

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

IN THE MATTER OF THE CLAIM OF

MOBIL OIL CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2452

Decision No. CU-
2718

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 MOBIL OIL CORPORATION in the amount of \$178,821.02, based upon the asserted loss of payment for petroleum products shipped to consignees in Cuba, including Compania Electric de Cuba, S. A. and Cia. Cubana de Electricidad.

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 the claimant herein, formerly known as Socony Mobil Oil Company, Inc., was organized in the State of New York and that at all times between the asserted dates of loss and presentation of this claim on April 28, 1967, more than 50% of the outstanding capital stock of the claimant corporation has been owned by nationals of the United States. The Commission finds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The evidence discloses that at all times pertinent to this claim approximately 99 per cent of the outstanding shares of stock of the MOBIL OIL CORPORATION were owned by shareholders who had registered addresses located within the United States. Thus, one per cent of the stockholders are assumed to be nationals of countries other than the United States.

The record includes a copy of a June 1954 License Agreement executed between claimant and the Compania Electric de Cuba, a Cuban corporation, and extensive evidence pertaining to shipments of petroleum products to the licensee in Cuba and payment therefor, including a copy of an agreement with Fondo de Estabilization de la Moneda, Banco National de Cuba, dated June 22, 1960, correspondence from Banco National de Cuba and the Royal Bank of Canada in Havana (acquired by the Banco National de Cuba), invoices and supporting documentation, account sheets showing accounts

receivable and the balance due and payable in December 1960 as well as all of the open account items appropriately marked. Additionally, claimant has submitted data pertaining to the shipment and payment thereof of petroleum products shipped to Cia. Cubana de Electricidad, a Florida corporation, doing business in Cuba.

With respect to the account of Compania Electric de Cuba, S.A., the evidence of record includes the aforesaid account sheets pertaining to transactions with the Cuban firm showing charges to and payments by the Compania Electric de Cuba, S.A. Such data disclose that as of December 31, 1960, after allowing all credits that were entered in these account sheets, there was an outstanding balance of \$173,157.12 due and payable by Compania Electric de Cuba, S.A. to the claimant corporation. The claimant, MOBIL OIL CORPORATION, states that it has not received payment for this outstanding balance.

On September 29, 1959, there was published in the Cuban Official Gazette, Cuban Law No. 568. This law, in its preamble refers to Law 13 of December 23, 1948, which organized the Currency Stabilization Fund, granting it the license to regulate international exchange. Law 568 proceeds to describe wrongful acts in the field of international exchange which adversely affected the national economy, including monetary offenses (Article 1), and punishment for the instigator (Article 2).

Paragraph (6) of Article 1 designates as an offense, inter alia, the transferring of funds abroad, by any means regardless of the origin of the funds. The only exceptions were in authorized cases or those which the Currency Stabilization Fund might authorize through the channels of an associated bank or entity authorized by the National Bank of Cuba. The second paragraph of Article 2 increases the penalty if the offense be committed by an officer of a bank or other juridical person.

On October 13, 1960, the Government of Cuba published in the Official Gazette Law No. 891, concerning the bank structure of Cuba. Article 12 thereof dissolved the Currency Stabilization Fund and transferred its function to the National Bank of Cuba.

It is clear that channels existing for effecting transfer of funds to a lawful creditor abroad required authorization from a Cuban Government agency, to be effected as designated by the National Bank of Cuba.

The demands by the Cuban Government on the consignee in implementation of Law 568 included, among other things, information and evidence as to the Cuban agent's commission; independent audit of consignee's accounts as well as an audit of the auditor's accounts; explanation of deductions; explanation of length of time in passage; complete list of consignee's accounts payable. In some instances compliance with these demands would cost the consignee more than the amount to be transferred to the consignor, with the result that consignee was deterred from complying with the demands of the Cuban Government.

Thus, 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 deterred from complying with the demands of the Cuban Government. The Commission finds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of claimant herein to the payment of the aforesaid account, 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.)

Accordingly, in the instant claim the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the loss of such account receivable, in the amount of \$173,157.12, occurred on December 31, 1960.

The remainder of this claim, for \$5,663.90, is based upon the asserted loss of payment for petroleum products shipped to the Havana office of Cia. Cubana de Electricidad.

Section 505(a) of the Act provides:

A claim under Section 503(a) of this title based upon a debt or other obligation owing by any corporation, association, or other entity organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico shall be considered only when such debt or other obligation is a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

The records of the Commission reveal that Cia. Cubana de Electricidad is a corporation organized under the laws of the State of Florida. Therefore this portion of the claim can be considered only if the claimed debt is a charge upon property which was nationalized, expropriated, intervened, or taken by the Government of Cuba.

Claimant has neither alleged nor submitted evidence to establish that this debt was a charge upon property which was nationalized, expropriated, intervened, or taken by the Government of Cuba. Therefore, the Commission is without authority to consider this portion of the claim, and it is hereby denied. (See Claim of Anaconda American Brass Company, Claim No. CU-0112.)

The Commission has decided that in certificate 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 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 loss arising from shipments of goods to the Cuban consignee shall be increased by interest thereon at the rate of 6% per annum from the date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that MOBIL OIL 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 One Hundred Seventy-Three Thousand One Hundred Fifty-Seven Dollars and Twelve Cents (\$173,157.12), with interest thereon at 6% per annum from December 31, 1960, to the date of settlement.

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

AUG 14 1968

Leonard v. B. Sutton

Leonard v. B. 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).)