

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

IN THE MATTER OF THE CLAIM OF

WARREN PETROLEUM CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2474

Decision No. CU-4181

Counsel for Claimant:

O. Gordon Oldham, Esquire

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 WARREN PETROLEUM CORPORATION, in the amount of \$762,778.49, and is based upon the asserted loss of balance due on debts of a Cuban corporation and the loss of payments for merchandise or materials shipped 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 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.

Officers of the claimant corporation have certified that 100% of the outstanding shares of stock of the claimant herein, organized in the State of Delaware, were owned at all times pertinent to this claim by the Gulf Oil Corporation, a Pennsylvania corporation; and that at all times pertinent to this claim over 99% of the outstanding shares of stock of the Gulf Oil Corporation were owned by shareholders who had registered addresses located within the United States, and are assumed to be nationals of the United States. The Commission finds that claimant, WARREN PETROLEUM CORPORATION, and the Gulf Oil Corporation are nationals of the United States within the meaning of Section 502(1)(B) of the Act.

The statement of claim, in the total amount of \$762,778.49, is based upon the following debts of Cuban corporations asserted to be due and payable to the claimant:

Principal Balance due on Note from Compania Terminal Caribe, SA dated 9-14-54 due 9-2-64:	\$175,000.00
10% interest on past due principal and interest from due date to May 2, 1967:	52,631.25
Principal balance due on note from Compania Terminal Caribe, SA dated 9-14-54 due in monthly installments. Original Principal Amount - \$350,000.00	201,000.00

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10% interest on above note from accelerated maturity date - January 1, 1959 to May 1, 1967:	244,213.06
Open account indebtedness of Compania Terminal Caribe, SA for propane delivered:	83,462.50
Open account indebtedness of Aspuru Y Cia for propane delivered:	<u>6,471.68</u>
TOTAL	\$762,778.49

The evidence of record discloses that in 1953 Industrias Magic-Gas de Cuba, S.A., Aspuru y Cia., S.A. and Compania de Gas Liquido, S.A., Cuban distributors of liquefied petroleum gas, organized the Compania Terminal Caribe, S.A., to purchase such liquefied petroleum gas in larger quantities than previously purchased by such firms. The claimant herein organized Compania de Gas Propano, S.A. which constructed a liquefied petroleum gas terminal at Matanzas, Cuba. The claimant then sold all of the capital stock of Compania de Gas Propano to Compania Terminal Caribe, S.A., accepting in payment the promissory notes, as described above, with the notes being secured by the pledge to claimant of all of the capital stock of Compania de Gas Propano, S.A.

The evidence of record discloses that the Compania Terminal Caribe, S.A. and Aspuru y Cia., S.A., Cuban corporations, were intervened on August 26, 1960, pursuant to Resolution 17923, by the Government of Cuba.

The claimant has submitted copies of the promissory notes, correspondence and affidavits as well as other evidence pertaining to the indebtedness of the Cuban firms. Claimant has also submitted the following computations concerning the amounts due from these firms:

Liquefied Petroleum Gas Receivables:		
Aspuru y Cia., S.A.	\$ 6,471.68	
Compania Terminal Caribe, S.A.	<u>83,462.50</u>	\$ 89,934.18

Miscellaneous Long-Term Receivables:		
Compania Terminal Caribe, S.A.	175,000.00	
Compania Terminal Caribe, S.A.	201,000.00	
Interest Receivable (through 12/31/59)		
Compania Terminal Caribe, S.A.	<u>13,065.00</u>	<u>\$389,065.00</u>
TOTAL		\$478,999.18

Although some of these receivables bore maturity dates subsequent to August 26, 1960, they all contained acceleration clauses; hence, the full amount became due on August 26, 1960.

The Commission finds that, as a result of the intervention of the debtor Compania Terminal Caribe, S.A. in Cuba on August 26, 1960, claimant suffered a loss in connection with the promissory notes within the meaning of Title V of the Act; and that the amount of the unpaid indebtedness on the notes on August 26, 1960, the date of loss, was \$397,105.00 including the principal amounts of \$376,000.00 and the interest due on August 26, 1960 in the amount of \$21,105.00. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1960].)

The claimant included in its claim interest at a rate of 10%, to May 2, 1967, when the claim was filed. The Commission holds, however, that this portion of the claim must be denied because the property of the Cuban corporation belonged to the Cuban Government after intervention in August 1960, and asserted loss of income thereafter is not compensable. However, interest will be granted in connection with total sums certified herein, as discussed hereafter in this decision.

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The claimant has also submitted invoices and correspondence concerning the accounts payable, subject of the claim, in connection with the liquefied petroleum gas shipments to Compania Terminal Caribe, S.A. and Aspuru y. Cia., S.A. These are described as "open accounts" which are due and payable upon receipt of the merchandise or within thirty days thereafter and are described as follows:

I. Compania Terminal Caribe, S.A.

<u>Date</u>	<u>Reference</u>	<u>Amount</u>
October 8, 1959	10-1009	\$51,389.62
December 11, 1959	12-1064	<u>32,072.88</u>
	Total:	\$83,462.50

II. Aspuru y Cia., S.A.

<u>Date</u>	<u>Reference</u>	<u>Amount</u>
August 3, 1959	7-1912	\$ 1,341.98
August 6, 1959	8-74	1,228.85
August 12, 1959	8-1068	705.95
August 12, 1959	8-1069	1,305.81
August 14, 1959	8-175	1,811.09
October 26, 1959	10-1622	<u>78.00</u>
		\$ 6,471.68

The claimant states that in all instances it has not received any of the funds for the shipments to Cuba enumerated above.

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 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 the claimant's right to receive payment for the aforesaid shipments was lost as a result of the intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the losses herein occurred thirty (30) days after the date of invoice (reference) of these open accounts. The Commission finds, however, that for those losses arising prior to the effective date of Law 568 such losses actually arose on the date of publication of this law, or on September 29, 1959. Thus, in this particular claim, the sum of \$6,393.68 represents the amount of losses on transactions arising prior to September 29, 1959.

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 respective dates of loss to the date of settlement. (See Claim of Lisle Corporation, Claim No. CU-0644.)

Accordingly, the Commission concludes that the amount of losses arising from debts, including unpaid promissory notes and interest thereon accruing in 1959, as well as shipments of materials or merchandise to Cuban consignees, is in a total amount of \$429,557.18; and such sum shall be increased by interest thereon at the rate of 6% per annum from the dates on which the losses occurred to the date on which provisions are made for the settlement thereof, as follows:

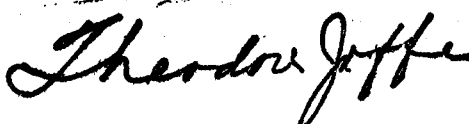
<u>FROM</u>	<u>ON</u>
September 29, 1959	\$ 6,393.68
November 8, 1959	51,389.62
November 26, 1959	78.00
January 11, 1960	32,072.88
August 26, 1960	<u>397,105.00</u>
	\$487,039.18

CERTIFICATION OF LOSS

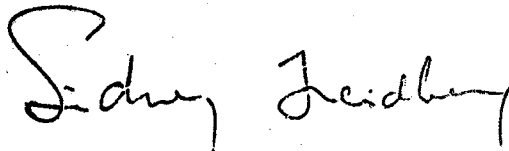
The Commission certifies that WARREN PETROLEUM CORPORATION suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Four Hundred Eighty-seven Thousand Thirty-nine Dollars and Eighteen Cents (\$487,039.18) with interest at 6% per annum from the respective dates of loss to the date of settlement.

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

NOV 7 1969



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).)

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