

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

IN THE MATTER OF THE CLAIM OF

GONZALO E. FIRPO
CARMEN MARIA HINDON
ANDREW CLIFFORD HINDON
ANNA CATHERINE FIRPO
GERMAINE S. FIELDS (now
Deceased)

Claim No. CU-3443
Claim No. CU-3446
Claim No. CU-3447
Claim No. CU-3448
Claim No. CU-3474

Decision No. CU-5090

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

Counsel for claimants:

Davidson & Buttermore
By Susan N. Markson,
Attorney at Law

PROPOSED DECISION

These claims against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the aggregate amount of \$249,997.00, were presented by the above-named claimants based upon the asserted loss of mining interests near the Port of Santiago de Cuba. Claimants have been nationals of the United States at all times pertinent to these claims.

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. 888 (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).)

Claimants assert that they inherited fractional interests in mining properties in Cuba, from predecessors including Delores Sarlabous Firpo and Maria Vilardell Sarlabous. They submitted a "List of Iron Mines Close to the Port of Santiago de Cuba, Owned by the Sarlabous and March Heirs", which lists 23 mining claims, comprising 1,199 hectares, stated to have been duly registered in the land records of Oriente Province, Cuba. Except with respect to 4 of the 23 mining claims, discussed below, the record does not contain evidence of exact ownership interests of the "Sarlabous" or "March Heirs".

The Commission has made numerous suggestions to claimants, through counsel, as to the type of evidence proper for submission to establish these claims under the provisions of the Act, specifically as to ownership, loss and value of the 23 mining claims.

The claimants submitted a copy of an "Option Agreement", executed on February 6, 1957, a diagram of family tree of the Sarlabous heirs, affidavits and other material including affidavits, correspondence, a letter from

Cuban attorney, dated May 23, 1959, and supporting evidence relating to the ownership, loss and value of 4 mining claims in Cuba; as well as evidence that Delores Sarlabous Firpo, who died on July 4, 1965, and her husband,onzalo Firpo, Sr., who died in 1940, were nationals of the United States at all times pertinent to these claims.

Counsel also submitted evidence concerning the heirs of Delores Sarlabous Firpo, Maria Vilardell Sarlabous and GERMAINE S. FIELDS (claimant in CU-3474), now deceased. The identity of said heirs and their interests are discussed below. No additional data has been submitted concerning the remaining 19 mining claims, subject of these claims.

The evidence submitted pertains to ownership, loss and value of 4 mining claims, identified as "Yuca", "Carpintero", "Pequena" and "Grande", located near Santiago, Cuba. This includes the Option Agreement of February 6, 1957, which establishes that Delores Sarlabous Firpo and GERMAINE S. FIELDS, successor in interest to Maria Vilardell Sarlabous, owned a fractional interest in the 4 mining claims. This Agreement provided for the sale of said interest to John B. Irwin and Joseph A. St. Ana, not claimants before this Commission, for the sum of \$90,000.00. The deed to the buyers of the 4 claims in question was held in escrow by the National City Bank in Santiago, pending payment of the balance of the \$90,000.00. It was to be returned on request of the sellers if the purchase price was not paid in full. This appears to have become impossible. The Commission holds that under this Agreement title did not pass to John B. Irwin and Joseph A. St. Ana. The record shows that \$5,000.00 was paid pursuant to the Agreement in 1958-1959 to the sellers; that another check in the amount of \$4,324.00, dated June 3, 1959, was forwarded, payable to the late GERMAINE S. FIELDS, but such check was not collected because of Cuban banking restrictions under the revolutionary government.

On October 30, 1959, the Cuban Government published its Law 617, which authorized the Minister of Agriculture to order the commercial exploitation

of mineral resources in Cuba. In the absence of evidence to the contrary, the Commission finds that the 4 mining claims were taken by the Government of Cuba on October 30, 1959, as a result of which the heirs of the decedents succeeded to and sustained a loss within the meaning of Title V of the Act.

The Commission finds that Delores Sarlabous Firpo died in 1965 and that her two surviving children, claimants herein, GONZALO E. FIRPO (CU-3443) and ARMEN MARIA HINDON (CU-3446), were her heirs in intestate succession in accordance with the law of New York, domicile of decedent; that GERMAINE S. FIELDS, successor to Maria Vilardell Sarlabous, died intestate in 1969 after filing claim herein; that she was a widow with no direct descendants; that her heirs, according to the law of New York, as developed by affidavits of heirship in the record, were the aforesaid GONZALO E. FIRPO and CARMEN MARIA HINDON, her only living relatives.

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.

Claimants have submitted a summation report of Charles E. Fink, Engineer, concerning the iron ore potential stated to have been located in the 4 mines in question. A letter of May 23, 1959, from Antonio Carillo, who represented the Sarlabous heirs in the Option Agreement of February 6, 1957, concerning the 4 mining claims, does not refer to value of these claims and the record does not contain other such information. In the absence of additional

supporting evidence, the Commission finds that the most equitable basis for evaluation of the fractional interest held by the Sarlabous heirs is the purchase price specified in the aforesaid Agreement between the parties to the uncompleted sale of the 4 claims; that since \$5,000.00 was paid thereunder, the actual value at the time of loss of such claims was the sum of \$85,000.00.

Accordingly, the Commission finds that claimants GONZALO E. FIRPO and CARMEN MARIA HINDON succeeded to and suffered a loss in the amount of \$85,000.00 within the meaning of Title V of the Act, or, the sum of \$42,500.00 to each such claimant, commensurate with each respective one-half interest.

The Commission appreciates the difficulties encountered by some claimants in establishing their claims against the Government of Cuba. However, the Commission must be guided by the evidence of record pertaining to the ownership, loss and value of the property included in each claim. Thus, with respect to 19 mining claims, the Commission is constrained to find that claimants herein 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. Accordingly, the Commission is constrained to deny this portion of the instant claims and such claim for loss of 19 mining claims is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of this portion of the claims.

The Commission also finds that claimants ANDREW CLIFFORD HINDON, husband of CARMEN MARIA HINDON, and ANNA CATHERINE FIRPO, wife of GONZALO E. FIRPO, have no direct interest in the claim for loss of the aforesaid fractional interest in the mines, subject of these claims, and their respective claims are hereby denied.

The Commission has decided that in certification of losses 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 it is so ordered.

CERTIFICATIONS OF LOSS

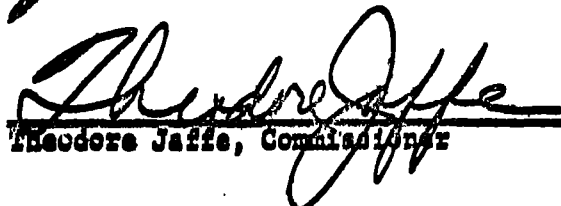
The Commission certifies that GONZALO E. FIRPO suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Forty-two Thousand Five Hundred Dollars (\$42,500.00) with interest at 6% per annum from October 30, 1959 to the date of settlement; and


The Commission certifies that CARMEN MARIA HINDON 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-two Thousand Five Hundred Dollars (\$42,500.00) with interest at 6% per annum from October 30, 1959 to the date of settlement.

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

JUN 30 1970


Louis S. Garlock, Chairman


Theodore Jaffe, Commissioner


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