

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

IN THE MATTER OF THE CLAIM OF

AMERADA HESS CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 0678

Decision No. CU - 6144

Counsel for claimant:

Howard B. Myers, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$872,161.93, was presented on February 21, 1966, by Hess Oil & Chemical Corporation, now known as AMERADA HESS CORPORATION, based upon the asserted loss of accounts receivable arising from shipments of machinery and parts to customers 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 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 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.

At the time of loss, as discussed hereafter, the claimant was known as The Oliver Corporation, a Delaware corporation, hereafter referred to as Oliver. The name of the corporation was changed on October 31, 1960, to Cletrac Corporation, which, in turn, was changed to the Hess Oil & Chemical Corporation on May 22, 1962. The Hess Oil & Chemical Corporation was thereafter merged into Amerada Petroleum Corporation, a Delaware corporation, under Agreement of Merger, Plan of June 20, 1969; and upon merger the Amerada Petroleum Corporation changed its name to AMERADA HESS CORPORATION.

The instant claim was filed on February 21, 1966, by the Hess Oil & Chemical Corporation, successor to the Cletrac and Oliver corporations. Officials of the claimant have certified that at all times pertinent to this claim more than 50% of the outstanding stock of the claimant corporation was owned by nationals of the United States. Further, the officials certified that at the time of loss of the property, subject of the claim, and, at the time of filing the instant claim, over 99% of the stock of the claimant was held by persons having addresses within the United States and who are presumed to be nationals of the United States. The Commission finds that the claimant herein was a national of the United States at times pertinent to this claim within the meaning of Section 502(1)(B) of the Act.

The evidence of record discloses that Oliver furnished agricultural and industrial equipment to customers in Cuba through a wholly owned Venezuelan subsidiary known as Oliver International, S.A., distributor for

claimant in foreign countries other than Canada but including Cuba. The merchandise was shipped to Cuban customers through the said distributor, the shipments being covered by duly accepted extended term dollar drafts, drawn on the customers and forwarded for collection through banking channels. Claimant has submitted company records and affidavits showing the shipments made to Cuban customers with information concerning draft numbers, dates of maturity, designation of United States or Cuban banks and the amounts due and payable at the time of loss, stated to be on dates over a period of time from October 13, 1958, to December 9, 1962.

Claimant has submitted evidence to establish that on or about October 31, 1960, then known as Oliver, it entered into an agreement with White Motor Company whereby properties and options to purchase certain properties were transferred to White, including the aforesaid subsidiary, Oliver International, S.A. In return, the White organization transferred stock and cash to the claimant and agreed to make collections, wherever possible, of receivables due and payable to Oliver, including those due and payable from Cuban sources. The name of Oliver was then changed to Cletrac which retained the right to reimbursement for the indebtedness of the Cuban customers.

The customers and total amounts due and payable are as follows:

<u>Customer</u>	<u>Total</u>
Constructora Progreso Rural	\$ 7,179.44
Ing. Regino Denis	27,650.52
Fuerza Industrial, S.A.	1,355.75
Nunez, Beattie Trading Company	207,764.44
Riera, Toro & Van Twistern	626,341.86
Zaldo y Martinez	<u>1,869.92</u>
T O T A L	\$872,161.93

These accounts were due and payable partly directly to claimant's predecessor and partly to Oliver International, claimant's wholly owned Venezuelan subsidiary not qualified itself to assert claim under Section 502(1)(B) of the Act. However, the Commission finds that claimant

herein may assert claim for loss of the accounts receivable from Cuban sources. (See Claim of Avon Products, Inc., Claim No. CU-0772, Amended Proposed Decision, 1967 FCSC Ann. Rep. 35.)

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter, the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous, unreasonable and costly demands upon the customers in Cuba 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 claimant's right to receive payment for the aforesaid shipments was lost as a result of the intervention by the Government of Cuba. Claimant has submitted no evidence to establish the exact date that each account was payable but asserts that it has not received payment for the outstanding accounts, enumerated above.

The Commission further finds that all the accounts were due and payable on or before January 9, 1963, or 30 days after the date that the last draft was due and payable for merchandise shipped by Oliver, through its subsidiary, to Cuban customers.

Accordingly, the Commission concludes that Oliver suffered a loss on January 9, 1963, in the total amount of \$872,161.93, to which AMERADA HESS CORPORATION has succeeded, all within the meaning of Title V of the Act, as a result of intervention by the Government of Cuba.

The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of

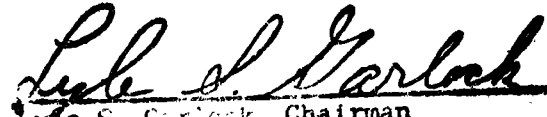
1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

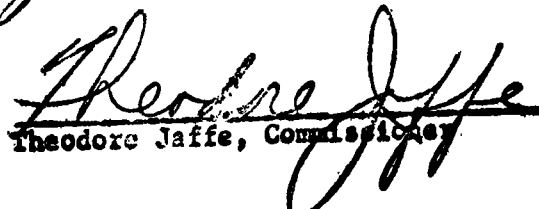
CERTIFICATION OF LOSS

The Commission certifies that AMERADA HESS CORPORATION succeeded to and 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 Eight Hundred Seventy-Two Thousand One Hundred Sixty-One Dollars and Ninety-Three Cents (\$872,161.93) with interest at 6% per annum from January 9, 1963, to the date of settlement.

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

APR 7 1971


Lyle S. Carlock, 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).)