

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

IN THE MATTER OF THE CLAIM OF

FREEPORT MINERALS COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2625

Decision No. CU -6162

Counsel for claimant:

Kaye, Scholer, Fierman,
Hays & Handler
By Fred N. Fishman, Esq.

Appeal and objections from a Proposed Decision entered on April 14, 1971.
No hearing requested.

Hearing on the record held on September 8, 1971.

FINAL DECISION

Under date of April 14, 1971, the Commission issued its Proposed Decision denying this claim based upon certain mining concessions in Cuba because the record failed to establish that the concessions had any value on June 27, 1960, the date of loss. The claim had been filed by Freeport Sulphur Company which changed its name to FREEPORT MINERALS COMPANY as of April 26, 1971. Claimant's name of record has been changed accordingly.

Claimant filed objections in the form of an affidavit of June 4, 1971 from Mr. Richard V. Colligan, Vice President of claimant. It is asserted that the minerals in the mining concessions had great value, but that the value could not be ascertained because the mines were not yet in operation. Claimant therefore urges the Commission to recognize that fact and allow the amount invested in the concessions in lieu of precise information concerning the value thereof.

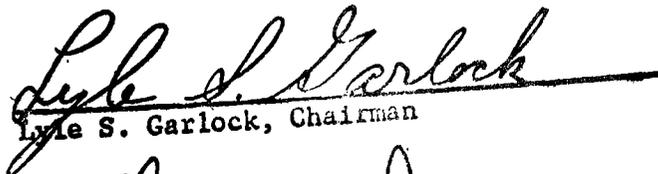
The Commission notes that while minerals in the ground may be valuable intrinsically, the costs of extracting and refining the minerals may render

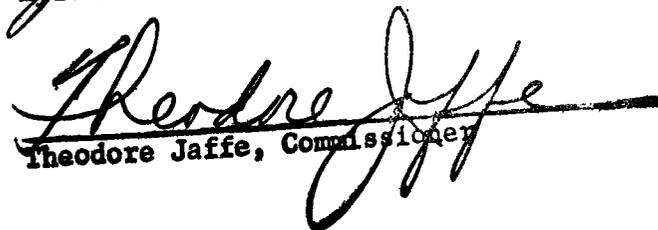
it economically prohibitive to operate the mines in which the minerals exist. Thus, for practical purposes the mining concessions would have no real value.

Upon consideration of the entire record, the Commission finds no basis for altering the Proposed Decision of April 14, 1971. The Commission reaffirms its finding that the record fails to establish that the mining concessions in question had any value on the date of loss. Accordingly, the Proposed Decision is affirmed in all respects.

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

SEP 8 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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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 \$387,000.00, was presented by FREEPORT SULPHUR COMPANY based upon the asserted loss of certain mining concessions in Cuba owned by claimant's Cuban subsidiary.

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 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The record shows that claimant was organized under the laws of Delaware and that at all pertinent times more than 50 per cent of its outstanding capital stock was owned by nationals of the United States. An authorized officer of claimant has certified that for the period November 16, 1959 through February 15, 1967, over 98.5 per cent of claimant's outstanding capital stock was held by individuals having addresses in the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The evidence establishes and the Commission finds that at all pertinent times claimant owned 100 per cent of the outstanding capital stock of Cia. Exploradora de la Isla, S.A. (Islexco), a Cuban corporation.

Since Islexco was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States" within the meaning of Section 502(1)(B) of the Act, supra. In this type of situation, it has been held that a stockholder is entitled to file a claim for the value of his ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

It is asserted that Islexco's assets consisted of a large number of mining concessions located in Las Villas, Pinar del Rio, and Oriente Provinces, Cuba. The record includes copies of deeds which support claimant's assertions in these respects. It further appears from the evidence of record that the Government of Cuba intervened Islexco's mining concessions pursuant to Resolution 4382, issued by the Ministry of Agriculture, on July 27, 1960, under Law No. 617 of October 27, 1959.

Claimant asserts the following losses:

San Isidro Properties, Las Villas Province	\$ 38,564.24
Carlota Properties, Las Villas Province	103,495.49
Pinar del Rio Properties, Pinar del Rio Province	42,436.25
Taco Bay Nickel Properties, Oriente Province	188,792.71
Cristo Manganese Properties, Oriente Province	<u>13,711.31</u>
Total	<u>\$387,000.00</u>

The following mining reports have been submitted by claimant:

1. A copy of a report of July 31, 1950 by Richard V. Colligan, president of Islexco, concerning the San Isidro Properties. This report covers an examination of two major areas during the period July 13, 1949 to September 17, 1949, and indicates the presence of manganese in those areas. Commercial exploitation of the ore deposits is recommended in the report only "should a satisfactory method of treating the ores be developed." Moreover, the report suggests the need for an engineering study to determine the adequacy of water for mining and washing plant purposes; it indicates that dock and storage facilities are inadequate; and it suggests that certain "surface rights" would have to be obtained from several large landowners in the area.

2. A copy of an extract from a report of February 1917 by Yeatman & Berry concerning the Carlota Properties. That extract indicates the presence of sulphur, iron and copper in the mines, and recommends "that the required expenditures be made to build the railway, to equip the mine, and to build a sintering or nodulizing plant. . . ."

3. A copy of a report of December 12, 1951 by B. F. Darnell also covering the Carlota Properties, which indicates negative results confirming statements in Mr. Colligan's affidavit of February 19, 1971.

4. A copy of a report of January 1944 by Richard V. Colligan, concerning the Pinar del Rio Properties. In this report, Mr. Colligan "recommended that this property be dropped from consideration" because the "reserve is believed to be too small to warrant the large capital expenditure necessary for plant and mine installations."

5. A copy of a report of March 27, 1951 by Richard V. Colligan, concerning the Taco Bay Nickel Properties, in which Mr. Colligan "made a rough calculation of tonnages of nickel ore developed at Taco Bay during our examination in 1945."

6. A copy of a report of October 7, 1956 by H. G. Kristjansen also covering the Taco Bay Properties. This report indicates the results of certain drilling operations during the latter part of September and the first half of October 1955, and includes estimates based primarily upon the 1945 project.

The record includes no such reports concerning the Cristo Manganese Properties.

It appears from Mr. Colligan's affidavit of April 24, 1967, that this claim is based on the "capitalized cost of such mining concessions" as shown by Islexco's books and records. With respect to property loss claims, the Commission's functions include determination of the values of properties taken by Cuba on the dates of loss. Therefore, this claim

was construed to be based upon the value of any ores in the mines in question on July 27, 1960, the date of loss. Accordingly, the Commission suggested the submission of evidence to establish the value of Islexco's ores and the extent of any mining operations performed by Islexco or claimant.

Mr. Colligan recites in his affidavit of February 19, 1971 that "In each case, the reserves were not considered ripe for commercial development", but claimant awaited "the day when higher metal prices and improved treatment processes would render these deposits suitable for commercial development." Under these circumstances, "No mining was performed" by Islexco or Freeport on any of the properties discussed herein.

The Commission made further inquiries concerning the value of the ores in question. It called claimant's attention to the fact that the Cuban Iron Ore Company, which had leased the Pinar del Rio Properties to Islexco, had asserted a claim for the loss of those mines and royalties under the lease with Islexco (Claim No. CU-3337), and that the claim had been denied for failure to establish that its property had any value.

In an affidavit of March 19, 1971, Mr. Colligan stated as follows: "With respect to the value of the ore reserves which are the subject of this claim, since the deposits were never exploited no definitive estimates of capital and operating costs were made. Hence no profit estimates are available. . . . I am, however, in a position to make a quantitative evaluation of the gross value of the ore in the ground." Appended to the affidavit are two schedules. One schedule indicates the gross value of the ore reserves, and the other schedule shows the bases for the calculations. The first schedule sets forth that in 1960 the aggregate gross value of the ore reserves in the ground where the San Isidro, Carlota, Pinar del Rio, and Taco Bay mines were situated was \$1,113,093,516.00. Nothing is included in that amount on account of the Cristo mines because "No reserve data are

available", as indicated in the second schedule. That schedule also shows that the calculations therein were based upon the reports discussed above.

This entire matter has been carefully considered. It is deemed unnecessary to dwell upon Mr. Colligan's computations indicating a gross value of over \$1 billion for the ores in the ground since that fact, in and of itself, is insufficient to establish what value, if any, the ores would have after considering mining and related costs. As already noted, the mines were never operated because "In each case, the reserves were not considered ripe for commercial development"; and the record contains no evidence to show the costs of mining and processing the ores. Moreover, the Pinar del Rio mines are indicated as having a gross value of \$437,005,520.00, while Mr. Colligan's recommendation in January 1944 was that "this property be dropped from consideration" and the claim of Islexco's lessor based upon the Pinar del Rio mines was denied for lack of proof.

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) (1970).)

The Commission finds that claimant has failed to sustain the burden of proof. While claimant's investment in the mines has some probative value, it is insufficient to establish the value of the mines on the date of loss. (See Claim of Warren and Arthur Smadbeck, Inc., et al., Claim No. CU-2465.) The Commission finds that claimant has failed to prove that its mining concessions had any value on the date of loss.

Accordingly, 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

APR 14 1971


Lyle S. Garlock, 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).)