

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

IN THE MATTER OF THE CLAIM OF

HAYES S. WOOD

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2847

Decision No. CU 5918

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in an unstated amount, was presented by HAYES S. WOOD and is based upon the asserted ownership and loss of stock interests in a Cuban mining corporation. Claimant asserts that he has been a national of the United States since birth.

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) (1969).)

Claimant has asserted that he acquired 10 shares or a one-third interest in the Tarbell Mining Company of Cuba and he has submitted a provisional certificate of the Tarbell Mining Company for 10 shares which were issued to Ross L. Clark and transferred by the registered owner to claimant on October 5, 1957.

The record includes a report obtained by the Commission concerning the Tarbell Mining Company of Cuba indicating that the corporation was organized under Cuban law in September 1956 by Sergio de Biscuccia y Concer and Celia Izquierdo Bauta, Cuban citizens, and the corporation was to buy, sell, exploit or engage in mining operations in Cuba. The only additional evidence contained in the report indicates that 20 shares of stock were issued at \$100 per share par value and such shares were paid for by Celia Izquierdo Bauta from her personal funds, acquired before marriage.

Claimant has submitted correspondence concerning the claim. The records of the Commission include evidence pertaining to this matter in a related claim filed by Evelyn M. McElfresh, Administratrix, Estate of Walter A. McElfresh, Deceased (Claim No. CU-3713). The record includes various mining reports prepared by geologists concerning mining in the Holguin area of Oriente Province, correspondence from the late Ross L. Clark and Sergio de Biscuccia to the claimant and the late Walter A. McElfresh, assay reports prepared by the Government of Cuba and others, a 1940 report of the Royal Bank of Canada concerning shipments of ore by the Corporacion Minera de Oro, reports concerning other mining ventures in Holguin as well as other areas in Central and South America. The claimant has submitted a copy of a quit-claim Deed executed in 1957 by the Executrix of the Estate of Ralph E. Kurtz, whereby the late Ross L. Clark acquired certain mining claims known as Hatuey, Coabilla and Atlanta, located in San Jose de la Plata, Victoria de las Tunas, Oriente, Cuba, comprising an area of approximately 1,228 acres.

By Commission letter of July 6, 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 letters of May 13, 1968 and July 10, 1968, with respect to the submission of evidence pertaining to ownership, loss and value of the property, subject of this claim.

The Commission suggested that claimant submit appropriate evidence pertaining to the mining activities of the subject Cuban corporation immediately prior to the asserted nationalization or other taking of the property by the Government of Cuba, including evidence pertaining to the extent and type of ore taken from the mining concessions, shipment of ore, profits or losses, if any, or any information bearing on the mining operations of the Cuban enterprise. The Commission also suggested that claimant advise the Commission as to leasing arrangements, if any, and what measures were taken to exploit ore from the concessions in question. Further, the claimant was requested to submit annual reports, balance sheets or any financial data to establish the


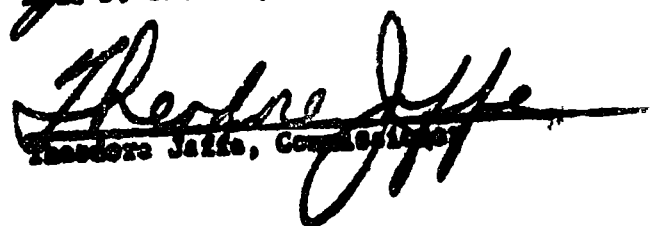
value of such stock interest, as well as information with respect to the date of nationalization or other taking of the concessions by the Government of Cuba.

While the record includes correspondence, appraisals, reports, maps and other data with respect to the possibilities of developing mines in Cuba and elsewhere, there has been no evidence of probative value, as suggested by the Commission and as outlined above, to specifically determine ownership rights in mining concessions, value of such ownership rights at the time of loss or the taking thereof by the Government of Cuba.

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 claimant herein has not met the burden of proof in that he has failed to establish the ownership and value 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

OCT 21 1970


Leo 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, 32 Fed. Reg. 412-13 (1967).)

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