

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

IN THE MATTER OF THE CLAIM OF

HARRY KOPLIN
and
HANNAH KOPLIN

Under the International Claims Settlement
Act of 1949, as amended

Claim No CU-2461

Decision No. CU-6181

Counsel for claimants:

Brown, Dashow, Langeluttig,
Arons & Doran
By Albert Langeluttig, Esq.

Appeal and objections from a Proposed Decision entered on May 5, 1971;
oral hearing requested.

Oral hearing held on September 28, 1971.

FINAL DECISION

Under date of May 5, 1971, the Commission issued its Proposed Decision certifying losses in favor of claimants, each in the amount of \$45,000.00 plus interest. Other portions of the claim based primarily on certain mining concessions in Cuba were denied for lack of proof. Claimants objected to the Proposed Decision insofar as it denied portions of their claim, and requested an oral hearing which was held on September 28, 1971.

At that hearing, counsel for claimants introduced new documentary evidence and presented oral argument. Claimant, HARRY KOPLIN, testified on his own behalf and on behalf of his wife, the other claimant. Upon consideration of the entire record, including the evidence and arguments presented at the oral hearing, the Commission now finds that claimants jointly owned a lease covering the Valle de Manganeso mine in Oriente Province, Cuba. The Commission further finds, in the absence of evidence to the contrary, that the mine was taken by the Government of Cuba on November 17, 1959 pursuant to Law No. 617.

The evidence of record is insufficient to establish the amount of ore in the manganese mine. However, the record shows that claimants had been

operating the mine since 1956, and had extracted about 31,000 tons of ore. An engineering report indicates that the mine contained high grade manganese ore recoverable to the extent of 47%. The Commission therefore finds that claimants' mining concession was a going concern on the date of loss, and that it had a value substantially greater than the cost of acquiring the lease covering the mine. On the basis of the entire record, the Commission finds that the value of claimants' mining concession on the date of loss was \$75,000.00.

The Commission finds that claimants jointly owned 25,000 tons of ore which were present at the site of the mine, and that said ore was also taken by Cuba on November 17, 1959. The record shows that claimants had sold some of the ore at \$31.00 per ton, and that their expenses including royalties amounted to \$5.00 per ton for the ore at the mine site. It appears that claimants had already paid the sum of \$10.00 per ton for mining the ore at the mine site. The Commission therefore finds that the value of the 25,000 tons of ore at the mine site on November 17, 1959 was \$650,000.00.

Each claimant's losses are now summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
Residence	October 14, 1960	\$ 7,000.00
Hotel and swimming pool	October 14, 1960	38,000.00
Valle de Manganeso mining concession	November 17, 1959	37,500.00
1/2 of 25,000 tons of ore at the mine site	November 17, 1959	<u>325,000.00</u>
	Total	<u>\$407,500.00</u>

The Commission reaffirms that interest shall be allowed, and it is so ordered as follows with respect to each claimant:

<u>FROM</u>	<u>ON</u>
November 17, 1959	\$362,500.00
October 14, 1960	<u>45,000.00</u>
Total	<u>\$407,500.00</u>

It may be noted that if probative evidence as to items of this claim, which would warrant a change in the decision, is received in sufficient time to permit consideration thereof before the close of the program on June 30, 1972, the Commission will reopen the claim. Such evidence should be received on or before May 1, 1972 in order to permit adequate consideration thereof.

Accordingly, the Certifications of Loss in the Proposed Decision are set aside, the following Certifications of Loss, will be entered, and the remainder of the Proposed Decision as amended herein is affirmed.

CERTIFICATIONS OF LOSS

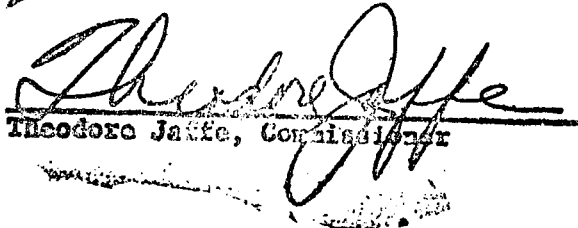
The Commission certifies that HARRY KOPLIN suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Four Hundred Seven Thousand Five Hundred Dollars (\$407,500.00) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that HANNAH KOPLIN 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 Four Hundred Seven Thousand Five Hundred Dollars (\$407,500.00) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

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

OCT 13 1971


Lytle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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Counsel for claimants:

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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 HARRY KOPLIN and HANNAH KOPLIN based upon the asserted loss of certain real and personal property in Cuba. Claimants 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.

Claimants assert the following losses:

	<u>Asserted Values</u>
Residence at Isle of Pines, Cuba	\$ 14,000.00
Isle of Pines Hotel and swimming pool	106,300.00
"Valle de Manganeso", manganese mine at Joturo, Alto Songo, Oriente, Cuba	\$3 to \$5 million
25,000 long tons of manganese ore at the site of the manganese mine, ready for shipment	\$775,000.00
<u>Cuba Camaguey Group of Mining Concessions</u>	
La Caridad, Robles de la Pena and Nelly mines, costing \$1,500.00	substantially in excess of cost
Candelaria and Maria mines, costing \$750.00	substantially in excess of cost
Consuelo, Porvenir and El Yunque mines, costing \$1,200.00	substantially in excess of cost
<u>Nunez Mesa Group of Mining Concessions</u>	
Otmara, Cachita, Jupiter, June, Segunda Maria, Estrella, Marte, Juarez, El Machito, Gonzalo, San Miguel, Maria, Silvia, Nelly, Nueva Maria, Nueva Silvia, Eureka, Prevision, Omega, Perseverante, Director and Oriente Mines - estimated value	\$ 25,000.00
<u>Oil Leases and Mining Concessions</u>	
Rolando, Rafael, Juan Panchita, Ram-Toni, Cancio, San Antonio, Calvo, Himaesca, Cornelita, Anitica Primera, Cornelita Segunda, Goyito, Evelyn, Avelina, Amanda, Egmont, Felisiano, Elenita, El Choteo, Crisanta, Rodolfo, Victoria, Ernesto Gomez, Margarita Gomez, Juana Maria, Coriolano, Angel Gomez, Cuatro Amigos, Merceditas, and Pantera - oil lease alone estimated in excess of	\$800,000.00

Marte, Estrellita and El Roble copper mines in Sierra Maestra Mountains near Manzanillo, Oriente, Cuba - leases estimated value in excess of	\$150,000.00
Oil lease on Este No. 1, Tres Amigos, Aragon - Present value	"unknown"
Other claims relating to other prop- erties, descriptions of and data relating to are not available	Value unstated

Residence

On the basis of a copy of a deed and contemporaneous correspondence, the Commission finds that on November 3, 1958 claimants each acquired a 1/2 interest in a certain residence and lot situated in the rear of the Isle of Pines Hotel, Nueva Gerona, Isle of Pines, Cuba.

On October 14, 1960, the Government of Cuba published in its Official Gazette, Special Edition, its Urban Reform Law. Under Article 2 of this law the renting of urban properties and all other translations or contracts involving transfer of the total or partial use of urban properties was outlawed. The law covered residential, commercial, industrial and business office properties (Article 15). The Commission finds in the absence of evidence to the contrary that the residence and lot were within the purview of the Urban Reform Law and were taken by the Government of Cuba on October 14, 1960. (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39.)

The record shows that claimants paid \$12,000.00 for the residence and lot plus certain related fees and expenses. On the basis of the evidence of record, the Commission finds that claimants' valuation is fair and reasonable. Therefore, the Commission finds that the aggregate value of the residence and lot on October 14, 1960, the date of loss, was \$14,000.00. Accordingly, the value of each claimant's 1/2 interest was \$7,000.00.

Hotel and Swimming Pool

Based upon the evidence of record, the Commission finds that in 1958 claimants each acquired a 1/2 interest in the Isle of Pines Hotel, Nueva Gerona, Isle of Pines, Cuba. The Commission further finds that the hotel was within the purview of the Urban Reform Law of 1960, supra. In the absence of evidence to the contrary, the Commission finds that the hotel was taken by the Government of Cuba on October 14, 1960.

The record includes copies of cancelled checks, bills and invoices; contemporaneous correspondence; a copy of an insurance policy covering the hotel and its contents; a copy of a general trial balance for the hotel as of September 30, 1958; copies of claimants' tax returns showing asserted deductions for Cuban losses; photographs of the property; and claimants' statements.

It appears that claimants paid \$60,000.00 for the hotel. In addition, they invested about \$15,000.00 for furniture, equipment, air conditioning and related personal property for the hotel. A swimming pool was built on the premises at a cost of \$3,997.19, completed in 1959. The hotel and its contents were insured for \$40,000.00 and \$10,000.00, respectively, for the year October 12, 1959 to October 12, 1960. At the time of loss, there was an outstanding mortgage of \$3,000.00. It further appears that as a result of mismanagement, the hotel showed no profits.

Claimants assert a valuation of \$100,000.00 for the hotel and \$6,300.00 for the swimming pool. On several occasions, the Commission suggested the submission of appropriate evidence in support of claimants' valuations. Counsel's response of April 14, 1971 was that claimants have furnished all available information.

Upon consideration of the entire record, the Commission finds that the aggregate value of the hotel and grounds, its contents and the swimming pool on October 14, 1960, the date of loss, was \$79,000.00. Therefore, claimants' equity therein, after deduction for the outstanding mortgage, was \$76,000.00; and the value of each claimant's interest was \$38,000.00.

Balance of the Claim

As noted above, claim is made for various mining concessions assertedly taken by Cuba in 1960, as well as for "other claims". The submission of supporting evidence in these respects was suggested by the Commission on several occasions. By letter of April 14, 1971, counsel stated that claimants' three principal claims were the Valle de Manganeso, the Marte copper claim, and the Isle of Pines, the last apparently relating to mining concessions on the Isle of Pines. It was further stated by counsel that with respect to the Valle de Manganeso and Marte claims "rather complete reports" had been submitted previously; and he added that no further information was available.

Valle de Manganeso

Claimants assert ownership of a lease of the Valle de Manganeso mine at Joturo, Alto Songo, Oriente, Cuba through ownership of Cia. Valle de Manganeso, S.A. and/or Cia. Minera Severina, S.A., apparently Cuban corporations. No evidence has been submitted which establishes that claimants owned stock interests in the two Cuban corporations although the submission of evidence in these respects was suggested by the Commission on several occasions.

The evidence includes a copy of a geologist's survey of February 1, 1956 of the Isle of Pines as a source of minerals; maps of the mine; a copy of a lease of March 5, 1956 concluded by the owners of the Valle de Manganeso mine and Edward N. Cooper, identified by claimants as their employee; and a statement of April 19, 1967 from Gerardo D. Aulet, President and General Manager of Cuban American Mining Company, concerning the Valle de Manganeso mine.

The report of February 1, 1956 indicates the presence of manganese in the Valle de Manganeso mine, but recommends further exploration and acquisition of facilities for mining. However, the report does not confirm claimants' ownership or valuation of the mine. It sets forth neither the quantity of ores in the mine, nor the costs of extracting the ores, and it does not mention the value of the ores.

The statement of Mr. Aulet of April 19, 1967 consists of one page in which he states that the mine had been exploited since 1939; that about 100,000 tons of ore had been mined from Valle de Manganeso mine; that claimants had invested over \$175,000.00 in exploration and equipment; that on the date of loss 25,000 long tons of high grade manganese ore, already sold at \$31.00 per ton F.O.B. Santiago de Cuba, was ready for shipment; and that in his opinion the value of the mine was \$3 to \$5 million.

Under date of January 27, 1971, the Commission advised counsel among other things that it would consider Mr. Aulet's statements, but suggested a supplementary statement setting forth in detail the basis for his opinion. The Commission also suggested the submission of evidence to establish: the nature, quality and amount of ore in the mine; the results of all mining operations performed by claimants; the reasons for not doing so in the event no such mining operations were performed; whether any of the mined ore was ever sold by claimants and if so, the dates, prices and names of the buyers; whether claimants ever paid royalties pursuant to the lease and if so, the dates, the amounts and the persons to whom such payments were made; and the value of Valle de Manganeso on the asserted date of loss.

As already noted, counsel's response was that there was no further information available.

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 claimants have failed to sustain the burden of proof with respect to the portion of their claim based on the Valle de Manganeso mine. The evidence does not establish that claimants owned stock interests in Cia. Valle de Manganeso, S.A. and/or Cia. Minera Severino, S.A. and therefore owned a lease on the Valle de Manganeso mine.

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Further, the record does not establish the nature or amount of ore in the mine; the costs of extracting the ore; and the value of such ore on the asserted date of loss. Claimants merely state that the mine had a value of \$3 to \$5 million. The evidence does not establish that claimants invested over \$175,000.00 in exploration and equipment for the mine. Nor does the record establish that on the asserted date of loss claimants owned 25,000 long tons of high grade manganese ore extracted from the mine that had already been sold for \$31.00 per ton F.O.B. Santiago de Cuba.

The only evidence of record which appears to connect claimants to the Valle de Manganeso mine is a copy of a letter of June 7, 1957 from Mr. KOPLIN to a Cuban Notary Public before whom the lease of March 5, 1956 of the mine was executed. That letter states that Mr. KOPLIN is enclosing his check for \$500.00 to cover the May rental on the Valle de Manganeso mine.

The copy of the lease of March 5, 1956 indicates that it was to terminate after 5 years from the date thereof, and was renewable every 5 years at the option of the lessee. The lease provides that the "price of the contract will be a fifth part of any type of mineral which is extracted from the mine and which are in condition to be shipped, the expense of extraction and washing in this case are to be paid by the lessee." The lessee was required to keep records of production. No fixed minimum of mineral production was provided for during the first six months of the lease. Thereafter, the minimum monthly production was to be 2,000 gross tons.

The copy of the letter of June 7, 1957 makes no reference to any production, but merely transmits \$500.00 for the May rental. In the absence of evidence to the contrary, it appears that the \$500.00 represented a minimum rental in the event no mining operations were performed. Thus, the record fails to show that claimants performed any mining operations or extracted any ore from the Valle de Manganeso mine.

For all of the foregoing reasons, the portions of the claim based upon the Valle de Manganeso mine and upon 25,000 long tons of manganese ore are denied.

Isle of Pines Leases

The record shows that claimants acquired leases with respect to a number of mines on the Isle of Pines, Cuba. Claimants have submitted copies of summaries of the lease agreements, identifying the leased properties, and indicating the royalties due in the case of production as well as the rentals in the event of no production.

The evidence also includes a statement from Gerardo D. Aulet of April 19, 1967, in which he states that claimants had invested over \$150,000.00 in exploration and surveys of the leased properties; and that in his opinion the leases had a value of \$800,000.00.

As in the case of the Valle de Manganeso mine, the Commission suggested the submission of a more detailed statement from Mr. Aulet and proof as to claimants' asserted investment. The Commission also suggested the submission of evidence to establish the amounts of minerals in the mines; the values of the minerals on the asserted date of loss; whether any minerals were ever mined by claimants or sold by claimants; and other evidence concerning the mines similar to that suggested with respect to the Valle de Manganeso mine. No such evidence has been filed, and counsel's response of April 14, 1971 that no further information was available was applicable to this portion of the claim.

Upon consideration of the entire record, the Commission finds that claimants have failed to sustain the burden of proof with respect to the portion of their claim based upon leases of mines on the Isle of Pines, Cuba. Accordingly, this portion of the claim is denied.

Marte and Other Copper Mines

Claimants assert losses based on leases with respect to three copper mines: Marte, Estrellita and El Roble, situated in the Sierra Maestra Mountains, near Manzanillo, Cuba.

The record includes a copy of report of April 3, 1957 from a geologist, indicating the presence of ores in the mines. However, the geologist states that the "results of the examination of the terrain does not permit me to form a definite opinion." After indicating the general nature of his investigation, the geologist states a major deposit is a possibility and recommends further investigation.

Another document, undated, indicates that copper is a good prospect in the area in question but that "it would require a year's work and one half million dollars to put into production." The evidence also includes an undated statement from Gerardo D. Aulet. He states that claimants have invested over \$25,000.00 in explorations, and that in his opinion the three leases had a value of \$150,000.00.

Here again, claimants have not submitted further supporting evidence, although suggestions in these respects were made by the Commission on several occasions. The suggestions were similar to those made in connection with the Valle de Manganeso mine.

Upon consideration of the entire record, the Commission finds that claimants have failed to sustain the burden of proof with respect to the portion of their claim based upon leases of the three copper mines. Accordingly, this portion of the claim is denied.

Remaining Mining Concessions

Claimants assert losses with respect to a number of other mining concessions. In support of this portion of the claim, claimants have submitted copies of some of the leases; summaries of some of the leases; and maps showing locations of the mines. The amounts claimed for these asserted losses are indefinite. In some cases, claimants state their losses were substantially in excess of cost. In others, they merely estimate the losses without indicating their basis for doing so; and the value of one concession is shown as "unknown".

The Commission finds that claimants have failed to sustain the burden of proof with respect to the portion of the claim based on the said remaining mining concessions. Accordingly, this portion of the claim is denied.

Other Claims

Claimants also assert "other claims relating to other properties, descriptions of and data relating to which are not available." They state that information in these respects will be supplied "to the extent that it becomes available at a future date." No amount of loss is asserted with respect to this portion of the claim.

To date no further information has been submitted concerning these "other claims". The record fails to indicate either the nature of the claim or the amount thereof, and no evidence has been submitted in support of this portion of the claim. Accordingly, this portion of the claim is denied.

Recapitulation

Each claimant's losses on October 14, 1960 are summarized as follows:

<u>Item of Property</u>	<u>Amount</u>
Residence	\$ 7,000.00
Hotel and swimming pool	<u>38,000.00</u>
Total	<u>\$45,000.00</u>

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.

CERTIFICATIONS OF LOSS


The Commission certifies that HARRY KOPLIN 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 Forty-five Thousand Dollars (\$45,000.00) with interest thereon at 6% per annum from October 14, 1960 to the date of settlement; and

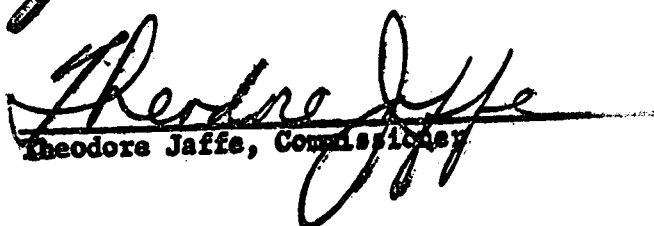
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The Commission certifies that HANNAH KOPLIN suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Forty-five Thousand Dollars (\$45,000.00) with interest thereon at 6% per annum from October 14, 1960 to the date of settlement.

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

MAY 5 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. 505(e) and (g), as amended (1970).)

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