

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

IN THE MATTER OF THE CLAIM OF

CUBAN IRON ORE COMPANY

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -3337

Decision No. CU 4645

Counsel for claimant:

Stroock & Stroock & Lavan  
By Radha Pillai, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the approximate amount of \$9,000,000.00, was presented by CUBAN IRON ORE COMPANY, and is based upon the asserted loss of interests and royalties in mining concessions located in Pinar del Rio, 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 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.

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) (Supp. 1967).)

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 discloses that the claimant was organized in the State of Delaware and that at all times pertinent to this claim more than 50% of the outstanding stock of the claimant corporation has been owned by nationals of the United States. The evidence of record, including a statement of a corporate official, establishes that at all times pertinent to this claim approximately 85 per cent of the outstanding shares of stock of CUBAN IRON ORE COMPANY were held by nationals of the United States. The Commission holds that claimant corporation is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claim has been asserted for loss of royalties in mining concessions in Pinar del Rio, Cuba, stated to be valued at \$1,000,000.00 per year, commencing in 1959. The claimant submitted a "Deed of Sale and Transfer of Mineral

Properties" dated March 6, 1951, whereby claimant conveyed certain mining concessions in Pinar del Rio to a Cuban corporation, Island Exploration Company, hereafter referred to as Island, a wholly-owned subsidiary of the Freeport Sulphur Company. The consideration for the sale was \$25,000.00 and under the agreement all mineral rights were conveyed to Island except that claimant retained rights in any combustible minerals, such as petroleum. Additionally, claimant was to receive a royalty of 15¢ for each "short dry ton of ore utilized" by Island, such as nickeliferous iron ore or similar ore removed and utilized by Island. By letter of October 13, 1967, claimant advised the Commission, through counsel, that no claim was asserted herein for loss of rights and interests in combustible minerals, such as petroleum products.

For tax assessments and recording expenses incident to the aforesaid transfer, the agreement specified that the sales price of \$25,000.00 was therein broken down for the concessions, as follows:

Ampliacion de Victoria	\$ 206.00
Victoria	1,028.00
Ampliacion de Rosario	771.00
Rosario	2,313.00
Ampliacion de Palmera	4,061.00
Palmera	2,056.00
Masue	3,392.00
Sueve	3,084.00
Todunido	238.00
Todigual	1,682.00
Santa Clara	<u>6,169.00</u>
Total	\$25,000.00

Claimant and Island, parties to the 1951 deed and agreement, stipulated that Island could develop the mining concessions in question at their sole option to extract or not extract ore and utilize or not utilize the ore in question. The terms of the agreement provided that Island's sole obligation as to any payment of royalties was contingent upon "if and when and so long as" Island utilized ore from the concessions so that claimant herein would be paid royalties only for ore which was actually utilized by Island.

Since claimant did not submit evidence to establish that the claimant corporation could reasonably expect to receive royalty payments beginning in

1959, as asserted by claimant, the Commission made suggestions to claimant, through counsel, in letter of November 1, 1967, with respect to the type of evidence proper for submission in development of the instant claim.

By letter of February 29, 1968, claimant submitted a copy of a letter to claimant dated January 31, 1968, from Robert C. Hills, President of Freeport Sulphur Company, in which he referred to the Pinar del Rio group of concessions and advised that in a test-pitting program conducted in 1943, on relatively wide centers, 22,540,000 tons of 1.30% nickel were developed on the concessions. He stated, among other things, the following concerning such concessions:

We acquired those concessions as a reserve for ultimate development, but we had not formulated any plans to develop them by the time we were forced out of Cuba. It is very difficult to determine in advance the circumstances which would make development feasible, since it is dependent on many factors, including the market price of nickel. However, I do not think that new facilities to process the ore would be economic for a throughput of less than one million tons annually.

By Commission letter of August 23, 1968, it was suggested to claimant, through counsel, that evidence be submitted concerning appraisals of the concessions, if any, and data concerning exploration and exploitation of the minerals in question; and that evidence be submitted to establish what expenditures, installations or type of mining operations were instituted by the parties to the agreement, with information on tons of ore utilized, if any, and profits therefrom. Thereafter, by Commission letter of October 6, 1969, claimant was again invited to submit any evidence available to it within thirty days from that date. Claimant was also informed that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. Extensions of time were granted by the Commission to claimant to submit supporting documentation.

By letter of February 20, 1970, claimant submitted an affidavit of a stockholder of the claimant corporation wherein affiant reiterated the pertinent portions or provisions of the 1951 deed and agreement between claimant and Island; and included in the affidavit certain statements of Mr. Hills of

Freeport Sulphur concerning projected plans to exploit the concessions if such exploitation became economically feasible to work a throughput of one million tons annually from the concessions which were acquired by Island, the subsidiary of Freeport.

In conclusion, the Commission has reviewed the evidence of record, including a claim asserted by Freeport Sulphur Company (Claim No. CU-2625), and finds that the royalty payments provided under the agreement with Island were contingent upon mining operations by Island which had not been instituted since the concessions were transferred to Island in 1951; and that evidence submitted by claimant can only be speculative in nature which, in turn, cannot enable the Commission to make a determination with regard to the value of anticipated royalties. Thus, the Commission finds that claimant has not met the burden of proof in establishing ownership of valuable royalty interests in mineral-producing land in Cuba. Accordingly, the Commission is constrained to deny this claim, and, it is hereby denied.

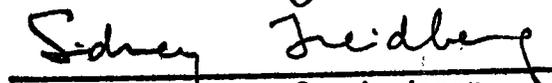
The Commission deems it unnecessary to make determinations with respect to other elements of this claim.

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

18 MAR 1970

  
Lyle S. Garlock, Chairman

  
Theodore Jaffe, Commissioner

  
Sidney Freidberg, 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, 32 Fed. Reg. 412-13 (1967).)

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