

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

IN THE MATTER OF THE CLAIM OF

MAURICE M. SOKOLOFF

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -3546

Decision No. CU 6070

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the revised amount of \$250,000.00 was presented by MAURICE M. SOKOLOFF, based upon the asserted loss of mineral concessions, stocks of Cuban corporations and furniture and furnishings. Claimant 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.

In his original application claimant stated that his losses consisted of the following:

Cost of mining surveys of the copper mine "Constancia" in the area of San Vicente, Pinar del Rio province	\$18,000.00
Legal costs	3,000.00
Purchase of mining concessions	7,000.00
Structures, buildings and machinery on the grounds of the "Constancia" mine, including drilling equipment	29,500.00
Furniture and furnishings in his apartment #18A, located at No. 20 Calle 12, Vedado, Havana	<u>4,500.00</u>
Total	\$62,000.00

Subsequently, claimant increased the amount of the claim to \$250,000.00 by including the value of the copper ore of the "Constancia" mine and the value of 120 shares of stock of Desarrollo Minero "Normandie" S.A., a Cuban corporation engaged in mining operations.

In support of the claim, claimant submitted geological reports on the survey of the copper mine "Constancia" and the adjoining mines "Normandie", "Demasia de Normandie", "La Chorrera" and "El Socorro" with accompanying maps and notes on the methods of operation; affidavits, statements, photographs, stock certificates, resolutions of the Cuban Government, listings of his household goods, copies of correspondence and other documentation. On the basis of this evidence the Commission makes its findings of fact regarding the various items of the claim under separate headings as set forth further below.

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.

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 evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

(1) Mineral Concessions

Based upon the evidence and the entire record the Commission finds that claimant was the owner of the mining concession "Constancia" for the exploration and exploitation of copper, located near San Vicente, Municipality of Vinales, Province of Pinar del Rio.

The evidence does not support claimant's assertion that he had an interest in mining concessions other than "Constancia". The evidence discloses that two mining concessions: "Normandie" and "Demasia de Normandie" were owned by the corporation Desarrollo Minero "Normandie" S.A. (see (2) below), and that all the other mining concessions to which reference is made in the claim were owned by persons other than the claimant. The Commission will therefore consider under this heading only the claim based upon the mining concession "Constancia", inasmuch as the evidence does not support claimant's assertion that he owned certain other mining concessions of the "Constancia" group ("La Chorrera", "El Socorro" "Nuestra Senora del Rosario", "Iris" and "Ampliacion de Iris").

The copper mine "Constancia" was inactive from 1917 to 1956, when a Canadian company opened the old shafts and undertook some drilling in an attempt to locate new sources of ore. These operations were discontinued in 1958. Thereafter, Mr. Perez Suarez, the owner of the mining concession sold and transferred the same to the claimant herein who appointed geologists and mining experts in order to examine the mines. On September 1, 1959, Dr. William Pfeffer, a geologist, and his associates submitted a report in which they stated that on the basis of new methods of explorations significant locations of mineral ore zones were discovered and that the chances for a successful drilling program were excellent.

Meanwhile, all mining rights, including the mineral rights discussed above, were substantially curtailed by the Cuban Government under Law No. 635 of November 23, 1959. This law effectively cancelled all applications for the exploration and exploitation of mines regardless of their status (see Claim of Felix Heyman, Claim No. CU-0412, 1968 FCSC Ann. Rep. 51). Thus, the Commission finds that the above-described concession was taken by the Government of Cuba on November 23, 1959.

The evidence, including affidavits and geological reports, shows that the mine "Constancia" had some value for speculative investments, but neither the claimant nor the Commission are in a position to place any value on the copper reserves assertedly located within the mine. Under these circumstances the Commission limits the valuation of the mining concession to the value of the physical property located on and within the mining grounds and to the amount of the expenditures which claimant had disbursed in his attempt to establish a better bargaining basis for the sale or lease of the concession to future operators.

The physical property consisted of the following:

Drilling equipment, generator and pipes	\$ 9,500.00
Structures, buildings, machinery	20,000.00

The expenditures were made for the following purposes:

Surveys of the mine	18,000.00
Acquisition of concession, including legal fees	<u>10,000.00</u>

Total	\$57,500.00
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The Commission, therefore, concludes that claimant suffered a loss in connection with the mining concession "Constancia" as a result of the actions of the Cuban Government within the meaning of Title V of the Act in the amount of \$57,500.00.

(2) Desarrollo Minero "Normandie" S.A.

The record shows that claimant was the owner of all the outstanding stock of Desarrollo Minero "Normandie" S.A., a corporation organized under the laws

of Cuba on June 20, 1959. The record further shows that this corporation owned two mining concessions for the exploitation of copper known as "Normandie" and "Ampliacion de Normandie", situated near San Vicente, province Pinar del Rio.

The evidence does not disclose that these two mining concessions were income producing and nothing in the record indicates that any recent significant exploration or exploitation of these mining sites has taken place. The geological report by William Pfeffer and associates includes these two mines in the "Constancia" group to which reference is made above under (1) and recommends a drilling program which may have excellent chances of bringing favorable results, but there is no record of any drillings nor of any results.

Under these circumstances, the Commission finds that it cannot place any value on the copper reserves assertedly covered by the two mining concessions. There is also no evidence that claimant made any investments for the survey of these two mines, except to the extent already discussed above under (1) and for which losses have been established under that heading.

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 with respect to this portion of the claim.

Claimant further states that Desarrollo Minero "Normandie" S.A. was approached in 1959 by Compania Minera Lehigh S.A., a Cuban corporation, and offered a lease of seven iron mines and four copper mines in the area of Florida and Nuevitas, province of Camaguey. In July of 1959 a preliminary oral agreement was reached between the two parties which provided for a lease of the aforesaid mines to Desarrollo. This agreement, however, never was signed and never became operative, because the concessions were subject to Cuban Law No. 635 of November 23, 1959, as stated above. In any event, the loss claimed for Desarrollo, is for prospective earnings and anticipated profits which might have been realized had the lease been signed and had the Government of Cuba not interfered with the mining rights of the lessor.

Claims based on the loss of prospective earnings and profits are generally not allowed under international law (see Borchard: "Diplomatic Protection of Citizens Abroad" Section 172, a treatise recognized as leading in this field of international law), and the Commission has equally held that claims for losses based on prospective profits and earnings of a Cuban enterprise are not within the scope of Title V of the Act. (See Claim of Metro-Goldwyn-Mayer, Inc., et al., Claim No. CU-2225.)

Accordingly, the portion of the claim relating to losses of Desarrollo Minero "Normandie" is hereby denied.

(3) Household Furniture and Furnishings

Claimant states and the Commission finds that he was the owner of household goods (furniture and furnishings) located at his apartment #18A, at No. 20 Calle 12, Vedado, Havana.

The Commission further finds that this property was taken by the Government of Cuba pursuant to the provisions of Law No. 989 published in the Official Gazette of December 6, 1961, which confiscated all goods and chattels, rights, shares, stock, bonds and other property of persons who left Cuba. Claimant left Cuba by the end of August of 1960 and in the absence of evidence to the contrary, the Commission finds that the above personal property in claimant's apartment in Havana was taken by the Government of Cuba on December 6, 1961.

Claimant asserts that the value of the furniture and furnishings at the time of taking was \$4,596.00. The record includes a description of the properties, and affidavits of persons familiar therewith. The Commission finds that claimant's estimate of value is fair and reasonable. Accordingly, it is concluded that claimant suffered a loss as a result of the taking of this personal property in the amount of \$4,596.00.

Recapitulation

The losses certifiable within the scope of Title V of the Act are summarized as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>Amount</u>
(1) Mineral Concessions	November 23, 1959	\$57,500.00
(2) Furniture and furnishings	December 6, 1961	<u>4,596.00</u>
	Total	\$62,096.00

The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

<u>FROM</u>	<u>ON</u>
November 23, 1959	\$57,500.00
December 6, 1961	4,596.00

CERTIFICATION OF LOSS

The Commission certifies that MAURICE M. SOKOLOFF 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 Sixty-two Thousand Ninety-six Dollars (\$62,096.00) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

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

FEB 17 1971


Lyle S. Carlock, Chairman


Theodore Jaffe, Counsel

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.

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 notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended (1970).)