

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

IN THE MATTER OF THE CLAIM OF

AMERICUBA CORPORATION
and
BARUCH-FOSTER CORPORATION

Claim No. CU - 2318

Decision No. CU - 3829

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Delmar W. Holloman, Esq.

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 AMERICUBA CORPORATION and the BARUCH-FOSTER CORPORATION, in the amount of \$371,924.05 based upon the asserted loss of oil concession rights and titles in connection with the operation and loss of a Cuban corporation known as Cuban Oil "R.F.O.", S.A.

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 or entity.

The evidence of record discloses that BARUCH-FOSTER CORPORATION, a Delaware corporation, is the owner of all of the shares of AMERICUBA CORPORATION, also a Delaware corporation, and that it acquired said stock by reason of a 1959 merger with Reiter-Foster Oil Corporation, leaving BARUCH-FOSTER CORPORATION surviving. An officer of BARUCH-FOSTER CORPORATION has certified that at all pertinent times more than 50 percent of its outstanding capital stock was owned by nationals of the United States. That officer has also certified that as of April 27, 1967, less than 1 percent of claimant's outstanding capital stock was owned by nonnationals of the United States. The Commission holds that BARUCH-FOSTER CORPORATION and AMERICUBA CORPORATION are nationals of the United States within the meaning of Section 502(1)(B) of the Act.

The evidence of record discloses that on or about August 30, 1956, the AMERICUBA CORPORATION, hereinafter referred to as AMERICUBA, acquired all of the outstanding stock of Cuban Oil "R.F.O.", S.A., a corporation organized under the laws of Cuba on July 18, 1955, and hereinafter referred to as the Cuban corporation. The Cuban corporation held, subject to the oil and gas law of Cuba, and subject to survey and prior rights of third parties, various interests in concession rights and titles in extensive acreage in Cuba. On December 4, 1956, the Cuban corporation, formerly known as Americuba Petroleum Corporation, S.A., entered into an Agreement with the Union

Oil Company of California relating to the exploration and development of all its acreage. A copy of this is of record.

The Cuban corporation purchased the concessions to approximately 920,947 acres, for the price of \$184,615.58, comprising \$63,015.58 in cash and \$121,600.00 in the form of 101,305 shares of stock of the Reiter-Foster Oil Corporation, hereinafter referred to as Reiter-Foster. Reiter-Foster furnished the Cuban corporation with the consideration for these acquisitions, and assertedly invested a total of \$316,763.70 in the Cuban corporation. In exchange for this investment, Reiter-Foster thereafter received all of the outstanding shares of stock of the Cuban corporation, except for qualifying shares, and delivered such shares to AMERICUBA in exchange for all of the outstanding stock of AMERICUBA.

It is asserted that from September 1, 1956, to December 31, 1956, Reiter-Foster advanced an additional \$33,305.69 to AMERICUBA for the payment of expenses incurred on behalf of the Cuban corporation. The record contains a copy of the financial statements of AMERICUBA and the Cuban corporation as of December 31, 1956, submitted to show a total investment in and advances to the Cuban corporation, in the amount of \$350,069.39. Reiter-Foster also is asserted to have advanced an additional \$21,854.66 to AMERICUBA for expenses incurred by the Cuban corporation. The record also includes a report of the Empire Oil & Gas Management Company, dated April 4, 1955, concerning the Cuban concessions, Articles of incorporation of the Cuban corporation and certain income tax data showing that BARUCH-FOSTER CORPORATION and subsidiaries asserted a loss of \$371,924.05 on the consolidated income tax return for 1962.

No supporting evidence has been submitted to establish that any exploration or development work produced any significant oil or gas "shows" prior to the nationalization of the concessions or properties of the Cuban corporation. While the record fails to establish proven reserves, the Cuban corporation did acquire concession rights and

titles to approximately 920,947 acres of land as stated above. And, the exploration and development of the acreage (and presumably much of the expense) was performed by the Union Oil Company which also apparently completed geological and geophysical investigations or studies. Thus, whatever value the properties had when seized depends on their status as unproven concessions which had cost \$371,924.05 as hereafter set forth.

The Cuban Government enacted Law No. 635, on November 23, 1959. This law effectively cancelled all applications for exploration and exploitation of concessions, regardless of the status thereof. (See Claim of Felix Heyman, Claim No. CU-0412.) Accordingly, the Commission finds that the rights of AMERICUBA with respect to the property which it controlled in Cuba through the Cuban corporation were effectively nationalized or otherwise taken by the Government of Cuba on November 23, 1959.

The record includes a balance sheet of the Cuban corporation as of December 31, 1959, which assertedly reflects the financial status of the Cuban enterprise at the time of loss. This balance sheet provides the following information:

ASSETS

Denouncements, concession rights and concession titles	\$197,115.58
Capitalized expenses (schedule attached)	171,115.27
Organization expenses	<u>3,693.20</u>
	<u>\$371,924.05</u>

LIABILITIES

Due to Americuba Corporation	\$ 55,160.35
Capital stock	200.00
Capital surplus (represents excess of consideration over the par value of capital stock issued)	<u>316,563.70</u>
	<u>\$371,924.05</u>

The "Capitalized expenses" are listed as follows:

Drilling costs, including rental of machinery, labor, supplies and other expenses	\$102,771.15
Technical services	6,345.54
Taxes on denouncements	6,618.20
Traveling expenses	15,823.33
Penalties on concessions	20,022.40
Title services fee	2,050.00
Legal and audit fees and expenses	9,908.05
Salaries	2,692.73
Telephone and telegraph	2,140.69
General expenses	2,047.43
Notarial fees and expenses	<u>695.75</u>
	<u>\$171,115.27</u>

An examination of these entries discloses, of course, that several of them under normal conditions would be classified more appropriately as expenses not subject to capitalization and therefore not as assets. The same thing is true of the item shown as organization expenses. In the instant case, however, where the acreage was very large and the initial drilling and other share of expense of the claimant's predecessor was small it seems inappropriate and inequitable to base a valuation of the concession on a figure that would deduct any of these items as expenses. All of them were necessary to set up and proceed with the exploration and development work and, for valuation purposes, in arriving at a fair value of the concession will not be subject to deduction in this case.

The Commission therefore finds that the fairest and most equitable value of the nationalized property is its actual cost without deduction except for the \$55,160.35 owed by the Cuban corporation to AMERICUBA (which is treated separately), which results in a net loss to claimant AMERICUBA of \$316,763.70 for this portion of the claim.

As mentioned earlier, the balance sheet discloses that the debt of \$55,160.35 was due to AMERICUBA CORPORATION. Accordingly; the Commission finds that AMERICUBA CORPORATION also suffered a loss in this amount

within the scope of Title V of the Act as a result of the taking of the Cuban corporation by the Government of Cuba. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

The record has established that AMERICUBA CORPORATION, sole owner of the Cuban enterprise, is the proper party claimant, in this matter. Accordingly, as to so much of the claim as has been asserted by BARUCH-FOSTER CORPORATION, which is based on an interest in a corporation which qualifies as a United States national, the Commission is precluded, under Section 505(a) of the Act, from consideration thereof and it is therefore denied. (See Claim of Mary F. Sonnenberg, Claim No. CU-0014, 25 FCSC Semiann. Rep. 48 [July-Dec. 1966].)

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.

CERTIFICATION OF LOSS

The Commission certifies that the AMERICUBA CORPORATION 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 Three Hundred Seventy-One Thousand Nine Hundred Twenty-Four Dollars and Five Cents (\$371,924.05) with interest at 6% per annum from November 23, 1959 to the date of settlement.

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

AUG 27 1969

Edward v. P. Sutton
Edward v. P. Sutton, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

Sidney Freidberg
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).)