

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

IN THE MATTER OF THE CLAIM OF

JONES BROTHERS DRILLING
COMPANY, INCORPORATED

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -3488

Decision No. CU -972

Counsel for Claimant:

Marion K. Smith, Esquire

ORDER AND AMENDED PROPOSED DECISION

By Proposed Decision dated January 17, 1968, the Commission denied this claim for the reason that claimant had not established the ownership, loss and value of the property, subject of the claim. Subsequently, additional supporting evidence was submitted by claimant, through counsel, pertaining to the subject property. Upon consideration of this matter, it is

ORDERED that the Proposed Decision be amended to read as follows:

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amended amount of \$451,887.43, was presented by JONES BROTHERS DRILLING COMPANY, INCORPORATED, and is based upon the asserted loss of drilling equipment located 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.

Officers of the claimant corporation have certified that the claimant was organized in the State of Louisiana and that at all times between the respective dates of loss and presentation of this claim on May 1, 1967, more than 50% of the outstanding capital stock of the claimant corporations has been owned by nationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The evidence of record, including birth records and statements of corporate officials, discloses that at all times pertinent to this claim, 100 per cent of the outstanding shares of stock of the JONES BROTHERS DRILLING COMPANY, INCORPORATED, were held by nationals of the United States.

The record includes copies of claimant's correspondence to and from agents in Cuba, itemized lists and recapitulation of the drilling equipment, subject of this claim, affidavits and statements of officials of the Brewster Company, a corporation doing business in Louisiana,

invoices of shipments, photograph, newspaper article, Government of Cuba publications and list, as well as a brochure and shipping contract with the West Indies Fruit and Steamship Company of Florida. This data discloses that the claimant purchased drilling equipment from the Brewster Company and others; that the market price at dates of purchase, as discussed hereafter, was in the total sum of \$451,887.43; and that claimant shipped such equipment to their offices or other consignees in Cuba but retained the ownership interest therein until the asserted loss occurred.

The record discloses the following shipments of drilling equipment, vehicles and miscellaneous items by claimant to Cuban consignees for the use of claimant corporation in that area:

<u>Date</u>	<u>Invoice or B/L No.</u>	
October 1954	504-11	\$ 391,991.18
January 1955	211	5,447.00
April 1955	N430-2649	3,772.30
July 1955	N727-4557	5,867.43
May 1956	P510-2849	16,793.62
November 1956	P113-7255	6,438.45
November 1957	5201-12109	<u>21,577.45</u>

T O T A L\$ 451,887.43

The record reflects that Cuban Resolution 3, published October 24, 1960 (pursuant to Cuban Law 851) listed as nationalized "John Brothers Company" which the record shows refers to claimant company.

Accordingly, the Commission finds that the assets in Cuba of JONES BROTHERS DRILLING COMPANY, INC. were nationalized by the Government of Cuba on October 24, 1960, within the meaning of Title V of the Act.

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 Commission has considered the evidence submitted by claimant, as discussed above, to establish that the original market value of this equipment was \$451,887.43. It consisted of equipment valued at \$391,991.18 shipped to Cuba in October 1954, and equipment valued at \$59,896.25, shipped to Cuba in 1955-1957. This data consists principally of the price schedules compiled by the Brewster Corporation and the invoices but also includes pictures of the equipment loaded on flat cars and a letter of a Cuban representative, Enrique Urioste, Jr., dated November 4, 1957, referring to the value of the initial shipment as \$415,151.72.

Additionally, the Commission has considered depreciation and obsolescence or the estimated useful life of equipment, including Bulletin "F" of the Internal Revenue Service of the United States Treasury Department and data contained in the Appraisal and Valuation Manual of the American Society of Appraisers (1955-1956). These sources disclose, among other things, that the average useful life of oil drilling equipment is between 5 and 10 years, with a few items, such as steam engines, having a useful life of 15 years. Thus, the average useful life of such equipment would approximate a 7 to 8 year period. The bulk of the equipment, subject of this claim, was shipped to Cuba in October 1954, at a cost of \$391,991.18, and was utilized for approximately six years prior to loss. Based upon the entire record, including evidence available to this Commission concerning the value of similar property in Cuba, the Commission finds that at the time of loss the subject property had a total value of \$235,321.67 as follows:

<u>Initial Value</u>	<u>Percentage of Depreciation</u>	<u>Depreciated Value</u>
\$ 391,991.18	50% (\$195,995.59)	\$ 195,995.59
26,012.92	40% (10,405.17)	15,607.75
<u>33,883.33</u>	30% (10,165.00)	<u>23,718.33</u>
<u>\$ 451,887.43</u>		<u>\$ 235,321.67</u>

The Commission concludes that claimant herein suffered a loss in the amount of \$235,321.67 within the meaning of Title V of the Act.

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

Accordingly, the Commission concludes that the amount of the loss arising from the taking of the drilling equipment and other personal property by the Government of Cuba shall be increased by interest thereon at the rate of 6% per annum from the date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that JONES BROTHERS DRILLING COMPANY, INCORPORATED, 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-Five Thousand Three Hundred Twenty-One Dollars and Sixty-Seven Cents (\$235,321.67) with interest thereon at 6% per annum from February 6, 1960, to the date of settlement.

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

JUN 19 1968

Leonard v. B. Sutton
Leonard v. B. Sutton, Chairman

Leonard v. B. Sutton, Chairman

Richard Jaffe
Richard Jaffe, Commissioner

Richard 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).)

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IN THE MATTER OF THE CLAIM OF

JONES BROTHERS DRILLING COMPANY,
INCORPORATED

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -3488

Decision No. CU

977

Counsel for Claimant:

Marion K. Smith, Esquire

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 \$459,000.00, was presented by JONES BROTHERS DRILLING COMPANY, INCORPORATED and is based upon the asserted loss of drilling equipment located 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)]⁷, 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, JONES BROTHERS DRILLING COMPANY, INCORPORATED, asserted that it was the owner of drilling equipment which was nationalized or otherwise taken by the Government of Cuba. In support of the claim, the claimant submitted photo-copies of lists of personal properties with headings such as "The Brewster Company, Incorporated, Export Division", apparently prepared in 1954, and miscellaneous lists relating to drilling equipment. However, claimant submitted no evidence to establish the ownership or value of properties in Cuba which were nationalized or otherwise taken by the Government of Cuba.

By Commission letter of June 27, 1967, claimant was advised, through counsel, as to the type of evidence proper for submission to establish this claim under the Act. Thereafter, by letter of August 10, 1967, counsel was invited to submit any evidence available to him within 45 days from that date, and he was informed that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record.

By letter of November 27, 1967, the Commission made additional suggestions to claimant with respect to the submission of supporting evidence and granted an extension of time of thirty days to submit such material.

However, claimant has submitted no evidence of probative value in support of this claim.

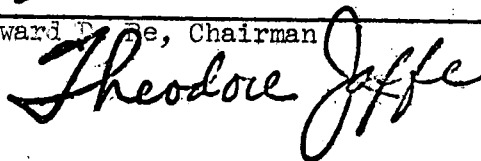
The Commission finds that claimant has not met the burden of proof in that it has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this claim is hereby denied. The Commission deems it unnecessary 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

JAN 17 1968



Edward D. Tamm, Chairman



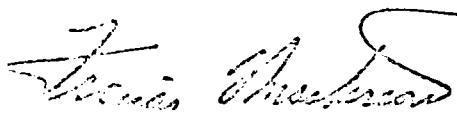
Theodore Jaffe, Commissioner

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CLASSIFICATION

CU-3488

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on _____



Clerk of the Commission