

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

IN THE MATTER OF THE CLAIM OF

D. R. WIMBERLY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -3417

Decision No. CU **3418**

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 \$6,330.00, was presented by D. R. WIMBERLY, and is based upon the asserted loss of stock interests in the Compania Petrolera Trans-Cuba, S.A., hereinafter referred to as Trans-Cuba or Trans-Cuba Oil Company. Claimant, D. R. WIMBERLY, also known as DOTY RECTOR WIMBERLY, has been a national of the United States since birth in Wise County, Texas.

This is the first decision involving stock of Trans-Cuba Oil Company. The Commission notes that other claims have been filed with it by other stockholders; thus, this decision may, where applicable, serve as a precedent in the determination 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.

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 claimant, D. R. WIMBERLY, submitted evidence to establish that he owned 2,000 shares of stock of the Trans-Cuba Oil Company and asserts that his interest in this business enterprise was nationalized or otherwise taken by the Government of Cuba.

The Trans-Cuba Oil Company was organized under Cuban laws on June 16, 1953, and the Commission previously determined, among other things, that this business enterprise was not an eligible claimant within the contemplation of Section 502(1)(B) of the Act. (See Claim of Trans-Cuba Oil Company, Claim No. CU-3492.) Section 502(1)(B) of the Act specifically defines a "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 claim herein, however, has not been asserted as a corporate claim or one by a business enterprise, but is based on the interest of the claimant herein in a Cuban corporation. The claim may be considered as one based upon the interest of a stockholder in a Cuban enterprise, within the meaning of Section 505(b) of the Act, which provides as follows:

A claim under section 503(a) of this title based upon a direct ownership interest in a corporation, association, or other entity for loss shall be considered, subject to the other provisions of this title, if such corporation, association or other entity on the date of the loss was not a national of the United States, without regard to the per centum of ownership vested in the claimant.

TRANSACTIONS AND OPERATIONS OF TRANS-CUBA

Trans-Cuba entered into agreements in 1954 with the Cuban-Venezuelan Oil Voting Trust, hereafter referred to as the Voting Trust, whereby Trans-Cuba agreed to expend approximately \$3,000,000 for oil exploration and maintenance of concession rights which were owned by the Voting Trust. The Voting Trust had been organized in 1950 for the management of twenty-four (24) Cuban corporations which were engaged in the exploration and exploitation of oil resources in Cuba. In return for the expenditures, Trans-Cuba was to receive a 50 per cent working interest in all areas held by the 24 companies comprising the Voting Trust.

Thereafter, in 1954-1955, Trans-Cuba and the Voting Trust signed contracts with Cuban-American Drilling and Exploration Company whereby that business enterprise acquired certain ownership rights in the oil concessions by drilling for oil in certain areas, including the Central Basin area. Test holes were reported dry except those known as Catalina #1 and Catalina #2. Catalina #1 produced about 30 barrels of oil a day, of a paraffin base and 32.8 degree gravity. In Catalina #2, shows of oil were encountered at a depth of approximately 6,900 feet and the well was bottomed in January 1957 at 8,844 feet. This well is not a commercial producer.

Thereafter, in 1955 and 1956, the Voting Trust and Trans-Cuba signed agreements with Stanolind Oil Company of Indiana whereby Stanolind agreed to expend certain sums, maintain a continuous drilling program, and, in return, receive certain rights to any oil production which might be developed.

While Trans-Cuba had no proven reserves other than an interest in Catalina #1 and Catalina #2, such enterprise did acquire certain concession rights in 6,483,942 hectares or 15,417,676 acres of land. Trans-Cuba and its associates had made certain geological and geophysical investigations, including gravimetric, magnetometer, photo-geological, seismic and surface studies. However, while other wells had been drilled by Trans-Cuba and associates, no significant oil or gas "shows" were reported at the time of nationalization or other taking of the concessions or properties in question except the two Catalina properties.

NATIONALIZATION OR OTHER TAKING OF TRANS-CUBA

The rights of Trans-Cuba in the property which it controlled were substantially curtailed by the Cuban Government under Law No. 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.) Thereafter, Trans-Cuba and the Voting Trust filed applications for further drilling operations and other activities but none of the applications were approved by the Cuban Government. Accordingly, the Commission finds that the rights of Trans-Cuba 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 therein, as evidenced by the shares of stock which he held on that date, was also taken at that time.

VALUE OF A SHARE OF STOCK IN TRANS-CUBA

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 claim for \$6,330.00 or \$3.665 per share, is based upon the price paid by the claimant for his stock in December, 1956, i.e., 1,400 shares at \$3.00 and 600 shares at \$3.25, plus brokers' commissions. It should be noted, however, that the claimant sold other shares of the same enterprise in January, 1958, for a net price of \$.9375 per share. Moreover, the Commission has ascertained that in 1959 the price on the open market ranged from a high of \$1.125 to a low of \$.125 per share.

In determining the value of the shares of stock owned by claimant in Trans-Cuba, the Commission considered claimant's assertions, the purchase price of his stock, the price range of the stock on the open market, a combined balance sheet dated December 31, 1959, as well as other data pertaining to the value of the shares of stock. The Commission concludes that the book value of the subject business enterprise is the most appropriate basis of valuation to reach a determination of the value of claimant's interest in the subject corporation.

On December 31, 1959, immediately following the passage of Law No. 635, Trans-Cuba issued an Annual Report, pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, for the fiscal year ended December 31, 1959, which included a Statement of Assets and Capitalized Expenses, with other data. This report disclosed that Trans-Cuba had issued 9,390,693 shares of Class A Common stock of the 16,000,000 which had been authorized by the enterprise. Pro forma pertinent parts of this Statement of Assets and Capitalized Expenses and certain liabilities are set forth as follows:

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TRANS-CUBA OIL COMPANY
Statement of Assets and Capitalized Expenses
December 31, 1959

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Current assets:		
Cash in banks and on hand		\$2,869,806.14
Accounts receivable, less provision for uncollectible items \$1,205.48		53,129.80
Accrued interest receivable		4,388.40
Claims for reimbursement under Law 635 of November 20, 1959, less share of others, \$42,309.05		46,914.80
Materials and supplies		115,067.81
Prepaid expenses		<u>1,867.97</u>
Total current assets		3,091,174.92
Loan to Fiduciaria Tafet, less provision for possible loss, \$66,806.95		26,460.00
Investment in foreign mining company, less provision for possible loss, \$14,241.65		
Machinery, equipment and furniture (Schedule I)	\$ 16,379.83	
Less accumulated depreciation (Schedule III)	<u>4,609.39</u>	
		11,770.44
Equipment held for sale		2,877.85
Unrecovered promotional, exploratory and development costs (Schedule II)		2,969,256.47
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		\$6,101,539.68

Statement of Liabilities
December 31, 1959

Current liabilities:		
Accounts payable	\$ 9,049.34	
Taxes payable	267.44	
Accrued expenses	<u>1,448.51</u>	
Loan payable and accrued interest	1,245,900.00	
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		\$1,256,665.29

An examination of the entries included in "Unrecovered promotional, exploratory and development costs" discloses that some of the items listed

therein, such as general and administrative expenses, including rents and salaries, interest expenses, legal fees and similar charges, should be more appropriately expenses, rather than being capitalized, and cannot properly constitute assets of the Trans-Cuba enterprise. In addition, it appears that substantial amounts claimed as assets of the corporation were in fact capitalized expenses attributable to the drilling of six dry holes and cannot be categorized as property taken by the Cuban Government.

The Commission has determined that only those costs hereinafter listed, which were included in Schedule II, are to be used in computing the value of a share of stock in Trans-Cuba because such items are proper assets of the enterprise:

<u>Item</u>	<u>Total to December 31, 1959</u>
Geological expenses	\$ 621,706.98
Exploration concession expenses	
Reimbursement to Cuban-Venezuelan Oil Voting Trust	72,692.34
Taxes on exploration rights and expenses of filing claims	303,767.49
Acquisition costs, taxes on exploration rights, interest in new concessions	14,754.48
Exploitation expenses, one producing well, not in commercial production	
Labor	6,480.51
Equipment Costs	11,294.27
Material and supplies	1,543.31
Overhead	2,587.71
Other expenses	<u>2,491.59</u>
Total	\$1,037,318.68

Thus, the amount of \$2,969,256.47 entered above under Schedule II must be adjusted herein to \$1,037,318.68 to reflect those compensable items included in such schedule. This adjustment reduces the "Assets and Capitalized Expenses" shown on the preceding page from \$6,101,539.68 to \$4,169,601.89.

Further, evidence of record discloses that Trans-Cuba maintained bank accounts in the United States in the amount of \$1,787,496.55 which were placed in receivership pursuant to an Order issued by the Supreme Court of the State of New York in 1960.

Additionally, the Receivers were advised that under the Regulations of the United States Treasury Department and the Foreign Assets Control Office, the aforesaid funds will remain blocked until ultimate disposition by Congressional or Executive action. This sum of \$1,787,496.55 is not subject to and could not have been taken by the Government of Cuba. Therefore, the Commission finds that the assets and things of value such as the adjusted promotional, exploratory and developmental costs, are determined to be in the total amount of \$2,382,105.34, viz., \$4,169,601.89 less \$1,787,496.55, subject to further offsets as discussed hereafter.

Since the subject enterprise was a Cuban corporation, the Commission is required to determine its net worth and not merely its assets. Accordingly, the amount listed as liabilities, including taxes and loans payable, must be deducted from the asserted value of the assets claimed, as adjusted above. In sum, a further amount of \$1,256,665.29 is hereby deducted to reach a net asset value of Trans-Cuba in the amount of \$1,125,440.05.

The Commission finds that the total number of outstanding shares of stock in Trans-Cuba at time of nationalization by the Government of Cuba was 9,390,693. Based on the aforesaid net value, the Commission hereby finds that each share of stock in the losses sustained by Trans-Cuba was \$0.1198, or 11.98 cents per share at time of loss.

The Commission concludes that the claimant's interest in the losses sustained by Trans-Cuba, consisting of 2,000 shares, as a result of the nationalization or other taking of the business enterprise by the Government of Cuba, was \$239.60.

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 D. R. WIMBERLY 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 Thirty-nine Dollars and Sixty Cents (\$ 239.60) 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

JAN 8 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).)