

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

7155
Voting Trust

IN THE MATTER OF THE CLAIM OF

FELIX HEYMAN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0412

Decision No. CU 2726

Counsel for claimant:

Paul Neuberger, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$1,800.00, was presented by FELIX HEYMAN, and is based upon the asserted loss of interests in a voting trust, known as Cuban Venezuelan Oil Voting Trust of Cuba. Claimant, FELIX HEYMAN, has been a national of the United States since his naturalization on November 14, 1944.

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 claimant herein, FELIX HEYMAN, submitted five certificates of the Cuban Venezuelan Oil Voting Trust for a total of 900 units and asserts that his interest in this business enterprise was nationalized or otherwise taken by the Government of Cuba.

Evidence of record discloses that on June 1, 1950, for the purpose of assuring continuity of management and stability of policy, all of the stockholders of twenty-four (24) Cuban companies agreed to transfer their shares to the Cuban Venezuelan Oil Voting Trust, hereafter referred to as the Voting Trust. The Agreement provided that the Trust Agreement would expire on June 1, 1955, but this was later extended to June 1, 1965. Under the Trust Agreement, the shareholders received one voting trust certificate for each unit of twenty-four shares (one share of each company) delivered; and the Voting Trust was authorized to act for the stockholders of the twenty-four companies in all matters as lawful attorneys and general managers of such companies. The Trust Agreement was entered into in the Republic of Cuba and was in all respects, subject to and governed by the laws of that country.

The Voting Trust and Cuban corporations forming the Voting Trust were organized in Cuba in 1950 and in years prior thereto, and would

not be eligible claimants under Section 502(1)(B) of the Act. This provision specifically defines a "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.

The claim herein, however, has not been asserted as a corporate claim or one by a business enterprise, but is based on the interest of claimant in a Cuban Voting Trust which controls the activities of Cuban corporations. The claim may be considered as one based upon the interest of a stockholder in a Cuban enterprise, within the meaning of Section 505(b) of the Act, which provides as follows:

A claim under section 503(a) of this title based upon a direct ownership interest in a corporation, association, or other entity for loss shall be considered, subject to the other provisions of this title, if such corporation, association or other entity on the date of the loss was not a national of the United States, without regard to the per centum of ownership vested in the claimant.

TRANSACTIONS AND OPERATIONS OF THE VOTING TRUST

The Voting Trust entered into agreements with Trans-Cuba Oil Company, whereby Trans-Cuba expended certain sums to acquire a 50% working interest in all areas held by the 24 companies forming the Voting Trust. In 1954-1955, Trans-Cuba and the Voting Trust signed contracts with Cuban American Drilling and Exploration Company whereby that business enterprise acquired certain ownership rights in the oil concessions by drilling for oil in certain areas, including the Central Basin area. Test drills were reported dry except those known as Catalina #1 and Catalina #2. Catalina #1 produced about 30 barrels of oil a day, of a paraffin base and 32.8 degree gravity. In Catalina #2, shows of oil were encountered at a depth of

approximately 6,900 feet and the well was bottomed in January 1957 at 8,844 feet. This well is not a commercial producer.

Thereafter, in 1955 and 1956, the Voting Trust and Trans-Cuba signed agreements with Stanolind Oil Company of Indiana whereby Stanolind agreed to expend certain sums, maintain a continuous drilling program and, in return, receive certain rights to oil production.

The 24 Cuban corporations under the management and administration of the Voting Trust held, subject to the provisions of the Cuban Oil Law, the following properties:

<u>SCHEDULE OF PROPERTIES</u>		
<u>Kind of concession rights</u>	<u>Per cent net interest of Company</u>	<u>Total approximate area in hectares</u>
Exploration Titles	25%	2,267,024
Surveyed Awaiting Exploration Titles	25%	2,147,434
Definite Acceptance and Surveyed	25%	94,380
Definite Acceptance Pending Survey	25%	1,384,424
Pending Definite Acceptance	25%	<u>590,680</u>
	TOTAL HECTARES	6,483,942

While the Voting Trust associates had no proven reserves other than Catalina #1 and #2, such enterprise did have concession rights in the aforesaid acreage. The Voting Trust had developed geological and geophysical investigations, including gravimetric, magnetometer, photo-geological, seismic and surface studies. Other wells were drilled even though no significant oil or gas "shows" were reported at the time of nationalization or other taking of the properties in question.

NATIONALIZATION OR OTHER TAKING OF THE VOTING TRUST

The rights of the Voting Trust in the property which it controlled were affected by the Cuban Government under Law No. 635, of November 23, 1959. This Law effectively cancelled all applications for exploration and exploitation of concessions, regardless of the status thereof. Thereafter, the Voting Trust filed applications for further drilling operations but none of the applications were approved. Accordingly,

the Commission finds that the rights of the Voting Trust with respect to the property which it controlled were effectively nationalized or otherwise taken by the Government of Cuba on November 23, 1959; and that the interest of claimant therein, as evidenced by the units of participation in the 24 companies which he held on that date, was also taken at that time.

VALUE OF A UNIT OF PARTICIPATION IN THE VOTING TRUST

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.

Evidence of record includes data submitted by officers and stockholders of the Voting Trust disclosing that on December 13, 1960, an Information Questionnaire was filed with the United States State Department containing information relating to value of the Voting Trust at that time. This report, filed on behalf of the owners of certificates in the Voting Trust, was intended to be the basis of a future claim against the Government of Cuba; and such report indicated that the value of all property owned by the Voting Trust was estimated to be \$3,547,267.86; and that there were 9,242,162 units of Voting Trust Certificates outstanding.

Additionally, in determining the value of the units of participation owned by claimant in the Voting Trust, the Commission considered claimant's assertions, the purchase price of his stock, the purchase prices of the units on the open market, a combined balance sheet dated December 31, 1959, as well as other data pertaining to the sales price of the units of participation. The Commission concludes that the last sales price of the units on the open market and similar criteria of value are not fairly indicative

of net disposable unit values; and that the book value of the subject business enterprise is the most appropriate basis of valuation to reach a determination of the value of claimant's interest, or the value of a unit of participation in the Voting Trust.

On December 31, 1959, immediately following the passage of Law No. 635, the Voting Trust issued a combined balance sheet of the Voting Trust and 24 companies which reflects the assets and liabilities, including rights and interests previously acquired by agreements with other companies. This combined balance sheet, set forth hereinafter, was taken from the Annual Report of the Voting Trust for the Year 1959:

CUBAN VENEZUELAN OIL VOTING TRUST
AND 24 COMPANIES COMMITTED TO TRUST AGREEMENT DATED JUNE 1, 1950

Combined Balance Sheet
As of December 31, 1959

Assets and Capitalized Expenses

Current assets:	
Cash in banks	\$ 58,378.32
Deposits with investment bankers	1,513.93
Marketable securities (quoted market \$138,942.50)	139,863.47
Accounts receivable, less provision for uncollectible items, \$7,222.58	2,190.76
Claims for reimbursement under Law 635 of November 20, 1959	46,376.79
Materials and supplies	40,411.25
Prepaid expenses	3,549.00
Total current assets	<u>\$ 292,283.52</u>
Investment in lease in United States	35,000.00
Investment in foreign mining company, less provision of possible loss, \$8,279.50	- -
Machinery, equipment and furniture, less accrued depreciation of \$7,885.29	12,003.70
Unrecovered promotional, exploratory and development costs - (Schedule 1)	<u>1,574,267.86</u>
	<u><u>\$1,913,555.08</u></u>

Liabilities and Capital

Current liabilities:			
Accounts payable		\$ 69,959.79	
Tax payable		2,550.00	
	Total current liabilities	<u>\$ 72,509.79</u>	
Capital stock:			
Authorized			
10,000,000 common shares of 1/2¢			
par value each for 23 companies	\$1,150,000.00		
10,110,126 common shares of 1/2¢			
par value each for 1 company	<u>50,550.63</u>		
Issued and outstanding:			
9,242,162 common shares of each			
of 24 companies represented by			
9,242,162 Voting Trust Certificates	1,109,059.44		
Minority interest:			
110,126 common shares of Exploradora			
Petrolera Puerto Padre, S.A.	<u>550.63</u>		
			1,109,610.07
Capital surplus (premium on issuance of			
capital stock, less par value of bonus			
shares)			<u>731,435.22</u>
			<u>\$1,913,555.08</u>

An examination of Schedule 1 - "Unrecovered promotional, exploratory and development costs" - discloses that many of the items listed therein, such as salaries of Directors, Office Rent and Travel Disbursements, should be expensed rather than capitalized and do not properly constitute assets of the Trust. Several items, however, constitute expenses for which the Trust obtained things of value, or assets.

The Commission has determined that the following costs, listed in Schedule 1, are to be included in computing the value of a unit of participation in the Voting Trust:

Payment for transfer of claims, expenses of filing and special expenses relating to claims	\$250,019.16
Maps, plans and special reports	81,907.10
Geological and Geophysical expenses, surveys and reports	540,008.67
Exploration expenses	2,676.40
Machinery, equipment and furniture, less accrued depreciation	<u>12,003.70</u>
TOTAL	\$886,615.03

Additionally, the Commission has determined that current assets, in the amount of \$292,283.52, should be included in the asset value of the Voting Trust resulting in a total of \$1,178,898.55.

"Investment in Lease in the United States - \$35,000" is not included because this is not subject to, and could not have been taken by the Government of Cuba.

Since the subject enterprise was a Cuban corporation, the Commission is required to determine the net worth of the enterprise, and not merely the assets of the Voting Trust. Accordingly, the amount listed as liabilities and taxes must be deducted from the asserted value of the assets claimed. In sum, the total amount of \$72,509.79 is hereby deducted to reach a net asset value of the Voting Trust of \$1,106,388.76.

The Commission finds that the total number of outstanding units of participation in the Voting Trust at time of nationalization by the Government of Cuba was 9,242,122. Accordingly, the Commission hereby finds that the share of each unit of participation in the losses sustained by the Trust was \$0.11971 or 11.97 cents per unit of participation.

The Commission concludes that the claimant's interest in the losses sustained by the Voting Trust, consisting of 900 units of participation, as a result of the nationalization or other taking of the business enterprise by the Government of Cuba, was \$107.73.

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.)

Accordingly, the Commission concludes that the amount of the loss sustained by claimant herein 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 FELIX HEYMAN 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 Seven Dollars and Seventy-Three Cents (\$107.73) 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 Proposed
Decision of the Commission

AUG 14 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

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 claimant establishes retention of the securities or 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).)