

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

IN THE MATTER OF THE CLAIM OF

SHIRLEY B. CORTADA,  
ADMINISTRATOR OF THE ESTATE OF  
WILLIAM ELDRIDGE BARLOW, DECEASED

Claim No. CU - 1097

Decision No. CU 6220

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for claimant:

Shackelford & Robertson  
By A. Stuart Robertson, Jr., Esq.

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$1,095,000.00, was presented by SHIRLEY B. CORTADA, ADMINISTRATOR OF THE ESTATE OF WILLIAM ELDRIDGE BARLOW, DECEASED, based upon the asserted loss of certain personal property in Cuba. The deceased, his late wife, and their two daughters, the beneficiaries of his Estate, have been nationals of the United States since birth.

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.

Claimant asserts the following losses:

"Josefina" mining concession	\$1,075,000.00
Equipment	<u>20,000.00</u>
Total	<u>\$1,095,000.00</u>

"Josefina" Mining Concession

Claimant states that the deceased, William Eldridge Barlow, owned a mining concession with respect to the "Josefina" mine No. 4830, situated in Bayamo, Oriente Province, Cuba. In support thereof, claimant has submitted the following evidence:

1. A copy of a form executed by the deceased, pursuant to which he re-registered the "Josefina" mining concession No. 4830 in accordance with Cuban Law No. 617 of October 27, 1959. That form indicates that the deceased had acquired the concession on December 8, 1916.
2. A copy of an official receipt of February 23, 1960, for the fee of \$100.00 in connection with the registration of "Josefina" No. 4830.
3. A copy of a receipt of March 1, 1960 for the payment of a fee of \$40.00 to one G. R. Catasus, in connection with the re-registration of "Josefina".
4. A copy of a power of attorney executed by the deceased in Havana, Cuba on March 23, 1960, authorizing one Gerald R. Mackenzie, to act on behalf of the deceased with respect to "Josefina" No. 4830.

The foregoing evidence tends to show that the mining concession known as "Josefina" No. 4830 was owned by the deceased. The record before the Commission also includes a copy of a Contract to Lease, dated in Havana,

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Cuba on August 25, 1956, covering "Josefina" No. 4830. That document was submitted in the Claim of Matthew A. Fryer, Claim No. CU-1617, involving two mines, "El Americano" and "Demasio de la Josefina", adjacent to "Josefina" No. 4830. The document recites that "Josefina" No. 4830 is being leased to Compania Fomento Ball-Bro, S.A., a Cuban corporation, for a period of one year and renewable each year for a total of 25 years. It contains the following statements concerning ownership of the mining concession:

FIRST: That the Messrs. Jose Antonio and Renato Villaverde y Ariza jointly with Mr. William E. Buckley are owners in the proportion of 25% to each of the Messrs. Villaverde and 50% to William E. Buckley, of the property of the mine named "JOSEFINA", in accordance with the concession granted, in the Department of Mines No. 4830 of the provincial government of Oriente, according to presidential decree No. 808 of the 15th of March, 1943, and in the official bulletin of Oriente Province No. 1282 of the 27th of March, 1943 and of the Resolution of the 27th of March of 1943 by the Governor of the Province of Oriente, which mine is situated on the land of the farm "Cayo Redondo" in the district of Bueycito, Municipal Terminal of Bayamo, Province of Oriente and in the center of which is located the mine known as "El Americano".

---That the Messrs. Jose Antonio and Renato Villaverde y Ariza, acquired the ownership of their participation of said mine by inheritance from their father Dr. Jose Ramon Villaverde y Peyrellade, who jointly with Mr. William E. Barlow were owners of one-half interest each in the referred to "Josefina" mine, and Mr. William E. Buckley acquired ownership of his 50% of the referred to mine by purchase from Mr. William E. Barlow, according to public deed No. 469 of the 24th of October of 1953 before the Notary of the city of Havana, Dr. Rafael Sanchez Losada, these parties assert that the referred to mine is free of all encumbrances and that they are not limited in their faculties to authorize a contract of lease, which by the present document is carried into effect by Messrs. Villaverde and Buckley, and who in the future will be referred to as, the lessors.

The records of the Commission disclose that a claim was filed by three stockholders of Fomento-Ball-Bro, S.A., whose aggregate stock interest was 80% (Claim of Howard E. Holtzman, et al., Claim No. CU-2168). However, that claim involved only the other two mines, "El Americano" and "Demasia de la Josefina", there being no mention therein of "Josefina" No. 4830. It would appear that if Fomento Ball-Bro, S.A. had owned a lease covering "Josefina" No. 4830, it would have been included in

Claim No. CU-2168. In any event, the Commission deems it unnecessary to make any determination concerning ownership of a lease to "Josefina" No. 4830 since other factors are dispositive of this portion of the claim.

Claimant asserts that the mining concession had a value of \$1,075,000.00, based upon an unsigned and undated report stated to have been prepared by one Edward N. Cooper, Jr. In response to Commission suggestions that corroborating evidence in this respect be submitted, counsel for claimant advised by letter of December 5, 1969 that Mr. Cooper was deceased. Thereafter the Commission suggested on two occasions that other appropriate evidence be submitted to establish that the mining concession had the asserted value. However, no further material has been submitted.

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 sustain the burden of proof. The evidence does not establish that the deceased owned a mining concession in Cuba that had the asserted valuation. Accordingly, the portion of the claim based upon the mining concession is denied.

#### Equipment

Claimant states that the deceased owned certain equipment relating to his mining operations in Cuba, having an asserted value of \$20,000.00. The record includes a copy of a letter of February 12, 1961 from the deceased's agent in Cuba, Gerald R. Mackenzie, in which the deceased was advised as follows:

. . . Hold on to your papers on the Josefina Mine and it will be yours again when this Government goes out . . . I went down to the mines after you left . . . The plant was in bad shape - they had taken the motors and all the tools and tubing - take about \$20,000.00 I calculate to get it in shape again . . .

Counsel states that claimant has no further supporting evidence. On the basis of the entire record, the Commission finds that the deceased

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owned certain mining equipment in Cuba. Claimant states that the deceased and his wife left Cuba after registering their mining concession, and that their property was taken by Cuba on March 27, 1960. In the absence of evidence to the contrary, the Commission finds that the deceased's mining equipment was taken by the Government of Cuba on March 27, 1960 pursuant to Law No. 617 of October 27, 1959.

In his letter of June 20, 1967, counsel states that Mr. Mackenzie refers to cost of replacing the machinery and equipment in his letter of February 12, 1961. Apparently, no further details are available, such as the nature of each item of equipment, its original cost or its age on March 27, 1960, the date of loss. Nevertheless, the equipment had some value when taken by Cuba.

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

It is clear that claimant's valuation is based upon the cost of replacement as stated by Mr. Mackenzie. However, the Commission finds no valid ground for concluding that the statutory reference to "cost of replacement" means the cost of replacing the property in question with new property. The Commission has held and now reaffirms its holding that the term "cost of replacement" means replacement in kind, taking into

consideration the age and condition of the property on the date of loss, and that all of the specific bases mentioned in Section 503(a) are merely standards for determining the value of the property on the date of loss. (See Claim of M & M Dredging & Construction Co., et al., Claim No. CU-0219, 1969 FCSC Ann. Rep. 28.)

The record indicates that the deceased had been in Cuba for many years. As already noted, the only description of the equipment appears in Mr. Mackenzie's letter of February 12, 1961. Neither the cost nor age of any of the equipment is known. However, the Commission notes that some mining equipment, such as rolling stock, is subject to depreciation at the rate of 15% per year and other equipment at the rate of 10% per year.

Upon consideration of the entire record, the Commission finds that the valuation most appropriate to the property and equitable to the claimant is the result obtained by reducing Mr. Mackenzie's estimate by 50%. Accordingly, the Commission finds that the value of the deceased's equipment on March 27, 1960, the date of loss, was \$10,000.00.

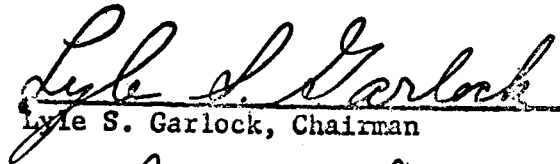
The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim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

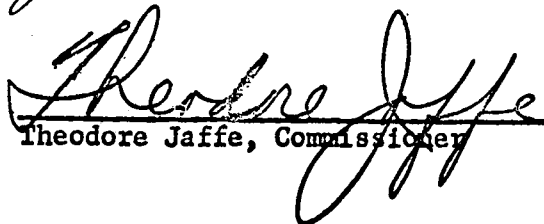
CERTIFICATION OF LOSS

The Commission certifies that SHIRLEY B. CORTADA, ADMINISTRATOR OF THE ESTATE OF WILLIAM ELDRIDGE BARLOW, DECEASED, 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 Ten Thousand Dollars (\$10,000.00) with interest thereon at 6% per annum from March 27, 1960 to the date of settlement.

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

JUN 9 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).)

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