

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

IN THE MATTER OF THE CLAIM OF

ARCHIBALD S. ABBEY, Individually, as
a Successor in Interest to the Estate
of CHESTER E. ABBEY, Deceased

Claim No. CU -0352

Decision No. CU -6784

Under the International Claims Settlement
Act of 1949, as amended

Appeal and Objections from a Proposed Decision entered August 25, 1971;
oral hearing requested.

Oral argument June 22, 1972 by Chester E. Abbey, on behalf of the
Heirs of Chester E. Abbey, Deceased.

FINAL DECISION

This claim was filed by ARCHIBALD S. ABBEY, as the representative of the Estate of his deceased father, CHESTER E. ABBEY. The claim was submitted on August 16, 1965, prior to the opening of the filing period, and such filing was considered validated as of November 1, 1965, the commencement of the period for filing claims against the Government of Cuba. As it was not shown that any legal representative had been appointed, the claim was considered as that of the Estate of CHESTER E. ABBEY, Deceased.

The efforts of the Commission to assist in the development of this claim are outlined in the Proposed Decision. The claim was denied for failure to establish the identity of persons assertedly having any interest in this claim, that they were United States nationals at all pertinent times, that they owned interests in any of the claimed mining concessions in Cuba, or if they did that the concessions had any value on the asserted date of loss, and that the claim was owned by nationals of the United States continuously from the date of loss to the date of filing the claim.

Objections were filed in this matter by Chester E. Abbey, grandson of Chester E. Abbey, deceased, and nephew of ARCHIBALD S. ABBEY, and an oral hearing was held in the offices of the Commission on June 22, 1972, at which time Chester E. Abbey presented argument on behalf of the Estate. No additional documentary evidence was presented at the hearing.

It has been contended that Chester Eli Abbey and Alice Soutar Abbey (both now deceased) had five children, one of whom died in infancy, and that four survived to adulthood. These four have been identified as Franklin G. Abbey, now deceased, Henry C. Abbey, now deceased, Wellington F. Abbey, now deceased, and ARCHIBALD S. ABBEY. The Commission finds that ARCHIBALD S. ABBEY, a national of the United States at all times pertinent to this claim, inherited a one-fourth part of any interest his grandfather, Chester E. Abbey, Deceased, held in the mining concessions subject of this claim and which were not sold by Alice S. Abbey, on behalf of the Estate. Accordingly, ARCHIBALD S. ABBEY is substituted as claimant, in his individual capacity as a successor in interest to a part of the Estate of Chester E. Abbey, Deceased.

The record does not establish with certainty the successors in interest to the remaining part of the Estate of Chester E. Abbey, Deceased, whether they were United States nationals, and their continued ownership (if any) from the date of loss to November 1, 1965.

On November 17, 1959 the Government of Cuba published its Law 617, which authorized the Minister of Agriculture to order the commercial exploitation of mineral resources in Cuba. Accordingly, the Commission finds that any mining concessions held by the Estate of Chester E. Abbey, Deceased, or his heirs, which had not been sold, were taken by the Government of Cuba on November 17, 1959. (See the Claim of John El Koury, Claim No. CU-0384.)

As set out in the Proposed Decision, claim was originally made for

the mining concessions Providencia, La Union, Minnesota and El Cupey. Thereafter, in letters of February 18, 1968, and September 25, 1971, subsequent to issuance of the Proposed Decision, ARCHIBALD S. ABBEY clarified that only the El Cupey group is claimed. The Commission found in its Proposed Decision that the first three named mining concessions had been sold and were not owned by any of the heirs of Chester E. Abbey, deceased, when they were taken from the purchaser on August 19, 1960 (See Claims of Moa Bay Mining Company, et al., Claim Nos. CU-2619 and CU-2573.)

The record, including a "Memorandum of All property Owned by C. E. Abbey, Deceased" reflects that the interest of the Estate in the El Cupey group was 12 per cent. This is affirmed in a letter of June 27, 1967 of ARCHIBALD S. ABBEY. Chester E. Abbey has contended that he filed claim with the Internal Revenue Department for losses as a result of the Castro regime takeover, that he got 8.5 years income tax returned based on a large evaluation of the total loss insofar as he suffered a loss as a grandson. This is not of record. Chester E. Abbey has never clarified whether the claim, after he commenced addressing the Commission, is intended to cover more than the El Cupey group, although this information was requested. However, he stated at the oral hearing that \$200,000 was allowed him by the Internal Revenue as 1/4 of 12 per cent, although his interest might be 1/8 of 12 per cent. It is noted that \$200,000 is the amount originally asserted by ARCHIBALD S. ABBEY as the value of the 12% interest of the Estate.

Chester E. Abbey has submitted a copy of a Deposition of June 8, 1966, of William A. J. Pitt, in the Matter of Chester E. Abbey, et al, in the United States Court of Claims, Number 367-65. Mr. Pitt, a mining engineer, was formerly with the Department of Mines, Oriente Province. In his deposition Mr. Pitt set out his recognition of the abovementioned Memorandum of Properties. He also affirmed that part of the properties including Providencia, La Union and Minnesota had been sold to the Moa Bay Company, and Freeport Sulphur (as then known).

The Commission affirms its holding that the Providencia, La Union and Minnesota mining concessions were not owned by any of the heirs of Chester E. Abbey, Deceased, on the date of any taking by the Government of Cuba. Moreover, it is to be noted that even if the Internal Revenue Service made a return to Chester E. Abbey of taxes paid, on the ground that the properties belonged to the Government of Cuba, this does not establish that prior to such taking, the properties had belonged to the heirs of Chester E. Abbey, deceased. The Collector of Taxes historically accepts taxes proffered and has no obligation to research the title of the one making the payment.

Accordingly, the Commission finds that ARCHIBALD S. ABBEY suffered a loss of his inherited interest of three per cent of the El Cupey group, on November 17, 1959, the date of taking by the Government of Cuba.

There remains for determination the value of the loss suffered by ARCHIBALD S. ABBEY. In this connection the Commission has carefully examined the several sketches and maps submitted by ARCHIBALD S. ABBEY, and his various assertions that the Moa and El Cupey properties consisted of 2,365 acres with 84 million tons of ore -- manganese, iron, nickel and cobalt. The abovementioned Memorandum of Properties shows that the El Cupey concessions consisted of 957.40 hectares, equivalent to 2,364.78 acres. By letter of June 27, 1967 ARCHIBALD S. ABBEY stated that the El Cupey group held 58 million tons. Thereafter his calculations of value increase while the method remains unclear.

Chester E. Abbey had submitted certain Internal Revenue Service schedules indicating an original loss of \$100,000 in 1960 and subsequent carryovers for unused portions, but the papers submitted do not indicate the nature of the loss. Clarification was requested of this point, but was not forthcoming. As shown above, the Commission has also considered the assertion of a tax return to Chester E. Abbey.

ARCHIBALD S. ABBEY stated in his letter of September 25, 1971 that

the silver content had a value of from 24 to 26 cents an ounce, lead had a value of 5 cents a pound, and zinc had no value. He continued that the ore in these properties was 28 per cent zinc, that the smelter liquidations of the value metals was almost absorbed by the zinc penalties, so they closed the property in 1935. He continued that it would take many years to exploit and process the property, and that the Russians were using the crude ore for ballast in their ships.

The record includes an accounting for the proceeds of the sale of Providencia, La Union and Minnesota on April 7, 1943 for \$21,072. This covered a surface area of 558 hectares, and represented a value of \$37.76 per hectare.

The Commission has also examined the abovedescribed deposition of William A. J. Pitt. It is noted that he stated that the El Cupey property had not been mined for iron or nickel. He gave it as his opinion that El Cupey had twenty to forty million tons of ore -- a wide allowance which is not shown to be proved. He also indicated that certain properties in the vicinity could be sold for \$125 a hectare, and \$1.00 royalty per dry ton, but that El Cupey would be lower, inasmuch as it would take ten years to exploit the Moa properties (sold) but would take about twenty years for El Cupey.

The evidence of record justifies some finding of value inasmuch as the property would have had a commercial worth in the market place, if it had not been taken by the Government of Cuba.

On the basis of the 1943 sale and Mr. Pitts's various statements, the Commission finds that the 957.40 hectares of El Cupey had a surface value averaging \$50 per hectare, aggregating \$47,870.00. Further the Commission finds that the El Cupey property probably contained 5,000,000 tons of ore and after considering a discount rate of 12 per cent appropriate to the area, over a 15 year period, finds that the value of the El Cupey ores was \$950,000 on the date of loss.

Accordingly, the Commission finds that ARCHIBALD S. ABBEY suffered a loss of \$29,936.10 when his 3 per cent interest was taken on November 17, 1959.

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.

Accordingly the following Certification of Loss will be entered and in all other respects the Proposed Decision is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that ARCHIBALD S. ABBEY, individually, 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-Nine Thousand Nine Hundred Thirty-Six Dollars and Ten Cents (\$29,936.10) with interest thereon at 6% per annum from November 17, 1959 to the date of settlement.

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

June 30, 1972
1972

Lyle S. Garlock
Lyle S. Garlock, Chairman

Kieran O'Doherty
Kieran O'Doherty, Commissioner

NOTICE: 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.

FOREIGN CLAIMS SETTLEMENT COMMISSION
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IN THE MATTER OF THE CLAIM OF

Estate of CHESTER E. ABBEY,
Deceased

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0352

Decision No. CU

6784

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 \$200,000.00, was presented by Archibald S. Abbey who stated that he is Administrator for the estate of his father, CHESTER E. ABBEY, deceased. However, it appeared subsequently that there was no legal representative of the estate of the deceased. The record shows that the widow of the deceased, Alice S. Abbey, died intestate in 1943.

The deceased and his widow were survived by 4 sons — Franklin G. Abbey, stated to have been born in the United States and to have died on July 29, 1960; Henry C. Abbey, stated to have been born in the United States and to have died on June 23, 1955; Wellington F. Abbey, stated to have been born in the United States; and Archibald S. Abbey, stated to have been born in the United States. In a letter of September 28, 1970, Archibald S. Abbey stated that he is the only living son of his late father. On several occasions, the Commission suggested the submission of evidence to show the chain of ownership beginning with the late Mr. and Mrs. CHESTER E. ABBEY. Some information was submitted. However, the record is not clear as to who were the successors to the asserted property interests of the late CHESTER E. ABBEY. Accordingly, the claim is being considered as that of the Estate of CHESTER E. ABBEY, Deceased. The claim is based on the asserted ownership and loss of certain mining concessions 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 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.

On several occasions the Commission suggested the submission of evidence to establish the identity of all persons assertedly having any interest in this claim and to prove that all such persons were United States nationals at all pertinent times. It was also suggested that such evidence establish that the claim was owned by United States nationals from the date it arose until the date of filing the claim. No such evidence has been submitted to date.

Originally, claim was made for the following mining concessions: Moa Bay Group and El Cupey Group. In his letter of February 19, 1968, Arch S. Abbey stated that the claim is for the El Cupey Group only. Subsequently,

Chester Edward Abbey, grandson of CHESTER E. ABBEY, deceased, communicated with the Commission, concerning this claim, and it was no longer clear whether claim was being made for El Cupey Group alone or for other mining concessions as well. Accordingly, the Commission suggested by letter of June 30, 1971 that this matter be clarified by an appropriate explanation and a list of each item of property being claimed.

The Commission noted from the record that all deeds and other such documentation were not available, such papers having been left in Cuba. However, certain correspondence in the record tended to indicate that the deceased may have owned fractional interests in certain mining concessions in Cuba. Neither that correspondence nor the record as a whole was sufficient to establish the interests actually owned by the deceased. Accordingly, the Commission also suggested in its letter of June 30, 1971 that proof be submitted to establish ownership of each item of property being claimed together with evidence that said properties had an aggregate value of \$200,000.00 as asserted. It was further suggested that proof be submitted to establish the United States nationality of all persons having interests in the claim from the date the claim arose until the date of filing with the Commission. To date, no response has been received.

Further, in that letter of June 30, 1971 the Commission pointed out that the record in this case and in another claim (see below) establish that the mining concessions — Providencia, La Union and Minnesota Mines — had been sold to an American concern, and that the Commission had issued a decision allowing a claim for the loss of those three mining concessions. (See Claims of Moa Bay Mining Company, et al., Claim Nos. CU-2619 and CU-2573.) As already noted, an explanation of this matter was suggested, but none was ever received.

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. §531.5(d) (1970).)

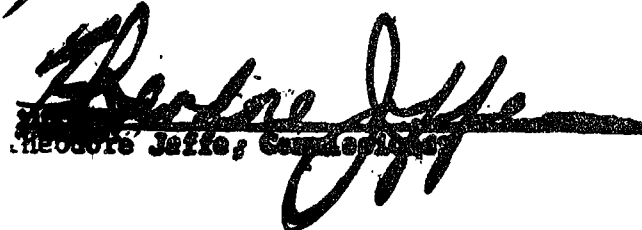
The Commission finds that on August 19, 1960, the date of loss for the Providencia, La Union and Minnesota mining concessions, these concessions were not owned by any of the heirs of CHESTER E. ABBEY, deceased, who may be claimants herein. The Commission further finds that claimant has failed to sustain the burden of proof with respect to any other mining concessions. The evidence does not establish that any of said heirs owned interests in any of the claimed mining concessions in Cuba, or if they did that the concessions had any value on the asserted date of loss. In this connection, it is noted that in his letter of June 27, 1967, Arch S. Abbey stated that he had arrived at the figure of \$200,000.00 "out of thin air." Finally, the record does not establish that the claim was owned by nationals of the United States on the date of loss and continuously thereafter until the date of filing the claim.

For all of the foregoing reasons, 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

AUG 25 1971


Paul S. Carlock, 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).)