

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

IN THE MATTER OF THE CLAIM OF

HENRY H. WELDON

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3416

Decision No. CU 3368

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 HENRY H. WELDON and is based upon the asserted loss sustained in connection with the ownership of stock interests in Perforaciones Oro Negro, S.A., a Cuban corporation. Claimant has been a national of the United States since his naturalization on May 14, 1943.

This is the first claim involving Perforaciones Oro Negro, S.A. The Commission notes that several other claims have also been filed with it by other stockholders; thus this decision may, where applicable, serve as a precedent in the determinations of those other claims.

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.

On the basis of the evidence of record, the Commission finds that claimant owned since prior to November 1959, 230,000 shares of stock of Perforaciones Oro Negro, S.A. This corporation was engaged in the oil industry and owned oil concessions in various areas of Cuba. The Commission finds that these oil concessions constituted property within the meaning of Section 502(3) of the Act.

On November 23, 1959, the Cuban Government issued Law 635 which effectively cancelled all rights and interests with respect to exploration and exploitation of oil concessions. Accordingly, the Commission finds that the rights of Perforaciones Oro Negro, S.A. were effectively nationalized or otherwise taken by the Government of Cuba on November 23, 1959; and that claimant's interests therein, as evidenced by 230,000 shares of stock in said corporation, were also taken on that date.

Perforaciones Oro Negro, S.A. was organized under the laws of Cuba and 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 previously that a stockholder in such a corporation is entitled to file a claim based upon the stock in question which represents an ownership interest in the assets of a nationalized enterprise within the purview of Section 502(3) of the Act. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The record contains no evidence concerning the value or financial condition of the said Cuban corporation on the date of loss, and claimant has advised that he is unable to furnish such evidence. However, the record includes an affidavit from Dr. Miguel R. Gomez Bustillo, a Cuban attorney, who was the Secretary and General Counsel of this corporation, which affidavit contains information concerning the market price of a share of stock of Perforaciones Oro Negro, S.A. It appears that the market value of a share of this stock varied from \$.11 to \$.22 per share during the period from 1955 to 1959, when the corporation was nationalized. Dr. Bustillo attests that he sold most of his holdings in this corporation at an average price of \$.15 per share, although the par value was \$.10 per share. It is noted that claimant asserts that his stock had a value of \$.10 per share.

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 interest 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.

Based upon all the evidence of record, the Commission finds that the valuation most appropriate to the property and equitable to the claimant was the fair market value on the date of loss. In the absence of evidence to the contrary the Commission determines that it should, in this case, use the minimum open market price, viz. \$.11 per share, and concludes that claimant suffered a loss in the amount of \$25,300.00 within the meaning of Title V of the Act.

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 it is so ordered.

CU-3416

CERTIFICATION OF LOSS

The Commission certifies that HENRY H. WELDON 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-five Thousand Three Hundred Dollars (\$25,300.00) 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

DEC 11 1968

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).)