

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

IN THE MATTER OF THE CLAIM OF

JOSEPH R. JULIA, JR., BETTY I. JULIA,
JOSEPH R. JULIA, SR., LUISA JULIA,
OSCAR BERNSTIEN, REBECCA BERNSTIEN,
PAUL O'DWYER, KATHLEEN O'DWYER;
CHARLES F. PREUSSE, MARTHA J. F. PREUSSE,
CHARLES E. RICHTER, and HELEN RICHTER

Claim No. CU -2795

Decision No. CU -6155

**Under the International Claims Settlement
Act of 1949, as amended**

Appeal and objections from a Proposed Decision entered April 7, 1971.
Oral hearing requested and held July 7, 1971.

FINAL DECISION

The Commission issued its Proposed Decision on this claim filed by JOSEPH R. JULIA, JR., JOSEPH R. JULIA, SR., OSCAR BERNSTEIN, PAUL O'DWYER, CHARLES F. PREUSSE and CHARLES E. RICHTER, on April 7, 1971, denying the same for the reason that the evidence did not support claimants' contentions that the mining concessions subject of this claim contained minerals capable of producing over a 12-1/2 year period 200 tons of ore per day with a grade per ton of 3% copper and \$5.00 in gold and silver, and for the further reason that the evidence did not establish that it was commercially feasible and profitable to extract and sell the minerals of the mines. The Commission therefore concluded that claimants had failed to prove that the mining concessions had any value on the asserted date of loss.

Claimants filed objections, submitted additional evidence, and requested an oral hearing which was held on July 7, 1971. At the hearing claimant JOSEPH R. JULIA, JR., gave testimony as to the asserted value of the mines, as to the reasons why the mines were not operated during the last years prior to their taking by the Cuban Government, and as to the income producing capacity of the mines under normal circumstances, not disturbed by revolutionary movements in the area.

The record shows that all claimants were nationals of the United States at all pertinent times.

Based upon the testimony of JOSEPH R. JULIA, JR. and the entire record, the Commission now finds that JOSEPH R. JULIA, JR. acquired a long term lease on 19 mining concessions for the exploration and exploitation of copper ore, known as the Bayamo group; that he assigned an interest of 5% each in the mining property to JOSEPH R. JULIA, SR., OSCAR BERNSTIEN, PAUL O'DWYER, CHARLES F. PREUSSE and CHARLES E. RICHTER as compensation for their legal and financial assistance in the development of the mines; and that these concessions were subject to Law 635 of November 23, 1959 which effectively cancelled all mining concessions for the exploitation of ore in Cuba, regardless of their status. (See Claim of Felix Heyman, Claim No. CU-0412, 1968 FCSC Ann. Rep. 51.)

The Commission further finds that according to the community property law of Cuba properties acquired by one or both spouses during their marriage from funds of the marriage partnership, or by the industry, salary or work of either of the spouses, and the fruits thereof, belong in equal parts to both spouses. (See Claim of Robert L. Cheaney and Marjorie L. Cheaney, Claim No. CU-0915.) The Commission has therefore added claimants' spouses as claimants, BETTY I. JULIA, LUISA JULIA, REBECCA BERNSTIEN, KATHLEEN O'DWYER, MARTHA J. F. PREUSSE and HELEN RICHTER, all nationals of the United States at the time of the loss.

The record shows that Edward N. Cooper, a mining engineer, upon examination of the mines in 1952, in a report dated March 8, 1952 stated, among other things, that two veins in Mines San Pedro 2 and San Pedro 4 contained 700,000 cubic feet of medium grade copper ore. This is equivalent to 42,000 tons of extracted copper ore.

In a subsequent report dated May 13, 1959, Edward N. Cooper estimated the potential average profit for one ton of extracted ore at \$13.13, considering, however, that the ore would be processed in a copper ore concentrating plant on the spot and that such concentrating plant will be constructed and owned by the holders of the mining concessions. Since claimants have never

constructed such concentrating plant, it is fair to assume that the profit on one ton of extracted ore would be less than \$13.13. The Commission has considered this matter in the light of the report of Edward N. Cooper who mentions the cost of concentrating the ore, and finds that the average value of one ton of ore shipped from the mine during the years preceding the loss was \$10.50 and that the value of the entire proven ore reserves was therefore \$441,000.00.

Claimant JOSEPH R. JULIA, JR., testified at the hearing that he had an offer for the mining concessions in the amount of \$500,000; but no evidence was submitted to show that this was a firm offer binding on the offeror. In the absence of such evidence, this offer cannot be considered here.

The Commission holds that no valuation can be placed on unproven reserves because the quantity is totally conjectural and speculative.

With respect to cost and expenses, listed by the claimants as investments (legal fees, paid royalties, taxes, surveying expense, traveling and miscellaneous costs), the Commission holds that these investments are, in fact, part of the cost of acquisition of the mining concessions and cannot be classified separately as a loss resulting from action of the Government of Cuba, inasmuch as they did not increase the value of the minerals in the mines.

With respect to the claim for future and prospective profits, the Commission has consistently held that such profits are not recognized by international law and are not within the scope of Title V of the Act. (See Claim of Metro-Goldwyn-Mayer, Inc., Claim No. CU-2225.)

The loss of \$441,000.00 is apportioned among the claimants commensurate to their proprietary interests in the mining concessions, as follows:

JOSEPH R. JULIA, JR.	(37-1/2%)	\$ 165,375.00
BETTY I. JULIA	(37-1/2%)	165,375.00
JOSEPH R. JULIA, SR.	(2-1/2%)	11,025.00
LUISA JULIA	(2-1/2%)	11,025.00
OSCAR BERNSTIEN	(2-1/2%)	11,025.00
REBECCA BERNSTIEN	(2-1/2%)	11,025.00
PAUL O'DWYER	(2-1/2%)	11,025.00
KATHLEEN O'DWYER	(2-1/2%)	11,025.00
CHARLES F. PREUSSE	(2-1/2%)	11,025.00
MARTHA J. F. PREUSSE	(2-1/2%)	11,025.00
CHARLES E. RICHTER	(2-1/2%)	11,025.00
HELEN RICHTER	(2-1/2%)	11,025.00
Total		\$ 441,000.00

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

In view of the foregoing, the following certifications of loss are entered, and in all other respects the Proposed Decision as amended herein is affirmed.

CERTIFICATIONS OF LOSS

The Commission certifies that JOSEPH R. JULIA, JR. 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 Hundred Sixty-five Thousand Three Hundred Seventy-five Dollars (\$165,375.00) with interest thereon at 6% per annum from November 23, 1959 to the date of settlement;

The Commission certifies that BETTY I. JULIA 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 Hundred Sixty-five Thousand Three Hundred Seventy-five Dollars (\$165,375.00) with interest thereon at 6% per annum from November 23, 1959 to the date of settlement;

The Commission certifies that JOSEPH R. JULIA, SR., 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 Eleven Thousand Twenty-five Dollars (\$11,025.00) with interest thereon at 6% per annum from November 23, 1959 to the date of settlement;

The Commission certifies that LUISA JULIA 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 Eleven Thousand Twenty-five Dollars (\$11,025.00) with interest thereon at 6% per annum from November 23, 1959 to the date of settlement;

The Commission certifies that OSCAR BERNSTIEN 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 Eleven Thousand Twenty-five Dollars (\$11,025.00) with interest thereon at 6% per annum from November 23, 1959 to the date of settlement;

The Commission certifies that REBECCA BERNSTIEN 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 Eleven Thousand Twenty-five Dollars (\$11,025.00) with interest thereon at 6% per annum from November 23, 1959 to the date of settlement;

The Commission certifies that PAUL O'DWYER 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 Eleven Thousand Twenty-five Dollars (\$11,025.00) with interest thereon at 6% per annum from November 23, 1959 to the date of settlement;

The Commission certifies that KATHLEEN O'DWYER 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 Eleven Thousand Twenty-five Dollars (\$11,025.00) with interest thereon at 6% per annum from November 23, 1959 to the date of settlement;

The Commission certifies that CHARLES F. PREUSSE 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 Eleven Thousand Twenty-five Dollars (\$11,025.00) with interest thereon at 6% per annum from November 23, 1959 to the date of settlement;


The Commission certifies that MARTHA J. F. PREUSSE 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 Eleven Thousand Twenty-five Dollars (\$11,025.00) with interest thereon at 6% per annum from November 23, 1959 to the date of settlement;

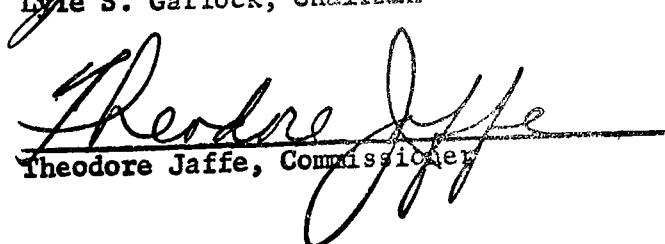
The Commission certifies that CHARLES E. RICHTER suffered a loss as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Eleven Thousand Twenty-five Dollars (\$11,025.00) with interest thereon at 6% per annum from November 23, 1959 to the date of settlement; and

The Commission certifies that HELEN RICHTER 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 Eleven Thousand Twenty-five Dollars (\$11,025.00) with interest thereon at 6% per annum from November 23, 1959 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

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.

CU-2795

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

IN THE MATTER OF THE CLAIM OF

JOSEPH R. JULIA, JR.
PAUL O'DWYER
OSCAR BERNSTEIN
CHARLES F. PREUSSE
JOSEPH R. JULIA, SR.
and
CHARLES E. RICHTER

Claim No. CU-2795

**Decision No. CU
6155**

**Under the International Claims Settlement
Act of 1949, as amended**

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 amended amount of \$7,424,000.00, was presented by JOSEPH R. JULIA, JR., and the other claimants subsequently filed as parties in interest. The claim is based upon the asserted loss of interests in 19 mining concessions in Cuba. Claimants state that they have been nationals of the United States at all pertinent times. It further appears from claimants' communication of March 10, 1971 that their wives may have interests in the claim pursuant to the community property laws of Cuba, and may wish to request leave to join the claim. However, in view of the findings herein, the Commission deems it unnecessary to further consider that aspect of the matter.

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 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

It is asserted that JOSEPH R. JULIA, JR. owned 19 mining concessions in Bayamo, Oriente Province, Cuba. In an affidavit of February 11, 1971, PAUL O'DWYER states that he, OSCAR BERNSTEIN and CHARLES F. PREUSSE acted as counsel for Mr. JULIA, JR. in connection with a mining venture in Cuba, as a result of which each of them acquired a 5% interest in the venture. CHARLES E. RICHTER states in an undated affidavit that his compensation for assisting Mr. JULIA, JR. in financing and developing various mines in Cuba was 5% of the claim.

Mr. JULIA, JR. states that his father, Mr. JULIA, SR., also owns a 5% interest in the claim. An affidavit of March 11, 1971 from Mr. JULIA, SR. indicates that he caused certain of his relatives, presently outside the United States, to loan over \$60,000.00 to Mr. JULIA, JR. to carry on his mining venture in Cuba; and that from 1948 to 1960 Mr. JULIA, SR. contributed over \$1,000.00 a year toward the support of his son's wife and daughter while Mr. JULIA, JR. worked on his mining venture.

Claimants state that the 19 mining concessions contained copper, gold and silver ores that had a value of \$7,424,000.00. They further assert that their leasehold also had value which should be taken into consideration.

The record shows that by document No. 59 of December 19, 1947, one Antonio Reyes Hechavarria acquired a lease on the mines in question, situated in Bayamo, Oriente Province, Cuba. The duration of the lease was two years with extensions every two years at the option of the lessee for a total period not exceeding 100 years. The lessee was required to pay certain royalties based upon any recoverable minerals extracted from the mines. Pursuant to an amendment to the lease by document No. 30 of June 19, 1950, the lease provided for a minimum royalty of \$2,500.00 per year.

By document No. 45 of December 19, 1952, the lease was assigned to Mr. JULIA, JR. The consideration for the assignment to Mr. JULIA, JR. was a certain royalty based upon the extraction of minerals from the mines.

The evidence includes a report of September 1948 from Antonio Calvache, a mining engineer. The engineer stated that he did not consider himself in a position to be able to classify in a categorical manner the type of mineral formation, which was the object of the study, because he had inspected only a small area of the land in question. He indicated the probability that minerals were present in the land, but suggested the exploitation of the four veins already investigated, works of investigation and preparation of works in depth to proceed simultaneously as mineral was mined from the area.

The record also includes a report of May 13, 1959 from another mining engineer, Edward N. Cooper, Jr. That report indicates that it was based upon an estimate by Mr. JULIA, JR. that the mines would produce 200 tons of ore per day, relying upon certain preliminary work that pointed to a grade per ton of 3% copper and \$5.00 in gold and silver. However, Mr. Cooper cautioned that before the investment of placing plant and mill would be justified, a proved tonnage of about this grade of some 500,000 tons appeared necessary. For this purchase, it was estimated that about \$500,000.00 would be required.

It appears that Mr. JULIA, JR. had requested a loan of \$500,000.00 from the National Bank of Cuba by letter of July 20, 1959. The record

shows that a similar loan had been requested by Mr. JULIA, JR. in 1953. In response to Commission inquiries concerning this matter, Mr. JULIA, JR. stated in his letter of March 10, 1971 that the bank authorities laid down certain prerequisites in order to obtain the loan. One of the conditions with which compliance was possible was the "cubication of 50,000 tons." Another condition required a payment of 1/8 of 1% monthly in advance which, Mr. JULIA, JR. states, would have entailed unnecessary expense.

In any event, no loan was made and exploitation of the mines never commenced. Mr. JULIA, JR. states in his letter of March 10, 1971 that he and several laborers did some "cleaning and mining works on three sections of the mines" between June 1952 and May 1953. However, no ores were ever extracted for commercial purposes and none was ever sold. It further appears from the letter of March 10, 1971 that from 1953 to 1959 the mines were not operated, but remained inactive. Mr. JULIA, JR. stated that this condition was the result of certain legal work which he wanted to complete in connection with the mining concessions; and further, that it is obvious that revolutionary action in the Sierra mountains completely made impossible any mining works from 1954 until 1959.

It is stated that after Castro came into power in 1959, claimants' mining concessions were confiscated so that no commercial exploitation of the mines ever took place.

No claim is being made for the loss of mining equipment or other related personal property since claimants state that they have no evidence to support such a claim.

The claim is based primarily on the asserted loss of estimated profits. Claimants' computations assume a production of 200 tons of ore per day, having a grade per ton of 3% copper and \$5.00 in gold and silver. According to their estimates, the ore reserves in the mines were sufficient to support that production for about 12-1/2 years. They assert that their aggregate investment in the mines was \$350,000.00, including costs in acquiring and

exploring the concessions. They estimate that they would have derived a profit of \$2,358,000.00 for the period 1956 to 1960, and \$4,716,000.00 for the period 1960 to 1967. On this basis, claimants assert a loss of \$7,424,000.00. In addition, claimants request that consideration be given to the value of the 100-year lease on the mines.

The Commission has carefully considered this entire matter. Insofar as claims for property losses are concerned the Commission determines the values of any properties taken by the Government of Cuba if the claims are found to be valid. Accordingly, the Commission construes this claim to be based upon the value of any ores in the mines in question on the asserted date of loss, and the following appears. As stated above, on December 19, 1947, Mr. Hechavarria obtained a lease on the 19 mines here under consideration. There is nothing in the record to show that Mr. Hechavarria ever explored or attempted to explore the mines, or if he did, that any minerals were extracted for commercial purposes. Five years later on December 19, 1952, the lease was assigned to Mr. JULIA, JR., and as already noted, the consideration therefor was a certain royalty based on the extraction of minerals from the mines.

In September 1948, a mining engineer, Antonio Calvache, had prepared a report on the mines. Although Mr. Calvache found some evidence of ores in the mines, he did not consider himself competent to judge the feasibility of commercial exploitation since his investigation was confined to only a small area. Instead, he suggested further exploration. It is not apparent from the record whether the lessee, Mr. Hechavarria, concluded that such exploration was or was not desirable or economically feasible. In any event, the lessee assigned the lease to Mr. JULIA, JR. four years after that mining report.

Between June 1952 and May 1953, a period of one year, Mr. JULIA, JR. and some laborers did some "cleaning and mining works", and thereafter the mines were not operated. Mr. JULIA, JR. estimated that the mines could

produce 200 tons of minerals a day. Another mining engineer, Edward N. Cooper, Jr., suggested in his letter of May 13, 1959 that further explorations were required before a substantial investment in erecting a plant and mill was justified. No such explorations were ever made, and no such plant or mill was ever constructed by or for the claimants.

Thus, it appears that there were some minerals in the claimed mines. However, the mines were not in fact explored and while some mining operations took place in 1952-1953, no ore was ever extracted for commercial purposes. The mines were never exploited although they had been under lease since December 19, 1947.

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).)

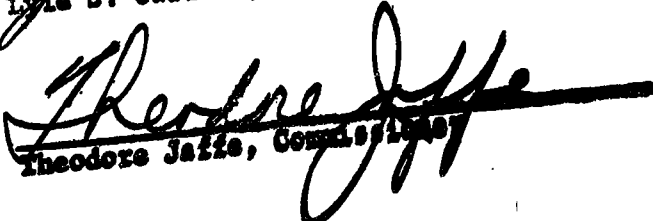
The Commission finds that claimants have failed to sustain the burden of proof. The evidence of record does not support claimants' assertions that the mines contained minerals capable of producing over a 12-1/2 year period 200 tons of ore per day with a grade per ton of 3% copper and \$5.00 in gold and silver. Moreover, the evidence does not establish that it was commercially feasible and profitable to extract and sell the minerals in the mines. The Commission therefore finds that claimants have failed to prove that the 19 mining concessions had any value on the asserted date of loss.

Accordingly, this claim is denied in its entirety. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

APR 7 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).)