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

IN THE MATTER OF THE CLAIM OF

AMERADA HESS CORPORATION OF VIETNAM
MARATHON PETROLEUM VIETNAM, LIMITED
VIETNAM SUN OIL COMPANY

Claim No. V-0247
V-0305
V-0465

Decision No. V-0427

Hearing on the Record held on NOV 19 1985

FINAL DECISION

These claims in the initial amounts of $2,476,666.07, $2,242,954.50, and $2,231,054.10, respectively, against the Government of the Socialist Republic of Vietnam under Title VII of the International Claims Settlement Act of 1949, as amended by Public Law 96-606 (94 Stat. 3534), are based upon the loss of a petroleum concession off the coast of South Vietnam, as well as some property in Saigon.

By Proposed Decision issued June 26, 1985, the Commission found that the three claimants had entered a joint venture for the exploration of petroleum reserves off the coast of Vietnam. The Commission found that the joint venture had sustained certain losses which would form the basis of a compensable claim if claimants were nationals of the United States. The Commission found that AMERADA HESS CORPORATION OF VIETNAM had established that it was a national of the United States as that term is used in Public Law 96-606. However, the Commission found that the other two claimants had not submitted sufficient evidence to establish that they were nationals of the United States. Therefore, the Commission denied the claims of MARATHON PETROLEUM VIETNAM, LIMITED, and VIETNAM SUN OIL COMPANY, but made an award to AMERADA HESS CORPORATION OF VIETNAM in the principal sum of $2,223,217.55.

Claimants MARATHON PETROLEUM VIETNAM, LIMITED, and VIETNAM SUN OIL COMPANY objected to the Proposed Decision and have submitted additional evidence in the form of affidavits from appropriate corporate officers. The affidavit from Sun Company, Inc., the owner of VIETNAM SUN OIL COMPANY, indicates that the common stock of the parent company was held at all relevant times to the extent of 99% by stockholders with registered addresses in the United States. The affidavit from Marathon Petroleum Company indicates that 99% of its stock was owned by individuals with mailing addresses in the United States up to and including the date (in January 1982) on which USS Holdings Company, a wholly owned subsidiary of United States Steel Corporation, acquired approximately 51% of the stock. The affidavit on behalf of United States Steel Corporation indicates that 97% or more of its outstanding capital stock is owned by individuals with mailing addresses in the United States.

Based on the foregoing evidence, the Commission concludes that claimants, MARATHON PETROLEUM VIETNAM, LIMITED, and VIETNAM SUN OIL COMPANY, have established that they were owned indirectly at least 50% by United States citizens at all times pertinent to their claims.

The Commission has previously held that a joint venture may be considered an eligible claimant in its own right if it is formed under the laws of a State of the United States and is indirectly owned to the extent of 50% or more by citizens of the United States.

In the present claims it is not clear that a joint venture was formed under the laws of a State of the United States and the petroleum concession appears to have been granted to each of the three participants. The Commission will therefore consider each of the three claimants herein as a proper claimant rather than the joint venture.

For the reasons set forth in the Proposed Decision, which are incorporated herein by reference, the Commission withdraws its previous award and makes the following awards as its final determination of these claims.

A W A R D S

Claimant, AMERADA HESS CORPORATION OF VIETNAM, is entitled to an award in the principal amount of Two Million Two Hundred Twenty-Three Thousand Two Hundred Seventeen Dollars and Fifty-Five Cents ($2,223,217.55), plus interest at the rate of 6% simple interest per annum, on Five Thousand Four Hundred Five Dollars and Fifty-Seven Cents ($5,405.57) from May 1, 1975 and on Two Million Two Hundred Seventeen Thousand Eight Hundred Eleven Dollars and Ninety-Eight Cents ($2,217,811.98) from August 6, 1975, to the date of settlement.

Claimant, MARATHON PETROLEUM VIETNAM, LIMITED, is entitled to an award in the principal amount of Two Million Two Hundred Thirty-One Thousand Three Hundred Fourteen Dollars and Fifty-Five Cents ($2,231,314.55), plus interest at the rate of 6% simple interest per annum, on Thirteen Thousand Five Hundred Two Dollars and Fifty-Seven Cents ($13,502.57) from May 1, 1975 and on Two Million Two Hundred Seventeen Thousand Eight Hundred Eleven Dollars and Ninety-Eight Cents ($2,217,811.98) from August 6, 1975, to the date of settlement.

Claimant, VIETNAM SUN OIL COMPANY, is entitled to an award in the principal amount of Two Million Two Hundred Twenty-Three Thousand Two Hundred Seventeen Dollars and Fifty-Five Cents ($2,223,217.55), plus interest at the rate of 6% simple interest

per annum, on Five Thousand Four Hundred Five Dollars and Fifty-Seven Cents ($5,405.57) from May 1, 1975 and on Two Million Two Hundred Seventeen Thousand Eight Hundred Eleven Dollars and Ninety-Eight Cents ($2,217,811.98) from August 6, 1975, to the date of settlement.

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

NOV 19 1985

Bohdan A. Futey, Chairman

Frank H. Conway, Commissioner

Joseph W. Brown, Commissioner

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OF THE UNITED STATES
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IN THE MATTER OF THE CLAIM OF	
AMERADA HESS CORPORATION OF VIETNAM MARATHON PETROLEUM VIETNAM, LIMITED VIETNAM SUN OIL COMPANY	Claim No. V-0247, V-0305, V-0465 Decision No. V-0427

PROPOSED DECISION

These claims in the initial amounts of $2,476,666.07, $2,242,954.50, and $2,231,054.10, respectively, against the Government of the Socialist Republic of Vietnam under Title VII of the International Claims Settlement Act of 1949, as amended by Public Law 96-606 (94 Stat. 3534), are based upon the loss of a petroleum concession off the coast of South Vietnam, as well as some property in Saigon.

Under section 703 of Title VII of the International Claims Settlement Act of 1949, as amended, the Commission is given the following jurisdiction:

> "The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of claims by nationals of the United States against Vietnam arising on or after April 29, 1975, for losses incurred as a result of the nationalization, expropriation, or other taking of (or special measures directed against) property which, at the time of such nationalization, expropriation, or other taking, was owned wholly or partially, directly or indirectly, by nationals of the United States to whom no restoration or adequate compensation for such property has been made... ."

Claimant, AMERADA HESS CORPORATION OF VIETNAM, was incorporated in the State of Delaware on June 29, 1973 as a wholly owned subsidiary of Amerada Hess Corporation. The Commission has previously found that Amerada Hess Corporation is a United States national, based on statements from corporate officials that over 99% of the company's stock was held by persons with addresses in

the United States. The Commission has received a similar statement from the Secretary of Amerada Hess Corporation in the current program, dated May 30, 1985, asserting that he had examined the company's stock books and records, which disclose that 90% of the common and preferred stock is presently owned by persons with registered addresses in the United States. Based on this evidence, the Commission considers it reasonable to presume that no less than 50% of Amerada Hess Corporation was owned by United States nationals at all times pertinent to this claim. Accordingly, the Commission finds that AMERADA HESS CORPORATION OF VIETNAM was indirectly owned no less than 50% by United States nationals at all times pertinent to this claim and therefore qualifies as a United States national within the meaning of Public Law 96-606.

MARATHON PETROLEUM VIETNAM, LIMITED, was incorporated in the State of Delaware on April 22, 1974 as a wholly owned subsidiary of Marathon International Oil Company, also a Delaware corporation, which in turn was a wholly owned subsidiary of Marathon Oil Company, an Ohio corporation previously known as the Ohio Oil Company from the time of its incorporation on August 1, 1887 until its change of name on August 1, 1962. In 1982, shortly before the filing of this claim, Marathon Oil Company was acquired in full by USS Holdings Company, an Ohio corporation wholly owned by United States Steel Corporation, which is incorporated in Delaware. On July 9, 1982 the name of Marathon Oil Company was changed to Marathon Petroleum Company and the name of USS Holdings Company was changed to Marathon Oil Company. The record includes statements from the corporate secretaries of Marathon Petroleum Company and United States Steel Corporation, dated July 26 and July 27, 1982, asserting that 50% or more of each company's stock was owned by individuals and entities with mailing addreses in the United States at all times pertinent to this claim.

VIETNAN SUN OIL COMPANY was incorporated in the State of Delaware on May 3, 1974 as a wholly owned subsidiary of Sun Company, Incorporated, a Pennsylvania corporation originally organized in New Jersey and formerly known as Sun Oil Company. The record contains a certification from the Secretary of Vietnam Sun Oil Company, dated August 27, 1982, asserting that at least 50% of the stock of Sun Company, Incorporated, is owned directly or indirectly by citizens of the United States.

Based on the evidence of record, the Commission is of the opinion that MARATHON PETROLEUM VIETNAM, LIMITED, and VIETNAM SUN OIL COMPANY have not satisfactorily established their United States nationality. In the case of MARATHON PETROLEUM VIETNAM, LIMITED, the record indicates only that "50% or more" of the stock of the two parent companies was owned by "individuals and entities" with United States addresses. Without evidence of a more exact percentage of the stock owned by United States residents, the Commission has no reason to find that more than 50% was so owned. As it is possible, indeed probable, that some of these individuals and entities with addresses in the United States were not United States citizens, it could be that less than 50% of the stock of the parent companies is owned by nationals of the United States. With regard to VIETNAM SUN OIL COMPANY, the statement from the corporate secretary indicates that "at least 50%" of the stock of the parent corporation, Sun Company, Incorporated, is directly or indirectly owned by United States citizens. The statement does not provide any further data as to the ownership percentage of United States nationals in Sun Company, Incorporated, or the percentage of stockholders with addresses in the United States. Nor is there any reason to presume that the secretary of VIETNAM SUN OIL COMPANY was privy to such information, since there is no indication in his statement that he examined the books and records of the parent company.

On the present record, therefore, the Commission is not convinced that MARATHON PETROLEUM VIETNAM, LIMITED, and VIETNAM SUN OIL COMPANY are indirectly owned to the extent of 50% or more by nationals of the United States. Accordingly, the Commission concludes that these two claims must be denied for insufficient evidence of the claimants' United States nationality.

The record establishes that the claimants signed a concession agreement with the Republic of (South) Vietnam on June 27, 1974 to explore for and produce petroleum and associated minerals in Vietnam's coastal waters. As outlined in the concession agreement, which bears the identification no. 11 - TLD, the concession area covered 4,575 square kilometers and was located within the following geographical coordinates:

-- On the North by the North Latitude 8 degrees 0 minute 0 second,

-- On the East by the East Greenwich Longitude 107 degrees 45 minutes 0 second,

-- On the South by the North Latitude 7 degrees 30 minutes 0 second,

-- On the West by the East Greenwich Longitude 107 degrees 0 minute 0 second.

Beginning in July 1974 the claimants were represented in Saigon by Mr. J.P. Johnson, who on October 15, 1974 signed a 2-year lease agreement with a Vietnamese national for the use of a villa at no. 49 Le Qui Don in Saigon Doc-Lap. On behalf of the concessionaires Mr. Johnson opened a Saigon office at no. 17 Bin Bach Dang. Meanwhile, the claimants subcontracted some seismic studies and related work in the concession area and prepared to drill their first test well around June 1, 1975. Because of the impending military defeat of South Vietnam, however, all exploration activities in the concession area ceased in April 1975. The claimants were not allowed to resume operations in the concession area thereafter.

The record contains evidence of a number of communications issued by Communist authorities after April 1975 indicating that the subject oil concession would not be honored by the new South Vietnamese regime. The first such communication was reported in the May 7, 1975 issue of Platt's Oilgram News Service, quoting government officials in Paris on May 6 to the effect that oil concessions granted by the deposed regime would not be recognized and that the various oil companies would have to renegotiate concession agreements with the new South Vietnamese government.[1] Subsequently, on August 7, 1975, The New York Times published an article, datelined in Hong Kong on August 6, quoting a statement of the Vietnam News Agency that "all deals made by the puppet regime of Nguyen Van Thieu are hereby declared invalid." A similar article appeared in the August 7, 1975 issue of New Nation, reporting a broadcast the previous day by Radio Giai Phong (Liberation Radio) in South Vietnam to the effect that oil concessions issued by the Thieu regime were illegal and invalid. On August 8, 1975 an article appeared in Platt's Oilgram News Service which also quoted South Vietnamese sources concerning the invalidity of prior concession agreements. The record includes evidence of yet another article which appeared in The Wall Street Journal on November 26, 1975 reporting an announcement by the Communist regime the previous day that petroleum concessions granted by the Thieu government would no longer be recognized.

From the foregoing sources, it is clear that the concession of AMERADA HESS CORPORATION OF VIETNAM, MARATHON PETROLEUM VIETNAM, LIMITED, and VIETNAM SUN OIL COMPANY was revoked by the new South Vietnamese regime in 1975. The Commission finds that this action constituted a taking of the claimants' property rights in the concession area. While the record is somewhat ambiguous as to the exact date of taking, the Commission considers The New York Times and New Nation articles of August 7, 1975 as most authoritative, since they quoted official sources in South Vietnam--the Vietnam News Agency and Radio Giai Phong--on

[1] On April 30, 1975, President Ford invoked the Trading with the Enemy Act, which made renegotiation of the concession impossible.

granted oil concessions. Accordingly, the Commission finds that the claimants' petroleum concession was taken by Vietnam as of August 6, 1975.

In previous claims programs, the Commission has granted awards for petroleum concessions if the record contained evidence of the proven reserves and/or prior production levels of the concession areas. (See Claim of STANDARD OIL COMPANY, Claim No. RUM-30140, Decision No. RUM-813, and Claim of SOCONY MOBIL OIL COMPANY, INC., Claim No. PO-2650, Decision No. PO-1769.) However, the Commission has traditionally denied claims based on the loss of prospective earnings from unproven petroleum reserves, because they were incapable of accurate measurement. (See Claim of EUROPEAN GAS & ELECTRIC COMPANY, Claim No. HUNG-20367, Decision No. HUNG-2135, and Claim of ROBERT STIEFEL, Claim No. PO-6101, Decision No. PO-4438.)

With regard to the concession of AMERADA HESS CORPORATION OF VIETNAM, MARATHON PETROLEUM VIETNAM, LIMITED, and VIETNAM SUN OIL COMPANY, in the South China Sea, there was no petroleum production at all prior to the taking of the concession and no firm data as to the petroleum reserves in the concession area. Accordingly, there is no basis to grant an award herein based on prospective earnings or the value of the petroleum reserves.

The Commission has sometimes been willing to consider alternative methods of valuation for petroleum concession claims where there were no producing wells or evidence as to the volume of reserves. Thus, in the Cuban claims program, the Commission held that certain investments connected with the exploration of a concession area--such as fees paid for a concession, the costs of seismic or geological surveys, mapping, marine seep or soil surveys, and similar studies--could be categorized as "capitalized expenditures or assets" of the claimant. As such, their loss represented compensable property interests. On the other hand, the Commission held that ordinary administrative costs and other general expenses could not properly be categorized as "capitalized expenditures or assets," and therefore did not

represent compensable property interests. (See Claim of ATLANTIC RICHFIELD COMPANY, ET AL, Claim Nos. CU-2338 and CU-3017, Decision No. CU-6031, Claim of FELIX HEYMAN, Claim No. CU-0412, Decision No. CU-2726, and Claim of D.R. WIMBERLY, Claim No. CU-3417, Decision No. CU-3418.)

The Commission considers these precedents from the Cuban program as a reasonable basis for the valuation of the instant claims. According to information furnished by the claimants, and evidenced by invoices in the record, the following expenditures were made in 1974-1975 in connection with the offshore oil concession:

1.	Acquisition Expenses	
a.	Signature bonus payment pursuant to Article 7 of Concession Agreement	$6,100,000.00
2.	Obligated expenses	
a.	Annual exploration surface tax payment pursuant to Article 8 of Concession Agreement	$ 27,450.00
b.	Geological and Geophysical Expenses	
1.	Petty-Ray Geophysical, Inc. Services under contract to perform geophysical services at site of concession 11/TLD. Includes: mobilization and demobilization; Acquisition of data; fuel consumed and reimbursable items; processing of data; reproduction charges; intensity maps and calcomp profiles	$ 519,818.85
2.	Geodata Services, Inc. Storage and shipping of geophysical information.	$ 1,267.08
3.	A.H. Glenn and Associates Meteorologic and Oceanographic condition report affecting offshore Vietnam.	$ 4,900.00
4.	Service of P. Tackenberg Salary, business expenses, and transportation	$ 12,378.69
5.	Pecten Vietnam Company Expenses of Mr. Tran Van Khoi	$ 1,059.40
6.	Related other expenses	$ 2,500.00
c.	Drilling Expenses	
1.	Mobilization of Tainaron drilling rig for commencement of operations on or about June 1, 1975. Operations suspended, rig diverted to alternative site.	$ 9,834.56

Among the foregoing expenditures, the Commission finds that the signature bonus payment and exploration surface tax, as well as the geological and geophysical expenditures to Petty-Ray Geophysical, Inc., Geodata Services, Inc., and A.H. Glenn and Associates, constituted capitalized expenditures or assets and, as such, represent compensable property losses. However, the Commission finds that other expenditures listed as "geological and geophysical expenses"--the "service of P. Tackenberg" and "other related expenses," neither of which is further explained in the record, and the expenditure to Pecten Vietnam Company for the "expenses of Mr. Tran Van Khoi," who provided an evaluation of the Vietnamese political situation in June 1975--did not constitute capitalized expenditures or assets. Therefore, they do not represent compensable property interests under Public Law 96-606. Nor does the mobilization of the drilling rig and its diversion to an alternative site represent a compensable capitalized expenditure since the record does not establish any property loss to the claimants.

The Commission holds, therefore, that the following capitalized expenditures are compensable herein: $6,100,000.00 for the signature bonus payment, $27,450.00 for the exploration surface tax, and $525,985.93 worth of geological and geophysical expenditures to Petty-Ray Geophysical, Inc., Geodata Services, Inc., and A.H. Glenn and Associates--for a total of $6,653,435.93.

The record also indicates that the claimants owned some property interests in Saigon, including the contents of the office at no. 17 Bin Bach Dang, the leasehold and certain household furnishings in the villa at no. 49 Le Qui Don, and a piaster bank account no. 90-11-00958-7 at the Saigon branch of the Chase Manhattan Bank. According to an inventory dated December 31, 1974, the office was stocked in the fall of 1974 with $2,649.23 worth of furniture and $1,096.82 worth of machines, while the villa in which Mr. Johnson, the claimants' Saigon representative, resided was furnished at company expense with assorted household goods costing $2,835.82. (A separate inventory

prepared by Mr. Johnson listed another $8,097.00 worth of his own property located in the residence.) Mr. Johnson has asserted that working funds and petty cash consisting of $429.20 of U.S. currency and $224.24 worth of Vietnamese currency was located in the claimants' Saigon office as well.

All of this property was lost when South Vietnam fell in the spring of 1975. The Commission finds that the foregoing property interests would have been considered "property of the people" by the new Communist authorities and taken under government control. As the record contains no particular evidence as to when such action occurred, the Commission holds that the subject property was taken on or about May 1, 1975--the date the Communists completed their occupation of South Vietnam. (See Claim of BETTY JANET MITCHELL, Claim No. V-0358, Decision No. V-0259 (1984).)

Allowing for some depreciation after the time of purchase, the Commission determines that the furniture and machines in the office, which cost $3,746.05, and the household goods provided Mr. Johnson by the claimants, which cost $2,835.82, were worth $3,500.00 and $2,700.00, respectively, at the time of loss. The working funds and petty cash in the Saigon office totalled $653.44. As for the claimants' joint bank account at the Saigon branch of the Chase Manhattan Bank, the record indicates that it had a balance of 69,278 piasters. At the offical exchange rate of 755:1 in the spring of 1975, this balance would have converted to $91.76. The record also indicates that the claimants' Saigon representative paid a total of 9,600,000.00 piasters "as advance payment of rent for 24 months" on the villa. Since this lease was terminated after only 6 1/2 months, on May 1, 1975, the Commission determines that the claimants lost the remaining 17 1/2 months of prepaid rent worth the equivalent of 7,000,000 piasters. Converted at the foregoing rate of 755:1, 7,000,000 piasters would have been worth $9,271.52.

Thus, the Commission determines that the claimants sustained joint property losses in Saigon totalling $16,216.72.

As for the additional household goods and personal effects lost by the claimants' representative in Saigon, the record establishes that MARATHON PETROLEUM VIETNAM, LIMITED, reimbursed Mr. Johnson for the full $8,097.00 in September 1975. This amount has been added to its claim by MARATHON VIETNAM PETROLEUM, LIMITED, as the subrogee of Mr. Johnson.

To recapitulate, the claimants' joint losses consisted of 6,653,435.93 for the petroleum concession and $16,216.72 for property in Saigon--a total of $6,669,652.65. Each claimant's 1/3 share therein equals $2,223,217.55. Adding the additional $8,097.00 subrogation item to the claim of MARATHON PETROLEUM VIETNAM, LIMITED'S, claim raises that claimant's total losses to $2,231,314.55.

Since MARATHON PETROLEUM VIETNAM, LIMITED, and VIETNAM SUN OIL COMPANY have not established their United States nationality to the Commission's satisfaction, however, the Commission finds that they are not entitled to awards for the above losses.

As AMERADA HESS CORPORATION OF VIETNAM has established its United States nationality within the meaning of Public Law 96-606, the Commission determines that it is entitled to an award for its losses in the principal amount of $2,223,217.55.

The Commission has concluded that in granting awards on claims under section 703 of Title VII of the Act, for the nationalization, expropriation, or other taking of property, interest shall be allowed at the rate of 6% simple interest per annum from the date of loss to the date of settlement. (See Claim of BETTY JANET MITCHELL, Claim No. V-0358, Decision No. V-0259 (1984).)

AWARD

Claimant, AMERADA HESS CORPORATION OF VIETNAM, is entitled to an award in the principal amount of Two Million Two Hundred Twenty-Three Thousand Two Hundred Seventeen Dollars and Fifty-Five Cents ($2,223,217.55), plus interest at the rate of 6% simple interest per annum, on Five Thousand Four Hundred Five Dollars and Fifty-Seven Cents ($5,405.57) from May 1, 1975 and on Two Million Two Hundred Seventeen Thousand Eight Hundred Eleven Dollars and Ninety-Eight Cents ($2,217,811.98) from August 6, 1975, to the date of settlement.

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

JUN 26 1985

Bohdan A. Futey, Chairman

Frank H. Conway, Commissioner

Joseph W. Brown, 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.)

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