

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

P-19

IN THE MATTER OF THE CLAIM OF

THE BERWIND-WHITE COAL MINING COMPANY

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-0538

Decision No. CU -30

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$3,311,726.00 was presented by THE BERWIND-WHITE COAL MINING COMPANY, based upon the nationalization by the Government of Cuba of the business of its former wholly owned subsidiary, Havana Coal Company.

Under Section 503 of the International Claims Settlement Act of 1949, as amended (64 Stat. 12; 69 Stat. 562; 72 Stat. 527; 78 Stat. 1110; 79 Stat. 988) the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. That section 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

(a) . . . 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 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.

Section 502(1) of the Act defines the term "national of the United States" as . . . (B) 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 claimant corporation, THE BERWIND-WHITE COAL MINING COMPANY, was organized in the State of Pennsylvania on September 30, 1960. An officer of the corporation has certified that at all times since then and until presentation of this claim, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. Claimant is now a subsidiary of Berwind Corporation, which states that all of its stock is owned by United States nationals. Therefore, the Commission holds that claimant is a national of the United States within the meaning of Section 502(1) (B) of the Act.

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 . . .

The Commission finds on the basis of evidence of record that claimant was the sole shareholder of Havana Coal Company, which was organized in the State of New Jersey in 1904, and which operated in Havana, Cuba.

On October 24, 1960, the Government of Cuba published in its Official Gazette Resolution 3, (pursuant to Law 851) which listed as nationalized Havana Coal Company and the Commission finds that the business in Cuba, carried on by Havana Coal Company, then wholly owned by claimant herein, including Havana Coal Company's wholly owned subsidiary "Compania Habanera de Vapores y Lanchas, S.A." (Havana Steamship and Lighterage Company), was nationalized by the Government of Cuba on October 24, 1960, within the meaning of Title V of the Act. Thereafter, on September 30, 1964, Havana Coal Company, of New Jersey, was merged in THE BERWIND-WHITE COAL MINING COMPANY. The Commission holds that THE BERWIND-WHITE COAL MINING COMPANY is the legal successor in interest and invested with the claim which arose in favor of the former Havana Coal Company.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value or cost of replacement.

Claimant has stated its loss in the amount of \$3,311,726.00, itemized as follows:

1. Lands and Concessions		\$ 850,750.00
2. St. Nicolas land		750,000.00
3. Wharves		760,000.00
4. Buildings		76,945.00
5. Plants (Machinery & Equipment)	\$384,924.00	
6. Cash	114,580.96	
7. Accounts Receivable:		
	\$112,348.87	
Less Reserve	<u>39,730.83</u>	76,618.04
8. Inventories	<u>119,619.04</u>	691,742.00
9. Securities		39,300.00
10. Cuban Government debt		<u>122,989.00</u>
		\$3,311,726.00

Among the documentation submitted are balance sheets for Havana Coal Company (Havana office), for June 30, 1960 and September 30, 1960 and its wholly owned subsidiary Compania Habanera de Vapores y Lanchas, S.A., for June 1960 and September 1960, a consolidated balance sheet for September 30, 1960, as well as a detailed summary

of losses as of September 30, 1960. These reflect the following:

<u>ASSETS</u>			
	<u>Havana</u>	<u>Vapores</u>	<u>Balance</u>
Lands and Concessions	\$437,090.42	\$	\$ 437,090.42
San Nicolas Land	312,231.62		312,231.62
Wharves: \$688,514.88			
Less Depreciation	<u>567,418.21</u>	121,096.67	121,096.67
Buildings: 76,944.74			
Less Depreciation	<u>56,915.16</u>	20,029.58	20,029.58
Machinery and Equipment: 384,924.00		13,015.31	
Less Depreciation	<u>379,939.32</u>	(13,015.31)	4,984.68
Cash & Bank Accounts:	108,400.70	6,180.26	114,580.96
Accounts Receivable:			
Havana Coal		344,334.57 (eliminated)	
Subsidiary	245,000.00 (eliminated)		
Other: 112,298.91			
Less Reserve: <u>39,730.83</u>	72,568.08	49.96	72,618.04
Coal Inventory	91,725.05		91,725.05
Supplies	21,040.58		21,040.58
Prepaid Insurance, etc.	6,519.32	334.45	6,853.77
Securities 76,800.00			
Less Reserve <u>37,500.00</u>	39,300.00		39,300.00
Cuban Govt: 190,639.13			
Less Reserve <u>67,649.80</u>	122,989.33		122,989.33
			<u>\$1,364,540.70</u>

LIABILITIES

Capital	\$	\$250,000.00 (eliminated 245,000.00)	\$	5,000.00
Surplus	139,619.40	100,770.80		240,390.20
Current Account	993,171.68			993,171.68
Reserve for Employees Bonus	1,908.69			1,908.69
				<u>[1,240,470.57]</u>
Reserve for Taxes	3,602.00			3,602.00
Accounts Payable:				
Vapores	344,334.57 (eliminated)			
Berwind-White C.M.Co.	96,467.56			96,467.56
Other	23,872.13	128.44		24,000.57
				<u>\$1,364,540.70</u>

As it appears from the above, the net worth of the Cuban losses, according to the balance sheets and their supporting data, was

\$1,240,470.57 at the time of loss.

With respect to the claimed figure of \$850,750.00 for lands and concessions in the Casa Blanca section of Havana Harbor, consisting of 29,025 square meters, claimant has applied thereto a figure of \$30.00 per square meter, asserting this as the appraised value. In support thereof claimant has submitted a copy of a letter of August 21, 1960 from Ernesto de Zaldo the former Managing Director of the Havana Coal Company.

As to the claimed figure of \$750,000.00 for undeveloped and unused San Nicolas property at the land end of Havana Harbor, claimant has applied to the area of 74,970 square meters a value of \$10.00 per square meter, citing it as an offer received in February, 1956, and further states that with the opening of the tunnel across the Havana Bay, the potential value of this property was doubled. In support thereof claimant cites a letter from Mr. de Zaldo of February 28, 1956 in which he states that a broker expressed an interest in the property, suggesting \$10.00 as a fair evaluation. As it appears, however, the property was not sold.

In regard to the claimed figure of \$760,000.00 for 6,000 square meters of wharves, claimant has applied \$160.00 as a new construction figure to one-third of the dock, and valued the remaining two-thirds at \$110.00 per square meter. Again reference is made to Mr. de Zaldo's letter of August 21, 1960 in which he states that under the former Batista Government, the Frederick Snare Corporation estimated the cost of replacement as \$160.00 per square meter of new dock, and further Mr. de Zaldo stated that one-third of the dock was new.

Regarding the claimed figure of \$384,924.00 for plant machinery, equipment, etc., claimant describes this as the actual or appraised value, and states that replacement values of machinery, tools and

equipment increased very substantially over the years and estimates that increased values are just about offset by the accumulated depreciation.

The Commission has carefully considered all of the evidence, taking into account the basis of valuation most appropriate to the property and equitable to the claimant including the evidence submitted as to book value, going concern value and cost of replacement. The Commission finds no reason to alter the value of the lands, concessions and wharves by substituting replacement figures, particularly when claimant's predecessor, to within twenty-four days of nationalization, relied on figures which have permitted profits to the claimant's predecessor some of which still appear on the balance sheet. The Commission finds that the value of Havana Coal Company's losses as reflected by the balance sheet of September 30, 1960 is the most appropriate basis of evaluation.

Accordingly, the Commission finds that the value of the Havana Coal Company's business in Havana, at the time of nationalization, was \$1,240,470.57, and concludes that claimant has succeeded to a loss in that amount, within the meaning of Title V of the Act as a result of nationalization of the business of its wholly owned subsidiary, the Havana Coal Company, by the Government of Cuba on October 24, 1960.

However, the balance sheet for Havana Coal Company's Cuban operations discloses a debt owed to THE BERWIND-WHITE COAL MINING COMPANY. On the balance sheet of June 30, 1960 this appears as \$56,963.20 and on the balance sheet for September 30, 1960 this has increased by \$39,504.36 to \$96,467.56. The Commission finds that THE BERWIND-WHITE COAL MINING COMPANY suffered a direct loss of the debt in the amount of \$96,467.56 as a result of nationalization of

the debtor enterprise. (See In the Matter of the Claim of American Cast Iron Pipe Company, FCSC Claim No. CU-0249.)

The Commission concludes that Havana Coal Company suffered a loss in the amount of \$1,240,470.57 within the meaning of Title V of the Act as a result of nationalization of its enterprise in Cuba, by the Government of Cuba on October 24, 1960; that claimant has succeeded to the claim; and further that claimant suffered a separate loss of \$96,467.56, by the same action of the Government of Cuba.

The Commission has decided that in payment of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be allowed at the rate of 6% per annum from the date of loss to the date of settlement (See the Claim of American Cast Iron Pipe Company, FCSC Claim No. CU-0249).

Accordingly the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from October 24, 1960, the date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

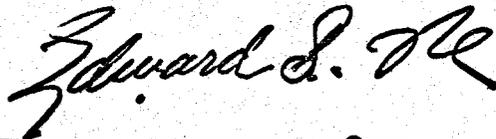
The Commission certifies that THE BERWIND-WHITE COAL MINING COMPANY succeeded to and suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the

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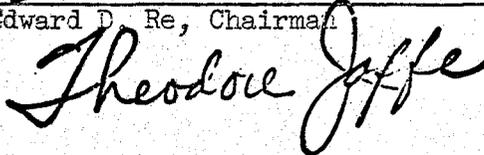
amount of One Million Three Hundred Thirty-six Thousand Nine  
Hundred Thirty-eight Dollars and Thirteen Cents (\$1,336,938.13),  
with interest thereon at 6% per annum from October 24, 1960 to  
the date of settlement.

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

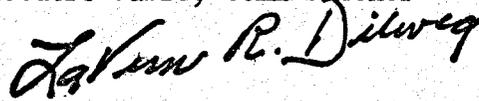
25 JAN 1967



Edward D. Re, Chairman



Theodore Jaffe, Commissioner



LaVern R. Dilweg, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections  
are filed within 20 days after service or receipt of notice of this  
Proposed Decision upon the expiration of 30 days after such service or  
receipt of notice, the decision will be entered as the Final Decision  
of the Commission, unless the Commission otherwise orders. (FCSC  
Reg., 45 C.F.R. 531.5(e) and (g) (1964))