

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

IN THE MATTER OF THE CLAIM OF

ROBERT F. GEORGE
JOHN M. ROBERTS
CHARLES B. ROBERTS
WILLIAM ROBERTS and
F. WAYNE FESENMYER

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3580
Claim No. CU-4972
Claim No. CU-4973
Claim No. CU-4974
Claim No. CU -5004

Decision No. CU 4220

Counsel for claimants:

Hale Russell & Stentzel
By Thomas P. Finn, Jr., Esq.

PROPOSED DECISION

These claims against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the respective amounts of \$1,062,007.60 (by ROBERT F. GEORGE), \$132,750.95 (by JOHN M. ROBERTS), \$132,750.95 (by CHARLES B. ROBERTS), \$132,750.95 (by WILLIAM ROBERTS), and \$398,252.85 (by F. WAYNE FESENMYER) were based upon the asserted loss of stock interests in a Cuban corporation. Claimants have been nationals 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.

The record establishes and the Commission finds that ROBERT F. GEORGE, JOHN M. ROBERTS, CHARLES B. ROBERTS, WILLIAM ROBERTS and F. WAYNE FESEMYER owned 20.248%, 2.531%, 2.531%, 2.531% and 7.593% stock interests in Santa Fe Petroleum Company, Inc., a Cuban corporation, engaged in exploiting oil concessions in Cuba.

The Cuban Government published its Law No. 635 on November 23, 1959, which cancelled all rights with respect to the exploration and exploitation of oil concessions in land. In the absence of evidence to the contrary, the Commission finds that the property rights of Santa Fe Petroleum Company, Inc. (hereafter referred to as Santa Fe) were nationalized or otherwise taken by the Government of Cuba on November 23, 1959. (See Claim of Felix Heyman, Claim No. CU-0412, 1968 FCSC Ann. Rep. 51.)

Since Santa Fe was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States", 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. In this type of situation it has been held that an American stockholder is entitled to file a claim for the value of his ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

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

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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 circumstances, is "most appropriate to the property and equitable to the claimant." This phraseology does not differ from the international legal standard which would normally prevail in the valuation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation which the Commission shall consider.

The record shows that claimant, ROBERT F. GEORGE, a petroleum geologist and engineer with many years of experience, went to Cuba in 1955 for the purpose of investigating the Motembo field, Las Villas Province, Cuba. Mr. George worked with Santa Fe officials. When his investigation indicated that the Motembo field had large deposits of oil and gas reserves, he and a group of friends formed a Cuban corporation and obtained a sub-lease to exploit the land. The corporation commenced operations and subsequently merged with Santa Fe which was completely reorganized on May 7, 1957. Santa Fe owned nine concessions in land extending over an area of about 17,500 acres, which was later reduced to 16,500 acres. Mr. George conducted extensive tests to measure the amount of oil and gas reserves in the land.

The evidence includes a copy of an analysis report, dated February 1, 1958, which was prepared in connection with a prospectus for a proposed public offering of stock, and indicates the presence of large deposits of oil and gas in the lands under lease by Santa Fe; a copy of a report, dated January 31, 1956, from another geologist corroborating Mr. George's findings and conclusions concerning the Motembo field; maps of the Motembo oil field; a copy of an itemized "Statement of Value" in the nature of a pro forma balance sheet for Santa Fe as of March 1, 1958 which were included in the above-mentioned draft prospectus; a copy of a statement dated February 1, 1956 showing that Santa Fe had acquired drilling and related machinery and equipment at a cost of \$789,815.70; a detailed estimate, by an independent expert, dated December 20, 1957, of the value of the oil and gas reserves in the land covered by Santa Fe's lease; and statements from Mr. George and counsel concerning this claim.

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The "Statement of Value" for Santa Fe as of March 1, 1958 shows the following, the Cuban peso being on a par with the United States dollar:

ASSETS

Cash		\$ 13,000.00
Fixed Assets:		
Fully equipped machine and forge shop for handling oil equipment and machinery	\$ 65,000.00	
Warehouse	10,000.00	
Office building	6,000.00	
Mess hall	4,000.00	
Six residences at \$5,000.00	<u>30,000.00</u>	115,000.00
Oil field equipment - line pipe, tubing, casing, sucker rods, working barrels, pumping jacks, tanks, wire-line, trucks, engines, power plants, etc.	180,000.00	
Research and exploration investment	75,000.00	
17,500 acre leasehold at \$100.00 per acre	<u>1,750,000.00</u>	<u>2,005,000.00</u>
Total Assets		<u>\$2,133,000.00</u>

LIABILITIES AND CAPITAL

Liabilities:		
Current		\$ 32,000.00
Debentures		<u>150,000.00</u>
Total Liabilities		\$ 182,000.00
Capital and Surplus:		
Class A stock - 50,000 shares at \$.50 per share	\$ 25,000.00	
Class B stock - 4,000,000 shares at \$.01 per share	<u>40,000.00</u>	
Capital	65,000.00	
Surplus	<u>1,886,000.00</u>	
Capital and Surplus		<u>1,951,000.00</u>
Total Liabilities and Capital		<u>\$2,133,000.00</u>

ROBERT F. GEORGE has stated that no other financial statements or other records concerning Santa Fe are available since they were left in Cuba.

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Upon consideration of the entire record, the Commission finds that the valuation most appropriate in this case and equitable to the claimants is that shown in the "Statement of Value" as of March 1, 1958, with certain adjustments as indicated hereafter. Statements made by the claimants in connection with these claims, indicating a higher value for the land, are unsupported by the evidence.

In the absence of evidence to establish that Santa Fe owned cash on November 23, 1959, over 1-1/2 years later than the "Statement of Value", the Commission finds no valid basis for allowing Cash as an asset of Santa Fe on the date of loss.

The Commission finds that Santa Fe's fixed assets in the amount of \$115,000.00 and its oil field equipment in the amount of \$180,000.00 should be depreciated. Of the \$115,000.00, \$50,000.00 represented structures and \$65,000.00 constituted machinery and equipment. Applying the annual depreciation factors of 2% for structures, 5% for machinery and equipment, customarily used for such property, the Commission finds that on November 23, 1959, about 1-1/2 years after the date of the balance sheet, the structures had depreciated to the extent of \$1,500.00 and the machinery and equipment had depreciated to the extent of \$18,375.00. Accordingly, these assets had the values of \$48,500.00 and \$226,625.00, respectively.

The Commission finds that the amount expended for research and exploration, \$75,000.00, enhanced the value of Santa Fe's concessions and therefore constituted an asset on the date of loss.

Giving effect to the foregoing adjustments, the balance sheet of Santa Fe would appear as follows as of November 23, 1959, the date of loss:

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ASSETS

Fixed Assets:		
Structures	\$ 48,500.00	
Machinery & Equipment	<u>226,625.00</u>	\$ 275,125.00
Research & Exploration		75,000.00
Leasehold		<u>1,750,000.00</u>
Total Assets		<u>\$2,100,125.00</u>

LIABILITIES AND CAPITAL

Liabilities		\$ 182,000.00
Capital:		
Stock	\$ 65,000.00	
Surplus	<u>1,853,125.00</u>	<u>1,918,125.00</u>
Total Liabilities and Capital		<u>\$2,100,125.00</u>

The Commission, therefore, finds that the value of Santa Fe or the excess of its assets over its liabilities on November 23, 1959, the date of loss, was \$1,918,125.00. Accordingly, the losses sustained by ROBERT F. GEORGE, JOHN M. ROBERTS, CHARLES B. ROBERTS, WILLIAM ROBERTS and F. WAYNE FESEMYER were in the amounts of \$388,381.95 (20.248%), \$48,547.74 (2.531%), \$48,547.74 (2.531%), \$48,547.74 (2.531%) and \$145,643.23 (7.593%), respectively.

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 No. CU-0644), and in the instant case it is so ordered.

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CERTIFICATION OF LOSS

The Commission certifies that ROBERT F. GEORGE sustained 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 Three Hundred Eighty-eight Thousand Three Hundred Eighty-one Dollars and Ninety-five Cents (\$388,381.95) with interest thereon at 6% per annum from November 23, 1959 to the date of settlement;

The Commission certifies that JOHN M. ROBERTS 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 Forty-eight Thousand Five Hundred Forty-seven Dollars and Seventy-four Cents (\$48,547.74) with interest at 6% per annum from November 23, 1959 to the date of settlement;

The Commission certifies that CHARLES B. ROBERTS 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 Forty-eight Thousand Five Hundred Forty-seven Dollars and Seventy-four Cents (\$48,547.74) with interest at 6% per annum from November 23, 1959 to the date of settlement;

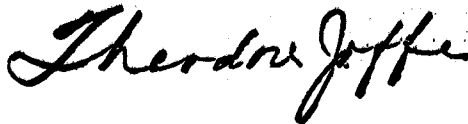
The Commission certifies that WILLIAM ROBERTS suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Forty-eight Thousand Five Hundred Forty-seven Dollars and Seventy-four Cents (\$48,547.74) with interest at 6% per annum from November 23, 1959 to the date of settlement; and

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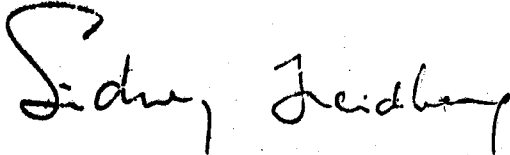
The Commission certifies that F. WAYNE FESEMYER suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Forty-five Thousand Six Hundred Forty-three Dollars and Twenty-three Cents (\$145,643.23) 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

NOV 26 1969



Theodore Jaffe, Commissioner



Sidney Freidberg, Commissioner

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 claimants establish retention of the securities for 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, 32 Fed. Reg. 412-13 (1967).)

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