

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

IN THE MATTER OF THE CLAIM OF

ATLANTIC RICHFIELD COMPANY
ATLANTIC REFINING COMPANY OF CUBA
CANDELARIA EXPLORATION CORPORATION
RODAS EXPLORATION CORPORATION
SANTA CRUZ EXPLORATION CORPORATION
SILVA EXPLORATION CORPORATION
LOS PALACIOS EXPLORATION CORPORATION

Claim No. CU-2338
Claim No. CU-3017

Decision No. CU-6031

**Under the International Claims Settlement
Act of 1949, as amended**

Counsel for Claimants:

H. G. Hachmann, Esq.
Bertram Balch, Jr., Esq.

Appeal and objections from a Proposed Decision entered on January 12, 1971;
no oral hearing requested.

Hearing on the record held on September 30, 1971.

FINAL DECISION

Under date of November 12, 1971, the Commission issued its Proposed Decision certifying losses in favor of the claimants herein and establishing that on March 4, 1969 the Sinclair Oil Corporation was merged into Atlantic Richfield Company; and the latter, as the surviving corporation under the laws of Pennsylvania, became possessed of all rights and properties of the Sinclair Oil Corporation. The respective claims of the claimants listed above were based on losses arising before merger and were discussed in the Proposed Decision.

Prior to May 3, 1966, ATLANTIC RICHFIELD COMPANY was known as The Atlantic Refining Company; and during 1955 and prior thereto certain wholly owned subsidiaries of claimant were organized under the Laws of Delaware, including ATLANTIC REFINING COMPANY OF CUBA, CANDELARIA EXPLORATION CORPORATION, RODAS EXPLORATION CORPORATION, SANTA CRUZ EXPLORATION CORPORATION, SILVA EXPLORATION CORPORATION, and LOS PALACIOS EXPLORATION CORPORATION.

The Commission determined in the Proposed Decision of January 12, 1971, that the losses within the meaning of Title V of the Act included the following:

I. SINCLAIR OIL CORPORATION:

Sinclair Cuba Oil Company:	
Stock interest in this Cuban subsidiary	\$ 5,533,170.23
Debts payable by this Cuban subsidiary	1,047,736.43
Dividends payable	<u>1,369,580.00</u>

Sub-total \$ 7,950,486.66

Sinclair Cuba Navigation Company:	
Stock interest in this Cuban subsidiary	\$ 1,521,634.38
Debt payable by this Cuban subsidiary	46,005.38
Dividends payable	<u>28,500.00</u>

Sub-total \$ 1,596,139.76

Total SINCLAIR OIL CORPORATION loss to which ATLANTIC RICHFIELD COMPANY had succeeded. \$ 9,546,626.42

II. SINCLAIR REFINING COMPANY \$ 670,018.87

III. ATLANTIC RICHFIELD COMPANY \$ 47,705.46

IV. ATLANTIC REFINING COMPANY OF CUBA \$ 1,171,832.41

V. CANDELARIA EXPLORATION CORPORATION \$ 157,568.96

VI. RODAS EXPLORATION CORPORATION \$ 118,450.04

VII. SANTA CRUZ EXPLORATION CORPORATION \$ 491,397.74

VIII. SILVA EXPLORATION CORPORATION \$ 116,077.81

IX. LOS PALACIOS EXPLORATION CORPORATION \$ 597,749.49

Additionally, the Commission denied certain portions of the claims asserted by the ATLANTIC RICHFIELD COMPANY OF CUBA and LOS PALACIOS EXPLORATION CORPORATION for expenditures made incident to drilling on Camaguey I, Alpha I, Paulina, the "Nev-Joint Venture" and other areas of Cuba. The Commission determined that no evidence had been submitted to establish the development of productive wells and concluded that such sums expended by ATLANTIC REFINING COMPANY OF CUBA, in the amount of \$841,928.09, and LOS PALACIOS EXPLORATION CORPORATION, in the amount of \$489,052.64, were for dry holes, not being assets of the exploring companies. These claimants have objected to the denial of these portions of the claims and have submitted additional information and evidence.

Further, the claimants have now submitted evidence disclosing that on December 3, 1968, the SINCLAIR REFINING COMPANY had been merged into the SINCLAIR OIL CORPORATION, as provided by the laws of the State of New York. Thus, upon this merger SINCLAIR OIL CORPORATION succeeded to the loss of \$670,018.87. Upon merger of SINCLAIR OIL CORPORATION with ATLANTIC RICHFIELD COMPANY in March 1969, ATLANTIC RICHFIELD COMPANY succeeded not only to the individual loss of SINCLAIR OIL CORPORATION as set out in the Proposed Decision but also to the loss of \$670,018.87 which originally accrued to SINCLAIR REFINING COMPANY.

Full consideration having been given to the objections of the claimants, and the entire record, including claimants' objections, having been reviewed, the Commission has determined that those claimants with losses incident to drilling expenditures are entitled to 25% of such expenses since such drilling activity was exploratory in nature and are expenditures in the nature of capitalized expenses or assets of the exploring enterprises in question. Accordingly, the Commission finds that the ATLANTIC REFINING COMPANY OF CUBA sustained a loss of \$210,482.02 and LOS PALACIOS EXPLORATION CORPORATION suffered a loss of \$122,263.16.

Thus, the Commission concludes that claimants suffered the following losses within the meaning of Title V of the Act; and that interest should be included at the rate of 6% per annum from the respective dates of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant claims it is so ordered as follows:

<u>FROM</u>	<u>ON</u>
ATLANTIC RICHFIELD COMPANY	
August 6, 1960	\$ 10,216,645.29
December 15, 1960	47,705.46
ATLANTIC REFINING COMPANY OF CUBA	
November 23, 1959	\$ 1,197,291.73
September 12, 1960	185,022.70
CANDELARIA EXPLORATION CORPORATION	
November 23, 1959	\$ 157,568.96

<u>FROM</u>	<u>ON</u>
RODAS EXPLORATION CORPORATION	
November 23, 1959	\$ 118,450.04
SANTA CRUZ EXPLORATION CORPORATION	
November 23, 1959	\$ 491,397.74
SILVA EXPLORATION CORPORATION	
November 23, 1959	\$ 116,077.81
LOS PALAÇIOS EXPLORATION CORPORATION	
November 23, 1959	\$ 720,012.65

Accordingly, all the Certifications of Loss in the Proposed Decision are set aside, the Certifications of Loss as restated below will be entered, and in all other respects, the remainder of the Proposed Decision as amended herein, is affirmed.

CERTIFICATIONS OF LOSS

The Commission certifies that ATLANTIC RICHFIELD COMPANY suffered and succeeded to 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 Ten Million Two Hundred Sixty-four Thousand Three Hundred Fifty Dollars and Seventy-five Cents (\$10,264,350.75) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement;

The Commission certifies that ATLANTIC REFINING COMPANY OF CUBA 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 Million Three Hundred Eighty-two Thousand Three Hundred Fourteen Dollars and Forty-three Cents (\$1,382,314.43) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement;

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The Commission certifies that CANDELARIA EXPLORATION 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 One Hundred Fifty-seven Thousand Five Hundred Sixty-eight Dollars and Ninety-six Cents (\$157,568.96) with interest thereon at 6% per annum from November 23, 1959 to the date of settlement;

The Commission certifies that RODAS EXPLORATION 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 One Hundred Eighteen Thousand Four Hundred Fifty Dollars and Four Cents (\$118,450.04) with interest thereon at 6% per annum from November 23, 1959 to the date of settlement;

The Commission certifies that SANTA CRUZ EXPLORATION 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 Four Hundred Ninety-one Thousand Three Hundred Ninety-seven Dollars and Seventy-four Cents (\$491,397.74) with interest thereon at 6% per annum from November 23, 1959 to the date of settlement;

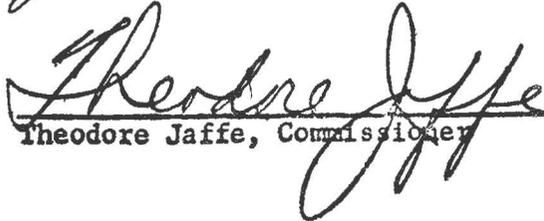
The Commission certifies that SILVA EXPLORATION CORPORATION suffered a loss as a result of actions of the Government of Cuba within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Sixteen Thousand Seventy-seven Dollars and Eighty-one Cents (\$116,077.81) with interest thereon at 6% per annum from November 23, 1959 to the date of settlement; and

The Commission certifies that LOS PALACIOS EXPLORATION 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 Seven Hundred Twenty Thousand Twelve Dollars and Sixty-five Cents (\$720,012.65) 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 Final
Decision of the Commission

SEP 30 1971


Lyle S. Garlock, Chairman


Theodore 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.

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Bertram Balch, Jr., Esq.

PROPOSED DECISION

These claims against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the total amount of \$22,961,926.93, were presented by the SINCLAIR OIL CORPORATION and the ATLANTIC RICHFIELD COMPANY and are based upon the asserted loss of the assets of wholly owned subsidiaries doing business in Cuba, oil concessions, personal property and other property 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 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) (1970).)

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.

An officer of the SINCLAIR OIL CORPORATION has certified that the corporation was organized under the law of the State of New York; that on the date of the asserted loss in Cuba, at least 98% of the shareholders were nationals of the United States; and that on the date of the presentation of this claim at least 99.5% of the shareholders were nationals of the United States. Further, an officer of the ATLANTIC RICHFIELD COMPANY, formerly known as the Atlantic Refining Company, has certified that the corporation was organized under the laws of Pennsylvania and at all times pertinent to this claim approximately 99% of the outstanding shares of stock

were held by nationals of the United States. SINCLAIR REFINING COMPANY was incorporated in the State of Maine and wholly owned by SINCLAIR OIL CORPORATION. The Commission finds that these claimant corporations are nationals of the United States within the meaning of Section 502(1)(B) of the Act.

The evidence of record establishes that since filing their respective claims herein, and on March 4, 1969, the SINCLAIR OIL CORPORATION was merged into ATLANTIC RICHFIELD COMPANY and the latter, as the surviving corporation under the laws of Pennsylvania, became possessed of all rights and properties of the SINCLAIR OIL CORPORATION, including the properties subject of the claim of the SINCLAIR OIL CORPORATION. However, the respective claims of the aforesaid companies are based upon losses which arose prior to merger and they will be so discussed herein except that the Certification of Loss will cover the merged corporation, now known as ATLANTIC RICHFIELD COMPANY, with separate Certifications to the separate United States subsidiaries.

I. SINCLAIR OIL CORPORATION

The evidence of record establishes that SINCLAIR OIL CORPORATION owned all of the shares of two Cuban subsidiary corporations known as Sinclair Guba Oil Company and Sinclair Cuba Navigation Company, formerly doing business at Edificio Sinclair, 21st and O Streets, Havana, Cuba. These companies marketed petroleum products throughout the Island of Cuba and owned bulk storage plants, water terminals and various types of gasoline service stations, located in the larger cities of Cuba. The real property included land, buildings and various types of installed service station equipment. The personalty included cash, accounts receivable, petroleum products, materials, equipment and other assets utilized in the petroleum industry.

Claimant has submitted evidence in support of the claim, including copies of stock certificates of the Cuban subsidiaries to establish their ownership; balance sheets of the subsidiaries prepared on June 30, 1960, affidavits of company officials, including those employed in Cuba, lists

of notes and loans receivable as of June 30, 1960, lists of service stations and plant equipment, lists of other personalty utilized in Cuba and financial data prepared by their accountants. The claimant also submitted various official documents issued by the Government of Cuba, the Certificate of Merger with ATLANTIC RICHFIELD COMPANY, correspondence and other evidence of record. The record also includes a State Department file concerning the claimant's subsidiaries in Cuba and a report submitted by the claimant to the State Department in 1960.

The evidence discloses that the Cuban subsidiaries were nationalized by the Government of Cuba on August 6, 1960 by Resolution 1 pursuant to Cuban Law 851 of July 6, 1960.

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." This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

Upon consideration of the entire record, the Commission finds that the valuation most appropriate to the property involved and equitable to the claimant is that shown in the balance sheets of June 30, 1960, as set forth below, which were prepared by claimant's accountants for Sinclair Cuba Oil Company and Sinclair Cuba Navigation Company and which reflect the financial condition of such business enterprises at about the time such firms ceased to actively operate in Cuba. Since these are Cuban enterprises, it is necessary to establish the net worth of each subsidiary and not solely the asset value of such firms.

Sinclair Cuban Oil Company

Assets

CURRENT ASSETS:

Cash		\$ 3,166,144.98
Notes and accounts receivable	\$5,309,895.27	
Less - Reserve for doubtful receivables	<u>527,000.98</u>	

4,782,894.29

Inventories:

Refined oil products, at average cost:

Gasolines	1,020,823.31
Kerosene	10,845.33
Fuel oil	222,508.69
Gas oil	290,865.88
Lubricants, greases and specialties	<u>319,876.07</u>

1,864,919.28

Materials and supplies, at cost

287,313.57

2,152,232.85

Total current assets

10,101,272.12

INVESTMENTS:

Investment in Ferrocarriles Occidentales
de Cuba, S.A. (cost \$52,600.00) 1.00

Investment in Republic of Cuba Bonds,
at cost

3,500.00

3,501.00

LONG-TERM NOTES AND ACCOUNTS RECEIVABLE:

1,054,283.97

CAPITAL ASSETS:

Property, plant and equipment, at cost 4,756,308.27

Less - Reserve for depreciation

3,029,056.26

1,727,252.01

PREPAID AND DEFERRED CHARGES, NET:

Prepaid insurance 12,302.67

Prepaid taxes 72.00

Prepaid rent, salaries and other deferred
charges

38,590.45

50,965.12

Less - Deferred profit on equipment
sales and other deferred credits

44,439.46

6,525.66

UNADJUSTED DEBITS, NET:

Claims and other unadjusted debits 16,275.03

Less - Unadjusted insurance and other
credits

15,169.39

1,105.64

\$12,893,940.40

Liabilities

CURRENT LIABILITIES:

Trade accounts payable		\$ 2,404,834.08
Dividends payable, pending obtention of permissions to remit:		
Declared in 1959, less 6% tax withheld	\$ 679,620.00	
Declared in 1960, less 6% tax withheld	<u>689,960.00</u>	
		1,369,580.00
Accrued payroll		73,840.04
Accrued taxes		<u>309,860.15</u>
Total current liabilities		4,158,114.27

DUE TO AFFILIATED COMPANIES:

Sinclair Oil Corporation	1,036,298.14	
Sinclair Oil Corporation - Insurance Fund	<u>11,438.29</u>	
	1,047,736.43	
Sinclair Refining Company, New York	670,018.87	
Sinclair Cuba Navigation Company	<u>1,537,499.60</u>	
		<u>3,255,254.90</u>
Total Liabilities		7,413,369.17

CAPITAL STOCK AND SURPLUS:

Capital stock:		
Authorized, 75,000 shares of \$100.00 par value		
Issued and outstanding, 50,000 shares	5,000,000.00	
Earned surplus	<u>480,571.23</u>	
		<u>5,480,571.23</u>
		<u>\$12,893,940.40</u>

The total assets of Sinclair Cuba Oil Company, as shown on the balance sheet, were in the amount of \$12,893,940.40. However, the Commission has determined that corporate investments in Ferrocarriles Occidentales should be allowed at cost. (See Claim of Ruth Anna Haskew, Claim No. CU-0849, 1968 FCSC Ann. Rep. 31.) Accordingly, the assets are found as \$12,946,539.40. The liabilities were in the total amount of \$7,413,369.17. Accordingly, the net worth of this enterprise was in the amount of \$5,533,170.23.

The record shows that this Cuban subsidiary owed a debt to the claimant herein and to the Sinclair Oil Corporation Insurance Fund, a division of the claimant, and to SINCLAIR REFINING COMPANY, incorporated in the State of Maine but solely owned by the claimant. SINCLAIR REFINING COMPANY has accordingly been added as claimant herein. These accounts payable by the

Cuban firm were in the amounts of \$1,047,736.43 and \$670,018.87 and as of the date of loss of the Cuban subsidiary such sums were due and payable. The Commission has held that debts of nationalized corporations are within the purview of Title V of the Act. (See Claim of Kramer, Marx, Greenlee & Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

Moreover, the balance sheet reflects dividends payable in the total amount of \$1,369,580.00 for 1959-1960, which are for the benefit of claimant, sole owner of this Cuban corporation. Accordingly, the Commission concludes that SINCLAIR OIL and SINCLAIR REFINING sustained the following losses within the meaning of Title V of the Act with respect to Sinclair Cuba Oil Company:

Stock interest in Cuban subsidiary	\$ 5,533.170.23
Debt payable by Cuban subsidiary to claimant	1,047,736.43
Dividends payable	<u>1,369,580.00</u>
TOTAL	\$ 7,950,486.66
SINCLAIR REFINING COMPANY	\$ 670,018.87

The balance sheet, as of June 30, 1960, for the Sinclair Cuba Navigation Company, which includes as an asset the sum of \$1,537,499.60, an obligation of Sinclair Cuba Oil Company, as well as other assets and liabilities, follows:

Sinclair Cuba Navigation Company

Assets

CURRENT ASSETS:

Cash in Banks and Offices	\$ 49,239.60
Notes and Accounts Receivable:	
Accounts Receivable, Trade	2,818.11
Inventories:	
Materials and Supplies	<u>2,993.25</u>
TOTAL CURRENT ASSETS	\$ 55,050.96

INDEBTEDNESS OF OTHER CONSOLIDATED AFFILIATES:

Sinclair Cuba Oil Co., S. A.	1,537,499.60
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CAPITAL ASSETS:

Ships, Barges and Launches	\$ 176,486.18	
Less: Reserve for Depreciation	<u>169,661.38</u>	6,824.80

PREPAID AND DEFERRED CHARGES:

Prepaid Insurance:		
Outside Premium Paid in Advance	\$ 1,094.58	
Unexpired Premium on Fund Insurance	<u>973.05</u>	2,067.63

UNADJUSTED DEBITS:

Less: Unadjusted Credits		<u>1,710.00</u>
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TOTAL		<u>\$ 1,603,152.99</u>
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Liabilities and Capital

CURRENT LIABILITIES:

Accounts Payable	\$ 4,077.90	
Accrued Payroll	663.57	
Dividend Payable	<u>28,500.00</u>	

<u>TOTAL CURRENT LIABILITIES</u>	\$ 33,241.47	
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DUE TO OTHER CONSOLIDATED AFFILIATES:

Sinclair Oil Corporation	\$ 309.36	
Sinclair Oil Corp.-Insurance Fund	<u>45,696.02</u>	46,005.38

OTHER RESERVES

2,271.76

CAPITAL STOCK:

Authorized, Issued and Outstanding:		
Par Value \$100.00 per Share - 10,000 shares		1,000,000.00

SURPLUS:

Earned Surplus:		
At December 31, 1959	\$ 526,233.30	

Net Income:		
Current Year to Date	<u>4,598.92</u>	521,634.38

TOTAL		<u>\$ 1,603,152.99</u>
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The total assets of the Sinclair Cuba Navigation Company, as shown on the balance sheet, are in the amount of \$1,603,152.99. The liabilities are in the total amount of \$81,518.61. Accordingly, the net worth of this subsidiary was \$1,521,634.38 at the time of loss.

Additionally, the aforesaid balance sheet reflects an indebtedness to SINCLAIR OIL in the amount of \$46,005.38 which is a debt of a nationalized corporation (see Marx, supra); that dividends were payable in the total amount of \$28,500.00 which are for the benefit of SINCLAIR OIL, sole owner of this Cuban corporation; and that the total loss sustained by SINCLAIR OIL as a result of the taking of this Cuban corporation is in the amount of \$1,596,139.76.

Thus, the Commission concludes that the SINCLAIR OIL CORPORATION, now a part of the ATLANTIC RICHFIELD COMPANY, sustained a total loss of \$9,546,626.42; and SINCLAIR REFINING COMPANY sustained a loss of \$670,018.87, all within the meaning of Title V of the Act.

II. ATLANTIC RICHFIELD COMPANY

The evidence of record establishes that prior to May 3, 1966, ATLANTIC RICHFIELD COMPANY was known as The Atlantic Refining Company; and that during 1955 and prior thereto certain wholly owned subsidiaries of claimant were organized under the laws of Delaware to explore and exploit oil or petroleum products in Cuba although their activities are not limited to Cuba. These subsidiaries include ATLANTIC REFINING COMPANY OF CUBA, CANDELARIA EXPLORATION CORPORATION, LOS PALACIOS EXPLORATION CORPORATION, RODAS EXPLORATION CORPORATION, SANTA CRUZ EXPLORATION CORPORATION and SILVA EXPLORATION CORPORATION.

The total value of property assertedly confiscated by the Government of Cuba from ATLANTIC RICHFIELD COMPANY and the aforesaid subsidiaries is stated by claimant as follows:

Commercial drafts (Unpaid)	\$ 47,705.46
Equipment and supplies	185,022.72
Petroleum Concessions	<u>4,165,386.40</u>
	\$4,398,114.58

The claimant, ATLANTIC RICHFIELD COMPANY, asserts that in 1960 it owned certain dollar drafts against which provisional deposits had been in collecting banks in Cuba. Upon receipt of the provisional deposits in payment of merchandise shipped by claimant to Cuban customers the collecting banks were unable to transmit such funds to claimant in payment for the merchandise because the Government of Cuba adopted discriminatory exchange controls pertaining to the funds in question.

Claimant has submitted copies of the acknowledgments of the collecting banks, to whom the drafts were delivered for collection; and the record indicates that receipt of the provisional deposits had been made by the banks, as received from claimant's customers in Cuba, although reimbursement to claimant was not made by the banks in question. Claimant submitted the following data, among other things, concerning these unpaid accounts:

<u>Payor</u>	<u>Draft No. and Date</u>	<u>Date Due</u>	<u>Amount</u>
Tropical Agriculture, S.A., Havana	5251 Sept. 28, 1959	Jan. 27, 1960	\$ 3,807.52
	5251-A Sept. 28, 1959	Dec. 28, 1959	3,807.52
Miquel & Bacardi, S.A., Santiago	5242 Aug. 4, 1959	Dec. 2, 1959	1,582.24
	5242-A Aug. 4, 1959	Jan. 31, 1960	1,582.24
	5289 Dec. 22, 1959	June 19, 1960	6,440.47
	5290 Dec. 22, 1959	Apr. 20, 1960	6,440.47
	5304 Apr. 18, 1960	Aug. 16, 1960	5,731.68
	5304-A Apr. 18, 1960	Oct. 15, 1960	5,759.60
	5301 Apr. 11, 1960	Aug. 9, 1960	2,111.23
	5301-A Apr. 11, 1960	Oct. 8, 1960	2,111.23
Linea Cubana de Omnibus, S.A., Santiago	5256 Oct. 2, 1959	Jan. 30, 1960	4,165.63
	5256-A Oct. 2, 1959	Mar. 31, 1960	<u>4,165.63</u>
	Total		\$47,705.46

The Government of Cuba on September 29, 1959 published its Law 568. By this law, the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba. This was accomplished by requiring numerous, unreasonable and costly demands upon the Cuban debtors or customers of claimant, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba in the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

The Commission finds that all payments for merchandise shipped by ATLANTIC RICHFIELD COMPANY to the aforesaid customers in Cuba, as established in the evidence of record, were due and payable on or before December 15, 1960; and that ATLANTIC RICHFIELD COMPANY suffered a loss in the total amount of \$47,705.46 within the meaning of Title V of the Act as a result of the taking of such funds by the Government of Cuba.

The evidence of record discloses that the subsidiaries of ATLANTIC RICHFIELD COMPANY, as listed above, owned certain petroleum exploration and exploitation concessions which had been granted by the Cuban Government under those laws of Cuba pertaining to combustible minerals. The evidence includes a complete list of the petroleum concessions owned by the subsidiaries and a map showing the location of the concessions in question. ATLANTIC RICHFIELD COMPANY has asserted that the value of such petroleum concessions at the time of loss was in the amount of \$4,165,386.40, as

discussed hereafter. The subsidiaries, Delaware corporations which qualify as United States nationals within the meaning of Section 502(1)(B) of the Act, are added as claimants herein.

These claimants have submitted detailed data with respect to "Concession Costs", which are broken down under subheadings, such as fees and payment, seismic development, aerial mapping, marine seep survey, soil analysis, drilling, administrative costs and miscellaneous expenditures. A recapitulation submitted indicates the following expenditures by the subsidiaries:

Atlantic Refining Company of Cuba	\$ 2,192,638.80
Candelaria Exploration Corporation	157,568.96
Los Palacios Exploration Corporation	1,087,213.81
Rodas Exploration Corporation	118,450.04
Santa Cruz Exploration Corporation	491,397.74
Silva Exploration Corporation	116,077.81
Miscellaneous activities: "Trustees"	<u>2,039.24</u>
TOTAL	\$ 4,165,386.40

The evidence of record, including a copy of Resolution 3, published October 24, 1960, reflects that ATLANTIC RICHFIELD COMPANY was listed as nationalized on that date by the Government of Cuba pursuant to Law 851. However, the Commission finds that the rights of the subsidiaries in the oil concessions in question were substantially curtailed 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. (See Claim of Felix Heyman, Claim No. CU-0412, 1968 FCSC Ann. Rep. 51.) Accordingly, the Commission finds that the rights of the six subsidiaries in these concessions were effectively nationalized or otherwise taken by the Government of Cuba on November 23, 1959.

With respect to the basis of valuation of the concessions the Commission has determined that the measure of evaluation "most appropriate to the property and equitable to the claimants" is the evidence of record submitted by the claimants and evidence available to the Commission concerning the value of similar properties. The evidence submitted by the claimants

includes affidavits, a recapitulation of all expenditures made in Cuba, maps, inventories, 1959 balance sheets and other company records which were prepared at or about the time of loss. The balance sheet and affidavits support the aforesaid recapitulation which is the basis of these claims and which was prepared from books of original entry as maintained by employees of the claimant corporations.

1. ATLANTIC REFINING COMPANY OF CUBA

The amended claim of this claimant in the total amount of \$2,377,661.52 includes the sum of \$2,192,638.80 for loss of concessions owned by claimant and a claim in the amount of \$185,022.92 for loss of equipment and supplies which were located in Pinar del Rio, Cuba.

The record, including entries in claimant's recapitulation of claim, indicates that the expenditures made by claimant were, in large part, for fees paid for the concessions, mapping, soil surveys or for seismic or geological surveys. Such expenditures can readily be classified as capitalized expenses or assets of the claimant. However, claimant has included certain drilling and miscellaneous expenses, apparently expended in the development of dry holes or in payment of ordinary administrative costs, which cannot, on the basis of the evidence of record, be categorized as assets or property which was taken by the Government of Cuba. (See Heyman, supra; also Claim of D. R. Wimberly, No. CU-3417.)

The drilling or miscellaneous expenses of the ATLANTIC REFINING COMPANY OF CUBA include expenditures incident to Camaguey I, Alpha I, Paulina and the "Nev-Joint Venture", in the total amount of \$841,928.09. There is no evidence to establish the development of productive wells and the Commission is constrained to conclude that such drilling was for dry holes which are not assets of the exploring company.

Additionally, the ATLANTIC REFINING COMPANY OF CUBA has listed "Administrative and Other Office Charges", in the total amount of \$501,912.00, as follows:

Administrative	\$ 138,910.00
Legal	89,458.00
Land and lease	68,381.00
Accounting	6,681.00
District Overhead	9,778.00
Drilling Dept. Overhead	14,710.00
Geological Department Overhead	132,804.00
Geophysical Department Overhead	5,207.00
Other	<u>35,983.00</u>
TOTAL	\$ 501,912.00

The above expenses include those in the total amount of \$138,011.00 for "Geological and Geophysical Expenses", which are apparently sums expended for the salaries of personnel engaged in survey activities concerning geological or seismic development of the concessions, as well as for technical reports helpful to the developing company. The balance of \$363,901.00, designated as administrative or general expenses, is not further clarified in the record and cannot be classified herein as assets.

Thus, the Commission finds that the expenditures of ATLANTIC REFINING COMPANY OF CUBA for concessions which can be classified as capitalized expenses, or assets, are in the total amount of \$986,809.71, as follows:

	\$2,192,638.80
less	<u>841,928.09</u>
	\$1,350,710.71
less	<u>363,901.00</u>
	\$ 986,809.71

The Commission concludes that claimant suffered a loss in this amount within the purview of Title V of the Act when the Government of Cuba seized such property on November 23, 1959.

The claimant also maintained an oil field equipment supply depot leased at the railroad yard in Los Palacios, Pinar del Rio, Cuba, where drilling supplies and other equipment was stored. The claimant prepared an inventory of such items at or about the time of loss and affidavits concerning the existence and value of these items and the taking of such inventories have been submitted by claimant. The claimant has included certain items with asserted evaluations at the time of loss, as follows:

Drilling, pipes, valves, other equipment	\$181,546.28
Drilling muds	1,202.76
Velocity survey equipment	308.59
Office furniture and equipment	1,708.70
Cash	188.37
Office rental deposits	<u>68.00</u>
TOTAL	\$185,022.70

The record includes affidavits and other material which establishes that on September 12, 1960, the Cuban militia and officials of the National Institute for Agrarian Reform, seized the oil drilling or oil field equipment located at Los Palacios, Pinar del Rio, Cuba. The Commission finds that the personal property, office equipment, cash and similar property, had been effectively taken on or before September 12, 1960; and that the drilling and oil field equipment was also taken by the aforesaid agents of the Government of Cuba on September 12, 1960.

The asserted evaluation of \$185,022.70 for loss of the personalty is based on a physical inventory made on April 30, 1960, by several employees of the ATLANTIC REFINING COMPANY OF CUBA, under the general supervision of their auditor or accounting department. Further, the values given in the inventory are based on an examination of invoices, shipping documents, cost of the inventories with shipping charges, condition of the items when checked and other factors.

Based upon the entire record, including evidence available to the Commission concerning the value of similar personal property, the Commission finds that the value of the property in question was \$185,022.70; and concludes that claimant suffered a loss in that amount within the provisions of Title V of the Act.

Accordingly, the Commission concludes that ATLANTIC REFINING COMPANY OF CUBA suffered a loss in the total amount of \$1,171,832.41 within the meaning of the Act.

With respect to other subsidiaries, the Commission finds that the following corporations expended sums, as listed hereafter, for concession

fees or costs, seismic and geological development, aerial mapping, marine seep or soil surveys, and similar expenditures, all in the nature of capitalized expenses or assets of these companies:

2.	<u>CANDELARIA EXPLORATION CORPORATION</u>	\$ 157,568.96
3.	<u>RODAS EXPLORATION CORPORATION</u>	118,450.04
4.	<u>SANTA CRUZ EXPLORATION CORPORATION</u>	491,397.74
5.	<u>SILVA EXPLORATION CORPORATION</u>	116,077.81

Thus, the Commission finds that these claimants suffered losses in the aforesaid amounts within the contemplation of Title V of the Act when their properties were taken by the Government of Cuba on November 23, 1959.

5. LOS PALACIOS EXPLORATION CORPORATION

Claim was asserted by this claimant in the amount of \$1,087,213.81 which includes expenditures in the amount of \$489,464.32 for drilling and miscellaneous or administrative expenses, leaving a balance of \$597,749.49 for costs incident to acquiring the concessions, surveys and those expenditures in the nature of assets. The Commission concludes that claimant suffered a loss in the amount of \$597,749.49 within the contemplation of the Act when its property was seized by the Cuban Government on November 23, 1959.

The ATLANTIC RICHFIELD COMPANY has included in the recapitulation of claims a sum of \$2,039.24 which is a loss attributable to an activity involving "Trustees", apparently involving miscellaneous activities of the subsidiaries but not otherwise explained in the claim. The Commission is constrained to deny this portion of the claim since ownership, loss and value of property assertedly owned by "Trustees", in relation to claimants herein, is not clarified or supported in the record. Accordingly, this portion of the claim is hereby denied.

Recapitulation

Claimants' losses within the scope of Title V of the Act are summarized as follows:

I. SINCLAIR OIL CORPORATION:

Sinclair Cuba Oil Company:	
Stock interest in this Cuban subsidiary	\$ 5,533,170.23
Debts payable by this Cuban subsidiary	1,047,736.43
Dividends payable	<u>1,369,580.00</u>

Sub-total \$ 7,950,486.66

Sinclair Cuba Navigation Company:	
Stock interest in this Cuban subsidiary	1,521,634.38
Debt payable by this Cuban subsidiary	46,005.38
Dividends payable	<u>28,500.00</u>

Sub-total \$ 1,596,139.76

Total SINCLAIR OIL CORPORATION loss \$ 9,546,626.42
to which ATLANTIC RICHFIELD COMPANY has succeeded.

- | | |
|--|-----------------|
| II. SINCLAIR REFINING COMPANY | \$ 670,018.87 |
| III. ATLANTIC RICHFIELD COMPANY | \$ 47,705.46 |
| IV. ATLANTIC REFINING COMPANY OF CUBA | \$ 1,171,832.41 |
| V. CANDELARIA EXPLORATION CORPORATION | \$ 157,568.96 |
| VI. RODAS EXPLORATION CORPORATION | \$ 118,450.04 |
| VII. SANTA CRUZ EXPLORATION CORPORATION | \$ 491,397.74 |
| VIII. SILVA EXPLORATION CORPORATION | \$ 116,077.81 |
| IX. LOS PALACIOS EXPLORATION CORPORATION | \$ 597,749.49 |

The Commission has decided that in certifications of loss 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, as follows:

<u>FROM</u>	<u>ON</u>
ATLANTIC RICHFIELD COMPANY	
August 6, 1960	\$9,546,626.42
December 15, 1960	47,705.46
SINCLAIR REFINING COMPANY	
August 6, 1960	670,018.87

<u>FROM</u>	<u>ON</u>
ATLANTIC REFINING COMPANY OF CUBA	
November 23, 1959	\$ 986,809.71
September 12, 1960	185,022.70
CANDELARIA EXPLORATION CORPORATION	
November 23, 1959	157,568.96
RODAS EXPLORATION CORPORATION	
November 23, 1959	118,450.04
SANTA CRUZ EXPLORATION CORPORATION	
November 23, 1959	491,397.74
SILVA EXPLORATION CORPORATION	
November 23, 1959	116,077.81
LOS PALACIOS EXPLORATION CORPORATION	
November 23, 1959	\$ 597,749.49

CERTIFICATIONS OF LOSS

The Commission certifies that ATLANTIC RICHFIELD COMPANY suffered and succeeded to 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 Million Five Hundred Ninety-four Thousand Three Hundred Thirty-one Dollars and Eighty-eight Cents (\$9,594,331.88) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement;

The Commission certifies that SINCLAIR REFINING COMPANY 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 Six Hundred Seventy Thousand Eighteen Dollars and Eighty-seven Cents (\$670,018.87) with interest thereon at 6% per annum from August 6, 1960 to the date of settlement;

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The Commission certifies that ATLANTIC REFINING COMPANY OF CUBA 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 Million One Hundred Seventy-one Thousand Eight Hundred Thirty-two Dollars and Forty-one Cents (\$1,171,832.41) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement;

The Commission certifies that CANDELARIA EXPLORATION 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 One Hundred Fifty-seven Thousand Five Hundred Sixty-eight Dollars and Ninety-six Cents (\$157,568.96) with interest thereon at 6% per annum from November 23, 1959 to the date of settlement;

The Commission certifies that RODAS EXPLORATION 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 One Hundred Eighteen Thousand Four Hundred Fifty Dollars and Four Cents (\$118,450.04) with interest thereon at 6% per annum from November 23, 1959 to the date of settlement;

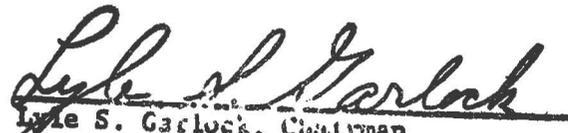
The Commission certifies that SANTA CRUZ EXPLORATION CORPORATION suffered a loss as a result of actions of the Government of Cuba within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Four Hundred Ninety-one Thousand Three Hundred Ninety-seven Dollars and Seventy-four Cents (\$491,397.74) with interest thereon at 6% per annum from November 23, 1959 to the date of settlement;

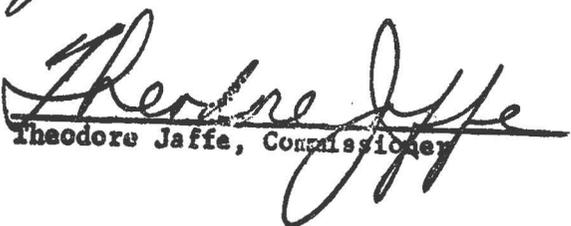
The Commission certifies that SILVA EXPLORATION CORPORATION suffered a loss as a result of actions of the Government of Cuba within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Sixteen Thousand Seventy-seven Dollars and Eighty-one Cents (\$116,077.81) with interest thereon at 6% per annum from November 23, 1959 to the date of settlement; and

The Commission certifies that LOS PALACIOS EXPLORATION 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 Five Hundred Ninety-seven Thousand Seven Hundred Forty-nine Dollars and Forty-nine Cents (\$597,749.49) 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

JAN 12 1971


Lyle S. Garlock, Chairman


Theodore 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, (1970).)

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