

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

IN THE MATTER OF THE CLAIM OF

YARA ENGINEERING CORPORATION

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-2542

Decision No. CU

3933

Counsel for Claimant:

Holbrook and McKinsey  
By: Robert G. Holbrook, Esq.

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 \$20,446.05, was presented by the YARA ENGINEERING CORPORATION, and is based upon the loss of mineral rights and concessions to land 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.

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 claimant herein, YARA ENGINEERING CORPORATION, organized under the laws of New Jersey, whose shares were owned by nationals of the United States within the contemplation of Section 502(1)(B) of the Act, asserted this claim for loss of rights and interests incident to mineral lands in Cuba. Claimant stated that it entered into a partnership with John B. Irwin and others for the exploration and exploitation of mineral lands; that some mines were not commercially feasible and were abandoned in 1957-1958; that other concessions were still being processed and considered for future exploitation; and that claimant had capitalized expenses in the amount of the claimed sum herein which was "written-off" in 1959, but discovery of minerals exceeded the amount invested in the mining properties.

By Commission letter of July 31, 1967, claimant was advised as to the type of evidence proper for submission to establish this claim under the provisions of the Act. Thereafter, the Commission made additional suggestions to claimant in letter of September 15, 1967, and telephone discussions with members of the Staff of the Commission. Counsel submitted data concerning the organization and nationality of the

stockholders of the claimant corporation but no evidence was submitted pertaining to the ownership, loss and value of the mining concessions or minerals located in Cuba.

By Commission letters of October 11, 1968, and July 31, 1969, additional suggestions were made to claimant, through counsel, in connection with the submission of supporting evidence to establish the instant claim. However, no response has been forthcoming to Commission correspondence and no additional information or evidence has been submitted in support of this claim.

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, the Commission is constrained to find that claimant herein has not met the burden of proof in that it has 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 also constrained to deny this claim and it is hereby denied. 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

SEP 24 1969

*Leonard v. B. Sutton*  
\_\_\_\_\_  
Leonard v. B. 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).)