

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

IN THE MATTER OF THE CLAIM OF

JOHN EL KOURY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0384

Decision No. CU

3796

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amended amount of \$2,966,630.67, was presented by JOHN EL KOURY, based upon the asserted loss of a 50% interest in a Cuban corporation which owned four mines in Oriente Province, Cuba, and a 100% interest in another mine also situated in Oriente Province, Cuba. Claimant has been a national of the United States since birth.

Under Title V of the International Claims Settlement Act of 1949 [79 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 discloses that El Koury-Cobty Mining Corporation, S.A., in which claimant asserts a 50% interest, was organized under the laws of Cuba and does not qualify as a corporate "national of the United States" defined by Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum 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 his ownership interest therein. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The Commission finds on the basis of the evidence of record, including a stock certificate and original deeds, that claimant owned a 50% interest in El Koury-Cobty Mining Corporation, S.A., hereafter referred to as the Cuban corporation, which was incorporated in Cuba in 1948; and that claimant was the sole owner of the undeveloped property known as the Isabel Mine, acquired in 1948 for \$5,000.00. As to the latter the Commission finds the price paid for that property to be its fair value at the time of nationalization. It further appears from the evidence of record that the Cuban corporation owned four mines in Oriente Province, Cuba; namely, the San Miguel Mine, the St. Joseph Mine, the San Basilio Mine and the Daher Mine; and that the Isabel Mine was also located in Oriente Province, Cuba.

On October 27, 1959, the Cuban Government enacted Law No. 617, which authorized the Minister of Agriculture to order the commercial exploitation of mineral resources in Cuba. Claimant has stated that the mines in question were nationalized by Cuba in 1960. The record shows that under date of February 9, 1960, the Department of State replied to claimant's inquiry of January 25, 1960 concerning said mines

and referred to Law No. 617 of October 27, 1959, published November 17, 1959. In the absence of evidence to the contrary, the Commission finds that the four mines owned by the Cuban corporation and the Isabel Mine owned by the claimant were taken by the Government of Cuba on February 15, 1960, as a result of which claimant sustained a loss within the meaning of Title V of the Act.

It should be noted that initially claimant asserted a loss of \$989,000.00 instead of the \$2,966,630.67 now claimed. The former amount was computed as follows:

(1) Four mines (above named)	\$270,000.00
(2) 50% stock interest in El Koury Cobty Mining Corp., S.A.	500,000.00
(3) Loss of lease income	<u>219,000.00</u>
	\$989,000.00

Following considerable correspondence asking for a clarification of claimant's figures, it appeared that the four mines had been purchased by the El Koury - Cobty Mining Corporation and so were part of its assets -- thus they were not the subject of a separate claim. Further, it appeared that those mining properties, in fact, had never been tested or surveyed to determine the quantity and quality of purported minerals therein. Claimant in his letter of July 16, 1969 to the Commission has now withdrawn "my claim for those mines" so they will not be considered further herein. As to the asserted loss of lease income, the record shows that the principal asset of the mining company was the St. Miguel Mine which was leased on December 14, 1950 by the company to the Emily S.A. Mining Corporation for a 10% gross royalty for a 30 year term. It therefore follows that the value of the claimant's interest for the loss in question for both lease value and residual value, if any, is a corporate asset and would be affected by the following factors, viz.:

- (1) The type, quantity and quality of the proven ore reserve in the San Miguel Mine;

- (2) The time it would take to develop the property and to mine the ore or, phrased another way, the number of days of projected operation during the lease term and the amount of ore processed during each of those days;
- (3) The prices at which the ore would be sold during the actual operation of the lease, which period, allowing for starting-up operations, would be shorter than the lease term;
- (4) The amount of minerable commercial ore, if any, left at the end of the lease term.

Claimant's substantially increased amended claimed amount is based upon various computations he has made primarily as to the asserted ore reserve and his projected production figures now based on a 500 ton a day mill rather than 100 tons per day first used in his claim. Although some evidence has been presented, it does not justify the total now claimed nor the method used by claimant in arriving at it, because the mine has evidently not been in production since the days of its early exploitation by the Spaniards who discovered it shortly after the discovery of Cuba and, because the evidence is inconclusive as to the true value of the total ore reserve. The Commission, therefore, finds that the valuation most equitable to the claimant is one hereinafter described.

Evidence submitted includes a price list of metals, certain assay reports dated August 25 and 26, 1948, and claimant's description as to the measurements made of five mineralized veins. All this gives some idea as to the values of the copper, gold, silver, zinc and the quantities of ore. The primary difficulty, however, is twofold, first (as above mentioned) apparently no production occurred after the execution of the lease in 1950, and secondly, the number of assays for the length of the veins is too small to be taken as fully applying to the large ore bodies claimed. Nevertheless, this evidence does justify some finding of value,

for the property would have had a commercial worth in the market place if it had not been expropriated.

As to the reason why the lessee had not yet started actual production, the claimant asserted in his letter of July 17, 1967 to the Commission that this occurred because the lessee "*** was starting operations at San Miguel Mine when Castro entered Cuba in Oriente Province and made his revolutionary coup on San Miguel Mine, which is located in the Sierra Maestra Mountains in Oriente Province, therefore the one hundred ton mill could not be completed by Emily S.A. Mining Co., and operations ceased." Claimant though asserts that there were six million tons of ore "on site" in that letter, i.e., meaning proven, and a potential of fifty million additional tons -- the latter with an estimated value of "one million dollars plus." This does not accord with another one of his statements in his letter of July 16, 1969, that "*** we had a proven tonnage of 723,330 tons ***."

Further difficulty with claimant's position as to the larger claim now asserted is that the lease was entered into in 1950 and Castro, according to historical accounts, did not operate from the Sierra Maestra Mountains until sometime in 1956. No explanation is made by claimant as to why such allegedly valuable properties were not mined between 1950 and 1956. We can only surmise that it was because for some reason it was not then profitable to do so. But that does not mean that there was no value to the property. Claimant himself states that he invested \$250,000 in his one-half interest in the enterprise, and the assays in part show some good values on certain samples. However, as stated earlier, we deem the assays as too few in number to justify the kind of averaging claimant has projected even if we accept his figure of 723,330 tons of possible commercial ore.

Considering all the evidence, the Commission finds that the most equitable valuation of the claimant's company's 10% gross lease interest is a gross worth of \$1,084,995, with claimant's one-half interest being \$542,497.50. The latter sum, plus the \$5,000.00 heretofore found as the value of claimant's interest in the Isabel Mine makes a total loss to claimant of \$547,497.50. In holding that claimant suffered a loss of \$547,497.50, the Commission has considered the value of claimant's stock in the El Koury-Cobty Mining Corporation, S.A., based on value of the lease itself and the possible residual value at the expiration of the lease in the event the full tonnage were not mined during the lease term.

The Commission has decided that in the 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 JOHN EL KOURY 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 Five Hundred Forty-Seven Thousand Four Hundred Ninety-Seven Dollars and Fifty Cents (\$547,497.50) with interest thereon at 6% per annum from February 15, 1960 to the date of settlement.

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

30 JUL 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

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).)