

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

IN THE MATTER OF THE CLAIM OF

SIBONEY CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2510

Decision No. CU -5906

Counsel for claimant: Bryan, Cave, McPheeters & McRoberts

Appeal and objections from a Proposed Decision entered on October 14, 1970;
oral hearing requested.

Oral hearing held on June 16, 1971.

AMENDED FINAL DECISION

The Commission issued its Final Decision on this claim on October 20, 1971, in which it certified a loss in favor of claimant in the amount of \$2,454,067.61 plus interest.

The Commission indicated in that Final Decision that the firm of Biggs, Hensley, Curtis & Biggs was counsel for claimant, whereas the Commission is informed that that firm had withdrawn as counsel previously. Accordingly, it is

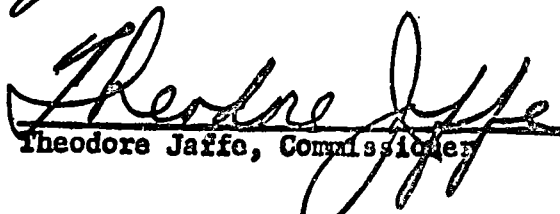
ORDERED that the Final Decision be amended to show that the firm of Bryan, Cave, McPheeters & McRoberts is counsel for claimant, and it is further

ORDERED that the Final Decision as amended herein be affirmed in all other respects.

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

OCT 20 1971


Lyle S. Garlock, Chairman


Theodore Jaifo, Commissioner

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IN THE MATTER OF THE CLAIM OF

SIBONEY CORPORATION

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Claim No CU-2510

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Counsel for claimant:

Biggs, Hensley, Curtis & Biggs
By William C. Dale, Jr., Esq.

Appeal and objections from a Proposed Decision entered on October 14, 1970;
Oral hearing requested.

Oral hearing held on June 16, 1971.

FINAL DECISION

Under date of October 14, 1970, the Commission issued its Proposed Decision certifying a loss in favor of claimant in the amount of \$1,237,240.00 plus interest. That amount included \$753,974.00 for claimant's eight wholly-owned Cuban subsidiaries which owned certain gas and oil concessions in Cuba, and \$483,266.00 for certain capital assets appurtenant to the development of the concessions. A portion of the claim for certain tangible personal property was denied for lack of proof.

Claimant objected to the Proposed Decision, submitted evidence in support thereof and requested an oral hearing which was held on June 16, 1971. At the hearing counsel for claimant presented oral argument and introduced additional evidence. Pursuant to an extension of time granted by the Commission at the hearing, counsel submitted new material concerning the value of the eight Cuban subsidiaries.

Upon consideration of the entire record, including the evidence submitted in support of claimant's objections, at the oral hearing, and subsequently, the Commission amends the decision in this matter as follows:

The Commission now finds that claimant owned certain tangible personal property which was taken by the Government of Cuba on November 23, 1959. The Commission further finds that the aggregate value of said personal property on the date of loss was \$20,801.61.

The record now shows that during a few years immediately prior to 1959 claimant was negotiating with certain major oil companies in the United States concerning the development and exploitation of the Cuban subsidiaries' concessions. While no agreements were ever consummated as a result of those negotiations, it is nevertheless clear that the concessions constituted valuable assets of the subsidiaries.

The record indicates that claimant asserted in its 1961 returns a tax deduction on account of the loss of its stock interests in the eight Cuban subsidiaries. According to claimant's letter to the Commission of October 28, 1970 and a copy of counsel's letter of November 4, 1964 to claimant's President, claimant's asserted loss of \$2,500,000.00 at the rate of \$1.00 per share of that stock was challenged by an agent of the Internal Revenue Service, who stated that he would recommend \$0.78 per share. However, since no tax deficiency was determined at that time, claimant did not appeal from that recommendation.

On the basis of the entire record, the Commission finds that the valuation most appropriate to claimant's stock interest and equitable to the claimant is that recommended by the Internal Revenue Agent. Accordingly, the Commission finds that claimant's stock in the eight Cuban subsidiaries had a value of \$0.78 per share on November 23, 1959, the date of loss, aggregating \$1,950,000.00 for the 2,500,000 shares of stock.

Claimant's losses on November 23, 1959 are now summarized as follows:

<u>Item of Property</u>	<u>Amount</u>
Tangible personal property	\$ 20,801.61
Stock interests in the eight Cuban subsidiaries	1,950,000.00
Capital assets	<u>483,266.00</u>
Total	<u>\$2,454,067.61</u>


Accordingly, the Certification of Loss in the Proposed Decision of October 14, 1970 is set aside and the following Certification of Loss will be entered, and in all other respects the Proposed Decision, as amended herein, is affirmed.

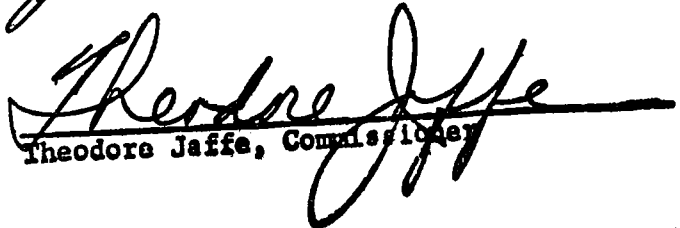
CERTIFICATION OF LOSS

The Commission certifies that SIBONEY 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 Two Million Four Hundred Fifty-four Thousand Sixty-seven Dollars and Sixty-one Cents (\$2,454,067.61) with interest at 6% per annum from November 23, 1959 to the date of settlement.

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

OCT 20 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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

IN THE MATTER OF THE CLAIM OF

SIBONEY CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2510

Decision No. CU 5906

Counsel for claimant:

Biggs, Hensley, Curtis & Biggs
By William C. Dale, Jr., 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 SIBONEY CORPORATION in the amount of \$3,303,141.00, based upon the asserted ownership and loss of real and personal property in Cuba.

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.

The claimant has submitted evidence to establish that on May 31, 1955, the claimant was incorporated under the laws of Maryland as the Siboney Development and Exploration Company; that on April 2, 1956, the name of the claimant was changed to Siboney-Caribbean Petroleum Company; and that on April 19, 1962, the name of claimant was changed to SIBONEY CORPORATION. A statement of an officer of claimant corporation and other evidence of record establishes that 98.3 percent of the outstanding shares of stock of the claimant corporation was owned at times pertinent to this claim by shareholders who were nationals of the United States. The Commission finds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

This claim was asserted by claimant in the total amount of \$3,303,141.00, as follows:

Mineral concessions	\$ 532,384.00
Personal property	20,757.00
Value of Cuban subsidiaries	<u>2,750,000.00</u>
Total	\$3,303,141.00

Claimant has submitted its annual reports for the years 1955 through 1960, a copy of a "Conveyance and Agreement", executed on May 31, 1955, balance sheets of eight Cuban subsidiaries and lists of their concessions

in Cuba, correspondence, affidavits, concession maps and balance sheets of the claimant corporation, with explanatory notes, from 1955 through 1960. The evidence establishes that at the time of the asserted loss of the Cuban properties, subject of this claim, the claimant also owned interests in oil concessions and other properties in various parts of the United States and Canada.

The claimant acquired the outstanding shares of stock of eight Cuban corporations which owned oil and gas exploration rights in 3,838,192 acres of land in six provinces of Cuba and off-shore areas to the south of the island. These subsidiaries, organized under the laws of Cuba, with offices in Havana, include the following:

- Cacique Petroleum Company, Inc.
- Canto Petroleum Company, Inc.
- Bahia Petroleum Company, Inc.
- Contrapunteo Petroleum Company, Inc.
- Good Hope Petroleum Company, Inc.
- Sea Shore Petroleum Company, Inc.
- Marine Petroleum Company, Inc.
- Meridional Petroleum Company, Inc.

The claimant acquired the outstanding capital stock of the aforesaid Cuban corporations in May 1955 for a consideration of \$500,000.00, including \$250,000.00 in cash and 2,500,000 shares of its capital stock, at par value of \$0.10 per share, or \$250,000.00. The evidence also establishes that there were certain necessary costs incurred by the organizers before incorporation, in the amount of \$253,974.00, which were carried as assets on the balance sheets of claimant from organization of the corporation until the asserted date of loss.

After incorporation, expenditures were made by claimant for geological and geophysical surveys, seismic investigations and similar data. Such expenditures were not capitalized by claimant as assets but were charged as expenses in a deficit account as a possible charge against any future income that the claimant might realize from development of the concessions. Examination of the annual reports of claimant for 1955, 1956 and 1957, disclose that

such geological and seismic surveys, mapping, photographs, salary of geologist and similar expenses, were in the total amount of \$483,266.00.

The rights of claimant 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, 1967 FCSC Ann. Rep. 51.)

Thereafter, when claimant filed applications for further drilling operations and other activities such applications were not approved by the Cuban Government. Accordingly, the Commission finds that the rights of claimant 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 herein was taken on that date.

In the 1960 annual report claimant stated that ". . . After a careful review of the Cuban political situation, Siboney's directors determined that the investment in Cuba became worthless in 1959. After writing off the investment in Cuba in the amount of \$753,974.00 . . ." The claimant described the amount invested in Cuban mineral rights as follows:

At December 31, 1959, the amount invested in Cuban mineral rights was as follows:

Investment in common stock of unconsolidated Cuban subsidiaries	\$ 500,000.00
Costs incurred by organizers (before incorporation) for non- producing oil and gas rights in Cuba	<u>253,974.00</u>
Total	\$ 753,974.00

Additionally, claimant has indicated that a claim for loss in the amount of \$3,303,141.00, was asserted in their United States Income Tax Return for the year ending December 31, 1961; and that there was no tax liability for that year against which such loss could be utilized.

In considering the accumulated deficit, in the amount of \$1,125,979.00 as of December 31, 1959, the Commission finds that items included therein,

such as expenses for general and administrative expenses or sums expended in developing dry holes, cannot be capitalized as assets of the claimant. It appears that from 1955 to 1959, substantial amounts were expended by claimant attributable to general expenses and for the exploration and drilling of dry holes. The Commission finds that such items cannot be categorized as assets or as property taken by the Government of Cuba.

In the absence of additional evidence to establish a higher value of the subsidiaries or concessions in question, the Commission finds that the losses of claimant were those sums expended for the purchase and organizational expenses incident to purchase, as described above, in the total amount of \$753,974.00; and those expenditures which are in the nature of capitalized expenses, in the amount of \$483,266.00.

Accordingly, the Commission finds that claimant suffered a loss in the total amount of \$1,237,240.00, within the meaning of Title V of the Act, as a result of the nationalization or other taking by the Government of Cuba of the above-described properties, on November 23, 1959.

This leaves for determination a portion of the claim herein which was asserted by claimant for the loss of personal property, stated to be in the amount of \$20,757.00. Claimant has submitted no evidence to establish ownership, loss or value of the personal property included in this portion of the claim.

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) (Supp. 1967).)

In Commission correspondence, including letters dated October 31, 1967, and February 13, 1968, the Commission made suggestions to claimant with respect to the type of evidence proper for submission in development of the claim for loss of personal property. Claimant submitted no supporting evidence pertaining to the personalty.

The Commission finds that claimant has failed to meet the burden of proof with respect to the portion of the claim based upon the loss of personal property. Accordingly, this portion of the claim is hereby denied.

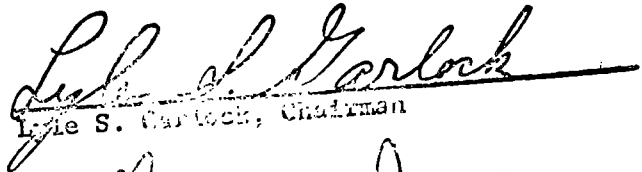
The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

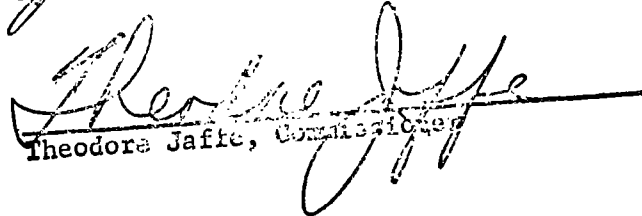
CERTIFICATION OF LOSS

The Commission certifies that SIBONEY 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 One Million Two Hundred Thirty-seven Thousand Two Hundred Forty Dollars (\$1,237,240.00) 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

OCT 14 1970


Lyle S. Garlock, Chairman


Theodora 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, 32 Fed. Reg. 412-13 (1967).)