

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

IN THE MATTER OF THE CLAIM OF

NICARO NICKEL COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2624

Decision No. CU-6247

Counsel for claimant:

Kay, Scholer, Fierman, Hays
& Handler
By Fred N. Fishman, Esq.

Appeal and objections from a Proposed Decision entered on June 30, 1971; oral hearing requested.

Oral hearing held on September 16, 1971.

FINAL DECISION

Under date of June 30, 1971, the Commission issued its Proposed Decision certifying a loss in favor of claimant in the amount of \$22,494,708.62 plus interest. The Certification of Loss covered certain mining concessions in Cuba in the amount of \$22,297,708.62, and other appurtenant property in the amount of \$197,000.00. In determining the value of claimant's mining concessions, the Commission allowed only the established amount of proven ore, and portions of the claim for probable ore and possible ore were denied. The value of the proven ore was determined by the application of a 12% annual discount rate to the yearly valuations of the ore for the period 1961 to 1979 to arrive at the aggregate value of the proven ore on October 24, 1960, the date of loss.

Claimant objected to the denial of the claim for probable ore and possible ore, and to the use of a 12% annual discount rate. In support of the objections, claimant submitted a report of August 1971 from Behre Dolbear & Company, Inc., a firm of mining, geological and metallurgical consultants, which contains the conclusion that an 8% annual discount rate should be applied to determine

the values of the proven ore, probable ore and possible ore. An oral hearing was requested which was held on September 16, 1971.

At the oral hearing, Richard V. Colligan, Vice President of claimant, testified as an expert geologist with many years of experience in Cuban mining operations. Counsel offered in evidence an affidavit of September 16, 1971 from William R. Thurston, geologist, concerning the value of claimant's ore in Cuba, and presented oral argument on behalf of claimant. Mr. Colligan testified that actual experience in exploiting claimant's mining concessions in Cuba showed that earlier estimates of proven ore were substantially less than actually found; that it developed that much of what was considered probable ore was found to be proven; and that much of what was considered possible ore was found to be probable.

Upon consideration of the evidence presented at the oral hearing in light of the entire record, the Commission now finds that claimant's proven ore, probable ore and possible ore, as shown by the evidence, should be allowed, and that the values thereof on the date of loss should be determined by the application of annual discount rates of 8%, 12% and 15%, respectively. Accordingly, the Commission finds that the aggregate values of claimant's ores in Cuba on October 24, 1960 were as follows:

<u>Year</u>	<u>Gross Value</u>	<u>Discount Factor</u>	<u>Net Value</u>
		<u>Proven Ore</u>	
1961	\$2,317,900.00	.925926	\$2,146,204.00
1962	2,385,500.00	.857339	2,045,182.00
1963	2,358,200.00	.793832	1,872,015.00
1964	2,358,200.00	.735030	1,733,348.00
1965	2,358,200.00	.680583	1,604,951.00
1966	2,394,600.00	.630170	1,509,005.00
1967	2,576,600.00	.583490	1,503,420.00
1968	4,162,200.00	.540269	2,248,708.00
1969	4,162,200.00	.500249	2,082,136.00
1970	4,162,200.00	.463193	1,927,902.00
1971	4,162,200.00	.428883	1,785,097.00
1972	4,162,200.00	.397114	1,652,868.00
1973	4,162,200.00	.367698	1,530,433.00
1974	4,162,200.00	.340461	1,417,067.00
1975	4,162,200.00	.315242	1,312,100.00
1976	4,162,200.00	.291890	1,214,905.00
1977	4,162,200.00	.270269	1,124,914.00
1978	4,162,200.00	.250249	1,041,586.00
1979	<u>2,180,200.00</u>	.231712	<u>505,179.00</u>
Totals	<u>\$64,713,600.00</u>		<u>\$30,257,020.00</u>

<u>Year</u>	<u>Gross Value</u>	<u>Discount Factor</u>	<u>Net Value</u>
<u>Probable Ore</u>			
1979	\$2,071,000.00	.116107	\$240,457.60
1980	4,039,100.00	.103667	418,721.38
1981	4,039,100.00	.092560	373,859.10
1982	4,039,100.00	.082643	333,803.34
1983	4,039,100.00	.073788	298,037.11
1984	<u>4,039,100.00</u>	.065882	<u>266,103.99</u>
Totals	<u>\$23,816,500.00</u>		<u>\$1,930,982.52</u>
<u>Possible Ore</u>			
1985	\$4,055,100.00	.030378	\$123,185.83
1986	4,055,100.00	.026415	107,115.47
1987	4,055,100.00	.022970	93,145.65
1988	4,055,100.00	.019974	80,996.57
1989	4,055,100.00	.017369	70,443.03
1990	4,055,100.00	.015103	61,244.18
1991	4,055,100.00	.013133	53,255.63
1992	<u>3,475,800.00</u>	.011420	<u>39,693.64</u>
Totals	<u>\$31,816,500.00</u>		<u>\$629,080.00</u>

Therefore, the aggregate value of claimant's ore was \$32,817,082.52, and the total losses sustained by claimant amounted to \$33,014,082.52.

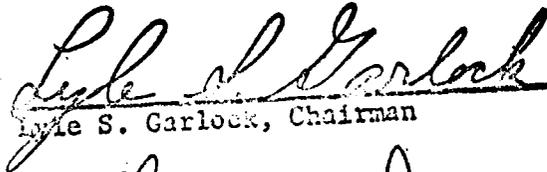
Accordingly, the Certification of Loss in the Proposed Decision of June 30, 1971 is set aside and the following Certification of Loss will be entered, and in all other respects the Proposed Decision as amended herein is affirmed.

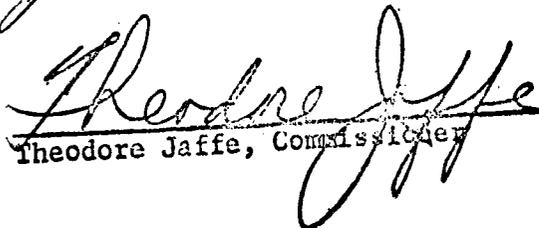
CERTIFICATION OF LOSS

The Commission certifies that NICARO NICKEL COMPANY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the Internatinal Claims Settlement Act of 1949, as amended, in the amount of Thirty-Three Million Fourteen Thousand Eighty-Two Dollars and Fifty-Two Cents (\$33,014,082.52) with interest at 6% per annum from October 24, 1960 to the date of settlement.

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

SEP 28 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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

IN THE MATTER OF THE CLAIM OF

NICARO NICKEL COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 2624

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Counsel for claimant:

Kay, Scholer, Fierman, Hays & Handler
By Fred N. Fishman, 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 \$42,600,000.00, was presented by NICARO NICKEL COMPANY based upon the asserted loss of certain mining concessions and other assets 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 claimant was organized under the laws of Delaware and that at all pertinent times another Delaware corporation, the Freeport Sulphur Company, now known as Freeport Minerals Company, owned all of claimant's outstanding capital stock. Claimant's Secretary has certified under date of April 24, 1967 that for the period November 16, 1959 to February 15, 1967 over 98.5% of Freeport's outstanding capital stock was owned by residents of the United States and its possessions. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act. (See Claim of Freeport Sulphur Company, Claim No. CU-2625.)

Claimant has submitted the affidavit of April 24, 1967 from Richard V. Colligan, its Vice President, in which some pertinent background information is included. As a result of a two-year research program, claimant developed an improved process for the commercial exploitation of nickeliferous ores in Cuba. The United States Government became interested in claimant's activities. Pursuant to agreements in 1942, the United States Government invested in preferred stock issued by claimant, which was redeemed in full in 1954 leaving Freeport as the sole owner of all of claimant's outstanding capital stock. The United States Government had acquired certain nickel deposits in Moa Bay, Cuba through ownership of Cuban Nickel Company, S.A., a Cuban corporation, which deposits are not the subject of this claim. (See Claims of United States of America, Claim Nos. CU-2522 and CU-2618, 1967 FCSC Ann. Rep. 50.)

Mining Concessions

The evidence establishes and the Commission finds that pursuant to
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deeds executed in 1940 and other instruments dated 1954 and 1958, claimant acquired mining concessions in Oriente Province, Cuba (Appendices E, F, G, H, I, J and K). Under an agreement of July 2, 1948, which incorporates an earlier one of March 12, 1942, between the United States Government and claimant (Appendix A), the United States Government acquired the right to take ore from claimant's ore properties for a period of twenty years commencing on March 11, 1948 in exchange for a certain expressed consideration. The United States Government purchased ore from claimant from 1952 to 1960.

On October 24, 1960, the Cuban Government published in its Official Gazette Resolution No. 3 pursuant to Law 851, which listed as nationalized NICARO NICKEL COMPANY (Appendix B). The Commission therefore finds that claimant's mining concessions were nationalized by the Government of Cuba on October 24, 1960.

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.

Claimant asserts that the minimum value of its mining concessions on the date of loss was \$42,082,362.00 (Appendix D). In its initial submission, claimant relied upon the affidavit of April 24, 1967 from its Vice President, Richard V. Colligan, a professional geologist who had participated in drilling programs and evaluation studies of claimant's mining concessions. Pursuant to his calculations, claimant's reserves included the following as of June 1960:

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<u>Type of Reserve</u>	<u>Short Dry Tons</u>	<u>% Nickel</u>
Proven	33,336,500	1.402
Probable	11,500,000	1.465
Possible	16,500,000	1.366

Mr. Colligan states that the Nicaro plant in Cuba had an annual capacity of 2,100,000 tons of ore; and that the United States Government's ore reserves in Cuba were sufficient to supply only 800,000 tons per year. Therefore, affiant computed this portion of the claim based upon annual sales of 1,300,000 tons of ore to the United States Government from 1961 to 1968 pursuant to the said agreements (Appendix A), and annual sales of 2,100,000 tons thereafter until 1992 when claimant's reserves of all types assertedly would be exhausted (Appendix D).

In response to Commission suggestions, claimant made a further submission under date of May 27, 1971. That submission includes another affidavit from Mr. Colligan; a copy of a memorandum of June 21, 1960 to Mr. Colligan together with attached copies of schedules showing the amounts of proven and probable reserves on the basis of a 1955 report; a copy of an unsigned statement of October 31, 1955 showing the proven, probable and possible reserves; and copies of excerpts from two publications. Mr. Colligan states that the October 31, 1955 report was prepared by Forbes Wilson, now a Vice President of Freeport.

Concerning the distinctions between proven, probable and possible reserves, claimant submitted copy of an excerpt from "Examination and

valuation of Mineral Property" by Baxter and Parks, pages 115-116

(4th ed. 1957) as follows:

C.K. Leith,¹ in preparing estimates of iron ore reserves, has defined terms used to designate respective classes of ore as follows:

" 'Assured' ore is defined to cover principally the ore blocked out in three dimensions by actual underground mining operations and drill holes, where the geological factors which limit the orebody are definitely known and where the chance of failure of the ore to reach these limits is so remote as not to be a factor in the practical planning of mine operations.

" 'Prospective' ore covers further extensions near at hand, where the conditions are such that ore will almost certainly be found but where the extent and limiting conditions cannot be so precisely defined.

"Ore is classed as 'possible' where the relation of the land to adjacent orebodies and to geological structures warrants the presumption that ore will be found but where the lack of exploration and development data precludes anything like certainty of its actual location or extent."

The U.S. Bureau of Mines and the U.S. Geological Survey, in recent estimates of mineral reserves, have agreed upon and defined² the following terms to signify relative dependability of information:

" 'Measured ore' is ore for which tonnage is computed from dimensions revealed in outcrops, trenches, workings, and drill holes and for which the grade is computed from the results of detailed sampling. The sites for inspection, sampling, and measurement are so closely spaced and the geological character is so well defined that the size, shape, and mineral content are well established. The computed tonnage and grade are judged to be accurate within limits which are stated, and no such limit is judged to differ from the computed tonnage or grade by more than 20 per cent.

" 'Indicated ore' is ore for which tonnage and grade are computed partly from specific measurements, samples, or production data and partly from projection for a reasonable distance on geologic evidence. The sites available for inspection, measurement, and sampling are too widely or otherwise inappropriately spaced to outline the ore completely or to establish its grade throughout.

" 'Inferred ore' is ore for which quantitative estimates are based largely on broad knowledge of the geologic character of the deposit and for which there are few, if any, samples or measurements. The estimates are based on an assumed continuity or repetition for which there is geologic evidence; this evidence may include comparison with deposits of similar type. Bodies that are completely concealed may be included if there is specific geologic evidence of their presence. Estimates of inferred ore should include a statement of the special limits within which the inferred ore may lie."

¹ Prospectus, The Cleveland-Cliffs Iron Co., Dec. 10, 1935, Lehman Bros., Field, Glore & Co., Hayden, Stone & Co., p. 9.

² "Investigation of National Resources," Subcommittee Hearings, U.S. Senate Committee on Public Lands, May 15-20, 1947; pp. 119-20.

The record includes a copy of a report of October 21, 1952 made to the United States Government by a firm of Metallurgists and Chemical Engineers concerning the amount and grade of nickeliferous reserves in Nicaro mines and the neighboring area of Moa Bay, Cuba, in which the United States Government was interested. In discussing the proven, probable and inferred or possible reserves, the report states: "The figures for probable and inferred reserves are little more than educated guesses. Similarly the grade of the reserves is mostly unknown."

The Commission has had occasion to consider other claims based on mining concessions in Moa Bay, Cuba. In those cases, the Commission allowed only the "measured" or "proven ore" reserves. (See Claims of Moa Bay Mining Company and Cuban American Nickel Company, Claim Nos. CU-2619 and CU-2573.)

Upon consideration of the entire record, the Commission finds no valid reason for allowing any amount on account of the asserted probable and possible ore reserves. Accordingly, the portion of the claim based upon probable and possible ore reserves is denied.

The Commission finds that on October 24, 1960, the date of loss, claimant's proven ore aggregated 33,300,000 tons. The value thereof must therefore be determined.

The record shows that pursuant to express provisions in contracts to which the United States Government was a party, the United States Government was to bear the expenses of mining, refining and related operations, as well as capital expenses for the term of the contracts, ending on March 10, 1968 (Appendix A). In addition, the contracts set forth the amounts the United States Government was required to pay claimant for the ore, which were the market prices of refined nickel F.O.B. Pittsburgh, Pennsylvania, as determined by the United States Government.

Accordingly, claimant has computed its loss with respect to the proven ore reserves on the basis of the contracts. As already noted, claimant's computations cover 1,300,000 tons of ore for the years 1961 through 1967, when the United States Government's supply would have been exhausted, and 2,100,000 tons per year thereafter, representing the annual capacity of

claimant's plant. Applying the market prices in effect during the years in question, claimant's computations show the following (Appendix D):

<u>Year</u>	<u>Tons of Proven Ore</u>	<u>Value Per Ton</u>	<u>Amount</u>
1961	1,300,000	\$1.783	\$ 2,317,900.00
1962	1,300,000	1.835	2,385,500.00
1963	1,300,000	1.814	2,358,200.00
1964	1,300,000	1.814	2,358,200.00
1965	1,300,000	1.814	2,358,200.00
1966	1,300,000	1.842	2,394,600.00
1967	1,300,000	1.982	2,576,600.00
1968	2,100,000	1.982	4,162,200.00
1969	2,100,000	1.982	4,162,200.00
1970	2,100,000	1.982	4,162,200.00
1971	2,100,000	1.982	4,162,200.00
1972	2,100,000	1.982	4,162,200.00
1973	2,100,000	1.982	4,162,200.00
1974	2,100,000	1.982	4,162,200.00
1975	2,100,000	1.982	4,162,200.00
1976	2,100,000	1.982	4,162,200.00
1977	2,100,000	1.982	4,162,200.00
1978	2,100,000	1.982	4,162,200.00
1979	<u>1,100,000</u>	1.982	<u>2,180,200.00</u>
Total	<u>33,300,000</u>		<u>\$64,713,600.00</u>

The Commission noted that for the entire period of claimant's computations ending in 1979, no amounts were deducted for mining, refining and related expenses, although the contracts with the United States Government were to end early in 1968. Therefore, the Commission inquired concerning the period following the termination of the contracts. Claimant's response was in the form of an affidavit from its Vice President, Richard V. Colligan.

That affiant states that in view of the increased value of nickel, the likely result was "that claimant would sell its ore for use in the Nicaro plant on at least as favorable a basis as provided in the Ore Contract." On this basis, claimant states that it is justified in computing the value of its ore without deducting any amounts for mining, refining and related expenses.

It is noted that the contracts with the United States Government provided that the price of the refined nickel was to be \$0.025 per pound, plus \$.0008 for each \$0.01 increase in market price, as determined by the United States Government, over \$0.30 per pound delivered at Pittsburgh, Pennsylvania, or minus that amount if there were a decrease in the market

price. Claimant has submitted evidence tending to show that the market prices for refined nickel at Pittsburgh, Pennsylvania were approximately as follows: \$0.74 per pound from January 1, 1961 to June 30, 1961; \$0.82 per pound from July 1, 1961 to May 23, 1962; \$0.79 per pound from May 24, 1962 to October 31, 1966; and \$0.87 per pound as of November 1, 1966. It further appears that the market price of refined nickel rose after November 1, 1966. Claimant has computed its claim for the period 1968 to 1979 on the basis of the prices in effect as of November 1, 1966.

The said report of October 21, 1952 to the United States Government also sets forth estimated operating costs as of 1952 for the Nicaro plant. Upon consideration thereof in the light of the entire record, the Commission finds that the prices per pound of refined nickel, as computed by claimant, are fair and reasonable. The sole remaining question insofar as the value of claimant's proven ore reserve is concerned is the discount rate applied by claimant to arrive at the value of its ore on the date of loss.

Claimant's Appendix D indicates that it has applied a 6% per annum discount rate for proven ore, a 10% rate for probable ore and a 15% rate for possible ore. The results of claimant's computations are not shown separately for each type of ore but are lumped together. In response to the Commission's inquiries concerning the discount rate, an affidavit of May 27, 1971 was submitted from claimant's Vice President. Therein he states that he applied the said discount rates on the basis of the risks involved. Therefore, the proven ore valuation was subjected to the lowest discount rate and the possible ore valuation was subjected to the highest rate.

The affidavit was supported by a copy of another excerpt from "Examination and Valuation of Mineral Property", supra at 447-465. That publication discusses the valuations of mines in Michigan and states that the "generally accepted figure for interest on capital in a nonspeculative industry is six per cent . . . The Tax Commission adopted the six per cent rate for both the interest on the investment and the return of the capital." Referring to the suggested six per cent rate, the authors state: "This

is the procedure under ideal conditions; but in nearly every valuation one or more factors have to be adjusted in view of such expected future conditions as probably will differ from the past five-year record."

There can be no doubt that conditions in the mining industry in Cuba were not ideal. It is equally true that they cannot be compared with those prevailing in the state of Michigan for the purpose of this decision. The Commission therefore holds that claimant's suggested discount rate of 6% per annum is inappropriate. In the Claims of Moa Bay Mining Company, et al., supra, the Commission held that the proper discount rate to apply to mining concessions in Cuba in order to arrive at the value of future amounts on the date of loss was 12% per annum.

Accordingly, the Commission finds that the valuation most appropriate in this case and equitable to the claimant is the result obtained from applying a discount rate of 12% per annum to the yearly valuations of the ore for the period 1961 to 1979, as shown in Appendix D and set forth above. Upon applying that discount rate to the foregoing valuations, the Commission finds that claimant's proven ore had the following aggregate valuation on October 24, 1960, the date of loss:

<u>Year</u>	<u>Gross Value</u>	<u>Net Value</u>
1961	\$ 2,317,900.00	\$ 2,069,553.24
1962	2,385,500.00	1,901,706.29
1963	2,358,200.00	1,678,519.60
1964	2,358,200.00	1,498,678.55
1965	2,358,200.00	1,338,106.35
1966	2,394,600.00	1,213,178.59
1967	2,576,600.00	1,165,522.43
1968	4,162,200.00	1,681,041.82
1969	4,162,200.00	1,500,930.94
1970	4,162,200.00	1,340,116.02
1971	4,162,200.00	1,196,532.61
1972	4,162,200.00	1,068,332.69
1973	4,162,200.00	953,868.02
1974	4,162,200.00	851,669.36
1975	4,162,200.00	760,417.29
1976	4,162,200.00	678,946.39
1977	4,162,200.00	606,199.46
1978	4,162,200.00	541,252.49
1979	<u>2,180,200.00</u>	<u>253,136.48</u>
Totals	<u>\$64,713,600.00</u>	<u>\$22,297,708.62</u>

Other Assets

On the basis of the evidence of record, the Commission finds that claimant owned property, discussed further below, which was appurtenant to its mining operations in Cuba. The Commission further finds that all such property was taken by the Government of Cuba on October 24, 1960 when claimant's mining concessions were taken.

In the opinion of claimant's Vice President, the overall value of claimant's mining concessions and other assets in Cuba was in excess of \$42,600,000.00, of which \$42,082,362.00 represents the asserted value of the mining concessions, and \$518,000, generally represented the other assets.

Claimant asserts that the value of \$518,000.00 included surface rights and timber which claimant had purchased in 1940 and 1956 at a cost of \$321,000.00; and furniture and fixtures, drilling and other equipment and vehicles at the Nicaro plant and in Santiago and Havana, Cuba, as well as a residence, warehouse and office buildings at the Nicaro plant, valued at \$197,000. Claimant states that in addition to its investment the values of all these properties must be measured in terms of years of research and efforts to develop the mining properties.

As indicated above, the record shows that claimant had developed an improved process for the commercial exploitation of nickeliferous ores in Cuba. In that program alone, claimant expended two years in research, which undoubtedly required a substantial investment of money. Claimant's program was successful, and the new process inured to the benefit of the United States Government. The Nicaro plant continued to function until nationalization by Cuba on October 24, 1960.

On that date, claimant's organization in Cuba included appropriate real and personal property in order to extract and process the ores. Claimant states that it is unable to supply a complete inventory of each item because many of its records were left in Cuba. However, claimant's books and records disclose that its investments in tangible real and personal property at the Nicaro plant aggregated \$197,000.00.

On the basis of the evidence of record, the Commission finds that

claimant owned certain items of real and personal property at its Nicaro plant in Cuba which had a value of \$197,000.00 on October 24, 1960, the date of loss.

Claimant also asserts the loss of its investment in obtaining the concessions and surface rights, including timber. While it appears from the evidence of record (Appendix J) that claimant had acquired hardwood trees in 1940, there is no evidence to establish that any such trees existed twenty years later on the date of loss, or the value thereof if such trees did exist. No amounts are being allowed for claimant's investments in the mining concessions or surface rights valued by claimant at \$321,000 because it is considered that they are not established beyond being covered by the allowance herein for the value of the ore and other investments.

Upon consideration of the entire record, the Commission finds that claimant's valuation of its other physical assets in Cuba is fair and reasonable. Accordingly, the Commission finds that the aggregate value of claimant's physical plant at Nicaro on October 24, 1960, the date of loss, was \$197,000.00 as aforesaid.

Claimant has stated that the extent of its investment in the properties herein must not be measured in terms of acquisition costs, but "in terms of the years of research and effort of an experienced and competent organization to develop an extremely valuable mining property." While the Commission recognizes that claimant did engage in research with respect to the mines in Cuba, the record contains insufficient evidence and information which could be used to determine the value thereof.

The Commission finds that claimant has failed to sustain the burden of proof with respect to this portion of the claim. Accordingly, this portion of the claim is denied.

Claimant's losses on October 24, 1960 are summarized as follows:

<u>Item of Property</u>	<u>Amount</u>
Mining Concessions	\$22,297,708.62
Other Assets	<u>197,000.00</u>
Total	<u>\$22,494,708.62</u>

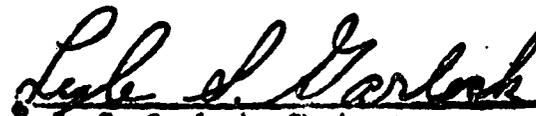
The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim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

CERTIFICATION OF LOSS

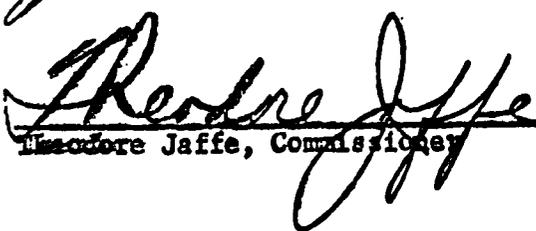
The Commission certifies that NICARO NICKEL COMPANY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Twenty-Two Million Four Hundred Ninety-Four Thousand Seven Hundred Eight Dollars and Sixty-Two Cents (\$22,494,708.62) with interest at 6% per annum from October 24, 1960 to the date of settlement.

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

JUN 30 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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