

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

IN THE MATTER OF THE CLAIM OF

WILLIAM FRANCIS CARLETON,
ADMINISTRATOR, ESTATE OF
WILLIAM CARLETON, DECEASED;
ELSIE FLORENCE CARLETON LAWTON,
ADMINISTRATRIX, ESTATE OF
ADA JANE CARLETON; and
MARGARET FRANCIS CARLETON COMPTON,
GUARDIAN OF DANIEL ERVIN CARLETON

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

Claim No. CU-2034
Claim No. CU-2787
Claim No. CU-3749

Decision No. CU

3980

PROPOSED DECISION

These claims against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in unstated amounts, were presented by the aforesaid claimants in their representative capacities based upon the asserted ownership and loss of extensive mining rights and real property owned by the late William Carleton who died in 1944. Claimants assert that their predecessors in interest and all heirs in the respective estates 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. 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).)

The claimants have asserted that their parents, William Carleton and Ada Jane Carleton, who died in 1944 and 1951, respectively, owned approximately forty-four mining properties in Cuba and several lots, as described in part hereafter. Claimants have submitted forty-four (44) claim applications with fifty-four (54) exhibits in connection with or in support of these claims. The evidence of record also includes extensive correspondence and other evidence contained in the files of the United States State Department. Among other things, the evidence includes numerous deeds, executed between 1910 and 1916 and subsequent years, which establish that the decedent, William Carleton, obtained various interests in mining rights to extensive properties in Cuba which assertedly contained copper, gold, lead, zinc, petroleum and other precious minerals.

In addition to several deeds, the claimants have submitted data as recorded in the Governor's Palace at Santiago de Cuba, and obtained by

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American authorities in Cuba in 1945. These Cuban records concerning mining rights include the following information with respect to ownership, description and other data:

"MINES IN THE NAME OF WILLIAM CARLETON AS THEY APPEAR IN THE RECORDS OF THE GOVERNOR'S PALACE AT SANTIAGO DE CUBA, CUBA."

<u>Record Number</u>	<u>Name of the Mine</u>	<u>Size</u>	<u>Class of Mineral</u>	<u>Title issued or pending</u>
<u>MUNICIPAL DISTRICT OF HOLGUIN</u>				
2782	Los Angeles No. 6	12 Hectareas	Asbestos	Issued
2780	Los Angeles No. 4	19 Hectareas	Asbestos	Issued
3551	Santa Maria	12 Hectareas	Copper	Issued
3554	Carlos	12 Hectareas	Copper	Issued
3653	La Esperanza	49 Hectareas	Copper	Issued
4052	Carleton	20 Hectareas	Copper	Issued
4543	Esperanza No. 2	6 Hectareas	Copper	Issued
4264	Evidencia	8 Hectareas	Gold	Issued

MUNICIPAL DISTRICT OF JIGUANI

4643	Charco Redondo ..	669 Hectareas	Manganeso ...	Issued
9648	Charco Redondo 2nd	175 Hectareas	Manganeso ...	Pending

MUNICIPAL DISTRICT OF MANZANILLO

7270	Francisca	642 Hectareas	Lead and zinc	Issued
7314	Hada	210 Hectareas	Lead and zinc	Issued
7312	Elsie	20 Hectareas	Lead and zinc	Issued
7792	Palmita 2nd.	2000 Hectareas	Petroleum ...	Pending
7793	Ciclón	65000 Hectareas	Petroleum ...	Pending
7265	Providencia	105 Hectareas	Lead and zinc	Issued
7273	Virginia	565 Hectareas	Lead and zinc	Issued
7266	America	153 Hectareas	Lead and zinc	Issued

MUNICIPAL DISTRICT OF VICTORIA DE LAS TUNAS

7647	Hatuey	24 Hectareas	Gold	Issued
7684	Antilla 2nd.	300 Hectareas	Gold	Issued
7686	Martha	41 Hectareas	Gold	Issued
7807	Anciano	205 Hectareas	Gold	Issued

Note: Legal titles in the name of William Carleton have been issued. Titles have not been issued in the cases of the mines which have been marked 'pending', because certain fees have not been paid. The time required to make the payment has not expired and upon payment of the fees the titles will be issued.

It has also been informed that Mr. Carleton bought a number of shares in other mines in this province, of which there is no record at the Governor's Palace. These shares may be disclosed from the notarial deeds to be found in Mr. Carleton's files."

The claimants have submitted other evidence concerning properties in Cuba and assert that William Carleton was the owner of other mining rights. Further, claimants assert that their predecessor in interest and others in their family were also the owners of several lots in the vicinity of La Gloria, Cuba, but deeds thereto are now on file in the County Judges' Court of Dade County, Florida, in connection with the probate proceedings of their parents. The claimants have included other items in their claims, such as the asserted loss of a mine "Verde Grande" situated within the confines of the United States Base at Guantanamo, comprising 70 hectares, as well as water rights to the Yateras River by reason of a one-fourth interest in the Henri Schueg Chassin Company, but the latter portion of the claims is described as "unsettled".

With respect to the aforesaid lots, claimants refer to the following deeds but indicate that the deeds, description of the property, value and other details are unavailable:

Deed No. 237, dated March 2, 1901. Cuban Land and Steamship Co. to Daniel L. Carleton.

Deed No. 368, dated June 11, 1901. Cuban Land and Steamship Co. to William Elson Russell.

Deed No. 406, dated September 6, 1901. Cuban Land and Steamship Co. to Daniel L. Carleton.

Deed No. 407, dated September 6, 1901. Cuban Land and Steamship Co. to William Carleton.

Deed No. 75, dated February 17, 1903. Egmont Mollenhaner to William Carleton.

Deed No. B 960, dated July 30, 1903. Cuban Land and Steamship Co. to William Carleton.

Deed No. 556, dated May 5, 1904. Samuel William Cook to William Carleton.

Deed No. 11, dated January 16, 1906. Cuban Land and Steamship Co. to William Carleton.

Deed No. 156, dated March 6, 1906. William Anson Barlow to William Carleton.

Deed No. B-1102, dated December 12, 1910. Cuban Land and Steamship Co. to Daniel L. Carleton.

Deed No. 88, dated February 11, 1914. Daniel Leeman Carleton to William Carleton.

The entire record in these claims having been examined, the Commission finds that the decedent, William Carleton, and others owned mining rights and lots in Cuba which were apparently acquired prior to 1944. With the exception of details concerning certain properties, as discussed hereafter, the claimants have failed to establish ownership of the properties in question at the time of the asserted dates of loss, nationalization or other taking of such properties or the value thereof when assertedly taken by the Government of Cuba.

The record includes a letter dated January 29, 1946, from the American Vice Consul at Santiago, Cuba, in which he advises Mrs. W. Carleton of Holguin, Oriente, Cuba, that the fee to obtain legal title to claim No. 9648 is \$150.21; and the time in which to pay the fee is fifteen days after notification. Further, Mrs. Carleton is advised that claim Nos. 7792 and 7793 have expired due to the passage of "a certain law" by the Government of Cuba in 1938.

The record also includes a letter from the Foreign Investments, Inc., to William F. Carleton, dated June 23, 1954, stating that ". . . the only properties we are interested in jointly with the Carleton Estate are the Petroleum Denouncements known as Carlos II, III, IV, VI and VII"; that the estate owns 50% and the corporation owns 50%; that the corporation has paid the "canon taxes" in full ever since the Mineral Fuels Law was passed in 1938; that the Estate has paid no taxes and if the taxes are not paid each year the denouncements would be lost by cancellation; and that these mining claims are recorded in the names of Andrew T. Healy and William Carleton.

Claimants have submitted extensive evidence concerning a legal controversy pertaining to the ownership of mines known as Charco Redondo Segundo and Charco Redondo, located in Santa Rita, Jiguani, Oriente, Cuba. It is asserted that certain persons and firms, including the Compania de Construccione Cajigas, S.A., Compania Minera Guama, S.A., with Messrs. Francisco Cajigas y Garcia del Prado, Wolff Edward Clawans, Miguel A. Cassfuch y Ramos and Luis Humberto Vidanas, perpetrated a fraud on the late William Carleton,

his estate and successors in interest. The aforesaid firms and persons assertedly obtained title to the mines in question by wrongful means, removed manganese ore therefrom, estimated to have a value "in the millions". A United States Interior Department report to William F. Carleton dated January 15, 1957, indicates that between 1944 and June 1954 there were approximately 964,935 long tons of manganese ore removed from these mines. No further information is available, however, as to mining operations subsequent to 1954 and the status of the mines is unknown at the time of taking. The record does include evidence to establish that the mine Charco Redondo was intervened by the Government of Cuba pursuant to Decree 1143 of April 21, 1959, as published in the Official Gazette on April 23, 1959.

In letter of August 5, 1955, the Division of Mines, Developmental Section, Government of Oriente Province, Cuba, advised W. F. Carleton that the Segundo Charco Redondo mine (File #9648) and Charco Redondo Mine (File #4643) had been owned by William Carleton and the status of the mines was as follows:

"Segundo Charco Rodondo Mine. File no. 9648. This file was prepared at the instance of Mr. William Carleton on July 2, 1941 and all the required steps taken up to payment of the government fees for issuance of the title deed. At this stage, in the presence of Mr. Francisco Cajigas y Garcia del Prado, as President and legal representative of the 'Compania de Construcciones Cajigas, S.A.,' registered Public Instrument No. 2464 was executed before Dr. Baldomero W. Guasch y Lopez, Notary Public of Habana, on December 13, 1950, whereby Mrs. Ada Jane Carleton, as widow and sole heir of her deceased husband, Mr. William Carleton, transferred all her rights and shares in the 'Segundo Charco Redondo' mine to the Compania de Construcciones Cajigas, S.A., such right having been recognized by Presidential Decree No. 2281 of May 4, 1951, and the Governor of the Province of Oriente being ordered to issue the title deed therefor in the name of the Government of the Republic, which order was carried out on July 11, 1951.

Charco Redondo Mine. File no. 4643. This file was prepared also at the instance of Mr. William Carleton on January 8, 1916, the title deed therefor having been executed in the name of Mr. Carleton on September 15, 1917. This file is now in the Office of the Director of Mountains, Mines, and Fauna, Ministry of Agriculture, pending recognition, by a decree of the President of the Republic, of the transfer of the property, [as] requested, to the above-mentioned Compania de Construcciones Cajigas, S.A.

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The file contains the public instruments submitted in proof of the said transfer of rights and shares, but I cannot tell you what they are, because I do not have before me the file in question.

This is all the information I can give you, pursuant to your request, from the files in reference.

Yours truly,

By order of the Governor:

/s/ F.C. Mora

Fernando Cuesta Mora
Secretary of Provincial Administration"

An affidavit of William F. Carleton, executed on October 18, 1968, refers to the estates of his parents and the controversy arising incident to ownership of the Charco Redondo mine. Affiant stated that when his mother was Executrix of the estate of his late father she brought suit in Cuba in 1946 to regain possession of one-half of this mine; that it was brought against Marsden R. Leeder, lessee of the mine in 1944; that in 1953 affiant made inquiry of the Supreme Court in Cuba which failed to respond to his questions; that the Cajigas Construction Company, S.A. is assertedly a non-existent Cuban corporation; and that the transferees of this mine wrongfully exploited same and took vast sums of money from the mining operation.

While the aforesaid evidentiary material concerning the ownership and loss of the Charco Redondo mining claims may be pertinent to the instant claims, it is also apparent that the Commission has no jurisdiction to determine whether the purported transfer of title was effective. This record does show that the Cuban mines were transferred, either legally or by fraud, prior to January 1, 1959, the period specified in Section 503(a) of the Act, and so the claim in question is not within the purview of Title V of the Act (supra). Additionally, the present record indicates that the claimants have been unable to institute appropriate action to restore ownership of the mines and have been unable to obtain evidence pertaining to the value of the mines when taken on April 21, 1959, by the Government of Cuba.

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By Commission letter of May 31, 1968, claimants were advised as to the type of evidence proper for submission to establish these claims under the provisions of the Act. Thereafter, the Commission made additional suggestions to claimants in various letters, including those dated July 10, 1968, and July 23, 1968, with respect to ownership, loss and value of the properties, subject of these claims.

The Commission suggested that claimants submit appropriate evidence to establish ownership and value of all mines and lots at the time of their asserted nationalization or other taking by the Government of Cuba; and that they establish that all of the properties, subject of these claims, were taken by the Cuban Government. The Commission suggested that claimants submit full details with respect to the extent of operation, production and type of minerals produced by the mines, if any, facilities for mining and shipping the ore, extent and type of ore produced and development of the mines during the life of William Carleton as well as subsequent to his death in 1944. In this connection, the Commission suggested in the letter of May 31, 1968, among other things ". . . Please submit your affidavits and all available evidence pertaining to development of the mines, production, minerals, profits, if any, leasing arrangements, appraisals, or any evidence whatsoever relating to value, especially in 1959-1960 and years immediately prior thereto".

Thereafter, claimants submitted additional evidence pertaining to the nationality of the decedents and heirs and history of the administration of the estate proceedings of William Carleton and Ada Jane Carleton in the probate court of Dade County, Florida, which were filed in 1944 and 1954 and are still pending in the court at the present time. Additionally, claimants submitted additional evidence pertaining to the controversy concerning ownership of the Charco Redondo mines.

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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. The Commission is constrained to find that claimants herein have not met the burden of proof in that they have failed to establish the ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, the Commission is also constrained to deny these claims and they are hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claims.

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

OCT 1 1969

Leonard v. B. Sutton

Leonard v. P. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

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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