

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

IN THE MATTER OF THE CLAIM OF

BLOOMFIELD ROYALTY CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0519

Decision No. CU - 6118

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$130,967.56 was presented by BLOOMFIELD ROYALTY CORPORATION of Houston, Texas, based upon the asserted loss of land, personal property and securities.

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 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

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 Houston National Bank as Transfer Agent for BLOOMFIELD ROYALTY CORPORATION, a corporation organized under the laws of Texas, reported that at the time of filing 666 stockholders owned 1,471,858.58 shares in the capital stock of the said corporation; that all the stockholders with the exception of two had their addresses in the United States; and that two stockholders, owners of 1,000 and 10 shares, respectively, had addresses outside of the United States. The Transfer Agent, therefore, presumes that only two stockholders were nonnationals of the United States, while all the others appear to be United States citizens. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant states that its predecessor in interest, the Delta Oil Company of Utah owned in the area of San Jose de las Lajas, province of Havana, Cuba, a large sand and gravel pit, machinery and equipment, as well as securities of a Cuban company organized for the management of its properties in Cuba known as "Delta Metals Corporation"; and that these properties were taken in 1960 by the Government of Cuba. Claimant further states that Delta Oil Company of Utah, a corporation organized under the laws of the

State of Utah, in 1963 was reorganized under Chapter X of the Bankruptcy Act pursuant to Order No. 5089 of the United States District Court for the Northern District of Texas and merged with other corporations into BLOOMFIELD ROYALTY CORPORATION.

The record before the Commission shows that on the asserted date of loss Delta Oil Company of Utah had outstanding 978,422 shares of capital stock, held by approximately 1,100 persons and that all stockholders whose addresses were known, were domiciled in the United States and were presumably nationals of the United States with the exception of two stockholders who owned 35,000 and 4,000 shares, respectively, and who are presumed to be non-nationals of the United States. The whereabouts of 47 stockholders, owners of 94,054 shares, were unknown, but it is assumed that they also were residents and nationals of the United States. The Commission, therefore, holds that from 1959, the time of the loss up to its reorganization in 1963, Delta Oil Company of Utah, the predecessor of claimant corporation, was also a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant has presented a copy of an agreement dated March 10, 1959 which shows that one Sid Jacobs sold and transferred to Delta Oil Company of Utah a sand and gravel pit he had under lease for 20 years in a locality known as "Guanabito de la Luz", in a section called "Las Dos Lomas", near the town of Arango, district of San Jose de las Latas, province of Havana, Cuba; and that at the same time he sold to Delta machinery, equipment and vehicles, as follows:

- (a) Ford Truck, Motor FREG-28094, lic. plate 360381
- (b) Ford Truck, Motor FGR-26038, lic. plate 350503
- (c) Ford Truck, Motor FGR-28194, lic. plate 361291
- (d) Ferguson Tractor, Model TO-30-65269
- (e) International Tractor, Model T-D-18-Serial 13838
- (f) Diesel Perkins Motor P-4, No. 2067215
- (g) Tractor, Model TDG, Motor DEM-6375
- (h) Mechanical Washer
- (i) Water Pump, Serial No. 1199
- (j) Hammer Mill
- (k) Water tank, 250 gallon capacity
- (l) Miscellaneous equipment and machinery

The record indicates that at the time of the signing of the agreement Delta undertook to pay the purchase price for the lease including the above-listed machinery and equipment in the amount of \$85,000.00 partly in cash, and partly in notes. The record also indicates that subsequently Delta purchased additional equipment, a passenger automobile and a jeep, as well as furniture and furnishings for its offices in the amount of \$17,348.30.

The mining rights encompassed by the lease were substantially curtailed by the Cuban Government under Law No. 635 of November 23, 1959. This law effectively cancelled all applications for the exploration and exploitation of mines and mining concessions, including leases of the type described above, regardless of their status (see Claim of Felix Heyman, Claim No. CU-0412, 1968 FCSC Ann. Rep. 51). Thus, the Commission finds that the rights of Delta Oil Company of Utah included in the lease for the exploitation of sand and gravel deposits and the property utilized in the business were taken by the Government of Cuba on November 23, 1959.

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 valuation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

Claimant submitted a report dated May 13, 1958 by W. P. Corking, a geologist, who states that the sand deposits to which reference is made above, are clean and free of salt and organic material, easily accessible and if properly exploited could become highly profitable. The geologist

mentioned in his report that the present equipment is obsolete and in poor repair; and that in any new operation such equipment could serve mostly for stand-by and emergency uses. He suggested that new machinery be acquired and estimated its cost between \$30,000 and \$70,000.

In view of the foregoing the Commission holds that claimant's losses must be confined to the purchase price of the lease, including equipment, plus purchase price of newly acquired equipment.

The purchase price of the lease was	\$ 85,000.00
Price of a jeep "Willys"	1,706.00
Price of a passenger automobile "Ford"	1,000.00
Price of furniture and office equipment	<u>15,642.30</u>
Total	\$103,348.30

Other items claimed, such as office, advertising, legal and travelling expenses, and costs of a mining report for a mine not connected with the gravel pit, are expenses in the course of regular business and not proper items certifiable as losses resulting from actions of the Cuban Government. Portions of the claim for alleged loss of cash are not substantiated by any evidence whatsoever and cannot be considered here. Accordingly, the portions of the claim for expenses in the course of business and for the loss of cash are hereby denied.

With respect to the claim for the loss of securities of "Delta Metals Corporation", a Cuban corporation set up for the management of Delta's future mining properties in Cuba, the Commission finds that the record indicates that this company never did any business, never paid any taxes, and there is some doubt whether stock certificates ever were issued. In any event, no such stock certificates were presented to the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (1970).)

The Commission finds that claimant has failed to meet the burden of proof with respect to the ownership and value of the securities of the "Delta Metals Corporation" and this portion of the claim also is denied.

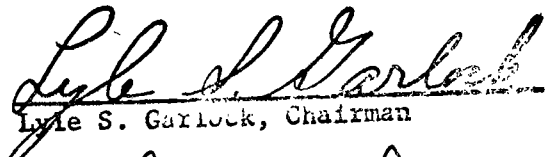
The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

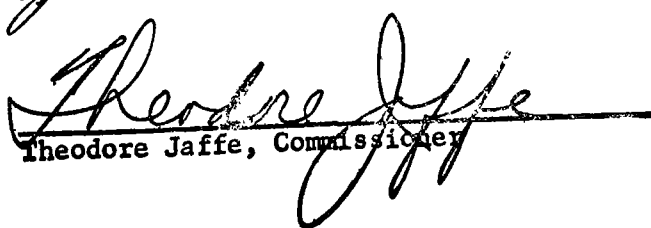
CERTIFICATION OF LOSS

The Commission certifies that BLOOMFIELD ROYALTY 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 Three Thousand Three Hundred Forty-eight Dollars and Thirty Cents (\$103,348.30) with interest at 6% per annum from November 23, 1959, the date of loss, to the date of settlement.

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

MAR 11 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, 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 (1970).)

CU-0519