationalized, within the meaning of Title V of the Act.

III. PHELDRAK INTERNATIONAL CORPORATION, CU-2347:

The claimant has submitted a copy of its Agreement with Productos de Cobre, of February 25, 1956, whereby claimant was to furnish technical assistance to the Cuban firm. Such Agreement specifies the scales of payment or consideration for such services. Additionally, claimant has submitted a copy of its financial statement for 1960 showing the amount due for such technical assistance fees in the year ending December 31, 1959; and a copy of the Statement of the Cost and Sales for the period ending September 30, 1960, of Productos de Cobre, showing such sums due in 1960.

Based upon the entire record, the Commission finds that claimant furnished technical assistance to Productos de Cobre prior to its nationalization in 1960; that \$77,278.00 remained unpaid when the Cuban firm was nationalized by the Government of Cuba; and that the claimant, PHELDRAK INTERNATIONAL CORPORATION, sustained a loss in this amount on October 24, 1960 within the meaning of Title V of the Act. (See Claim of Kramer, Marx, Greenlee and Backus, supra.)

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.

CERTIFICATIONS OF LOSS

The Commission certifies that PHELPS DODGE 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 Four Hundred Forty-three Thousand Three Hundred Fifty-five Dollars and

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Seventy-nine Cents (\$443,355.79) with interest thereon at 6% per annum from October 24, 1960 to the date of settlement;


The Commission certifies that PHELPS DODGE COPPER PRODUCTS 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 Four Hundred Twenty-five Thousand Three Hundred Twenty Dollars and Eighty-five Cents (\$425,320.85) with interest thereon at 6% per annum from October 24, 1960 to the date of settlement; and

The Commission certifies that PHELDRAK INTERNATIONAL 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 Seventy-seven Thousand Two Hundred Seventy-eight Dollars (\$77,278.00) with interest thereon at 6% per annum from October 24, 1960 to the date of settlement.

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

3 JUN 1970


Lytle S. Garlock, Chairman


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).)

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