

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

IN THE MATTER OF THE CLAIM OF

EMMA B. SIMPSON,
EXECUTRIX, ESTATE OF
CLARENCE J. SIMPSON,
DECEASED

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2873

Decision No. CU - 6198

Counsel for claimant:

Jackson, Parrish & Larson
By: J. Philip Burt, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, filed on May 1, 1967, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$827,369.89, was presented by the late CLARENCE J. SIMPSON, and is based upon the asserted loss of his stock interest in Compania Perforadora Petrolera Simpson de Cuba, S.A., or the Simpson Oil Drilling Company of Cuba. The decedent has been a national of the United States since birth until death on October 16, 1968, after filing this claim.

EMMA B. SIMPSON, widow and sole beneficiary under the Last Will and Testament of CLARENCE J. SIMPSON, was appointed Executrix under the Will by the County Court of Dallas, Texas, on January 27, 1969. Accordingly, she is substituted in her representative capacity as claimant in this matter.

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).)

The evidence of record discloses that the Simpson Oil Drilling Company of Cuba, hereafter referred to as the Simpson corporation, was incorporated in Cuba on November 16, 1954; and that there were 500,000 shares of common stock outstanding, of which 499,000 shares were owned by the late CLARENCE J. SIMPSON.

Since the Simpson corporation was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia, or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. In this type of situation, it has been held that an American stockholder is entitled to file a claim for the value of such ownership interest.

(See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

This corporation engaged in oil drilling activities, with offices in Santa Clara, Cuba, until March 1959 when the Drilling Superintendent of the company, Jake Wagstaff, was directed by agents of the Cuban Government to cease drilling operations and ship all machinery and equipment back to the United States. Accordingly, at a cost of approximately \$30,000.00 the machinery and equipment was crated and otherwise prepared for shipment and sent to the docks at Port Isabelle de Sigua, Cuba.

The evidence also discloses that on or about November 15, 1959, the Cuban militia, by force, took over the machinery and equipment at Port Isabelle de Sigua and wrested the possession thereof from the Simpson corporation. Thus, the Commission hereby finds that the aforesaid assets of the Simpson corporation were taken by the Government of Cuba on November 15, 1959.

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 some evidence pertaining to the value of the Simpson corporation. However, the only available balance sheet in the record is dated August 31, 1957, or approximately two years before the date of loss. There appears to be no company record, such as accounting reports or balance sheets, showing the value of the shares of the corporation at the time of loss.

The evidence includes itemized lists of the equipment and machinery indicating years of purchase which were 1954 to 1956 for three oil drilling rigs.

This data, showing a total value of \$827,474.98, included copies of the invoices, shipping documents and freight charges, pertaining to dates of purchase. The record also includes recapitulations of the depreciated value of all of the fixed assets of the Simpson corporation for 1957 and 1958, showing an evaluation of \$304,986.40 for each year.

Additionally, there is of record a contract dated March 19, 1960, between the aforesaid Jake Wagstaff in his capacity as Vice-President of the Simpson corporation and representatives of the Cuban governmental agency known as Instituto Cubano del Petrolera. This agreement includes a list and the condition of all of the equipment and machinery of the Simpson corporation and provides that whereas such personal property "does not have debts of any kind nor are affected and burdened in any way", the parties agree to sell and convey such personalty to the Cuban Government for a consideration of \$275,000.00, the peso and dollar being on a par.

The evidence shows that \$25,000.00 was paid to the Simpson corporation by the Cuban Government which was utilized as terminal pay bonuses to the employees of the Simpson corporation; and that the sum of \$250,000.00 and the crating and shipping charges of \$30,000.00 were not paid by the Government of Cuba although that government retained the personal property in question.

Thus, in the absence of financial statements of the Cuban corporation nearer to the date of loss, of November 15, 1959, the Commission finds that the basis of evaluation most appropriate to the property and equitable to the claimant is the agreed price arising from the aforesaid contract. However, the Commission also finds that the sum of \$25,000.00 paid by the Cuban Government on the \$275,000.00 should be deducted, leaving \$250,000.00; and that the cost of crating for shipment, \$30,000.00, should be added to the value of these fixed assets. Accordingly, the Commission finds that the value of the corporation was in the total amount of \$280,000.00; that each share of the Simpson corporation had a value of \$0.56 and the 499,000 shares held by decedent had a total value of \$279,440.00. (See Claim of Clemens R. Maise, Claim No. CU-3191, 1967 FCSC Ann. Rep. 68.)

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 claim it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that EMMA B. SIMPSON, EXECUTRIX, ESTATE OF CLARENCE J. SIMPSON, DECEASED, 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 Two Hundred Seventy-Nine Thousand Four Hundred Forty Dollars (\$279,440.00) with interest thereon at 6% per annum from November 15, 1959 to the date of settlement.

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

MAY 19 1971


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).)

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