

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

IN THE MATTER OF THE CLAIM OF

WILLIAM HAROLD POOVEY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -3569

Decision No. CU 3924

Counsel for Claimant:

William E. Butner, Esquire

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$300.00, was presented by WILLIAM HAROLD POOVEY based upon the asserted loss of a stock interest in a Cuban corporation. Claimant 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 record establishes and the Commission finds that claimant owned 60 shares of stock in Corporacion Minera Mesabi, S.A., a Cuban corporation. It further appears from the evidence of record that this corporation was organized in 1956 for the purpose of exploring and exploiting mining concessions in Cuba, and that it had acquired such concessions in Pinar Del Rio, Cuba.

The Cuban Government published Law No. 617 on November 17, 1959, which cancelled all rights with respect to exploration and exploitation of concessions in land. The Commission finds that the property rights of the Cuban corporation were effectively nationalized or otherwise taken by the Government of Cuba on November 17, 1959. (See Claim of John El Koury, Claim No. CU-0384.)

Since this corporation was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 percentum or more in natural persons who are citizens of the United States. In this type of situation, it has been held previously that a stockholder in such a corporation is entitled to file a claim based upon the stock in question which represents an ownership interest in a nationalized enterprise within the purview of Section 502(3) of the Act. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

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 has asserted that the value of a share of Corporacion Minera Mesabi, S.A. was \$5.00. In support thereof, claimant has submitted a memorandum from the treasurer of the Cuban corporation, dated June 5, 1957, in which he listed the names of certain stockholders, the number of shares held by each, and indicated a value for the shares owned by each said stockholder, which is based on a value of \$5.00 per share. This document merely includes a statement that the stock has been fully paid, but fails to set forth any basis for evaluating the stock at \$5.00 per share. It is noted that claimant's certificate was issued on December 10, 1957 and that the par value of a share of the stock is \$1.00, the Cuban peso being on a par with the United States dollar. The record also includes a copy of a balance sheet for the Cuban corporation, dated February 28, 1958, prepared by a Cuban accountant.

In response to inquiries by the Commission it was stated that the valuation of \$5.00 per share was based on engineering surveys made shortly before the date of confiscation. The Commission suggested the submission of copies of the surveys, but counsel for claimant stated that no further information is available other than the said memorandum of June 5, 1957 from the treasurer of the Cuban corporation.

Upon consideration of the entire record, the Commission finds that the valuation most appropriate to the property and equitable to the claimant is that shown in the balance sheet as of February 28, 1958, the last available financial statement of the Cuban corporation. That balance sheet shows the financial condition of the Cuban corporation as follows:

CURRENT ASSETS:

Cash in Bank	\$ 93.79	
Petty Cash	<u>465.00</u>	\$ 558.79

FIXED ASSETS:

Automobile	\$ 350.00	
Furniture and Office Equip.	1,584.00	
Mine Equipment	47,783.05	
Construction of Port in Progress	<u>64,192.52</u>	113,909.57

DEFERRED CHARGES:

Exploration Expenses	\$71,873.70	
Organization Expenses	<u>30,448.64</u>	<u>102,322.34</u>
		<u>\$216,790.70</u>

CURRENT LIABILITIES:

Accounts Payable	\$20,749.09	
Notes Payable	6,252.49	
Deposit for new stock not issued	2,380.00	
Short Term Loans Payable	<u>4,800.00</u>	\$ 34,181.58

SHAREHOLDER'S EQUITY:

Capital Stock \$1.00 Par Value		
Authorized 100,000 Shares	\$100,000.00	
Less not issued 50,000 Shares	<u>50,000.00</u>	
Issued and outstanding 50,000 Shares	\$ 50,000.00	
Capital contributed in excess of par Value	<u>132,609.12</u>	<u>182,609.12</u>
		<u>\$216,790.70</u>

Inasmuch as the record shows that the Cuban corporation owned leaseholds, had acquired equipment and was in operation, the Commission finds that the items in the balance sheet, exploration expenses and organization expenses, enhanced the value of the Cuban corporation's mining concessions and constituted assets of the corporation on November 17, 1959, the date of loss.

Accordingly, the Commission finds that the excess of the assets of the Cuban corporation over its liabilities, or the net worth of the corporation, was \$182,609.12. Since there were 50,000 shares of capital stock outstanding, the Commission concludes that the value of one share of stock in Corporacion Minera Mesabi, S.A. on November 17, 1959, the date of loss, was \$3.65218. Therefore, claimant sustained a loss in the amount of \$219.13 with respect to his 60 shares of stock.

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 in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that WILLIAM HAROLD POOVEY 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 Nineteen Dollars and Thirteen Cents (\$219.13) with interest at 6% per annum from November 17, 1959 to the date of settlement.

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

SEP 24 1969

Leonard v. B. Sutton
Leonard v. B. Sutton, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

Sidney Freidberg
Sidney Freidberg, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities for the loss here certified.

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).)