

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

IN THE MATTER OF THE CLAIM OF

L. CLYDE CARTER, JR.

Claim No. **CU**-6363

Decision No. **CU** -6299

Under the International Claims Settlement  
Act of 1949, as amended

Represented by Tropical Gas Company, Inc.

Counsel for Tropical Gas Company, Inc.:

Smathers & Thompson  
By Robert F. O'Malley, Esq.

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 L. CLYDE CARTER, JR. based upon an interest in common stock issued by the Tropical Gas Company, Inc. Claimant has been a national of the United States since birth.

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 evidence of record, the Commission finds that claimant is and, since prior to August 26, 1960, has been the owner of 169 shares of common stock of Tropical Gas Company, Inc.

The record discloses that Tropical Gas Company, Inc. was intervened by Resolution No. 17923 of the Ministry of Labor dated August 26, 1960, pursuant to Law 647 of November 24, 1959. This corporation was organized under the laws of the Republic of Panama and does not qualify as a corporate "national of the United States" which is 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. Therefore, claimant is entitled to file this claim based upon an ownership interest therein. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

Tropical Gas Company, Inc. is engaged in the transportation, distribution and sale of liquefied petroleum gas (LPG) for household, agricultural, commercial, industrial and carburetion uses for both wholesale and retail trade. Income is also realized from the sale of gas consuming appliances and consumer installation charges. Tropical was incorporated in Panama in 1954 to acquire the LPG business and properties of Esso Standard Oil, S.A. (Essosa) and in 1955 and 1956 the company entered the Cuban market by the purchase of several LPG companies in that country.

At the time of its intervention, Tropical had 794,042 shares of capital stock outstanding, 743,118 being common shares and the remainder being preferred shares of three classes.

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Although Tropical Gas Company does not qualify as a national of the United States, it has submitted a claim (Claim No. CU-3018) on behalf of its common stockholders. In connection with this claim, the company submitted evidence of the value of its properties in Cuba, asserting that the value of its properties taken by the Government of Cuba amounted to \$3,409,783.00.

The claimed losses were:

Adjusted Investment Costs of	
Cuban companies	\$1,830,647.56
Undistributed Earnings	173,802.80
Cuban Division Account Due	
Tropical	1,154,904.95
Dividends Declared, Not Paid	314,325.36
Less Dividends Paid, from	
earnings prior to acquisition	<u>(63,897.73)</u>
Total	\$3,409,782.94

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 concerning the Tropical Gas Company contains copies of its annual reports from 1959 through 1967, copies of stock certificates issued by its Cuban subsidiaries, copies of cancelled checks, excerpts from financial records, affidavits of its supervising officers in Cuba, and copies of Cuban decrees and laws affecting the Cuban properties. The record also includes translations of the proceedings wherein the bank accounts with the Cuban Continental Bank and the Trust Company of Cuba owned by claimant or its Cuban subsidiaries were turned over to the Intervenor.

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In its Annual Reports for the years 1960 through 1966, the Tropical Gas Company listed its investment and loss in the balance sheets at \$3,409,783.00 and in the years after 1960 a reserve in that amount was set forth in the balance sheets. In the notes to the financial statement contained in the 1960 Annual Report, the latest financial information relating to the Cuban operations was for the period ending July 31, 1960 and reflects the following:

Current Assets	\$ 715,824.00
Less Current Liabilities	<u>255,745.00</u>
	\$ 460,079.00
Fixed Assets, less depreciation of \$1,333,527.00	2,370,252.00
Other Assets	<u>28,835.00</u>
Net Assets	\$2,859,166.00
Excess of cost of investment over underlying net assets on date of acquisition	<u>550,617.00</u>
Total	\$3,409.783.00

According to the record, Tropical Gas Company purchased all the capital stock of a group of twelve Cuban companies engaged in the LP-Gas business in 1955. In 1956, Tropical purchased two more Cuban companies and 70% of a third which was known as Distribuidora Felix Dominguez, S.A. The remaining 30% interest in Distribuidora Felix Dominguez was purchased in 1960. At the time of the purchase of the additional companies, Tropical issued a Prospectus for a new stock issue, which Prospectus declared that an item of goodwill in the amount of \$528,433.00 would be carried on future balance sheets since the consideration paid for the purchases in 1956 was in excess of the underlying net assets of the companies purchased. As a result of subsequent purchases, the amount for goodwill increased to \$550,617.00.

On the basis of the entire record, the Commission finds that the most appropriate measure of the value of Tropical Gas Company's losses in Cuba when its properties were intervened is reflected in the 1960 Annual Report listing the value of the Current Assets, Fixed Assets, Other Assets and Goodwill for a total value of \$3,409,783.00.

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In its claim, Tropical Gas Company did not assert any interest in the lost assets for the holders of its preferred shares. The record establishes that these shareholders had been paid annually the required dividends and subsequently two of the classes of preferred stock were retired, and the Commission finds that the holders of such shares suffered no loss as a result of the taking of the Company's assets in Cuba. The value per share of the common stock asserted by Tropical is based, however, on the number of common shares outstanding in 1967 which amounted to 1,096,758. At the time of the intervention of its Cuban properties, Tropical had 743,118 shares of common stock outstanding and the increase in number of these shares was due to stock dividends, conversion of certain preferred shares to common and common stock issued pursuant to stock option grants made prior to the date of loss. Inasmuch as the shares were not in existence at the time of loss, the Commission does not consider that they represent an ownership interest in the value of the properties intervened and, accordingly, the value per share is based upon the total number of common shares outstanding on August 26, 1960, which was 743,118.

The ownership interest in the intervened properties of Tropical Gas Company on August 26, 1960 represented by each of the 743,118 shares of outstanding common stock was \$4.5885.

Accordingly, the Commission finds that claimant, as holder of 169 shares of Tropical Gas Company, Inc. stock on August 26, 1960, suffered a loss as a result of the intervention of that Company's Cuban properties in the amount of \$775.46 within the meaning of Title V of the Act.

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.

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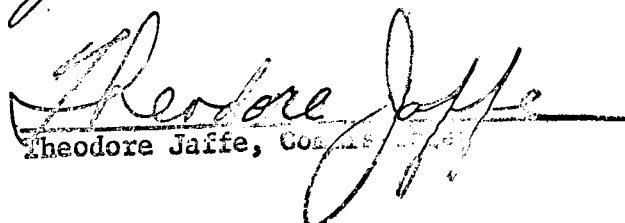
CERTIFICATION OF LOSS

The Commission certifies that L. CLYDE CARTER, JR. 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 Seven Hundred Seventy-five Dollars and Forty-six Cents (\$775.46) with interest thereon at 6% per annum from August 26, 1960 to the date of settlement.

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

AUG 4 1971

  
Lyle S. Garlock, Chairman

  
Theodore Jaffe, Counsel

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 or 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 (1970).)

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