

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

IN THE MATTER OF THE CLAIM OF

SANDY FRYER and CARROLL F.
POOLE, RECEIVERS OF
CRISTINA COPPER MINES, INC.

Claim No. CU-1549

Decision No. CU-6215

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

Jesse R. Smith, Esq.

Appeal and objections from a Proposed Decision entered on June 2, 1971; oral hearing requested.

Oral hearing held on October 6, 1971.

FINAL DECISION

Under date of June 2, 1971, the Commission issued its Proposed Decision denying this claim for lack of proof. Subsequently, claimants submitted additional supporting evidence and requested an oral hearing which was held on October 6, 1971.

At that hearing, counsel offered oral argument and presented further supporting evidence. Testimony was received from SANDY FRYER, Co-Receiver of claimant, from William A. J. Pitt, a mining engineer who owned a 45% stock interest in Yao Valley Mines, S.A. (Yao), the Cuban corporation in question, and from Leland E. Stevenson, a stockholder of claimant.

Upon consideration of the entire record, including the evidence presented at the oral hearing, the Commission amends the decision in this matter as follows:

Stock Interest

The evidence of record establishes that a 45% stock interest in Yao had a value of \$125,000.00 on April 15, 1960, the date of loss. The Commission therefore finds that claimant's 55% stock interest in Yao had a value of \$152,777.78.

Improvements

The Commission finds that claimant held a long term lease covering the Eureka mine at Bayamo, Oriente Province, Cuba. In conjunction with that lease, claimant owned certain assets, including improvements at the mine site. The evidence establishes and the Commission finds that the aggregate value of claimant's assets at the mine site was \$484,299.11.

Eureka Mine

The record shows that the Eureka mine contained valuable ore deposits, including copper, gold and silver. However, the witnesses at the oral hearing were unable to state with any degree of certainty how much ore was in the mine or the value thereof on the date of loss. On the basis of the entire record, the Commission finds that the valuation most appropriate in this case and equitable to the claimant, in light of the entire record, is that indicated by the report of March 16, 1959 from Alfred L. Sherman, mining engineer-geologist.

Upon consideration of this matter the Commission finds that the Eureka mine contained 1,500,00 tons of crude ore. It further appears that the production capacity at the mine was 10,000 tons of crude ore per month or 120,000 tons per year. Therefore it would take 12-1/2 years to exhaust the ore in the mine.

That report indicates that the aggregate annual costs of recovering the copper, gold and silver contents of the crude ore were as follows:

Mining 120,000 tons of crude ore at \$3.00 per ton	\$360,000.00
Milling 120,000 tons of crude ore to produce concentrate at \$5.00 per ton	600,000.00
Transportation of the concentrate, reduced by ratio of 10 to 1- 12,000 tons of concentrate at \$12.00 per ton	144,000.00
Smelting 12,000 tons of concentrate at \$20.00 per ton	240,000.00

Refining:

120,000 tons of crude ore
containing 3% copper
Yields 3,600 tons of cop-
per. At 80% recovery, it
yields 2,880 tons of copper.
Loss of 8% due to moisture
yields 2,649.60 tons of cop-
per, equalling 5,299,200
pounds. At \$0.03 per pound,
refining costs \$158,976.00

Penalties for arsenic and
antimony contents
At \$1.00 per ton 2,649.60

Total Annual Costs \$1,505,625.60

That report indicates that the annual values of the recovered copper,
gold and silver were as follows:

5,299,200 pounds of copper
At \$0.20 per pound \$1,059,840.00

120,000 tons of crude ore
At 90% recovery for
the gold and silver
Yield 108,000 tons at
\$5.00 per ton 540,000.00

Gross annual value of the ore \$1,599,840.00

Less annual costs 1,505,625.60

Net annual value
for 12-1/2 years \$94,214.40

The Commission finds that the foregoing constitutes the most appropriate
basis for evaluating the Eureka mine. The Commission further finds that the
said valuation should be discounted at the rate of 15% per year to arrive at
the value of the mine on April 15, 1960, the date of loss. Accordingly, the
Commission finds that the mine had the following value on April 15, 1960:

<u>Year</u>	<u>Gross Value</u>	<u>Discount Factor</u>	<u>Net Value</u>
1961	\$94,214.40	.869565	\$81,925.54
1962	94,214.40	.756143	71,239.56
1963	94,214.40	.657516	61,947.48
1964	94,214.40	.571753	53,867.37
1965	94,214.40	.497177	46,841.23
1966	94,214.40	.432328	40,731.52
1967	94,214.40	.375937	35,418.68
1968	94,214.40	.326902	30,798.88
1969	94,214.40	.284263	26,781.67
1970	94,214.40	.247185	23,288.39
1971	94,214.40	.214943	20,250.73
1972	94,214.40	.186907	17,609.33
1973	<u>47,107.20</u>	.162528	<u>7,656.24</u>
Totals	<u>\$1,103,572.80</u>		<u>\$518,356.62</u>

Claimant's losses on April 15, 1960 are summarized as follows:

<u>Item of Property</u>	<u>Amount</u>
Stock Interest	\$152,777.78
Improvements	484,299.11
Eureka Mine	<u>518,356.62</u>
Total	<u>\$1,155,433.51</u>

The Commission has decided that in certifications of loss 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 it is so ordered.

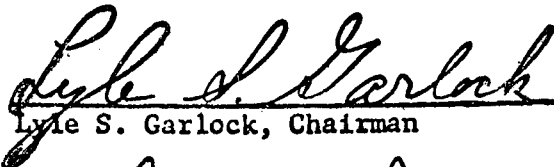
Accordingly, the following Certification of Loss will be entered, and in all other respects the Proposed Decision as amended herein is affirmed.

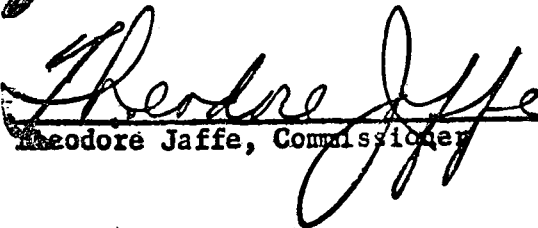
CERTIFICATION OF LOSS

The Commission certifies that SANDY FRYER and CARROLL F. POOLE, RECEIVERS OF CHRISTINA COPPER MINES, INC. 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 Million One Hundred Fifty-Five Thousand Four Hundred Thirty-Three Dollars and Fifty-One Cents (\$1,155,433.51) with interest at 6% per annum from April 15, 1960 to the date of settlement.

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

OCT 20 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

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.

FOREIGN CLAIMS SETTLEMENT COMMISSION
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IN THE MATTER OF THE CLAIM OF

SANDY FRYER and CARROLL F.
POOLE, RECEIVERS OF
CRISTINA COPPER MINES, INC.

Claim No. CU-1549

Decision No. CU 6215

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

Jesse R. Smith, 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 an indefinite amount was presented by SANDY FRYER and CARROLL F. POOLE, RECEIVERS OF CRISTINA COPPER MINES, INC. based upon the asserted loss of certain personal property 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.

The record shows that CRISTINA COPPER MINES, INC., hereafter called claimant, was organized under the laws of Delaware and that at all pertinent times more than 50% of claimant's outstanding capital stock was owned by nationals of the United States. SANDY FRYER, duly appointed Co-Receiver of claimant by court order of July 7, 1954 (Exhibit D), has stated under date of December 1, 1959 (Exhibit A) that out of a total of 2,141,936 shares of capital stock of claimant, approximately 60,000 shares were owned by nonnationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The evidence establishes and the Commission finds that claimant owned 770 shares of stock in Yao Valley Mines, S.A. (Yao), a Cuban corporation, representing a 55% stock interest therein. It is asserted that Yao owned certain real property in the area of Bayamo, Oriente Province, Cuba, which contained copper mines. In an affidavit of December 13, 1966 (Exhibit B), William A. J. Pitt Ferrer states that said property belonged to Yao and that it would be costly and impractical to obtain a land register extract to support his statement. It appears that claimant obtained a lease covering the mines in question.

In a letter of December 1, 1959 (Exhibit A) to the American Ambassador, Havana, Cuba, Mr. Fryer, Co-Receiver of claimant, deplored the "confiscatory implications" of Law No. 617 enacted on October 27, 1959. That statute was published in the Cuban Official Gazette on November 17, 1959 and authorized the Minister of Agriculture to order the commercial exploitation of mineral resources in Cuba. The record shows that LELAND E. STEVENSON, claimant in Claim No. CU-1550 and a stockholder of claimant, was denied the right to visit the mines in April 1960. In the absence of evidence to the contrary, the Commission finds that claimant's mining concessions in Cuba were taken by the Government of Cuba on April 15, 1960.

Since Yao was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States" within the meaning of Section 502(1)(B) of the Act, supra. In this type of situation, it has been held that an American stockholder owning an interest in such a corporation may file a claim for the value of his ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

Claimant had originally asserted the following losses (Exhibit K), based upon a report of March 16, 1959 from Alfred L. Sherman, a mining engineer (Exhibit J):

883,200,000 lbs. of copper at \$.30 per lb.	\$264,960,000.00
20,000,000 tons of \$5.00 per ton gold and silver, at 90% recovery	<u>90,000,000.00</u>
Gross value of ore	\$354,960,000.00
Less costs to recover	<u>250,937,600.00</u>
Net value of ore	\$104,022,400.00
Less royalties due Yao under lease - 5%	<u>2,340,504.00</u>
Total	<u>\$101,681,896.00</u>

CU-1549

An examination, of the Sherman report discloses the following:

1. Claimant's leases of the mining concessions in Yao Valley were duly registered with the Property Registrar at Bayamo, Cuba.

2. While there are three known mines in that area, Eureka is the only mine that had been explored to any extent.

3. The Eureka mine had been subleased to one, H. C. Johnson, who found an outcrop of about 500 tons of ore close to the surface. Previous operators had left about 5,000 tons of ore on the dumps and after a number of years the ore showed an average assay of 5% copper and some silver and gold.

4. In 1945, about 120 tons of ore had been extracted from the Eureka mine with an average grade of 12% copper, and the ore had been sold.

5. In 1948, claimant leased the Eureka mine to the Garland Mining Company of Cuba for the purpose of extracting and selling 50,000 tons of ore. The first 600 tons shipped was of a very low grade. Later the average grade of ores extracted was 9% copper. After the shipment in August, 1948, the Garland contract was terminated.

6. In 1951 the lessee, Johnson, and the members of Garland made arrangements to mine and sell ore from the Eureka mine. After having mined about 30 tons of average 10% ore, about \$6,000.00 had been expended and the operators discontinued mining because no further funds were available.

7. After indicating the provable, probable and possible tonnages of ore, Sherman estimated the mining costs without stating the factual basis therefor and concluded that with an investment of \$5 million to \$7 million there would be a net profit of about \$9 million.

Since the Sherman report included a number of estimates that had not been established and since no further exploration of the mines had taken place after 1951, the Commission suggested the submission of further evidence to support claimant's valuations. Claimant's response was in the form of an affidavit of March 15, 1971 from Mr. Fryer, the Co-Receiver. His affidavit sets forth the following asserted losses:

Capital expenditures in the nature
of assets:

Costs of surveys and engineering reports	\$ 22,224.11
Development work	227,075.00
Drilling costs of Co-Receiver	50,000.00
Costs of preserving the property and marshalling the assets on behalf of the Receivers	35,000.00
Development work performed by the Garland Mining Company of Cuba	150,000.00
5,000 tons of primary ore on the dumps with an average grade of 5% copper, and with silver and gold of \$10.00 per ton	(unstated) (amount)
About 10,000 tons of ore on the dumps "awaiting a concentrating mill"	(unstated) (amount)
Proven ore deposits of 3,360,000 metric tons per Sherman report	(reasonable) (profit)

Conferences were held at the offices of the Commission with counsel and Mr. Fryer, Co-Receiver, at which time the elements of the claim were discussed and further suggestions were made concerning the submission of supporting evidence. Subsequently, counsel for claimant advised under date of April 16, 1971 that no further information was available.

It is noted that the Co-Receiver's affidavit of March 15, 1971 mentions other properties not included in claimant's amended claim. Nevertheless it is considered that these properties warrant some discussion. At the outset, the Co-Receiver states that claimant owned a lease on the mines in Yao Valley "together with some fourteen buildings and equipment that had been assembled at the site." He further states that after the termination of the sublease with the Garland Mining Company of Cuba the Garland "Property and inventory" were taken over by claimant and mutual releases were exchanged.

The record contains no other evidence in support of asserted ownership by claimant of fourteen buildings, equipment and the Garland property, and that said properties were taken from claimant by the Government of Cuba. It is

noted, however, that counsel's letter of December 31, 1970 was accompanied by a map showing the location of the Eureka mine (Exhibit N), and an inventory made on July 10, 1953, apparently of property belonging to the Garland Mining Company of Cuba (Exhibit O). That inventory includes some equipment and a substantial amount of supplies that would normally be consumed in the course of operations. In any event, the evidence does not establish that any of said property existed on and after January 1, 1959 and was taken by the the Government of Cuba.

The evidence also includes a report of November 16, 1948 from the Phelps Dodge Refining Corporation (Exhibit P), which was appended to the Co-Receiver's affidavit of March 15, 1971. That report shows that 4,526,071 pounds of ore had been received from the Eureka mine; that the aggregate value of the ore content, including the copper, silver and gold, was \$69,305.81; and that the refining and related costs aggregated \$27,954.94, leaving a net value of \$41,350.87.

Counsel states in his letter of December 31, 1970 that in 1952 ore was sold and delivered to Woodward and Dickerson of Philadelphia. In his affidavit of March 15, 1971, the Co-Receiver states that the 1952 contract with Woodward and Dickerson "was never consummated for reasons described by Woodward and Dickerson as gross mismanagement and unethical dissipation of the funds." Claimant, whose only assets were in Cuba, was declared insolvent and Receivers were appointed on July 7, 1954.

It is clear from the evidence of record that the Eureka mine was not operated after 1951. Counsel states in his letter of December 31, 1970 that "By late 1958 much of the physical plant and equipment required to get operations underway on a volume basis had been assembled at the mine. There were fourteen buildings, including a generator, a machine shop, assay shop, bunk houses, mining machinery and trucks and tractors." The Co-Receiver states in his letter of December 1, 1959 (Exhibit A) that in March 1959 when he arrived at the mine the "Mining machinery, trucks, tractors, electric plant, buildings, etc., had all disappeared." It further appears from that letter that claimant

was not financially able to pay for the cost of re-registering its mining concessions pursuant to Law 617 of October 27, 1959.

It is noted, moreover, that in response to Commission inquiries concerning the lack of production during the 1950's the Co-Receiver stated in his affidavit of March 15, 1971 that the 1952 contract with Woodward and Dickerson was never consummated; that Receivers for claimant were appointed in 1954; and that contacts were being made in 1957 and 1958 with prospective investors, but that no firm commitments had been made, resulting in a lack of production. Considering the Sherman recommendation of March 16, 1959 that an investment of \$5 million to \$7 million was needed to operate the Eureka mine, it is not readily seen, in light of the foregoing circumstances, how "By late 1958 much of the physical plant and equipment required to get operations underway on a volume basis had been assembled at the mine", as stated by counsel.

In any event, the record includes no evidence to establish that claimant owned fourteen buildings and equipment as well as property and inventory of Garland that were in existence at the mine site on or after January 1, 1959; and that these properties were taken by the Government of Cuba within the meaning of Title V of the Act. Additionally, since no claim is being made for such properties, they are not further considered.

As already noted, about 2,200 tons of ore had been shipped to the Phelps Dodge Refining Corporation in 1948. That refining corporation reported that the ore had a content of about 6.5% copper and some silver and gold (Exhibit P). While that report shows a net value of \$41,350.87 for about 4-1/2 million pounds of ore, it fails to indicate the expenses involved in extracting the ore at the mine. It appears from the record that the shipment in 1948 was made by the Garland Mining Company of Cuba. The Sherman report (Exhibit J) indicates that the contract with Garland was terminated shortly thereafter and prior to the extraction of 50,000 tons of ore in accordance with that contract. It would therefore appear that it was not commercially feasible and profitable to continue operations at the mine.

In 1951, about 30 tons were extracted from the Eureka mine with an average grade of 10% ore. After expending \$6,000.00 for that operation, the operators terminated all work because no further funds were available. Here again, it appears that the mining operations were found to be unprofitable and therefore were discontinued.

Counsel's letter of December 31, 1970 refers to another mining report of March 8, 1952 prepared by Edward V. Cooper, Jr. concerning the mining concessions of one, Jose R. Julia, Jr., which indicate that Mr. Cooper also visited the nearby mines of claimant. That report suggests further exploration of the Julia and Eureka mines because of the proximity of the mines to one another. The Sherman report also mentions the Julia mine "which completely surrounds the Eureka" and states that it is important to the operations of the Eureka mine.

The records of the Commission disclose that Joseph R. Julia, Jr. filed a claim against Cuba based upon certain mining concessions in Bayamo, Oriente Province, Cuba. That claim was denied for failure to establish that the concessions had any value on the asserted date of loss (Claim of Joseph R. Julia, Jr., et al., Claim No. CU-2795.)

As amended, this claim is based upon the Eureka mining concession, and recovery is sought for expenditures incurred in developing the mine; for the value of certain ore at the mine site; and for a reasonable profit to be derived from operating the mine to extract 3,360,000 metric tons of "proven" ore deposits.

The Commission has fully considered this entire matter. Although it appears that the Eureka mine contained ore, the evidence of record does not establish that it was profitable to extract and sell the ore in the mine. According to the Sherman report of March 16, 1959, which estimates the existence of 3,360,000 metric tons of "proven" ore, about \$5 million to \$7 million was required to explore and develop the mine. No such investment was ever made and no such exploration and development ever took place. In 1948 after 2,200 tons had been extracted and shipped from the Eureka mine

and after the net value of these mining operations were made known (Exhibit P), the operations were terminated. In 1951 further exploration of the mine was discontinued after an expenditure of only \$6,000.00.

Under these circumstances, it cannot be seen that claimant would have profited from exploring the Eureka mine. Upon consideration of the entire record, the Commission finds that claimant has failed to establish that its mining concessions had any value on April 15, 1960, the date of loss. Therefore, claimant's capital expenditures of \$22,224.11 for surveys and engineering reports, and \$227,075.00 for development work cannot constitute a valid basis for concluding that they represented asset values. By the same token, the asserted expenditure of \$50,000.00 by the Co-Receiver personally and the asserted expenditure of \$150,000.00 by the Garland Mining Company of Cuba cannot be allowed as if they were assets belonging to claimant and taken by the Government of Cuba. The portion of the claim for 3,360,000 metric tons of asserted "proven" ore deposits likewise does not represent asset values on the basis of this record. For the foregoing reasons, the portions of the claim based upon asserted expenditures aggregating \$484,299.11 and upon the "proven" ore deposits of 3,360,000 metric tons are denied.

The remaining portions of the claim are based upon 15,000 tons of ore left on the dumps. It is asserted that 5,000 tons of ore had been left on the dumps near the mine for a number of years, based upon statements appearing in the Sherman report. In addition, claimant asserts that about 10,000 tons of ore were likewise on the dumps "awaiting a concentrating mill." No evidence has been submitted to establish that an additional 10,000 tons of ore were on the dumps. While the Sherman report refers to the 5,000 tons of ore, it fails to mention any other ore on the dumps. Moreover, claimant has neither asserted the values of said ores, nor does the record contain any evidence concerning the values thereof.

With respect to the asserted 10,000 tons of ore "awaiting a concentrating mill", the Commission finds that claimant has failed to sustain the burden of proving that such ore was in existence on the premises of the

Eureka mine on or after January 1, 1959; that it was taken by the Government of Cuba on or after January 1, 1959; and that the ore had a certain value on the date of loss. Accordingly, the portion of the claim for the 10,000 tons of ore on the dumps is denied.

The Sherman report recites that 5,000 tons of "primary ore" had been left on the dumps, and that after a number of years, it still gave an average assay of 3% copper and some silver and gold. That statement appears in the Sherman report in conjunction with the statement that H. C. Johnson had obtained a lease on the mine in 1942, and it appears as follows: "Previous operators had extracted 5,000 tons"

It appears therefore that these 5,000 tons had been lying on the dumps during the period when Johnson was the lessee; during 1945 when 120 tons of ore had been extracted and sold; during 1948 when the Garland Mining Company had shipped about 2,200 tons of ore to the Phelps Dodge Refining Corporation (Exhibit P); during 1951 when after extracting 30 tons from the Eureka mine the operators terminated all work for lack of funds; and during the other periods of time when claimant was in possession and control of the Eureka mine. However no one decided to sell or otherwise dispose of said 5,000 tons of ore. The record contains no explanation as to why so much ore was left untouched for so many years.

In this connection, it is noted that the Sherman report, states that the average assay of the 5,000 tons was 5% copper with some silver and gold. The 1948 shipment of 2,200 tons of ore showed an average grade of about 6.5% copper with some silver and gold. Nevertheless, it appears that the mining operations discontinued shortly after the facts concerning the ore content of that shipment became known. It appears that the mine operators found that the continued extraction of ore from the Eureka mine would not be profitable.

The only conclusion consistent with the fact that 5,000 tons of ore had been left lying on the dumps for many years under the said circumstances in this case is that the ore had no commercial value. In any event, claimant

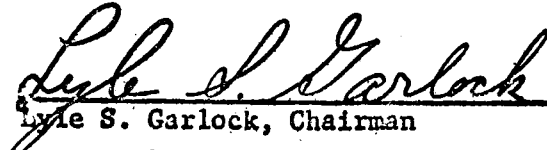
has failed to submit evidence to establish that the 5,000 tons of ore had any value on the date of loss. Therefore, this portion of the claim is denied.

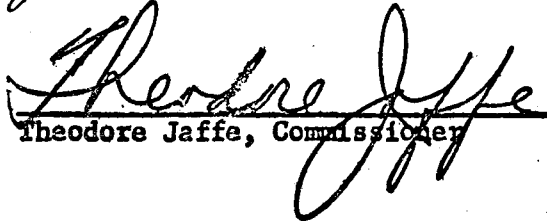
The Commission finds that claimant has failed to sustain the burden of proof with respect to its claim based upon a 55% stock interest in Yao. The evidence fails to establish that claimant's stock interest in Yao had any value on the date of loss. Accordingly, this portion of the claim is also denied.

The Commission deems it unnecessary to make determinations with respect to other elements of this claim.

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

JUN 2 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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).)