

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

IN THE MATTER OF THE CLAIM OF

LIBYA MERCURY PETROLEUM CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

*amended
proposed follows*

Claim No. CU-2535

Decision No. CU 5979

Counsel for claimant:

Rufus King, Esq.
Clarence W. Moore, 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 the Consolidated Development Corporation which in 1968 changed its name to LIBYA MERCURY PETROLEUM CORPORATION. The claim, presented in the total amount of \$3,000,000.00, is based upon the loss of certain Cuban subsidiary corporations with oil concessions, leases and personal properties.

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, of 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) (1969).)

The claimant was organized under the laws of Delaware in 1956 as the Consolidated Cuban Petroleum Corporation and the name of the corporation was changed to the Consolidated Development Corporation on June 26, 1959. On May 7, 1968, subsequent to filing this claim, the corporate name was again changed to LIBYA MERCURY PETROLEUM CORPORATION.

The record indicates that the claimant was organized to explore for and exploit oil properties in Cuba and in other areas; and that it assertedly owned two Cuban subsidiary corporations, organized in

that country in 1955 and 1956, known as Petrolera Cruz Verde, S.A. and Cuban Land Oil Company, S.A. The Cuban subsidiaries assertedly owned oil leases in the Bacuranao area of Havana Province, oil field equipment, tool rigs and concessions or royalties in extensive acreage in Cuba.

The claimant submitted annual reports for the claimant corporation for the years 1957, 1958 and 1959, concerning activities in Cuba, the Bahamas, Bolivia and other areas. Additionally, when listing stock on the American Exchange in 1956 the claimant prepared a Statement concerning geological development and exploration in Cuba and other data concerning the Cuban subsidiaries.


In Commission letters of April 1, 1968, August 27, 1968 and October 3, 1969, the Commission made suggestions to claimant, through counsel, as to the type of evidence proper for submission to establish the claim under the provisions of the Act. Thereafter, by letters of February 3, 1970 and July 7, 1970, the Commission again reminded counsel of the desirability of submitting the suggested evidence pertaining to ownership, loss and value of the properties, subject of the claim. While claimant has responded, through counsel, in part to the Commission correspondence, it has not submitted evidence of probative value which would establish the claim under the provisions of Title V of the Act.

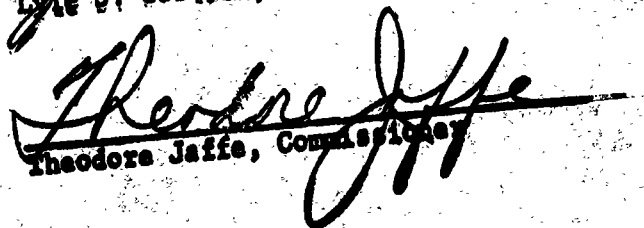
The Commission appreciates the difficulties encountered by the claimants in establishing their claims against the Government of Cuba. However, the Commission must be guided by the evidence

of record pertaining to the ownership, loss and value of the property included in each claim. The Commission is also constrained to find that claimant herein has not met the burden of proof in that it has failed to establish the ownership and value of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this claim is hereby denied for the reasons stated. The Commission deems it unnecessary to make determinations with respect to other elements of this claim.

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

NOV 23 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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).)

CU-2535

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

IN THE MATTER OF THE CLAIM OF

CONSOLIDATED DEVELOPMENT CORPORATION,
formerly known as
LIBYA MERCURY PETROLEUM CORPORATION

Claim No. CU - 2535

Decision No. CU-5979

**Under the International Claims Settlement
Act of 1949, as amended**

Counsel for claimants:

Rufus King, Esq.
Clarence W. Moore, Esq.

AMENDED PROPOSED DECISION

By Proposed Decision dated November 23, 1970, the Commission denied this claim for the reason that claimant had not established the ownership, loss and value of the properties, including certain Cuban subsidiaries, subject of this claim. Subsequently, claimant submitted additional supporting evidence pertaining to the subject properties. The matter has been considered and the Proposed Decision is hereby amended.

This claim was filed in the first instance on April 28, 1967, by the CONSOLIDATED DEVELOPMENT CORPORATION. On May 7, 1968, the corporate name was changed to LIBYA MERCURY PETROLEUM CORPORATION and claimant was doing business under this name at the time that the Proposed Decision was issued. However, counsel advised by letter of January 14, 1971, that the name of the claimant has again been changed to CONSOLIDATED DEVELOPMENT CORPORATION and this name of the claimant is hereby substituted in accordance with the name change.

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was asserted in the amount of \$3,000,000.00 and is based upon the loss of certain Cuban subsidiaries, including Petroleo Cruz Verde, S.A. and Cuban Land Oil Company, S.A., Cuban corporations, with oil concessions, leases and personal properties.

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.

Statements of an officer of the claimant corporation, and other evidence of record, establish that the claimant was first organized under the laws of Delaware in 1956 as the Consolidated Cuban Petroleum Corporation and is presently organized under the laws of that State. Further, the evidence discloses that at the time of filing claim there were 5,058,918 shares of stock outstanding and less than 200,000 shares were owned by persons with residences outside of the United States, with the remainder of the shares being registered to persons with addresses within the United States. The Commission finds that claimant herein is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The evidence of record includes certified balance sheets of the claimant corporation and Annual Reports for 1957-1959, inclusive, a stock prospectus prepared in 1958, data submitted to the Securities & Exchange Commission, photographs, a copy of a Dun & Bradstreet report concerning the claimant which was prepared in November 1957 and reports of geologists and other authorities concerning the exploration and production of oil in Cuba. The evidence discloses that claimant owned 98.4996% of the outstanding capital shares of Petroleo Cruz Verde, S.A. and all of the outstanding capital shares of Cuban Land Oil Company, S.A., Cuban corporations organized in 1955-1956.

Claimant asserted that the principal holdings of Petroleo Cruz Verde consisted of oil leases in the Bacuranao area of the Havana Province on which leases the company had drilled more than twenty wells, most of which had resulted in commercial production of oil. Claimant also asserted that Cuban Land Oil owned three cable tool rigs with tools and oil field equipment, and also held oil claims and royalties in leases owned by other oil companies.

The rights of claimant in the properties which it controlled through Cuban subsidiaries were affected by the Cuban Government under Law 635 of November 23, 1959. This law cancelled all applications for exploration and exploitation of concessions, regardless of the status thereof. While claimant filed applications for further drilling operations none of the applications were approved. Accordingly, the Commission finds that the rights of claimant with respect to the property which it controlled through Cuban subsidiaries were effectively taken by the Government of Cuba on November 23, 1959. (See Claim of Felix Heyman, Claim No. CU-0412, 1968 FCSC Ann. Rep. 51.)

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 a certified balance sheet, dated December 31, 1959, prepared in Havana, Cuba, which recites the assets and liabilities of the parent organization, including areas other than Cuba, but also includes those financial statements and related schedules, with explanatory notes, of the claimant's Cuban subsidiaries, designated therein as a "consolidated" report. The consolidated report, as shown hereafter, reflects the assets and liabilities of the Cuban subsidiaries and an investment in Bolivia at or about the time of implementation of Law 635 by the Government of Cuba; and the Commission finds that this financial data, with the exclusion of the Bolivian investments, as discussed hereafter, appropriately establishes the value of claimant's Cuban subsidiaries at the time of loss. It reflects the following, the peso being on a par with the United States dollar:

Assets

Current assets:		
Cash	\$ 1,406.00	
Accounts receivable - trade	2,823.85	
Petroleum in tanks, at market price	578.45	
Inventories of supplies	46,898.29	
Prepaid insurance	177.29	
Total current assets		\$ 51,883.88
Fixed assets		
Concession requests, leaseholds and overriding royalties:		
Non-producing	417,086.77	
Producing leaseholds	122,581.40	
	<u>539,668.17</u>	
Equipment		
Equipment	248,859.14	
Intangible drilling costs	59,925.55	
Casing awaiting removal from well	17,501.42	
	<u>865,954.28</u>	
Less accumulated depreciation, depletion and amortization		
	<u>126,099.80</u>	739,854.48
Deposits applicable to concession requests and lease, less reserve \$860.00		
	3,000.00	
Investment in Bolivian American Oil Company	79,563.12	
Non-current receivables, less reserve \$5,869.02	<u>2,517.68</u>	85,080.80
Deferred expenses:		
Discount on debentures, including the par value of 26,000 shares of the company issued for services, less amortization \$21,352.16		
	9,947.84	
Deferred organization and promotion expenses, less amortization \$16,438.40	<u>25,805.92</u>	
		<u>35,753.76</u>
		<u>\$912,572.92</u>

Thus, the assets are shown in the amount of \$912,572.92. It will be noted that such assets include the Bolivian investments in the amount of \$79,563.12, which, being beyond the jurisdiction of the Government of Cuba, is a deductible item, leaving a net asset total of \$833,009.80. Claimant's current liabilities in Cuba, including accounts payable, salaries and taxes payable, were in the amount of \$196,632.36.

With respect to the liabilities, the Commission has consistently not deducted liabilities of a corporate claimant organized in the United States as it may remain liable for such obligations. However, the Commission finds that claimant's losses must be off-set by \$539.22, the amount of taxes owed to the Government of Cuba on that date by the subsidiaries. (See Claim of Simmons Company, Claim No. CU-2303.) Accordingly, the Commission concludes that the adjusted value of the Cuban subsidiaries is \$832,470.58 and that claimant suffered a loss in this amount 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 case it is so ordered.

The following Certification of Loss will be entered and in all other respects the Proposed Decision is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that CONSOLIDATED DEVELOPMENT CORPORATION, formerly known as LIBYA MERCURY PETROLEUM 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 Eight Hundred Thirty-Two Thousand Four Hundred Seventy Dollars and Fifty-Eight Cents (\$832,470.58) with interest thereon at 6% per annum from November 23, 1959 to the date of settlement.

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

JUN 30 1971

Lyle S. Garlock
Lyle S. Garlock, Chairman
Theodore Jaffe
Theodore Jaffe, Commissioner

This Decision was entered as the Commission's Final Decision on 2 AUG 1971
Thomas W. ...
Clerk of the Commission

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 Amended 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).)