

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON 25, D. C.

IN THE MATTER OF THE CLAIM OF

STANDARD OIL COMPANY
30 Rockefeller Plaza
New York 20, New York

Claim No. RUM-30,140

Decision No. RUM- 813

Under the International Claims Settlement
Act of 1949, as amended

GPO 16-72126-1

Counsel for Claimant:

Grant W. Kelleher, Esquire
30 Rockefeller Plaza
New York 20, New York

Gall, Lane and Howe
401 Commonwealth Building
Washington, D. C.

PROPOSED DECISION

This is a claim against the Government of Rumania under Sections 303(1) and (2) of the International Claims Settlement Act of 1949, as amended, in the amount of \$65,586,348.00 by the STANDARD OIL COMPANY, a national of the United States within the meaning of Section 301(2)(b) of the Act, for war damages sustained to property in Rumania as a result of World War II, and for the nationalization and other taking of property.

The record shows that claimant owned, directly or beneficially, 100% of the outstanding shares of capital stock of "Romano-Americana, S.A.," hereinafter called "Romano," a Rumanian corporation, which in turn owned real and personal property in Rumania. "Romano" had been engaged since about 1904 in the production and sale of crude oil and natural gas and the refining, processing and sale of petroleum products. Claimant also owned all of the outstanding shares of capital stock of "Agentia Americana, S.A.," hereinafter called "Agentia," a Rumanian corporation, which in turn owned certain property in Rumania.

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It is also established by the record before the Commission that "Romano" owned the following: a one-third interest in "Distributia," a Rumanian corporation which marketed petroleum products through a number of wholesale depots and retail service stations in Rumania; a 38% interest in "Sospiro, S.A.," a crude oil producing company in Rumania; a 58.7% interest in "Speranta, S.A." and a 100% interest in "Neo-Petrol, S.A.," corporations likewise engaged in the petroleum industry in Rumania.

The Commission finds that certain structures and physical assets of "Romano" were damaged, and certain pieces of property of "Romano" were totally destroyed as a result of World War II. The Commission also finds that the loss thus actually sustained amounted to \$2,311,861.94 and concludes that claimant is entitled to compensation under Section 303(1) of the Act in the amount of \$1,541,087.17, since under this Section, awards are limited to two-thirds of the loss or damage actually sustained.

The Commission finds that "Romano" and "Agentia" were nationalized without compensation by the Government of Rumania pursuant to Law No. 119 of June 11, 1948 on Nationalization of Industrial, Banking Insurance, Mining and Transportation Enterprises (Monitorul Oficial No. 133 bis). The record further shows that "Distributia, S.A.," "Sospiro, S.A.," "Speranta, S.A.," and "Neo-Petrol, S.A." were likewise nationalized without compensation by the Government of Rumania.

The Commission finds that the value of claimant's interest in "Romano," not including hydrocarbon reserves, and the value of its interest in "Agentia" were \$11,498,500.00 and \$17,842.00, respectively, and concludes that claimant is entitled to compensation under Section 303(2) of the Act for the nationalization thereof. In determining the value of "Romano," appropriate allowances were made for amounts due to "Romano" for the use of certain of its

facilities, such as tank cars and automotive equipment, covering the period prior to the nationalization of "Romano" and certain securities owned by "Romano," identified as "Thring" Bonds.

In determining the value of the Thring Bonds (bond obligations of Rumanian Government expressed in pounds), it has been concluded that these obligations were almost valueless at the time of nationalization of "Romano" for the reason that the bonds were in default on both principal and interest since 1938 and were non-negotiable. Therefore, the claim for the full amount of \$9,883,990.00 must be rejected. In the absence of any other evidence, the market value of negotiable Kingdom of Rumania Bonds expressed in currency of the United States was used to determine the fair and reasonable value of Thring Bonds at the time of the nationalization of "Romano."

Claimant also seeks compensation based upon certain reserves in the subsoil of crude oil and gas liquids in which "Romano" and "Sospiro" had interests. The record shows that these companies owned certain rights and concessions under which they exploited the land covered by the agreements and extracted therefrom crude oil and gas liquids. In consideration of the rights and concessions, "Romano" and "Sospiro" invested large sums of money to exploit the lands in question and were obliged to pay royalties, taxes and other charges to the Rumanian Government.

It is concluded that these rights and concessions constituted "property" within the meaning of Section 301(9) of the Act and that such rights and concessions were nationalized without compensation by the Government of Rumania pursuant to Law No. 119 of June 11, 1948^{1/}. The record shows that the land in question

^{1/} The proposition that concession rights of aliens may be nationalized only against prompt, adequate and effective compensation appears to be well settled. (See "Concession Agreements and Nationalization" by Kenneth S. Carlston, The American Journal of International Law, April, 1958, and cases and authorities cited therein.)

contained proven reserves in the approximate amounts of 64,000,000 barrels of crude oil and 68,502,149 gallons of gas liquids.

In estimating the value of "Romano" and "Sospiro" interests in the reserves, the claimant proposes the analytical or engineering method of appraisal which is widely accepted and used by the oil industry in estimating the value of hydrocarbon reserves in the United States and throughout the world. Under this method, the claimant calculates the present worth value of the reserves at the time of nationalization at \$17,483,522.00. In applying the method claimant has assumed that all of the leases are valid, has used pre-war cost experience "adjusted" to 1948, has figured sales prices on the basis of a competitive free market and projected these costs and prices over the years to 1978 and 1983. Additionally, the claimant has assumed, for the remaining life of the leases, a government tax of 50% plus 11% royalty.

The Commission recognizes the validity of the method adopted by the claimant, but is not entirely convinced that all of the assumptions as to the costs, prices, taxes, etc., and particularly the reliance upon their continuance throughout the life of the leases, should be accepted without qualification. In arriving at the market value at the date of nationalization, the Commission is not presently convinced that a buyer in a competitive market would be willing to pay the figure asserted by the claimant. It is concluded that a discounting or downward adjustment of the claimant's figure is indicated and, accordingly, the amount of \$12,240,000 is awarded for nationalization of the claimant's reserves.

The claimant seeks compensation for loss of certain other rights and concessions belonging to Sospiro. It appears that these rights and concessions related to certain undeveloped acreage, and a portion of the claim is based upon the taking of the said

undeveloped acreage. The Commission has consistently held that the burden of establishing all elements of a claim rests with the claimant. It has not been shown that these rights and concessions of Sospiro had any proved or predictable value. Therefore, it must be concluded that claimant has not met its burden of establishing that it sustained any losses with respect to the undeveloped acreage within the meaning of Section 303(2) of the Act, and accordingly, this portion of the claim is denied.

The record further indicates that from October 1944 to August 1947, "Romano" was forced to sell to the Government of Rumania certain oil products at prices fixed by that government. The Commission finds that the prices thus fixed were substantially lower than the value of such oil products. It is concluded, therefore, that "Romano" thereby sustained certain losses as a result of these forced sales, and that such action of the Rumanian Government constituted a taking of claimant's property within the meaning of Section 303(2) of the Act. The Commission further finds that claimant's losses as a result of the said forced sales of oil products amounted to \$3,475,000.00.

The portion of the claim based upon supplies furnished and services rendered to the Soviet Army is denied for the reason that such items do not fall within the purview of Article 24 or Article 25, the only Articles of the Treaty of Peace with Rumania referenced in Section 303(1) of the Act. In this connection, it is noted that specific provisions are made for these items in Article 30, paragraph 2, of the Treaty of Peace with Rumania, which is not referenced in Section 303(1) of the Act. Paragraph 2 of Article 30 reads as follows:

"The provisions of this Article shall bar, completely and finally, all claims of the nature referred to herein, which will be henceforward extinguished, whoever may be the parties in interest. The Roumanian Government agrees to make equitable compensation in lei to persons who furnished supplies or services on requisition to the forces of Allied or Associated Powers in Roumanian territory and in satisfaction

of non combat damage claims against the forces of Allied or Associated Powers arising in Roumanian territory."

It is concluded that the fact that Section 303(1) of the Act references only Articles 24 and 25 of the Treaty of Peace with Rumania clearly indicates a Congressional intent to include under Section 303(1) only those claims which fall within the purview of said referenced Articles.

When this portion of the claim is considered under Section 303(2) of the Act, it is found to be not compensable for the reason that the circumstances herein cannot be construed as a taking of property by the Government of Rumania so as to give rise to a compensable claim thereunder. The Commission finds it unnecessary to make determinations with respect to other elements of this portion of the claim.

A W A R D

Pursuant to the provisions of the International Claims Settlement Act of 1949, as amended, the claim is allowed in part, and an award is hereby made to STANDARD OIL COMPANY in the amount of Twenty-Eight Million Seven Hundred Seventy-Two Thousand Four Hundred Twenty-Nine Dollars and Seventeen Cents (\$28,772,429.17) plus interest upon that portion of the award granted pursuant to Section 303(2) at the rate of 6% per annum from June 11, 1948 to August 9, 1955, the effective date of the Act, in the amount of Eleven Million Six Hundred Ninety-Five Thousand Eight Hundred Sixty-One Dollars and Twenty Cents (\$11,695,861.20).

Payment of any part of this award shall not be construed to have divested the claimant herein, or the Government of the United States on its behalf, of any rights against the Government of Rumania for the unpaid balance of the claim, if any.

Dated at Washington, D. C.

MAY 20 1959

FOR THE COMMISSION:

William Barrett
William Barrett

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON 25, D. C.

IN THE MATTER OF THE CLAIM OF

STANDARD OIL COMPANY
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Act of 1949, as amended

Claim No. RUM-30,140

Decision No. RUM-813

Counsel for Claimant:

GPO 942329

Grant W. Kelleher, Esquire
30 Rockefeller Plaza
New York 20, New York

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401 Commonwealth Building
Washington, D. C.

FINAL DECISION

The Commission issued its Proposed Decision on this claim on May 20, 1959, a copy of which was duly served upon the claimant.

Full consideration having been given to the objections of the claimant, and to the evidence and oral arguments presented at the hearing on July 2, 1959, and to the entire record herein, **it is** is

ORDERED that the Proposed Decision be amended as follows, and that as so amended it be entered as the Final Decision in this claim.

The record shows that claimant owned, directly or beneficially, 100% of the outstanding shares of capital stock of "Romano-Americana, S.A.," hereinafter called "Romano," a Rumanian corporation, which in turn owned real and personal property in Rumania. "Romano" had been engaged since about 1904 in the production and sale of crude oil and natural gas and the refining, processing and sale of petroleum products. Claimant also owned all of the outstanding shares of capital stock of "Agentia Americana, S.A.," hereinafter called "Agentia," a Rumanian corporation, which in turn owned certain property in Rumania.

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The Commission finds that the value of claimant's interest in "Romano," not including hydrocarbon reserves, and the value of its interest in "Agentia" were \$14,398,500.00 and \$17,842.00, respectively, and concludes that claimant is entitled to compensation under Section 303(2) of the Act for the nationalization thereof. In determining the value of "Romano," appropriate allowances were made for amounts due to "Romano" for the use of certain of its

facilities, such as tank cars and automotive equipment, covering the period prior to the nationalization of "Romano" and certain securities owned by "Romano," identified as "Thring" Bonds.

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The Commission recognizes the validity of the method adopted by the claimant, but is not entirely convinced that all of the assumptions as to the costs, prices, taxes, etc., and particularly the reliance upon their continuance throughout the life of the leases, should be accepted without qualification. In arriving at the market value at the date of nationalization, the Commission is not presently convinced that a buyer in a competitive market would be willing to pay the figure asserted by the claimant. It is concluded that a discounting or downward adjustment of the claimant's figure is indicated and, accordingly, the amount of \$12,240,000 is awarded for nationalization of the claimant's reserves.

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The record further indicates that from October 1944 to August 1947, "Romano" was forced to sell to the Government of Rumania certain oil products at prices fixed by that government. The Commission finds that the prices thus fixed were substantially lower than the value of such oil products. It is concluded, therefore, that "Romano" thereby sustained certain losses as a result of these forced sales, and that such action of the Rumanian Government constituted a taking of claimant's property within the meaning of Section 303(2) of the Act. The Commission further finds that claimant's losses as a result of the said forced sales of oil products amounted to \$3,475,000.00.

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of non combat damage claims against the forces of Allied or Associated Powers arising in Roumanian territory."

It is concluded that the fact that Section 303(1) of the Act references only Articles 24 and 25 of the Treaty of Peace with Rumania clearly indicates a Congressional intent to include under Section 303(1) only those claims which fall within the purview of said referenced Articles.

When this portion of the claim is considered under Section 303(2) of the Act, it is found to be not compensable for the reason that the circumstances herein cannot be construed as a taking of property by the Government of Rumania so as to give rise to a compensable claim thereunder. The Commission finds it unnecessary to make determinations with respect to other elements of this portion of the claim.

A W A R D

Pursuant to the provisions of the International Claims Settlement Act of 1949, as amended, the claim is allowed in part, and an award is hereby made to STANDARD OIL COMPANY in the amount of Thirty-one Million Six Hundred Seventy-two Thousand Four Hundred Twenty-nine Dollars and Seventeen Cents (\$31,672,429.17) plus interest upon that portion of the award granted pursuant to Section 303(2) at the rate of 6% per annum from June 11, 1948 to August 9, 1955, the effective date of the Act, in the amount of Thirteen Million Twenty-seven Thousand Three Hundred Eleven Dollars and Twenty-nine Cents (\$13,027,311.29).

Payment of any part of this award shall not be construed to have divested the claimant herein, or the Government of the United States on its behalf, of any rights against the Government of Rumania for the unpaid balance of the claim, if any.

General notice of the Proposed Decision having been given by posting for thirty days, it is

ORDERED that the Proposed Decision, as amended herein, be and is hereby entered as the Final Decision on this claim; and it is further

ORDERED that the award granted herein be certified to the Secretary of the Treasury.

Dated at Washington, D. C.

JUL 24 1959

Whitney Hilliard

Pearl Pace

Robert L. Kunz

COMMISSIONERS

*USA.
WB
mgf*