

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

IN THE MATTER OF THE CLAIM OF

INTER AMERICAN INDUSTRIES, INC.
HENRY SANDKUHL

Claim No. CU-2496
Claim No. CU-2497

Decision No. CIJ-6183

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

Lloyd Frank
By David B. Manowitz, Esq.

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

Oral hearing held on September 16, 1971.

FINAL DECISION

By Proposed Decision issued on May 5, 1971 these claims were denied for failure of proof. Subsequently additional evidence was submitted and oral testimony and arguments were presented at a hearing held on September 16, 1971. Pursuant to counsel's request, the Commission granted claimant, HENRY SANDKUHL, additional time in which to present further evidence.

Upon consideration of the new evidence in the light of the entire record, the Commission now finds that certain portions of these claims should be allowed.

MILL

The record includes a report by Edward N. Cooper, Jr., a mining engineer, dated February 24, 1955 in which he recommends the purchase and installation of a No. 2 Wemco mill, and a copy of an invoice dated September 19, 1956 addressed to claimant, INTER AMERICAN INDUSTRIES, INC., reflecting the shipment of a No. 2 Wemco Mobil Mill and a purchase price of \$45,251.70. Based on all the evidence of record the Commission finds that claimant, INTER AMERICAN INDUSTRIES, INC., owned the mill subject of this claim, and in the

absence of evidence to the contrary, that it was taken by the Government of Cuba on November 17, 1959 pursuant to Cuban Law 617 relative to mining concessions.

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.

In addition to the aforementioned invoice for the No. 2 Wemco mill the record includes a list of INTER AMERICAN INDUSTRIES, INC.'s assets as of October 31, 1957 which lists the mill as \$49,177.30 and Mr. Cooper's estimate in his report that the cost of building a concrete foundation for the mill would be \$10,000.00. Based on all the evidence of record the Commission finds that the value of the mine including its installation was \$60,000.00, and that claimant, INTER AMERICAN INDUSTRIES, INC., suffered a loss in that amount within the meaning of the Act.

ORE RESERVES

The evidence of record establishes that in 1954 and 1955 INTER AMERICAN INDUSTRIES, INC. acquired a 66-2/3% lease interest in certain mining claims covered by the Catusus Syndicate Lease and subsequently in 1956 purchased a 27-1/2% ownership interest in these claims. The lease interest provides for a term of 2 years which may be extended for successive periods of 2 years each up to a total of 24 years. Based on the foregoing the Commission finds that INTER AMERICAN INDUSTRIES, INC. had the equivalent of a 94-1/6% ownership interest in these mines.

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Claimant, HENRY SANDKUHL, asserts that the reserves of ore in INTER AMERICAN INDUSTRIES, INC.'s lease and ownership interest in the mines comprise at least 100,000 tons of high grade manganese ore concentrate. In INTER AMERICAN INDUSTRIES, INC. annual report to the Securities and Exchange Commission for the fiscal year ended March 31, 1956 there is a reference that "Drilling results have given indications that there may be a three year supply of ore based on a production of 1,000 tons a month of concentrates" (Item 4(i) page 3). The record contains no reference to subsequent drilling tests or results.

On the basis of the evidence of record the Commission finds that INTER AMERICAN INDUSTRIES, INC.'s proven ore reserves were sufficient to produce 12,000 tons of manganese concentrate ore annually for 3 years, and that these ore reserves were also taken on November 17, 1959 pursuant to Cuban Law 617.

The record contains no evidence to establish the cost of extracting, milling and transporting the ore. In the aforementioned properties of May 17, 1955 it is set forth that INTER AMERICAN INDUSTRIES, INC. had a contract entered in to on February 2, 1955 to sell up to 6,000 tons of manganese of chemical grade to Holston Trading Company delivered to Santiago, Cuba at prices per unit varying from \$.50 per unit of 78% MnO₂ to \$.65 for 90% MnO₂, each unit representing 1% MnO₂ (page 17). On this basis it was estimated the average price per day ton would be \$48.14. On the basis of the entire record including information available to the Commission, the Commission finds that in this case INTER AMERICAN INDUSTRIES, INC. would have realized a net profit of \$5.00 per ton and that a discount rate of 8% per annum will be applied to determine the yearly valuations of the ore for the period 1960 to 1962 inclusive.

Accordingly, the Commission finds that the aggregate value of the ore on November 17, 1959, the date of loss was as follows:

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<u>Year</u>	<u>Gross Value</u>	<u>Discount Factor</u>	<u>Net Value</u>
1960	\$60,000.00	.925926	\$55,555.56
1961	60,000.00	.857339	51,440.34
1962	<u>60,000.00</u>	.793832	<u>47,629.92</u>
	\$180,000.00		\$154,625.82

Therefore, the aggregate value of the ore reserves was \$154,625.82 and the Commission finds that claimant, INTER AMERICAN INDUSTRIES, INC. suffered a loss in the amount of \$145,606.50 for their 94-1/6% interest therein.

ORE SHIPPED

In INTER AMERICAN INDUSTRIES, INC.'s annual report to the Securities and Exchange Commission for the fiscal year ended March 31, 1957 it is stated that the company started producing in March, 1957 and delivered 53.97 tons of manganese concentrate to the dock for that month; that the company had leased dock space sufficient to hold 5,000 tons of ore; and that ore was being extracted from Guadalupe, Napturo, and Luis Segundo. The INTER AMERICAN INDUSTRIES, INC. annual report to the SEC for fiscal year ended March 31, 1958 it is stated that production which had commenced in March, 1957 obtained a peak of about 300 tons a month. It further appears the company was paid about 50% on delivery to the dock and could not obtain the remaining 50% until 2,000 tons had been delivered and thus found itself with inadequate cash income to continue operation.

In view of the foregoing and in the absence of evidence to the contrary the Commission finds that INTER AMERICAN INDUSTRIES, INC. had shipped 1,200 tons of manganese concentrate to the dock. The Commission further finds that INTER AMERICAN INDUSTRIES, INC. had been paid 50% of the price for this ore by the purchasers, and that INTER AMERICAN INDUSTRIES, INC. suffered a loss of \$31,800 as a result of the taking of this ore by the Government of Cuba on November 17, 1959.

LEASES

The record establishes that INTER AMERICAN INDUSTRIES, INC. had acquired leases to 36 mining claims in 1954 and 1955. These were valued by the company at \$39,000.00 in their balance sheet as of October 31, 1957. As of that date it appears that only 6 of these claims had been explored. Based on all

the evidence of record the Commission finds that INTER AMERICAN INDUSTRIES, INC. suffered a loss of \$32,500.00 as a result of the actions of the Cuban Government on November 17, 1959 within the meaning of the Act.

EQUIPMENT AND OTHER MOVEABLE PERSONALTY

With regard to the portion of this claim based on the loss of moveable equipment consisting of jeeps, trucks, bulldozers and other equipment on which objection was entered, the Commission finds no basis for altering its Proposed Decision.

HARRY SANDKUHL

Based on the evidence of record the Commission finds that claimant, HARRY SANDKUHL, purchased a 5.8% interest in the 36 mines leased by INTER AMERICAN INDUSTRIES, INC. from two groups of Cuban owners at a purchase price of \$4,600.00 and concludes that he suffered a loss of \$4,600.00 as a result of the taking of this interest by the Government of Cuba on November 17, 1959.

RECAPITULATION

Claimants' losses are now summarized as follows, the date of all losses being November 17, 1959:

<u>Item</u>	<u>Inter American Industries, Inc.</u>	<u>Harry Sandkuhl</u>
Mill	\$ 60,000.00	
Ore Reserves	154,625.82	
Ore Shipped	31,800.00	
Leases	<u>32,500.00</u>	<u>\$4,600.00</u>
	\$278,925.82	\$4,600.00

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.

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

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CERTIFICATIONS OF LOSS

The Commission certifies that INTER AMERICAN INDUSTRIES, 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 Two Hundred Seventy-Eight Thousand Nine Hundred Twenty-Five Dollars and Eighty-Two Cents (\$278,925.82) with interest thereon at 6% per annum from November 17, 1959 to the date of settlement; and

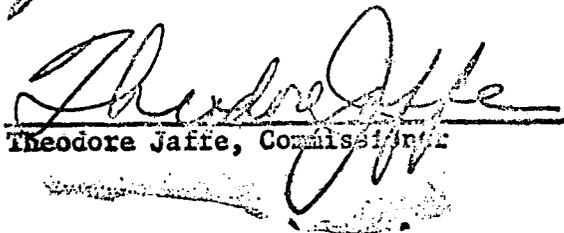
The Commission certifies that HENRY SANDKUHL suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Four Thousand Six Hundred Dollars (\$4,600.00) with interest thereon at 6% per annum from November 17, 1959 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

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Counsel for claimants:

Javits & Javits
By David B. Manowitz, Esq.

PROPOSED DECISION

These claims against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, were presented by INTER AMERICAN INDUSTRIES, INC. and HENRY SANDKUHL in the aggregate amount of \$2,510,000 and are based upon the asserted ownership and loss of leases and mining rights, and certain personalty. Claimant HENRY SANDKUHL has been a national 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.

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).)

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 claimant, INTER AMERICAN INDUSTRIES, INC. (IAI) was organized under the laws of Delaware. An officer of claimant IAI has certified that all of the corporate stock was owned by nationals of the United States in 1967. The Commission holds that IAI is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The claims are asserted as follows:

IAI: Interest in leases and mining rights	\$2,000,000.00
Buildings	150,000.00
Equipment and other personalty	<u>350,000.00</u>
Total	\$2,500,000.00
HENRY SANDKUHL: 6% interest in IAI and ownership of 2 copper mines	\$ 10,000.00

The record reflects that IAI was organized in 1954 to acquire, explore, mine and sell manganese ore from properties in Cuba.

It further appears that claimant, HENRY SANDKUHL, acquired the exploration and exploitation rights to certain mining claims from lessors who did not own the surface property. The record contains no evidence of the transfer of lease interests from HENRY SANDKUHL to IAI or of the acquisition of any ownership interest by either claimant. In this regard a prospectus of IAI dated

May 17, 1955 states that "None of the officers, directors or promoters owns, leases or has any interest in any properties in which the Company has any interest or which the Company has any present intention of acquiring."

Claimant, HENRY SANDKUHL, has also submitted a newspaper article which he was advised was published on February 12, 1959. The article refers to IAI's mine holdings having been shut down for 1-1/2 years during which the "manganese mining properties had been stripped of all moveable machinery including jeeps, small tools, bull dozers, surveying, drilling and welding equipment, trucks and tires, and even three quanset huts". It would therefore appear that all the movable assets of the mining operation were taken by insurgent forces prior to January 1, 1959, and therefore not within the purview of Title V of the Act. Claimants, however, assert that the claims arose in the latter part of 1959 or early part of 1960, but have submitted no evidence in support other than claimant HENRY SANDKUHL's affidavit which does not disclose the basis for his conclusion.

By Commission letter of January 7, 1969 the former counsel of claimants was advised of the additional evidence suggested to establish their claims, including evidence of ownership interests of each claimant and loss after January 1, 1959, the value of the property lost, and a more recent financial statement than the balance sheet of March 31, 1957 which was submitted. In addition the Commission offered to attempt to assist claimants to obtain evidence of their property interests, which offer was not accepted. There is no certainty that such evidence could now be obtained.

On February 20, 1970 claimant was informed through counsel that unless the suggested evidence was submitted by April 1, 1970 the Commission might proceed to determine the claims on the basis of the existing record. The Commission was thereafter advised of the substitution of the current counsel. On September 14, 1970 counsel was reminded that the suggested evidence had not been submitted and was granted 30 days to submit it. At counsel's request an extension until February 1, 1971 was granted. No evidence has since been received.

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In view of the foregoing the Commission finds that claimants have not met the burden of proof in that they have failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba subsequent to January 1, 1959. Thus, the Commission is constrained to deny these claims and they are hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claims.

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

MAY 5 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).)

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