

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

IN THE MATTER OF THE CLAIM OF

SUN OIL COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2056

Decision No. CU 4706

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 SUN OIL COMPANY in the amount of \$126,389.56 based upon the asserted ownership and loss of interests in real and personal property in Cuba and loss of payment for merchandise shipped to 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 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 of entity.

The record discloses that the claimant was organized in the State of New Jersey and that at all times pertinent to this claim more than 50% of the outstanding stock of the claimant corporation has been owned by nationals of the United States. A corporate officer has stated that the percentage of shares held by residents (of the United States) is in excess of 99 per cent. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

This claim is based upon the asserted ownership and loss of the following rights and interests in real and personal property in Cuba:

1. Tract of land, "El Agregado"	\$ 214.00
2. Mining concessions, including Helen, Manuel, Emilio, Carbayon and Barrabeitg	118,268.50
3. Automobile (1950 Cadillac)	1,000.00
4. Bank account, Havana Branch of The First National Bank of Boston	2,448.37
5. Office Furniture and Equipment	154.47
6. Accounts receivable for unpaid merchandise shipped by claimant to Equipos de Oficina Suinsa, S.A.	<u>4,304.22</u>
Total	\$126,389.56

In 1952 certain mines owned and operated by the Wayne Land Company with a total area of 411 hectares, were unitized with mining concessions owned by claimant, consisting of a tract of land known as El Agregado, comprised of 214 hectares, and five mining concessions, including Helen, Barrabeitg, Carbayon, Emilio and Manuel, which included a total area of approximately 6,255 hectares. The unitized mines were then leased with all concessions owned by claimant to the Holston Trading Corporation who operated the mines and extracted manganese ore until 1960. Royalties were paid claimant who, in turn, paid one-half to the Wayne Land Company; and the record indicates that claimant's net income from such royalties during this 8-year period was \$30,757.57.

The evidence of record establishes that the properties of claimant, including certain personal property discussed below, were nationalized by the Government of Cuba on October 24, 1960, by Resolution 3, pursuant to Cuban Law 851.

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.

The claimant has submitted the following information concerning the value of the mining concessions at the time of loss in 1960:

The manganese mines are located in the Sierra Maestra mountains, an early stronghold of the Castro forces. Commencing in 1957 the activities of the Castro forces and counter activity of the Government of Cuba greatly hampered the extraction of manganese ore by fear generated in the workers and difficulty in obtaining explosives. The increasing royalties received after the start up years shows that Sun Oil Company could have expected increasingly higher royalties from the mines. Capitalizing the \$7,096.11 net income earned from the mine royalties in 1957, the last year the mining activities were relatively free of revolutionary activity, at an equitable rate of 6%, places a value on the mines of \$118,268.50.

The Commission has considered the evidence submitted by claimant and related material available to the Commission concerning the value of land and mining interests in Cuba. The Commission finds that the claim for land asserted in the amount of \$214.00, is fair and reasonable; and, in the absence of additional evidence to show a higher value, finds that claimant suffered a loss in the amount of \$214.00 for the land. The Commission also finds that the process of capitalization, utilizing the income of \$7,096.11 in 1957 as 6% of the total value, is fair and reasonable and the most appropriate basis for evaluation of the concessions. Accordingly, the Commission finds that the said concessions had a value of \$118,268.50; and that the total value of the land owned in fee, with the concessions, was \$118,482.50.

Claimant has also submitted evidence to establish that at the time of loss it maintained a bank account with the Havana Branch of The First National Bank of Boston, with a reconciled balance of \$2,448.37; that it owned office furniture and equipment with a depreciated value of \$154.47; and that the claimant also owned a 1950 Cadillac automobile with an insured value of \$1,000.00 at the time of loss.

The Commission finds that claimant owned the aforesaid personal property, consisting of a bank account, furniture, equipment and automobile; that this personal property had a total value of \$3,602.84; and that the subject property was taken by the Government of Cuba on October 24, 1960 (supra).

This leaves for determination the portion of the instant claim asserted for the loss of payment for merchandise shipped by claimant to a Cuban consignee, known as Equipos de Oficina Suinsa, S.A. The claimant has submitted invoices, company records, affidavits and correspondence to establish the shipment of merchandise to the aforesaid Cuban firm; and this evidence establishes that the consignee owed claimant the sum of \$4,304.22 that was due and payable on November 30, 1960.

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 consignees, 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 into 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.)

Accordingly, in this claim the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba, and that the loss in the amount of \$4,304.22 occurred on November 30, 1960.

The Commission holds, therefore, that claimant suffered losses in the total amount of \$126,389.56 within the meaning of Title V of the Act as the result of the taking of its property by the Government of Cuba.

The Commission has decided that in certification of losses 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>
October 24, 1960	\$122,085.34
November 30, 1960	<u>4,304.22</u>
	\$126,389.56

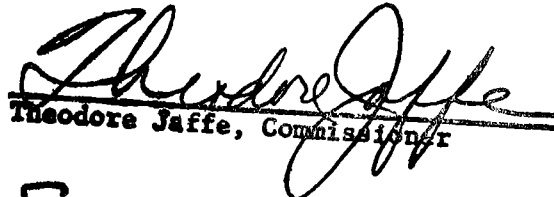
CERTIFICATION OF LOSS

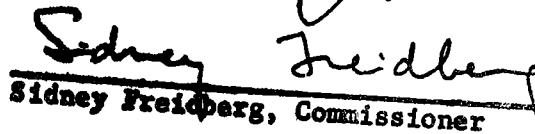
The Commission certifies that SUN OIL COMPANY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Twenty-six Thousand Three Hundred Eighty-nine Dollars and Fifty-six Cents (\$126,389.56) with interest thereon at 6% per annum from the respective dates of taking to the date of settlement.

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

8 APR 1970


Lytle S. Garlock, Chairman


Theodore Jaffe, Commissioner


Sidney Freidberg, 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, 32 Fed. Reg. 412-13 (1967).)