

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

IN THE MATTER OF THE CLAIM OF

ESTATE OF WILLIAM ASTOR CHANLER, DECEASED

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2540

Decision No. CU-0479

Counsel for claimant:

Rufus King, Esq.
Clarence W. Moore, Esq.

Appeal and objections from a Proposed Decision entered October 18, 1967;
No oral hearing requested.

Hearing on the record held October 14, 1971.

FINAL DECISION

This claim, based upon the loss of mining concessions in Mantua, Pinar del Rio, Cuba, was denied in Proposed Decision of October 18, 1967, for failure of proof. Subsequently, claimant's objections were entered to the Proposed Decision and certain supporting evidence was submitted. Upon consideration of the objections and new evidence, in light of the entire record, the Commission now amends the decision in this matter.

The Commission finds that the decedent, WILLIAM ASTOR CHANLER, died testate in 1934 and his Last Will and Testament was admitted to probate at the Surrogate's Court, County of New York, on March 23, 1934. The will provided for several trusts and the decedent's two sons, William A. Chanler, Jr., and Sidney A. Chanler, nationals of the United States since birth, were designated as the income beneficiaries of the trusts.

Counsel has submitted evidence to establish that the late WILLIAM ASTOR CHANLER was the owner of twelve mining claims or concessions in barrios of the Municipality of Mantua, Pinar del Rio, Cuba, which he acquired in 1905-1906. These claims or concessions include the following:

<u>Name</u>	<u>Record No.</u>	<u>Area - Hectares</u>
Colorado	66	25
Casilda	67	93
Oreste	68	20
Beatriz	78	332
Florence	79	125
Utah	80	75
New York	83	75
Astor	100	50
Montana	105	100
Alaide	112	89
Alaide Segunda	189	75
Brooklyn	6	50

The Executors of the Estate leased Alaide, Beatriz, Casilda and Oreste to Sergio de Biscuccia on December 28, 1955, and in 1955 and 1956 leased Brooklyn to Robert Cannon and the Mesabi Mining Corporation of Havana. Such leases stipulated that the lessees would pay certain monthly rentals and royalties on ore mined, shipped or sold. Additionally, the Estate executed a contract on April 16, 1957, with Joseph J. Schedel concerning the Astor concession whereby an annual rental was payable, with royalties for each ton mined and Mr. Schedel was given an option to purchase the claim at \$600.00 a hectare, or \$30,000.00 for the total claim.

With the exception of the Brooklyn claim, leased to the Mesabi group, no evidence has been submitted to establish the extent of development or production of ore from the mining claims, if any, leased or not leased, although it appears that the lessees paid rentals in part and made certain explorations and initial activities incident to mining operations. The Government of Cuba enacted Law 617 concerning mining properties on November 17, 1959, which curtailed all mining operations by exacting onerous requirements, including re-registration and taxes; and, in the absence of evidence to the contrary, the Commission finds that the mining interests subject of this claim were taken by the Government of Cuba on November 17, 1959.

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 taken 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.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

Correspondence and other data, dated from 1952 to 1959, submitted to the Commission by the representatives or attorneys of the Estate in Havana and New York, as well as the Mesabi group and others, discloses that the Mesabi group expended "over \$200,000" in development of the Brooklyn claim. Such expenditures included costs incident to exploration, equipment and labor, road clearance and mining operations. Further, it appears from the evidence of record that the other lessees had also enhanced the value of the mining concessions leased to them, including Beatriz, Casilda, Alaide, Orestes and Astor, although all of the lessees had failed to pay the stipulated rentals and were in default under their contracts at the time of loss.

The evidence of record also discloses that one shipment of ore was assertedly made to the United States from the Brooklyn mine but that the Mesabi group, nevertheless, entered into negotiations with the Professional Engineering Research and Development Corporation (PERDCO) of Havana, Cuba, for an assignment of their contract and a commitment on part of PERDCO to resume active exploration and production from the Brooklyn mine. Correspondence from PERDCO indicated that a possible 1,000,000 tons of iron ore might be available but problems, including mining and transportation, with lack of demand on the world market for such ore, posed serious complications in further production.

The Commission has carefully considered the entire record concerning the value of the mining properties in question. With the exception of the mining claims or concessions which were leased to others, as discussed above, the Commission finds that no evidence has been submitted to show development or value of the widely scattered claims, production of minerals therefrom,

profits, if any, or evidence relating to value of such claims at the time of loss. However, with respect to the leased concessions, especially Brooklyn, the Commission finds that expenditures were made for explorations, improvements and similar enhancement of the value of the concessions; and such expenditures in improvements represent assets which were, in fact owned by the Estate at the time of loss on November 17, 1959.

In arriving at the value of such assets, the Commission has considered evidence of record available to the Commission in similar mining operations in Cuba, expenditures made by the claimant and the lessees and other evidence, including the nature of the claims, geological reports, transportation of the ore and other factors. Based upon the entire record, the Commission finds that the value of the aforesaid mining interests in Cuba, owned by claimant and subject of this claim, was in the total amount of \$280,000.00; and that claimant sustained a loss in that amount within the meaning of Title V of the Act.

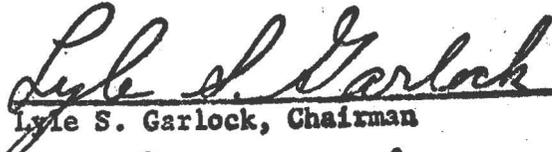
Accordingly, the following Certification of Loss will be entered, and in all other respects the Proposed Decision, as amended herein, is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that the ESTATE OF WILLIAM ASTOR CHANLER, DECEASED, 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 amount of Two Hundred Eighty Thousand Dollars (\$280,000.00) with interest at 6% per annum from November 17, 1959 to the date of settlement.

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

OCT 14 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

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ESTATE OF WILLIAM ASTOR CHANLER,
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Act of 1949, as amended

Claim No. CU -2540

Decision No. CU -

479

Counsel for claimant:

Rufus King, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$1,000,000^{1,000,000.}, was presented by the ESTATE OF WILLIAM ASTOR CHANLER, DECEASED, and is based upon the asserted loss of certain mineral interests in Pinar del Rio Province, Cuba. No evidence has been submitted to establish the nationality of the decedent or his heirs.

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 of 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).)

Counsel for claimant estate asserts the ownership, by the decedent, of certain mineral interests in the Pinar del Rio Province of Cuba; however, claimant has submitted no documentary evidence in support of its claim. By Commission letter of July 11, 1967, claimant, was advised, through counsel, as to the type of evidence proper for submission to establish this claim under the Act.

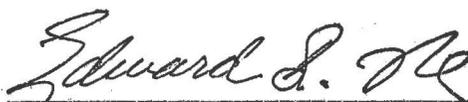
On August 22, 1967, counsel was invited to submit any evidence he might have within 45 days from that date, and he was informed that, absent such evidence, it might become necessary to determine the claim on the basis of the present record. Although counsel has since corresponded with the Commission, no evidence has been submitted in support of this claim.

The Commission finds that claimant has not met the burden of proof, in that it has failed to establish ownership, by a national or nationals of the United States, of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba.

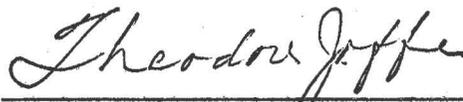
Accordingly, this claim is hereby denied. The Commission deems it unnecessary to determine other elements of this claim.

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

OCT 18 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 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).)