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

IN THE MATTER OF THE CLAIM OF

JOHN M. MURRELL

Claim No. CU-3614

Decision No. CU-6156

Under the International Claims Settlement Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba under Title V of the International Claims Settlement Act of 1949, as amended, was presented by JOHN M. MURRELL in the amount of $82,012.00 based upon the asserted loss in connection with his stockholder's interest in three Cuban corporations. Claimant, JOHN M. MURRELL, has been a national of the United States since his birth in Sumter, South Carolina.

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.

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.

Claimant states that he was the owner of 50% of all outstanding shares in the capital stock of Compania Petrolera la Sada S.A., and of 40% of the outstanding shares in the capital stock of Compania Minera Ross S.A. and Compania Minera Kevin S.A. Since all these three corporations were organized under the laws of Cuba, they do not qualify as corporate "nationals of the United States" defined under Section 502(1)(B of the Act (supra) as corporations or legal entities 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 cent 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 stockholders' ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.) The Commission, therefore, finds that claimant is the proper party before the Commission in connection with his claim for losses suffered by the three aforementioned corporations.

Claimant further states that the corporations owned valuable oil drilling and mining concessions which were expropriated by the Cuban Government

and that claimant sustained, as a result of this action, the following losses:

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| As stockholder of Compania Petrolera La Sada S.A. ..... | $65,000.00 |
| " " Compania Minera Ross S.A. ..... | $ 8,506.00 |
| " " Compania Minera Kevin S.A. ..... | $ 8,506.00 |
| Total..... | $82,012.00 |

Compania Petrolera La Sada S.A.

In order to establish his interest as a stockholder, claimant submitted an affidavit executed by Richard E. Viurrun, a former attorney and notary public of Havana, Cuba, who states that the corporation Compania Petrolera La Sada S.A. was organized under the laws of Cuba in 1955; that its authorized capital was 50,000 pesos, represented by 500 shares of common stock of 100 pesos each; that only 188 shares were issued, of which 50 per cent were owned by the claimant and 50 per cent by the affiant Viurrun. Claimant also submitted certificates for 94 shares of stock of the corporation, one-half thereof issued to his name, and one-half to the name of his son John M. Murrell, Jr. who endorsed the certificate in blank. Based upon this evidence, the Commission finds that claimant owned fifty (50) per cent of all the outstanding stock of Compania Petrolera La Sada S.A.

The record shows that prior to 1955 Richard E. Viurrun and the claimant were owners in equal shares of four (4) exploration concessions for the drilling of mineral oil, mining of asphalt and other mineral products. The concessions were known as "La Sada", "Don Manuel", "Helen" and "Flora" and covered an area of 1,250 hectares in the provinces of Havana and Matanzas. The record further shows that on February 3, 1955 Richard E. Viurrun and the claimant assigned all their rights to these concessions to the firm "Petrolera Paragon" S.A., a Cuban corporation, under an agreement which provided for Paragon to commence drillings for oil in two wells up to a minimum depth of 8,000 feet until commercial production was obtained, or in default thereof Paragon would pay a penalty which would amount to 5,000 pesos for the first year, 10,000 pesos for the

second year and 15,000 pesos for any year thereafter. If no commercial production were found at this depth, the obligation to continue drillings would terminate. The agreement further provided that the assignors of the concession would receive from the production 10 centavos per barrel of oil up to a total of 325,000 pesos, plus an overriding royalty of 7% of the entire production.

On April 19, 1955 the Compania Petrolera Paragon S.A. assigned all its rights and obligations from this agreement to Compania Petrolera Domo S.A., a Cuban company and a wholly owned subsidiary of Panoil Company, a Delaware corporation (formerly known as Pan American Land and Oil Royalty Corporation), which had its principal business offices in Dallas, Texas.

On May 28, 1955 the corporation Compania Petrolera La Sada S.A. was organized with the purpose to take over the rights and obligations Mr. Viurrun and claimant had in connection with the agreement of February 3, 1955. Thus the contracting parties from May 28, 1955 were: On one side Compania Petrolera La Sada S.A. and on the other side Compania Petrolera Domo S.A.

Petrolera Domo S.A. failed to comply with its drilling obligations. The penalty of $15,000 accrued by the year 1958 was reduced by mutual agreement to $9,000.00 and accepted in full payment by Compania Petrolera La Sada S.A. At the same time Compania Petrolera La Sada S.A. accepted an offer of $39,000.00 payable on September 30, 1959; should such payment have been made, all future drilling obligations would have been waived, and Compania Petrolera La Sada would have retained only a 4% royalty for the oil effectively produced from the wells in question. Negotiations were pending for the payment of the sum of $39,000 contemplated to be paid partly in cash, and partly in stock of Panoil Company, but meanwhile the Government of Cuba interfered with the drilling and mining concessions owned by private companies, and transactions among such companies became virtually impossible.

All mining rights in Cuba were substantially curtailed by the Cuban Government under Law 635 of November 23, 1959, which 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). Thus the Commission finds that the above described concessions owned by Compania Petrolera Domo S.A. were taken by the Government of Cuba on November 23, 1959.

Mr. Viurrun and claimant nevertheless pressed for the payment of the $39,000.00, upon which the parties had agreed. Payment was refused, because of the conditions prevailing in Cuba, whereupon Mr. Viurrun and claimant instituted suit in the United States District Court in and for the Northern District of Texas against Panoil Company on account of the failure of its affiliate, the Compania Petrolera Domo S.A. to carry out its obligations under the agreements. Stipulations dated February 18, 1964 signed by Mr. Viurrun and claimant in their own names and on behalf of Compania Petrolera La Sada S.A. on one side and by an officer of Panoil Company on the other side, representing Compania Petrolera Domo S.A., included, among other things, a provision for the payment of $8,500.00 to liquidate the disagreement between the parties; for the reduction of the royalty of 4% of the well production, should production be resumed; for the elimination of all penalties; and the parties exonerated each other of all responsibilities for the non-compliance of the provisions of the previous agreements. Upon payment of $8,500.00 by Panoil Company to Mr. Viurrun and the claimant the litigation in court was settled by Order of March 11, 1964.

On the basis of the foregoing the Commission concludes that on November 23, 1959, the date of taking of the concessions by the Government of Cuba, these concessions were owned by Compania Petrolera Domo S.A.; that Compania Petrolera La Sada S.A., in which claimant had an interest, at that time had only a claim for penalties in the agreed amount of $39,000.00; that as a consequence of the stipulations of February 18, 1964 all claims of La Sada had been settled by a compromise and paid in cash; and all that remained from the mutual contractual relations was an obligation of Domo to pay La Sada 4% royalty for future productions at the wells covered by the concessions.

The value of La Sada shares would therefore be confined to the evaluation of the 4% royalty payable in the case of any future exploitation of the wells. The Commission finds that claims based upon future royalties are not compensable under the Act, except where claimant can establish a continuous profitable exploitation in the years immediately prior to the taking of the concessions. Moreover, here, the profits from the wells after the concessions were taken by the Cuban Government, no longer belonged to the Compania Petrolera Domo S.A. since title to the concessions had become extinguished by the actions of the Cuban Government. Therefore, no royalties payable out of these profits could accrue to the claimant through Domo and La Sada. (See Claim of Metro-Goldwyn-Mayer, Inc. Claim No. CU-2225.) Accordingly, the Commission is constrained to deny this claim.

Compania Minera Ross S.A. and Compania Minera Kevin S.A.

Claimant submitted affidavits executed by the aforementioned Richard E. Viurrun, who states that in 1957 two corporations were organized under the laws of Cuba, by the name of Compania Minera Ross S.A. and Compania Minera Kevin S.A.; that each of the corporations had an authorized capital of 50,000 pesos, represented by 500 shares of common stock of 100 pesos each; that each corporation issued only 188 shares, of which 50% were owned by the claimant and 50% by the affiant; that Compania Minera Ross S.A. was the owner of a mining concession named "Ramone", located in the Province of Oriente, and the Compania Minera Kevin S.A. was the owner of a gold mining concession named "Pequita", also located in the Province of Oriente. It should be noted that claimant stated in his original claims applications that he owned only a 40% interest in the Ross and Kevin mining stock. However, no stock certificates were submitted in support of this portion of the claim and the Commission finds that claimant has failed to establish the extent of his stockholder's interest in these two corporations.

Additionally, no evidence of value of the two corporations was presented. The amount of claimant's asserted losses appears to be limited to the purchase price for the shares of stock, the expense in connection with the registration of the concessions, and to lawyers fees. However,

neither the purchase price of the shares nor the fees paid for the concessions and for legal services are relevant in establishing the value of the shares of stock.

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).)

The Commission finds that claimant has failed to meet the burden of proof with respect to the ownership and value of his stockholder's interest in the Compania Minera Ross S.A. and Compania Minera Kevin S.A.

In view of the foregoing, the claim is denied in its entirety.

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

APR 7 1971

Lyle S. Garlock

Lyle S. Garlock, Chairman

Theodore Jaffe

Theodore Jaffe, 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 (1970).)