

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

IN THE MATTER OF THE CLAIM OF

THE PROTANE CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2820

Decision No. CU -625

Counsel for claimant:

Reavis, Pogue, Neal & Rose
By William V. Kane, Esq.

AMENDED PROPOSED DECISION

By Proposed Decision dated November 15, 1967, the Commission denied this claim on the ground that claimant failed to meet the burden of proof in that it failed to establish ownership of rights and interests in property by a national of the United States which was nationalized, expropriated, or otherwise taken by the Government of Cuba. Subsequently, claimant furnished additional evidence on that issue which the Commission finds to be adequate.

Upon consideration of this matter, it is

ORDERED that the Proposed Decision be and it is hereby amended.

Officers of the hereinafter-named corporations and companies have certified that the claimant corporation was organized in the State of Delaware. At the time of loss the claimant corporation was wholly owned by The Weatherhead Company, organized in the State of Ohio. In 1961 The Weatherhead Company sold 40% of the claimant corporation to Phillips Petroleum Company which was organized in the State of Delaware. In April 1966 The Weatherhead Company sold the remaining 60% of claimant corporation to Eastdil LP-Gas Company, a wholly-owned subsidiary of Eastdil Corporation, organized in the State of Delaware. In February 1967, Northern Propane Gas Company, a wholly-owned subsidiary of Northern Natural Gas Company which was organized in Delaware, acquired all but .02% of the claimant corporation. Officers of the aforementioned companies and corporations have further certified that at all times between the date of loss and presentation of this claim,

more than 50% of their outstanding capital stock has been owned by United States nationals. Therefore, the Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act. With the exception of The Weatherhead Company, the aforementioned companies have not specified the percentage of their respective stock that may have been owned by nonnationals of the United States. An officer of The Weatherhead Company states that none of its shares were owned by nonnationals of the United States.

The Commission finds, on the basis of evidence of record, that claimant was the sole shareholder of Compania Gas Liquido, S.A., a corporation organized and incorporated under the laws of Cuba. The Commission further finds that Compania Gas Liquido, S.A., was nationalized by the Government of Cuba on October 24, 1960, by Resolution No. 3 pursuant to Law 851.

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, 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.

Claimant has stated its loss to be \$923,722.10.

Among the documentation submitted is an adjusted balance sheet for Compania Gas Liquido, S.A. for September 24, 1960, reflecting the following:

ASSETS

CURRENT ASSETS	
Cash	\$ 16,529.36
Receivables:	
Retail trade	54,581.56
Wholesale trade	13,317.21
Other accounts	17,177.26
Notes and bills	15,593.56
Total	\$ 100,669.59
Less allowance for losses	4,030.59
Net receivables	\$ 96,639.00
Inventories:	
Gas	23,501.27
Appliances	9,396.71
Utilization equipment	4,583.44
Total inventories	\$ 37,481.42
Prepaid insurance and other items	19,167.55
TOTAL CURRENT ASSETS	\$ 169,817.33
INVESTMENTS AND OTHER ASSETS	
Investments in and advances - subsidiaries	\$ 10,000.00
Miscellaneous receivables, advances	55,080.80
Rental equipment for sale	9,902.67
TOTAL INVESTMENTS AND OTHER ASSETS	\$ 74,983.47
PROPERTY, PLANT AND EQUIPMENT	
Buildings and station equipment	\$ 108,471.33
Systems	112,234.96
Cylinders	496,615.57
Service equipment	301,160.20
Office equipment	17,466.22
Transportation equipment	63,532.77
Total	\$1,099,481.05
Less reserves for depreciation	323,225.34
PROPERTY, PLANT AND EQUIPMENT - NET	\$ 776,255.71
DEFERRED CHARGES	\$ 8,053.93
TOTAL	\$1,029,110.44

LIABILITIES AND SHAREHOLDERS' EQUITY

CURRENT LIABILITIES

Accounts payable:	
Trade accounts	\$ 65,752.74
Salaries, wages and commissions	7,628.62
Payroll and withholding taxes	4,651.88
Customers' deposits on cylinders	23,434.03
Total	<u>\$ 101,467.27</u>

Accruals (51.55)

Federal and state taxes on income:	
Current year	208.51
Prior year	<u>3,764.11</u>

TOTAL CURRENT LIABILITIES \$ 105,388.34

SHAREHOLDERS' EQUITY

Capital stock:	
Preferred	\$ 230,000.00
Common	30,000.00
Total	<u>\$ 260,000.00</u>
Income retained in the business	290,461.82
Total	<u>\$ 550,461.82</u>
Net worth adjustment	<u>373,260.28</u>

TOTAL SHAREHOLDERS' EQUITY \$ 923,722.10

TOTAL \$1,029,110.44

The balance sheet enumerates the assets, tangible and intangible, and the liabilities of the enterprise. The liabilities consist of creditors' claims, which are contractual in nature, and those of the owner, which are residual in nature. The excess of assets over contractual liabilities represents the owner's equity, or net worth. Accordingly, the net worth is found as \$923,722.10.

The Commission has considered carefully all of the evidence of record, and finds that the book value of \$923,722.10 for Compania Gas Liquido, S.A., is the most appropriate to the property and equitable to the claimant, and concludes that claimant suffered a loss in that amount within the meaning of Title V of the Act as a result of the nationalization of Cia. Gas Liquido, S.A., by the Government of Cuba on October 24, 1960.

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 the 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 THE PROTANE 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 Nine Hundred Twenty-three Thousand Seven Hundred Twenty-two Dollars and Ten Cents (\$923,722.10), with interest thereon at 6% per annum from October 24, 1960 to the date of settlement.

Dated at Washington, D. C., and entered as the Amended 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

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

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

IN THE MATTER OF THE CLAIM OF

THE PROTANE CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2820

Decision No. CU

025

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$923,722.10, was presented by THE PROTANE CORPORATION and is based upon the asserted loss of all of the property of Compania Gas Liquido, a wholly-owned subsidiary of THE PROTANE CORPORATION.

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 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).)

Claimant has submitted certain specified evidence consisting of a May 1960 balance sheet for Compania Gas Liquido, S.A., and two lists of fixed assets. By Commission letter of July 17, 1967, claimant was advised, as to additional evidence proper for submission to establish this claim under the Act. However, no evidence in response to this correspondence has been received to date.

On August 31, 1967, claimant was invited to submit any evidence available to it within 45 days from that date, and it was informed, that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. No evidence has since been submitted, nor has claimant corresponded with the Commission.

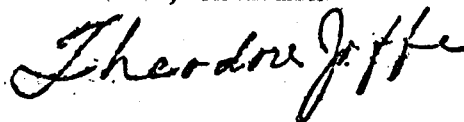
The Commission finds that claimant has not met the burden of proof in that it has failed to establish ownership by a national of the United States of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

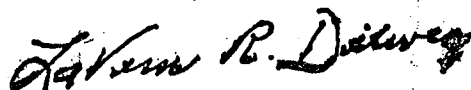
15 NOV 1967



Edward D. Re, Chairman



Theodore Jaffe, Commissioner



LaVern R. Dilweg, Commissioner

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CU-2820