

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

IN THE MATTER OF THE CLAIM OF

ESSO EXPLORATION AND PRODUCTION
VIETNAM, INCORPORATED

Claim No. V-0236

Decision No. V-0436

PROPOSED DECISION

This claim in the amount of \$5,121,806.00 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 a petroleum concession 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 claimant was incorporated in the State of Delaware on October 6, 1972, originally under the name of Essb Exploration and Production Incorporated, with the company name being changed to ESSO EXPLORATION AND PRODUCTION VIETNAM, INCORPORATED, on July 9, 1973. The claimant has at all times been a wholly owned subsidiary of Exxon Corporation, which was known as Standard Oil Company (New Jersey) until November 1, 1972. The Commission in previous claims programs has found that Standard Oil Company and Exxon Corporation were nationals of the United States and the claimant has asserted in the instant claim that more than 50% of

the shareholders of Exxon Corporation continue to be nationals and/or residents of the United States. Based on the entire record, the Commission finds that ESSO EXPLORATION AND PRODUCTION VIETNAM, INCORPORATED, as a wholly owned subsidiary of Exxon Corporation, is a United States national within the meaning of Public Law 96-606.

The record establishes that ESSO EXPLORATION AND PRODUCTION VIETNAM, INCORPORATED, signed a concession agreement with the Republic of (South) Vietnam on August 21, 1973 to explore for and produce petroleum and associated minerals in Vietnam's coastal waters. As outlined in the concession agreement, which bears the identification number 09 - TLD, the concession area covered 6,800 square kilometers and was located within the following geographical coordinates:

- on the North by the North Latitude 8 degrees 30 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 45 minutes 0 second,
- on the West by the East Greenwich Longitude 107 degrees 45 minutes 0 second.

The claimant set up a branch office in Saigon and immediately began exploration activities--geological studies and geophysical operations--to ascertain the most promising sites for petroleum production. In April 1975, however, before any test drilling began, the claimant ceased all exploration activities because of the impending military defeat of South Vietnam. ESSO EXPLORATION AND PRODUCTION VIETNAM, INCORPORATED, was not allowed to resume any activities in the concession area thereafter.

The record contains evidence of a number of communications issued by Communist authorities after April 1975 indicating that the subject oil concession would not be honored by the new South Vietnamese regime. The first such communication was reported in the May 7, 1975 issue of Platt's Oilgram News Service, quoting

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

From the foregoing sources, it is clear that the concession of ESSO EXPLORATION AND PRODUCTION VIETNAM, INCORPORATED, was revoked by the new South Vietnamese regime in 1975. The Commission finds that this action constituted a taking of the claimant's property rights in the concession area. While the record is somewhat ambiguous as to the exact date of taking, the Commission considers The New York Times and New Nation articles of August 7, 1975 as most authoritative, since they quoted official sources in South Vietnam--the Vietnam News Agency and Radio Giai Phong--on August 6 declaring the illegality and invalidity of previously granted oil concessions. Accordingly, the Commission finds that the claimant's petroleum concession was taken by Vietnam as of August 6, 1975.

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

With regard to the concession of ESSO EXPLORATION AND PRODUCTION VIETNAM, INCORPORATED, in the South China Sea, there was no petroleum production at all prior to the taking of the concession and no firm data as to the petroleum reserves in the concession area. Accordingly, there is no basis to grant an award 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 of ESSO EXPLORATION AND PRODUCTION VIETNAM, INCORPORATED. The claimant has submitted a chart of its concession-related expenditures during the years 1973-1978, which reads as follows:

ESSO EXPLORATION AND PRODUCTION VIETNAM INC.
EXPENDITURES BY YEARS
IN U.S. DOLLARS

| | <u>1973</u> | <u>1974</u> | <u>1975</u> | <u>1976-78</u> | <u>TOTAL</u> |
|------------------------------------|-------------|-------------|-------------|----------------|--------------|
| Bonus Payment | 2,000,000 | | | | 2,000,000 |
| Lease Rentals | 27,402 | 27,404 | | | 54,806 |
| Geological Surveys | | 35,394 | 93,826 | | 129,220 |
| Geophysical Surveys | 714,508 | 892,421 | 296,353 | | 1,903,282 |
| Geophysical Interpretation | 76,208 | 411,390 | 251,183 | 27,618* | 766,399 |
| Administrative and General Expense | | | | | |
| Salaries, Wages and Benefits | | | 27,075 | 1,118 | 28,193 |
| Maintenance and Repairs | | | 10,515 | | 10,515 |
| Telephone, Telex and Cables | 31 | 57 | 477 | | 565 |
| Stationery and Office Supplies | 69 | | 1,833 | | 1,902 |
| Helicopter Transport | | | 1,450 | | 1,450 |
| Air Freight | | | 1,322 | | 1,322 |
| Utilities | | | 1,618 | | 1,618 |
| Rents | | | 28,117 | | 28,117 |
| Legal Fees | | | 584 | | 584 |
| Consultants | | | 934 | | 934 |
| Mobilization/Demobilization | | | 50,217 | | 50,217 |
| Travel | | 908 | 50,321 | | 51,229 |
| Relocation | | | 7,319 | 16,408 | 23,727 |
| Foreign Exchange Loss | | | 651 | | 651 |
| Licenses, Fees and Stamp Taxes | 158 | 1,035 | 1,216 | 93 | 2,502 |
| Other Taxes | | 20 | 2,650 | | 2,670 |
| Bank Commissions | | | 7,264 | | 7,264 |
| Service Charges From Affiliates | 268 | 896 | 35,190 | 2,108 | 38,462 |
| Miscellaneous | 235 | 5,441 | 6,655 | | 12,331 |
| Total Admin. & General | 761 | 8,357 | 235,408 | 19,727 | 264,253 |
| Loss on Disposal of Assets | | | | 3,846 | 3,846 |
| Total Expenditures | 2,818,879 | 1,374,966 | 876,770 | 51,191 | 5,121,806 |

(Historical Dollars)

*expenses incurred in 1975 but invoiced in 1976

Among the foregoing expenditures, the Commission finds that the (signature) bonus payment, lease rentals (exploration surface taxes), as well as the geological/geophysical surveys and interpretation during the years 1973-1975 constituted capitalized expenditures or assets for which the claimant is entitled to an award. However, the Commission finds that the administrative and general expenses, as well as the "loss on disposal of assets," do not represent capitalized expenditures or assets and, therefore, do not represent compensable property interests under Public Law 96-606. Adding the aforementioned capitalized expenditures together--\$2,000,000.00 for the (signature) bonus payment, \$54,806.00 for the lease rentals (exploration surface taxes), \$129,220.00 for geological surveys, \$1,903,282.00 for geophysical surveys, and \$766,399.00 for geophysical interpretation--the Commission holds that the claimant sustained a total of \$4,853,707.00 worth of compensable losses.

Accordingly, the Commission determines that ESSO EXPLORATION AND PRODUCTION, INCORPORATED, is entitled to an award in the principal amount of \$4,853,707.00.

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).)

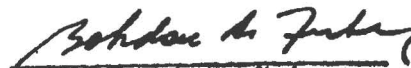
A W A R D

Claimant, ESSO EXPLORATION AND PRODUCTION VIETNAM, INCORPORATED, is therefore entitled to an award in the principal amount of Four Million Eight Hundred Fifty-Three Thousand Seven Hundred Seven Dollars (\$4,853,707.00), 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

Commissioners Brown and Conway did not participate in the decision of this claim.


Bohdan A. Futey, Chairman

This is a true and correct copy of the decision of the Commission which was entered as the final decision.

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.)