

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

IN THE MATTER OF THE CLAIM OF

JOINT VENTURE OF PECTEN VIETNAM
COMPANY AND VIETNAM CITIES
SERVICE, INCORPORATED

Claim No. V-0522

Decision No. V-0425

Counsel for Claimant:

Ezra Levine, Esquire
Howrey & Simon

FINAL DECISION

This claim in the amended aggregate amount of \$36,991,576.05 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), is based upon the loss of three petroleum concessions off the coast of South Vietnam.

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... ."

The Commission issued a Proposed Decision on this claim on June 26, 1985. In that decision the Commission found that PECTEN VIETNAM COMPANY and VIETNAM CITIES SERVICE, INCORPORATED, as joint venturers, held three petroleum concessions in Vietnam's coastal waters, by virtue of concession agreements negotiated with the Republic of (South) Vietnam in 1973, which were taken by the new Communist regime in South Vietnam as of August 6, 1975.

The record indicated that the companies expended a total of \$36,991,576.05 on the concessions between 1973 and 1978. Among these costs, the Commission found that \$33,517,926.19 worth were in the nature of "capitalized expenditures or assets" during the years 1973-1975 which constituted compensable property interests under Public Law 96-606. These items included signature bonus payments (\$9,000,000.00), exploration surface taxes (\$181,528.00), seismic expenses (\$5,083,979.31), and drilling expenses (\$19,252,418.88). The Commission held that an additional \$131,333.19 worth of drilling expenses in 1976 and 1977, as well as \$5,295.47 worth of seismic expenses in 1976, did not represent compensable expenditures since the claimant(s) no longer held any ownership interest(s) in the concessions by that time. In addition, the Commission held that \$1,541,585.60 worth of administrative expenses in the years 1973-1978, \$593,743.95 worth of other exploration expenses in the years 1974-1978, as well as alleged Saigon/Singapore branch office expenditures of \$1,203,452.84 in the years 1974-1977, were in the nature of ordinary administrative and other general expenses which could not properly be categorized as "capitalized expenditures or assets" of the claimant(s). Accordingly, the Commission concluded that they did not represent compensable property interests under the Act.

Before the Commission could grant an award, PECTEN VIETNAM COMPANY and VIETNAM CITIES SERVICE, INCORPORATED, had to establish that they were United States nationals within the meaning of Public Law 96-606. The pertinent provision in the Act is subsection 702(1)(B), which 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."

With regard to VIETNAM CITIES SERVICE, INCORPORATED, the record established that this company was incorporated in the State of Delaware on August 16, 1973 as a wholly owned subsidiary of Cities Service Company, which was also incorporated in the State of Delaware on September 2, 1910. The record included a "Certificate" from an Assistant Secretary of Cities Service Company dated June 3, 1985, stating that, based on information from the company's stock transfer and dividend paying agent as well as his own knowledge, 98% of the common stock issued by Cities Service Company was held during the years 1975 through 1982 by persons with registered addresses in the United States. The record also included two geographic analyses of the company's stock ownership, dated February 25, 1975 and December 31, 1982, respectively, listing the number of shareholders and the total shares of stock held by residents of each state in the Union, as well as other United States jurisdictions and foreign countries. As indicated in these geographic analyses, which showed widely dispersed holdings throughout the United States, approximately 98.3% of the company's stock was held by United States residents in February 1975 and approximately 99.1% in December 1982. Based on the foregoing evidence of ownership by an overwhelming percentage of United States residents, the Commission was satisfied that 50% or more of Cities Service Company was owned by citizens of the United States, as required under subsection 702(1)(B) of the Act. Accordingly, the Commission concluded that VIETNAM CITIES SERVICE, INCORPORATED, as a wholly owned subsidiary of Cities Service Company, was a United States national as well.

With regard to PECTEN VIETNAM COMPANY, the record indicated that it was incorporated in the State of Delaware on June 21, 1973 as a wholly owned subsidiary of Shell Oil Company, which was also incorporated in the State of Delaware on February 8, 1922. The evidence indicated that approximately 70% of Shell Oil Company stock was held during the years 1975 through 1982 by the

Royal Dutch/Shell Group, comprised of the Shell Transport and Trading Company P.L.C., a British corporation, and Royal Dutch Petroleum Company, a Netherlands corporation. Counsel for claimant conceded that Shell Oil Company and its subsidiary, PECTEN VIETNAM COMPANY, were not owned to the extent of 50% or more by United States nationals during the foregoing time period and that PECTEN VIETNAM COMPANY, therefore, did not qualify as an eligible claimant under subsection 702(1)(B) of the Act. The Commission so held in its Proposed Decision.

PECTEN VIETNAM COMPANY contended, however, that the joint venture, rather than the individual companies, was the proper claimant herein, that the joint venture qualified as a United States national, and that PECTEN VIETNAM COMPANY should therefore be entitled to an award as part of the joint venture. Counsel for claimant submitted a brief to the Commission on June 6, 1985 setting forth the arguments that (a) the joint venture, as a legal entity under the laws of Texas, constituted an "other legal entity...organized under the laws...of any State..." as defined in subsection 702(1)(B) of the Act, and (b) the joint venture met the requirement of United States nationality, as defined in subsection 702(1)(B). In support of this latter contention, counsel for claimant cited (1) the aforementioned "Certificate" of the Assistant Secretary of Cities Service Company, together with the geographic analyses of the shares and shareholders, to the effect that more than 98% of the company's stock was held between 1975, when the taking occurred, and 1982, when this claim was filed, by persons with registered addresses in the United States, and (2) a "Certificate" from an Assistant Secretary of Shell Oil Company, dated June 4, 1985, stating that corporate records showed approximately 30% of its shares to be held between 1975 and 1982 by stockholders with registered addresses in the United States. Based on the foregoing percentages, counsel for claimant argued that the JOINT VENTURE OF PECTEN VIETNAM COMPANY AND VIETNAM CITIES SERVICE, INCORPORATED, was indirectly owned to

the extent of approximately 64% by "natural persons who are citizens of the United States (emphasis added)," thereby surpassing the 50% minimum requirement of subsection 702(1)(B) of the Act.

The Commission held that the joint venture was indeed a proper claimant herein, but found that the record did not adequately establish that the joint venture was at least 50% owned by United States citizens. While the "Certificate" submitted by the Assistant Secretary of Cities Service Company was supplemented by two geographic analyses, no such supporting documentation accompanied the "Certificate" of Shell Oil Company's Assistant Secretary. The information offered in this latter certificate was simply that "approximately 30%" of Shell Oil Company's stock in the pertinent years was held by stockholders with registered addresses in the United States, with no information distinguishing between nominal ownership and beneficial ownership. The Commission noted that a brokerage firm in New York could be the nominal owner of a large concentration of stock for the benefit of foreign nationals. Considering this lack of compelling evidence as to the ownership percentage of United States citizens in Shell Oil Company, together with the fact that 98% ownership of Cities Service Company by persons with U.S. addresses did not establish that all such persons were also United States citizens, the Commission concluded that the record did not justify a finding that the joint venture was indirectly owned at least 50% by citizens of the United States. Accordingly, the Commission held that the joint venture was not entitled to an award under the Act.

As the Commission was satisfied from the evidence of record that VIETNAM CITIES SERVICE, INCORPORATED, was a United States national at all times pertinent to this claim, the Commission held that it was entitled to an award for its share of the joint venture's capitalized expenditures. The Commission noted that VIETNAM CITIES SERVICE, INCORPORATED, was obligated under the

joint venture agreement to pay the first \$1 million of drilling costs, with all subsequent outlays being equally divided. The Commission therefore calculated claimant's share of the capitalized expenditures for the years 1973-1975 as \$1,000,000.00 plus one-half of the remaining \$32,517,926.19, or \$16,258,963.10. Thus, the Commission determined that VIETNAM CITIES SERVICE, INCORPORATED, was entitled to an award in the principal amount of \$17,258,963.10.

By letter dated July 16, 1985, PECTEN VIETNAM COMPANY objected to the Proposed Decision. Counsel for claimant asserted that the Commission was in error in finding that the joint venture was not indirectly owned at least 50% by United States citizens, and indicated that more evidence would be forthcoming in support of this contention. Counsel for claimant also objected to the Commission's disallowance of the claims for drilling and seismic costs after 1975 as well as the Saigon/Singapore branch office expenditures. In addition, counsel for claimant noted that the Commission did not address PECTEN VIETNAM COMPANY's alternative assertion that a claim could be certified on behalf of Shell Oil Company's (U.S.) shareholders, under subsection 705(c) of the Act, in the amount of 30% of PECTEN VIETNAM COMPANY's interest in the joint venture.

On November 1, 1985, in support of the objection, counsel for claimant submitted an extensive brief supplemented by the following exhibits:

Exhibit 1--affidavit of S.R. Natenberg, an employee of Shell Oil Company since 1972 who has held the position of Assistant Corporate Secretary since June 16, 1984;

Exhibit 2--excerpt from the "Financial and Operational Information 1966-1975" of the Royal Dutch/Shell Group of Companies;

Exhibit 3--excerpts from the 1978 and 1982 annual reports of Royal Dutch Petroleum Company;

Exhibit 4--affidavit of H.E. Bockelken, Assistant Secretary of Cities Service Company between 1975 and 1982;

Exhibit 5--first pages of nine annual proxy statements of Shell Oil Company, covering the time period March 1975 through March 1983;

Exhibit 6--excerpts from eight annual proxy statements of Cities Service Company, covering the time period March 1975 through March 1982.

In its brief of November 1, 1985, counsel for claimant asserted that the above exhibits, together with additional data cited in the brief, demonstrate that "at the very least 88% of Cities (Service Company) stock and 25.8% of Shell (Oil Company) stock was held by U.S. citizens for the period pertinent to the claim," with the result that "over 56.8% of the joint venture was owned by U.S. citizens."

Counsel for claimant cited various judicial authority for the proposition that residents of the United States are presumed to be citizens thereof and, by extension, that shareholders of large publicly traded corporations may be presumed to be United States citizens if their addresses are in the United States. Counsel for claimant has cited a number of U.S. government studies indicating that the percentage of foreign ownership in United States corporations has been consistently low. According to a report issued by the Department of the Treasury in 1980, based on information from 7,750 reporting corporations, foreign ownership as of December 31, 1978 averaged only 4.3%. According to reports of the Securities and Exchange Commission, foreign ownership in United States corporations ranged from 5.2% to 8.1% in the years 1976-1980. Counsel for claimant pointed out that the SEC reports may overstate the foreign investment percentages since they included all investors owning more than 5% of a publicly traded corporation, who were required under the law to file disclosure forms with the SEC, whereas the aforementioned Treasury report focused principally on "portfolio investments" of smaller shareholders. Counsel for claimant also cited a recent State Department memorial submitted to the Iran-United States Claims Tribunal which concluded, based on a survey of pertinent tax, securities, and banking laws, as well as U.S. treaties with foreign countries, that there were legal disincentives for foreigners purchasing shares in U.S. corporations to use United

States addresses, and that there was no evidence that the percentage of foreign ownership through U.S. nominees (with U.S. addresses) exceeded the percentage of U.S. ownership through foreign nominees (with foreign addresses) in the late 1970's and early 1980's. The conclusion drawn by claimant's counsel from the foregoing studies, with respect to the instant claim, is that the percentage of each parent company owned directly or indirectly by persons with registered addresses in the United States is a reasonably accurate guideline for the percentage of each company owned, in fact, by citizens of the United States.

With regard to PECTEN VIETNAM COMPANY's parent, Shell Oil Company, counsel for claimant has acknowledged and the evidence of record establishes that nearly 70% was owned between 1975 and 1982 by the Royal Dutch/Shell Group, a foreign consortium consisting of the Royal Dutch Petroleum Company, a Netherlands corporation (60%), and the Shell Transport and Trading Company P.L.C., a British corporation (40%). During that same period, as indicated in the affidavit of Shell's Assistant Corporate Secretary (Exhibit 1), the percentage of Shell Oil Company's stock held directly by shareholders with registered addresses in the United States was slightly under 30%. Appended to the affidavit are three geographic analyses of Shell stock ownership during the years 1975, 1978, and 1982--representing the beginning, middle, and end of the time period applicable in this claim--listing the number of Shell's stockholders and the total number of shares held by (1) residents of each state in the Union, (2) residents of outlying U.S. territories and possessions, (3) known citizens of the United States residing in foreign countries, and (4) all other residents of foreign countries. As listed therein, foreign residents held only 814,166 out of 67,548,621 shares (1.2%) on March 5, 1975, 1,358,614 out of 147,948,247 shares (0.9%) on May 5, 1978, and 2,387,331 out of 308,959,521 shares (0.8%) on January 5, 1982. For each of these three years the vast majority of the shares were held by persons with registered addresses in New York,

although the great majority of individual stockholders were not so listed. As explained in the affidavit of Shell's Assistant Corporate Secretary and confirmed in the company's proxy statements, the bulk of these shares during the pertinent period were being held on behalf of the Royal Dutch/Shell Group: 80.81% (46,889,888 out of 58,023,440 shares) in 1975, 86.62% (102,594,909 out of 118,442,698 shares) in 1978, and 84.70% (214,502,844 out of 253,255,919 shares) in 1982. These large blocks represented the entire ownership interest of the Royal Dutch/Shell Group in Shell Oil Company during the pertinent years. Deleting the Royal Dutch/Shell Group blocks as well as the other foreign-owned shares previously discussed from the three geographic analyses leaves the following percentages of Shell stock owned by residents of the United States (or known citizens of the United States residing abroad) in the pertinent years: 29.37% in 1975, 29.60% in 1978, and 29.74% in 1982.

Aside from the foregoing percentages of Shell stock held directly by persons with registered addresses in the United States, the record indicates that U.S. residents owned additional indirect interests in Shell by virtue of their direct stock holdings in the Royal Dutch/Shell Group. Exhibits 2 and 3 (the Royal Dutch/Shell Group's financial and operational information during 1966-1975, as well as its 1978 and 1982 annual reports) listed ownership percentages in the Group by United States residents of 9.3% in 1975, 10.8% in 1978, and 15.0% in 1982. Multiplying these figures by the Group's percentage ownership of Shell during the pertinent years (69.42% in 1975, 69.48% in 1978, and 69.49% in 1982) results in additional indirect ownership interests in Shell Oil Company by U.S. residents of 6.5% in 1975, 7.5% in 1978, and 10.3% in 1982. Thus, the total direct and indirect ownership interests in Shell Oil Company by persons with registered addresses in the United States was 35.8% in 1975, 37.1% in 1978, and 40.0% in 1982.

With regard to the more than 29% of Shell stock owned directly by United States residents between 1975 and 1982, the record indicates that a sizeable proportion thereof was held for the benefit of Shell employees by the Shell Employees Stock Ownership Fund and the Shell Stock Fund. As indicated in the affidavit of Shell's Assistant Corporate Secretary (Exhibit 1) and Shell's proxy statements (Exhibit 5), this percentage ranged from 22.34% in 1975 to 26.16% in 1982. As a percentage of the entire ownership of Shell Oil Company, the employee stock funds held between 6.56% and 7.80% of the company's stock during those years. According to Shell's Assistant Corporate Secretary, company records indicate that 99.38% of Shell employees are United States citizens in 1985. While there are no such records for the years 1975-1982, it is the opinion of the Assistant Corporate Secretary that the foregoing percentage was relatively stable during the past decade. Thus, virtually all shares of Shell Oil Company held by the employee stock funds--approximately one-quarter of the entire U.S. resident ownership interest--would have been directly owned by United States citizens.

With regard to VIETNAM CITIES SERVICE, INCORPORATED, the affidavit of Cities Service Company's Assistant Secretary (Exhibit 4) and the company's annual proxy statements (Exhibit 6) provide additional information concerning the ownership of the parent corporation--Cities Service Company--between 1975 and 1982. In the affidavit, the Assistant Secretary once again stated that "to the best of my knowledge and belief, more than 98%" of the common stock of Cities Service Company was held by shareholders with registered addresses in the United States from 1975 to 1982, with the Employees Thrift Plan holding the largest concentration (6.7% in 1975) during much of this period. The Assistant Secretary indicated that there were no other holders of 5% or more of Cities Service Company's stock until May 1981, when a Canadian corporation, Nu-West Group Limited, purchased approximately 7.2% of the company's shares. Cities Service Company

contested this purchase by Nu-West Group Limited in Federal District Court, however, as a result of which the parties reached a settlement whereby the subject shares were repurchased by Cities Service Company in September 1981. In November or December 1981 Mesa Petroleum Company, a Delaware corporation whose main office was in Amarillo, Texas, purchased 4,100,000 shares of Cities Service Company, approximately a 5.3% interest therein. The record contains no evidence as to the citizenship of Mesa shareholders. According to Cities Service Company's Assistant Secretary, Mesa relinquished its ownership interest in Cities Service Company in June 1982. Finally, on September 10, 1982, Occidental Petroleum Corporation purchased approximately 45% of the outstanding shares of Cities Service Company. Occidental Petroleum Corporation was incorporated in the State of California and, according to company records, 98.92% of its approximately 209,000 shareholders had registered addresses in the United States. In a proxy statement filed with the SEC in November 1982, Occidental indicated that no one person or company owned as much as 5% of the company's shares.

To recapitulate, the extensive data furnished by counsel for claimant in its brief of November 1, 1985, together with the information previously submitted in the brief of June 6, 1985, demonstrates the following with regard to the ownership of the joint venture. PECTEN VIETNAM COMPANY, as the wholly owned subsidiary of Shell Oil Company, was owned indirectly by persons with registered addresses in the United States in a range of 35.8% to 40.0% between 1975 and 1982. VIETNAM CITIES SERVICE, INCORPORATED, as the wholly owned subsidiary of Cities Service Company, was owned indirectly by persons with registered addresses in the United States in a range of 98.3% to 99.1% between 1975 and 1982, except for the period of May-September 1981 when a Canadian company indirectly owned a 7.2% interest, albeit under the cloud of litigation, and possibly the period of November/December 1981-June 1982 when Mesa Petroleum Company, the citizenship and/or registered addresses of whose shareholders is not established in the record, indirectly owned a 5.3% interest.

Based on the foregoing figures, the overall percentage of the joint venture owned indirectly by persons with U.S. addresses would be as follows during pertinent years. Combining the 98.3% of VIETNAM CITIES SERVICE, INCORPORATED, so owned as of February 25, 1975 with the 35.8% of PECTEN VIETNAM COMPANY so owned as of March 5, 1975, results in an overall percentage of approximately 67% of the joint venture owned indirectly by persons with U.S. addresses at a period shortly before the loss of the subject petroleum concessions. Combining the 40% of PECTEN VIETNAM COMPANY so owned as of January 5, 1982 with the minimum of approximately 91% of VIETNAM CITIES SERVICE, INCORPORATED, so owned in the summer of 1981 (subtracting the Canadian corporation's 7.2% interest from the 98-99% of Cities Service Company owned until then by U.S. residents) results in an overall percentage of at least 65% of the joint venture owned indirectly by persons with addresses in the United States shortly before the filing of this claim.

Counsel for claimant concedes that not all of the U.S. resident shareholders are necessarily citizens of the United States. However, citing the U.S. Government studies indicating that, on the average, foreign nationals hold considerably less than a 10% interest in U.S. corporations, as well as the evidence that among the shares in question no large block of 5% or more were held by any one person or company, foreign or otherwise, between 1975 and 1982, counsel for claimant concludes that most of the 65-67% of the joint venture's indirect owners with U.S. addresses were also United States citizens.

Counsel for claimant presents a "worst case analysis" in which it is assumed, *arguendo*, that as much as 10% of the ownership interest in each of the parent companies held by persons with addresses in the United States was in fact owned,

directly or indirectly, by non-U.S. citizens. Reducing the lowest total direct and indirect ownership of Shell Oil Company by persons with registered U.S. addresses during the pertinent years (35.8% in 1975) to 25.8%, and reducing the figure for Cities Service Company from 98% to 88%, counsel for claimant calculates the total indirect ownership of the joint venture by citizens of the United States at 56.9%. The Commission notes in the foregoing calculations that the 10% reduction for Shell Oil Company should have been calculated from a base of 35.8%, rather than 100%, resulting in a "worst case analysis" of 32.2%, rather than 25.8%, direct or indirect ownership in the company by U.S. citizens. However, counsel for claimant also overlooked the brief 7.2% ownership interest in Cities Service Company that was held in 1981 by the Canadian Corporation, Nu-West Group Limited, which could have reduced the total ownership interest in Cities Service Company held by persons with U.S. addresses to as low as 91% at that time. A 10% reduction from 91% equals 81.9%. Taking these recalculated "worst case" percentages of 32.2% for Shell Oil Company and 81.9% for Cities Service Company would result in a total indirect ownership of the joint venture by United States citizens of approximately 57%, almost exactly the figure calculated by claimant's counsel.

In fact, the joint venture would still have been owned indirectly by a majority of United States citizens if as few as 77% of the parent companies' shareholders with U.S. addresses were actually citizens of the United States. This figure is based on the minimum 65% interest in the joint venture owned indirectly by persons with U.S. addresses during the pertinent years, as calculated on page 12, supra.

After thorough review of the entire record in this claim, the Commission is convinced that the JOINT VENTURE OF PECTEN VIETNAM COMPANY AND VIETNAM CITIES SERVICE, INCORPORATED, was indirectly owned at all times pertinent to the claim at least 50% by natural persons who were citizens of the United States, as

required for compensation under subsection 702(1)(B) of the Act. Accordingly, the Commission finds that the joint venture is entitled to an award for the taking of its three oil concessions by Vietnam. In connection therewith, the Commission determines that the award previously granted in the Proposed Decision to VIETNAM CITIES SERVICE, INCORPORATED, should be withdrawn.

As aforementioned, one of the grounds of objection to the Proposed Decision was the failure of the Commission to address PECTEN VIETNAM COMPANY's alternative assertion that, in the event of a denial of its own claim, an award could be certified under subsection 705(c) of the Act on behalf of the U.S. citizen shareholders of Shell Oil Company owning indirect interests in the joint venture. As the Commission has now concluded that the joint venture itself is entitled to an award, this objection is moot. The Commission notes for the record, however, that a claim on behalf of individual shareholders of a non-U.S. corporation would be treated like all other personal claims, requiring, among other things, that the name of each shareholder be submitted along with documentary evidence of the United States citizenship of each.

As for the claimant's other objection to the Proposed Decision, that the Commission should not have denied the post-1975 drilling and seismic costs as well as the expenditures by the Saigon/Singapore branch office, no further evidence or arguments have been submitted. Accordingly, the Commission affirms that portion of the Proposed Decision denying compensation for these items.

As aforementioned, the Commission determined in its Proposed Decision that the joint venture's capitalized expenditures during the years 1973-1975 totalled \$33,517,926.19, and that this sum represented all of the joint venturers' compensable losses under Public Law 96-606. Accordingly, the Commission hereby determines that the JOINT VENTURE OF PECTEN VIETNAM COMPANY AND VIETNAM CITIES SERVICE, INCORPORATED, is entitled to an award in the principal amount of \$33,517,926.19.

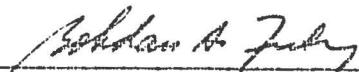
The Commission has concluded that in granting awards on claims under section 703 of title VII of the Act, for the nationalization, expropriation, or other taking of property, interest shall be allowed at the rate of 6% simple interest per annum from the date of loss to the date of settlement. (See Claim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

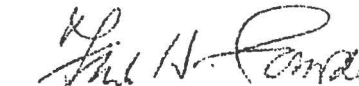
A W A R D

Claimant, JOINT VENTURE OF PECTEN VIETNAM COMPANY AND VIETNAM CITIES SERVICE, INCORPORATED, is therefore entitled to an award in the principal amount of Thirty-Three Million Five Hundred Seventeen Thousand Nine Hundred Twenty-Six Dollars and Nineteen Cents (\$33,517,926.19), plus interest at the rate of 6% simple interest per annum from August 6, 1975 until 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

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

IN THE MATTER OF THE CLAIM OF

PECTEN VIETNAM COMPANY

VIETNAM CITIES SERVICE, INCORPORATED

Claim No. V-0522

Decision No. V-0425

Counsel for Claimants:

Ezra Levine, Esquire
Howrey & Simon

PROPOSED DECISION

This claim in the amended aggregate amount of \$36,991,576.05 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), is based upon the loss of three petroleum concessions off the coast of South Vietnam.

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."

The record establishes that PECTEN VIETNAM COMPANY, which was incorporated in the State of Delaware on June 21, 1973 as a wholly owned subsidiary of Shell Oil Company, and VIETNAM CITIES SERVICE, INCORPORATED, which was also incorporated in the State of Delaware on August 16, 1973, signed three concession agreements with the Republic of (South) Vietnam on August 28, 1973 to explore for and produce petroleum and associated minerals in Vietnam's coastal waters. As outlined in the concession agreements, which bear the identification nos. 06-TLD, 07-TLD, and

08-TLD, the concession areas covered a total of 22,691 square kilometers and were located within the following geographical coordinates:

06-TLD

- on the North by the North Latitude 9 degrees 15 minutes 0 second,
- on the East by the East Greenwich Longitude 109 degrees 20 minutes 0 second,
- on the South by the North Latitude 8 degrees 30 minutes 0 second,
- on the West by the East Greenwich Longitude 108 degrees 30 minutes 0 second.

07-TLD

- on the East by the East Greenwich Longitude 108 degrees 30 minutes 0 second,
- on the South by the North Latitude 10 degrees 0 minute 0 second,
- on the Northwest by a line connecting the following points:
 - point 4 (9 degrees 25 minutes 0 second North, 106 degrees 45 minutes 0 second East Greenwich),
 - point 5 (10 degrees 9 minutes 0 second North, 107 degrees 6 minutes 0 second East Greenwich),
 - point 6 (10 degrees 32 minutes 0 second North, 108 degrees 0 minute 0 second East Greenwich),
 - point 7 (11 degrees 0 minute 0 second North, 108 degrees 36 minutes 0 second East Greenwich).

08-TLD

- on the North by the North Latitude 7 degrees 45 minutes 0 second,
- on the East by the East Greenwich Longitude 108 degrees 30 minutes 0 second,
- on the South by the North Latitude 7 degrees 0 minute 0 second,
- on the West by the East Greenwich Longitude 107 degrees 45 minutes 0 second.

According to the operating agreement between PECTEN VIETNAM COMPANY and VIETNAM CITIES SERVICE, INCORPORATED, which was also dated August 28, 1973, each company held a 50% interest in the "joint operation," with equal financial rights and obligations, although PECTEN VIETNAM COMPANY was designated as the operator

with sole responsibility for developing the concession area. The companies further stipulated in Article 14 of their operating agreement:

"...the liabilities of the Parties hereto shall be several and not joint or collective, and each Party shall be responsible only for its share of the costs and liabilities incurred as provided hereunder. It is not the purpose or intention of this Agreement to create any partnership, mining partnership or association and neither this Agreement nor the operation hereunder shall be construed or considered as creating any such relationship..."

Pursuant to this operating agreement with VIETNAM CITIES SERVICE, INCORPORATED, and their concession agreement with the Republic of Vietnam, PECTEN VIETNAM COMPANY set up an office in Saigon and subcontracted ~~some~~ seismic work, whereby some 20 prospect sites in the three concession areas were mapped and studied. Four test wells were drilled between August and November 1974, three in Block 8 (concession no. 08-TLD) and one in Block 6 (concession no. 08-TLD) which resulted in the discovery of oil and gas shows. One of the wells produced a test yield of approximately 2,230 barrels of oil per day and 17,600 MCFD of natural gas from three producing zones, although it could not be immediately determined whether this well would be commercially exploitable. In April 1975, before the test drilling had been completed, PECTEN VIETNAM COMPANY ceased its exploration activities in the concession areas because of the impending military defeat of South Vietnam. 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 concessions 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 concessions OF PECTEN VIETNAM COMPANY and VIETNAM CITIES SERVICE, INCORPORATED, were 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 areas. 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 August 6 declaring the illegality and invalidity of previously granted oil concessions. Accordingly, the Commission finds that the claimants' petroleum concessions were taken by Vietnam as of August 6, 1975.

¹ On April 30, 1975, President Ford invoked the Trading With the Enemy Act, which made renegotiation of the concessions impossible.

Section 704 of Public Law 96-606 limits the Commission's jurisdiction as follows:

"A claim may be favorably considered under section 703 of this Act only if the property right on which it is based was owned, wholly or partially, directly or indirectly, by a national of the United States on the date of loss and only to the extent that the claim has been held by one or more nationals of the United States continuously from the date that the loss occurred until the date of filing with the Commission.

Under Section 702(1)(B) of the Act, the term "national of the United States" is defined 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."

As aforementioned, VIETNAM CITIES SERVICE, INCORPORATED, was incorporated in the State of Delaware on August 16, 1973 as a wholly owned subsidiary of Cities Service Company, which was also incorporated in the State of Delaware of September 2, 1910. The record includes a "certificate" submitted by an Assistant Secretary of Cities Service Company, dated June 3, 1985, asserting that during the years 1975 through 1982, when he was Assistant Secretary, more than 98% of the company's stock was held by persons with registered addresses in the United States. Claimant has submitted a geographic analysis of the number of shareholders and shares held by residents of each State which shows widely dispersed holdings in all 50 States and that in excess of 99.1% of all shares are held by residents of the United States. Based on this information the Commission finds that VIETNAM CITIES SERVICE, INCORPORATED, is a United States national within the meaning of subsection 702(1)(B) of the Act.

As for PECTEN VIETNAM COMPANY, the record indicates that it was incorporated in the State of Delaware on June 21, 1973 as a wholly owned subsidiary of Shell Oil Company, which was also incorporated in the State of Delaware on February 8, 1922. The

record includes a "certificate" from an Assistant Secretary of Shell Oil Company, dated June 4, 1985, asserting that during the years 1975 to 1982 approximately 30% of the corporation's common stock was held by persons with registered addresses in the United States. Counsel for PECTEN VIETNAM COMPANY has advised the Commission that the remaining 70% of Shell Oil Company stock was held during the pertinent time period by the Royal Dutch/Shell Group, which is comprised of the Shell Transport and Trading Company P.L.C., a British corporation, and Royal Dutch Petroleum Company, a Netherlands corporation. The record contains no evidence as to what percentage of the stock of these two companies, if any, might be held by United States nationals.

Thus, the record fails to establish that PECTEN VIETNAM COMPANY is owned to the extent of 50% or more, either directly or indirectly, by natural persons who are citizens of the United States. Accordingly, the corporation fails to qualify as a national of the United States within the definition of subsection 702(1)(B) of the Act.

PECTEN VIETNAM COMPANY argues that its 1973 agreement with VIETNAM CITIES SERVICE, INCORPORATED, created a "joint venture" under Texas law which should be considered an "other legal entity" under subsection 702(1)(B) of the Act, which could then qualify as a United States national on the basis of the combined stock ownership percentages of the two companies.

The first question presented by this argument is whether the operating agreement between PECTEN VIETNAM COMPANY and VIETNAM CITIES SERVICE, INCORPORATED, constituted a "joint venture." Although this term is nowhere used in the agreement, the Commission finds, based on the language of the agreement and pertinent Texas law, that the relationship between the two companies was in the nature of a joint venture.

The second question facing the Commission is whether a joint venture falls under the definition of "other legal entity" as used in subsection 702(1)(B), which may then be considered as the claimant herein separate and apart from the individual companies. Claimant cites a number of Texas cases for the proposition that a joint venture is a legal entity, including the following quotation from the Texas Court of Appeals:

"A joint venture is a legal entity described as being 'in the nature of a partnership engaged in the joint prosecution of a particular transaction for mutual profit.' Brown v. Cole, 155 Tex. 624, 291 S.W.2d 704, 709, 59 A.L.R.2d 1011 (1956). Partnerships and joint ventures, however, are distinct legal entities in Texas." (Tex-Co Grain Co. v. Happy Wheat Growers, Inc., 542 S.W.2d 934, 936 (Tex. Civ. App. 1976)."

Although Public Law 96-606 does not itself contain a definition of the term "other legal entity," the report filed by the Committee on Foreign Affairs which accompanied H.R. 5737 states as follows:

"'Other entity' is intended by the committee to include a subsidiary, partnership, affiliate, branch, joint venture, office, or other permanent business establishment." (emphasis added)

Based on the foregoing authority, the Commission concludes that the joint venture between PECTEN VIETNAM COMPANY and VIETNAM CITIES SERVICE, INCORPORATED, constitutes a legal entity within the meaning of subsection 702(1)(B) and may be considered a proper claimant under the Act.

There remains the question, however, as to whether the joint venture qualifies as a United States national under Public Law 96-606. As defined in pertinent part in subsection 702(1)(B), a legal entity must be (1) "organized under the laws of the United States or of any State..." and (2) owned directly or indirectly to the extent of 50% or more by "natural persons who are citizens of the United States." The agreement between PECTEN VIETNAM COMPANY and VIETNAM CITIES SERVICE, INCORPORATED, was concluded in the State of Texas and pursuant to its terms all questions arising out of the agreement or its validity, interpretation,

performance or breach were to be governed by the laws of the State of Texas. Based on this evidence, the Commission finds that the joint venture was organized under the laws of a State of the United States, as required under subsection 702(1)(B). As aforementioned, the record includes statements from corporate officers of the parent companies to the effect that VIETNAM CITIES SERVICE, INCORPORATED, and PECTEN VIETNAM COMPANY were, at all times pertinent to this claim, indirectly owned to the extent of approximately 98% and 30%, respectively, by persons with registered addresses in the United States. According to this information, therefore, about 64% of the joint venture would have been owned by persons with addresses in the United States. In the Commission's view this fact does not establish that 64% of the joint venture was beneficially owned by United States nationals. While the evidence submitted on behalf of Cities Service Company, including the geographical breakdown of the residences of the owners of shares, convinces the Commission that at least 50% of the shares of that company were owned by United States nationals, no such compelling evidence has been submitted by Shell Oil Company. The evidence submitted is only that "approximately" 30% of the shares are held by stockholders with registered addresses in the United States and no information has been supplied distinguishing between nominal ownership and beneficial ownership of such stock. A brokerage firm with a New York City address could well hold, as far as this record establishes, substantial blocks of stock for the benefit of foreign investors. Absent more convincing evidence that the joint venture was, in fact, indirectly owned at least 50% by nationals of the United States, the Commission finds that the nationality requirement of subsection 702(1)(B) has not been satisfied.

Thus, while the joint venture is a proper claimant under Public Law 96-606, it has failed to establish its United States nationality as required for compensation under the Act. Based on the present record, therefore, the Commission concludes that no award can be issued to the joint venture.

Since PECTEN VIETNAM COMPANY is neither a United States national in its own right nor part of any legal entity which has established its United States nationality, the Commission concludes that its portion of the instant claim must be denied. As VIETNAM CITIES SERVICE, INCORPORATED, has established its United States nationality to the Commission's satisfaction, however, the Commission concludes that it is an eligible claimant under the Act.

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 concessions in which claimant participated in the South China Sea, there was no commercial production of petroleum prior to the taking of the concession and no firm data as to the volume of petroleum reserves in the concession areas. Accordingly, there is no reasonable basis to grant an award in this claim 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 claim. The claimant has submitted a chart of its concession-related expenditures during the years 1973-1978, supported by invoices, indicating the following categories and totals:

Signature Bonus Payments (1973)	\$ 9,000,000.00
Exploration Surface Taxes (1973-1974)	\$ 181,528.00
Drilling (1974-1977)	\$19,381,990.88
Seismic (1974-1976)	\$ 5,089,274.78
Administrative Expenses (1973-1978)	\$ 1,541,585.60
Other Exploration Expenses (1974-1978)	\$ 593,743.95
Saigon/Singapore	
Branch Office Expenditures (1974-1977)	\$ 1,203,452.84
TOTAL	\$36,991,576.05

Among the foregoing expenditures, the Commission finds that the signature bonus payments, exploration surface taxes, seismic expenses and drilling expenses during the years 1973-1975 constituted capitalized expenditures or assets for which claimant is entitled to an award. The Commission notes that \$131,333.19 worth of drilling expenses were listed for the years 1976-1977, and that \$5,295.47 worth of seismic expenses were listed for the year 1976. The Commission determines that these sums do not represent compensable expenditures since claimant no longer held an ownership interest in any of the concessions by that time. Furthermore, the Commission finds that none of the administrative expenses, "other exploration expenses," and Saigon/Singapore branch office expenditures (of which the record contains evidence only of the Singapore office) represent capitalized expenditures or assets of the claimants. Therefore, the Commission concludes that they do not represent compensable property interests under the Act.

Thus, the following capitalized expenditures during the years 1973-1975 constitute compensable property interests herein:

Signature Bonus Payments	\$ 9,000,000.00
Exploration Surface Taxes	\$ 181,528.00
Seismic Expenses	\$ 5,083,979.31
Drilling Expenses	\$19,252,418.88
TOTAL	\$33,517,926.19

According to Article 2.4 of its operating agreement with PECTEN VIETNAM COMPANY, VIETNAM CITIES SERVICE, INCORPORATED, was obligated to pay the first \$1 million of drilling costs. Thus, its share of the above capitalized expenditures would have been \$1,000,000.00 plus 1/2 of the remaining \$32,517,926.19, or \$16,258,963.10, for a total of \$17,258,963.10. The Commission determines, therefore, that VIETNAM CITIES SERVICE, INCORPORATED, is entitled to an award in the principal amount of \$17,258,963.10.

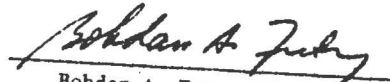
The Commission has concluded that in granting awards on claims under section 703 of Title VII of the Act, for the nationalization, expropriation, or other taking of property, interest shall be allowed at the rate of 6% simple interest per annum from the date of loss to the date of settlement. (See Claim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

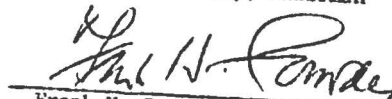
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Claimant, VIETNAM CITIES SERVICE, INCORPORATED, is therefore entitled to an award in the principal amount of Seventeen Million Two Hundred Fifty-Eight Thousand Nine Hundred Sixty-Three Dollars and Ten Cents (\$17,258,963.10), plus interest at the rate of 6% simple interest per annum from August 6, 1975 until 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.)