

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON 25, D. C.

IN THE MATTER OF THE CLAIM OF

HERSCHEL GLENN BUNN
931 Stanyan Street
San Francisco, California

Claim No. SOV-40,399

Decision No. SOV-2836

Under the International Claims Settlement
Act of 1949, as amended

GPO 16-73120-1

Counsel for Claimant:

POSTEL & POSTEL
400 Montgomery Street
San Francisco 4, California

FINAL DECISION

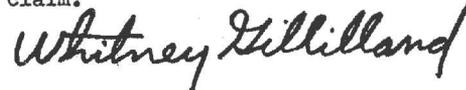
The Commission issued its Proposed Decision on this claim on September 17, 1958, a copy of which was duly served upon the claimant. Full consideration having been given to the objections of the claimant, filed within the twenty-day period after such service which has now expired, and general notice of the Proposed Decision having been given by posting for thirty days, it is

ORDERED that such Proposed Decision be and the same is hereby entered as the Final Decision on this claim.

Washington 25, D. C.

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COMMISSIONERS

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OPC 16-72126-1

Counsel for claimant:

POSTEL & POSTEL
400 Montgomery Street
San Francisco 4, California

PROPOSED DECISION

This claim for \$5,181,937.50 under Section 305(a)(2) of the International Claims Settlement Act of 1949, as amended, is based upon the following:

(1) Miscellaneous Expenses	\$ 47,130.00
(2) Gold Extracted from the Vernie Mine near Blagovestchensk, Siberia	34,807.50
(3) Lease on the Vernie Mine	<u>5,100,000.00</u>
	\$ 5,181,937.50

As to that part of the claim based upon Miscellaneous Expenses of \$47,130, the claimant has not met the burden of proving that such a claim is valid under international law as required by Section 305(a) of the aforesaid Act; therefore, this item is hereby denied.

Based upon the affidavit of the claimant and of C. E. Parker dated July 2, 1937 and March 17, 1938, respectively, the extraction of gold from the Vernie Mine pursuant to the alleged lease was begun on or after January 20, 1918. Decree No. 342 of the 2nd All-Russian Congress of Soviets of Workers' and Soldiers' Deputies Regarding Land, issued on

October 26, 1917, provides that "All sub-surface riches, ores, oil, coal, salt, etc., as well as water and forests, having a State importance are transferred for the exclusive use of the State." [Source: Collection of Decrees and Orders Regarding National Economy (October 25, 1917 - October 25, 1918), Moscow, p. 459.] In view of the foregoing, it is apparent that this item of the claim must also be denied for the gold upon which it is based was extracted from the Vernie Mine after it was confiscated by the Soviet Government.

As to that item of the claim based upon the lease of the Vernie Mine, the claimant alleges the original lease was destroyed when the Mine was confiscated on March 17, 1918 but he reconstructed it. When the attorney for the claimant was requested to reconcile the allegation regarding the reconstruction of the lease with a statement in the affidavit of C.E. Parker of March 17, 1938 that the copy thereof was ". . . a correct copy of the translation of the original contract written in the Russian language . . .", he stated that the explanation by the claimant regarding the reconstruction was inaccurate for the copy attached to his affidavit of July 2, 1937 was a copy of a translation of the original lease.

This reconstructed lease shows that it was entered into on October 20, 1917; that G. L. Brudno of Blagovestchensk, Siberia, lessor-owner, and H. G. Bunn, lessee-claimant, agreed that the lease "shall be for the life of the said property or until all minerals have been removed therefrom"; that the lessee shall, with certain exceptions, pay all operating expenses of the mine; that lessee shall be entitled to 85% of all gold removed from the mine with the balance of 15% to the lessor and that each party shall pay the government tax applicable to his share of the gold. Based on the theory that the net value of the gold was \$6,000,000 when the mine was confiscated by the Soviet Government on March 17, 1918, this item of the claim is for 85% of that amount, or \$5,100,000.

The first question presented is whether the evidence submitted to the

Commission to prove that G. L. Brudno was the individual owner of the Vernie Mine on October 20, 1917 has fulfilled that purpose. The claimant has submitted the following documents, none of which are primary evidence, for the purpose of proving such ownership:

- (1) Photocopy of a purported letter dated March 29, 1917 from G. L. Brudno to his brother, George Cornet, regarding various gold deposits but no reference was made therein to any specific property or mine. (The head of this letter refers to Sredne-Seledjinsk Gold Mining Company, City of Blagoveshtensk, Tel. No. 718),
- (2) Photocopy of a purported certification dated April 4, 1918 that E. Parker and G. Bunn have been working the Vernie (Verny) Mine which was formerly owned by Sredne Seledjinsky Gold Producing Company,
- (3) Affidavit of October 25, 1937 by George Cornet wherein he made the general statement that his brother (G. L. Brudno) was the owner of certain mining properties located near Blagovestchensk,
- (4) Photocopy of an article in the San Francisco Bulletin of April 23, 1917 in which the introductory remarks refer to a letter received by Z. L. Cornet from his brother (Brudno) in Russia regarding ". . . their mining property . . ." The entire letter is quoted in this article and contains several vague references to mines ". . . worth a million dollars . . ." but neither the names of these mines nor their locations are mentioned, and
- (5) Affidavit of March 17, 1938 by C. E. Parker (one of claimant's associates in the operation of Vernie Mine) which contains the statement that "The lease was executed by the owner, G. L. Brudno, a citizen of Russia . . ."

Page 18 of the claimant's aforesaid affidavit of July 2, 1937 contains a statement regarding the Vernie Mine that "This mine, as has been heretofore indicated, is only one of a number of mines in this vicinity belonging to Mr. Brudno, who was the owner of the Sredne Seledjensky Gold Producing Co." That this Company owned the Vernie Mine prior to its confiscation by the Soviet Government is confirmed by the certification described in item (2) of the paragraph immediately preceding, and also by the letterhead of the communication of March 29, 1917 from G. L. Brudno to George Cornet item (1) in the paragraph immediately preceding 7 which refers to Sredne Seledjensky

Gold Producing Co. Consideration must also be given to the fact that the aforesaid article in the San Francisco Bulletin item (4) of the paragraph immediately preceding⁷ indicates this mining property was owned by G.L.Brudno and George Cornet. The copy of the lease submitted to the Commission shows it was signed by G. L. Brudno in an individual capacity; however, the foregoing facts raise a doubt that this Mine was owned solely and individually by him. It is significant that no primary evidence has been offered to prove ownership of the Vernie Mine by G. L. Brudno even though the claim is for a substantial amount.

In the absence of the original lease, it is difficult to determine the actual terms of such a contract, especially as to length of time involved and respective participation of each party in the gold or profits therefrom and of the utmost importance is its true date in view of the fact that the Mine was confiscated on October 26, 1917, which was only six days subsequent to the date of the lease. The copy of the alleged lease attached to the claimant's affidavit of July 2, 1937 shows that the claimant was the sole lessee, but it also contains a significant statement that the party of the first part (lessor) agrees to furnish board and lodging to the second party (lessee) and two associates. The aforesaid affidavit of C. E. Parker states that "Sumn and associates were to receive living expenses, and eighty five percent (85%) of the proceeds in addition thereto" and that ". . . the value of the Gold on said properties at the time it was taken from lessees by the Soviet Government was the sum of Six Million Dollars . . ." (Underscoring supplied) Black's Law Dictionary defines the word "associate" as "a partner in interest" and the said affidavit by Parker corroborates that relationship. The facts are sufficient to pose the question as to whether the claimant was the only lessee.

It must also be noted that the alleged lease was dated October 20, 1917, which was during a most uncertain and hectic political period in Russia and only six days prior to the confiscation of the Vernie Mine by

the Soviet Government. As the owner of this Mine was a Russian national, the execution of the lease at that time could have been a transfer to the claimant for the purpose of invoking American diplomatic protection in the event of a confiscation of the property by the Soviet Government. In such an event, this claim would not come within the ambit of Section 305(a)(2) of the International Claims Settlement Act of 1949, as amended.

The alleged valuation of \$6,000,000 of the lease is based upon the following:

- (1) The affidavit of March 17, 1938 by C. E. Parker contains a statement ". . . he surveyed the properties mentioned in said contract, and that a fair estimate of the value of the Gold on said properties at the time it was taken from lessees by the Soviet Government was the sum of Six Million Dollars (\$6,000,000) U. S. currency",
- (2) The affidavit by George Cornet dated October 25, 1937 contains a statement that "This latter mining property was, according to the information rendered by engineering experts and given to the affiant by affiant's said brother, of a value in excess of \$6,000,000 and was the richest mine in the vicinity",
- (3) The claimant's affidavit of July 2, 1937 contains a statement that the gold extracted from a "cut" 500 feet in length, 40 feet wide and 4 feet in depth had a value of \$34,807.50 and that these same values extended over an area 3 miles long, 600 feet wide and 4 feet in depth for a net (after deducting costs of extraction) of approximately \$6,000,000 but this affidavit also contains a statement that the Alaska Packers Association had considered purchasing the Siberian Mining Properties for \$1,000,000 which Properties apparently included the Vernie Mine and several others, and
- (4) The letter of May 19, 1958 from the claimant's attorney explains that this net value of \$6,000,000 is based upon the following:
 - (a) Vernie Mine is 3 miles long, 600 feet wide and "pay dirt" of 4 feet which contains 1,630,222 cubic yards of "pay dirt",
 - (b) Each cubic yard of "pay dirt" contains gold with a value of \$15, or a total value of \$24,453,330, and
 - (c) Gross value of gold of \$24,453,330 less costs of extraction of \$18,453,330 (75% of \$24,453,330) leaving a net of \$6,000,000.

As to the evidence submitted in support of the alleged value of the lease, the said affidavit of C. E. Parker is couched in very general terms with no apparent basis for his conclusion. The affidavit by George Cornet regarding the value of this lease is materially decreased in value when it is realized that his information of a general nature is hearsay twice removed from the source. It is most difficult, if not impossible, to reconcile the claimed net value of this lease of \$6,000,000, which is applicable to the Vernie Mine only, with the apparent offer of \$1,000,000 by the Alaska Packers Association for that Mine and several others mentioned in claimant's affidavit of July 2, 1937, and with the alleged value of \$1,000,000 for the various mines placed thereon by G. L. Brudno in his letter of March 10, 1917 as incorporated in the article in the San Francisco Bulletin of April 23, 1917.

The alleged net value of \$6,000,000 of the lease as shown in the claimant's affidavit of July 2, 1937 is apparently based on the fact that as the "pay dirt" extracted from a "cut" 500 feet long, 40 feet wide and 4 feet deep had a gold value of \$34,807.50 the same values could be projected or extended over the entire Mine with a length of 3 miles, width of 600 feet and depth of 4 feet. Such a projection or extension would result in a net figure of \$4,126,131 and not \$6,000,000 as claimed. The aforesaid attorney's letter of May 19, 1958 shows that the entire Vernie Mine contained 1,630,222 cubic yards of "pay dirt" with each cubic yard containing gold with a value of \$15 so that the gross value of \$24,453,330 less costs of extraction of \$18,453,330 would result in a net of \$6,000,000. Based upon the Mine dimensions of 3 miles, 600 feet and 4 feet, there would have been 1,408,000 cubic yards rather than the figure of 1,630,222 as shown in the attorney's letter. The claimant's affidavit and the attorney's letter both show a gold value of \$15 per cubic yard, but the "pay dirt" of 80,000 cubic feet, or 2,988.88 cubic yards, extracted from the aforesaid "cut" had an alleged gold content of \$34,807.50 which would be

equivalent to \$11.64 per cubic yard. Although the claimed value of this item is a very substantial amount, no primary evidence has been submitted to corroborate the alleged value of \$6,000,000 for the lease of the Vernie Mine.

As the claimant has failed to submit persuasive evidence in support of this item of the claim based upon the lease of the Vernie Mine, it must also be denied.

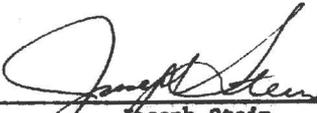
Other elements bearing upon the validity of the claim have not been considered.

Dated at Washington, D. C.

SEP 17 1958

FOR THE COMMISSION:

JMM
MSJ



Joseph Stein
Director, Soviet Claims Division