

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

IN THE MATTER OF THE CLAIM OF

NOLAN P. BENNER
JOSEPH S. YOUNG
WILLIAM B. BUTZ
CARL J. W. HESSINGER and
RICHARD K. WHITE

TRUSTEES OF A TRUST ESTABLISHED
UNDER THE WILL OF HARRY C. TREXLER,
DECEASED

**Under the International Claims Settlement
Act of 1949, as amended**

Claim No CU-8773

Decision No. CU -6084

Counsel for claimants:

Clifford, Warnke, Glass, McIlwain & Finney
By James T. Stovall III, Esq.

Appeal and objections from a Proposed Decision entered February 24, 1971;
Oral hearing requested.

Oral Argument June 9, 1971 by James T. Stovall III, Esq.

FINAL DECISION

The Commission issued a Proposed Decision on this claim on February 24, 1971, denying the same for the reason that the record did not warrant an evaluation of the assets of Compania Minera Lehigh S.A., the owner of certain mining concessions in Cuba. Claimants, Trustees under the Will of HARRY C. TREXLER, Deceased, also known as Trexler Foundation, objected to the Proposed Decision and requested an oral hearing which was held on June 9, 1971. Subsequently, additional documentary evidence concerning the value of the assets of the Compania Minera Lehigh S.A. was submitted. At the hearing testimony was presented of NOLAN P. BENNER, Executive Director of the Trexler Foundation and of Enrique Ruiz Williams, a consulting engineer who formerly resided in Cuba.

Based upon the evidence of record, including the testimony of the witnesses, the Commission reiterates its prior findings that the Trexler Foundation is the owner of 14,792 shares of stock of Compania Minera Lehigh S.A., a Cuban corporation, and that this corporation owned in the province of Camaguey seven concessions for the exploitation of iron and four concessions for the exploitation of copper ore. The Commission now finds that these concessions, taken by

the Government of Cuba on November 23, 1959, would have been profitably exploited had the concessions for the exploitation of ore not been withdrawn by the Cuban Government.

Based upon the report prepared by O. J. Conley in 1901 and by B. F. Fackenthal in 1906, and upon the report and testimony of Enrique Ruiz Williams who visited the mines in 1957, as well as upon the history of the mines which were in operation between 1952 and 1957, the Commission concludes that the iron ore reserves, and to some extent the copper reserves in the mines were abundant at the time of the taking in 1959. The Commission, however notes, that the survey of the mines made by Mr. Ruiz Williams was entirely limited to the surface; that he performed no drilling operations on the spot; and that he admitted that the depth of the reserves cannot be determined with any kind of certainty based only upon the protruding ore on the surface. The Commission further notes that the operations of the mines during the years 1952 - 1957 were conducted in the form of open pit mining, and that substantial investments would have been necessary in order to profitably exploit the ore in depth. Such investments would have consisted of elaborate drilling and other exploratory operations, and of the acquisition of appropriate machinery and equipment for the mining below the surface, none of which was in existence at the time of taking. In the light of the evidence submitted the Commission concludes that the iron ore reserves in the mine "John Fritz" at the time of taking represented a volume equivalent to 1,000,000 tons, and that the value of these reserves, taking into consideration the necessary investments described above, the relative remoteness of the mine from the railroad, and the unsatisfactory port facilities in the vicinity, was \$2,500,000. Based upon the record, the Commission further concludes that the reserves in all the other mines had an aggregate value of \$60,000 and that therefore the assets of Compania Minera Lehigh S.A. had a value of \$2,560,000.00.

The Commission takes notice that Compania Minera Lehigh S.A. had no liabilities whatsoever and that its capital stock was divided in 23,112 shares. Accordingly, the Commission finds that at the time of taking one share of the company had a value of \$110.76.

The record shows, as stated above, that the claimants are the owners of 14,792 shares and that the loss suffered by the Trust within the meaning of Title V of the Act amounts to \$1,638,361.92.

The claim for administrative and legal expenses in the amount of \$24,590.90 asserted subsequent to the issuance of the Proposed Decision is denied, because these expenses did not increase the value of the mines.

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.

Accordingly the following Certification of Loss will be entered and the remainder of the Proposed Decision, as amended herein, is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that NOLAN P. BENNER, JOSEPH S. YOUNG, WILLIAM B. BUTZ, CARL J. W. HESSINGER and RICHARD K. WHITE, TRUSTEES OF A TRUST ESTABLISHED UNDER THE WILL OF HARRY C. TREXLER, 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 One Million Six Hundred Thirty-Eight Thousand Three Hundred Sixty-One Dollars and Ninety-Two Cents (\$1,638,361.92) with interest thereon at the rate of 6% per annum from November 23, 1959 to the date of settlement.

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

JUL 6 1971


Eric S. Carlock, Chairman


Theodore Jaffe, Commissioner

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TRUSTEES OF A TRUST ESTABLISHED UNDER
THE WILL OF HARRY C. TREXLER, DECEASED

**Under the International Claims Settlement
Act of 1949, as amended**

Claim No. CU -8773

Decision No. CU -6084

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 \$512,000.00 was presented by NOLAN P. BENNER, JOSEPH S. YOUNG, WILLIAM B. BUTZ, CARL J.W. HESSINGER and RICHARD K. WHITE, TRUSTEES OF A TRUST ESTABLISHED UNDER THE LAST WILL OF HARRY C. TREXLER, DECEASED, based upon a 64% stockholder's interest in the capital stock of Compania Minera Lehigh, S.A., a corporation organized under the laws of Cuba on January 9, 1956.

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 record shows that the trust established under the last will of Harry S. Trexler, Deceased, was created by the decedent for the purpose of aiding and supporting the welfare and the poor inhabitants of the city of Allentown, Pennsylvania, and that the entire income of the trust created in perpetuity is being distributed from year to year as follows: 25% to the City of Allentown and 75% to the poor families residing in Allentown. The Commission holds that this charitable trust is a national of the United States within the meaning of Section 502(1)(B) of the Act. (See Claim of Independence Foundation, Claim No. CU-2152, 1969 FCSC Ann. Rep. 38.)

The Trustees have submitted to the Commission stock certificates Nos. 4 and 18 for 14,792 shares of stock of COMPANIA MINERA LEHIGH S.A. and the Commission finds that the Trustees have been the owners of the aforementioned stock since 1956, in trust nevertheless for the aforesaid beneficiaries.

Compania Minera Lehigh S.A., having been organized under the laws of Cuba, does not qualify as a national of the United States as defined in Section 502(1)(B) of the Act as a corporation or legal entity organized under the laws of the United States, or any State, the District of Columbia, or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per cent or more in natural persons who are citizens of the United States. In this type of situation it has been held that an American stockholder is entitled to file a claim for the value of his stockholder's interest (see Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33). The Commission, therefore, finds that this claim submitted

by the President of the Cuban company as agent of its stockholders, pursuant to Commission Order No. CU-2 of October 12, 1966, was properly filed.

Compania Minera Lehigh S.A. was the owner of the following eleven mining concessions in working condition for the exploration and exploitation of copper and iron ore, located in the area of Nuevitas and Florida, province of Camaguey, Cuba:

<u>Copper Mines:</u>	(1)	Bayatabo	covering an area of	44	hectares
	(2)	Colombia	"	"	60 "
	(3)	Luba Libre	"	"	80 "
	(4)	La Cubana	"	"	20 "
<u>Iron Mines:</u>	(5)	Adams	"	"	80 "
	(6)	Catasaugua	"	"	112 "
	(7)	El Iman	"	"	36 "
	(8)	John Fritz	"	"	96 "
	(9)	Pennsylvania	"	"	95 "
	(10)	Philadelphia	"	"	35 "
	(11)	Thomas	covering an area of	55	hectares

The mining rights encompassed by these concessions 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 concessions, 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 listed mining concessions were taken by the Government of Cuba on November 23, 1959.

Claimants state that the assets of Compania Minera Lehigh S.A. consisted of these mining concessions in Cuba, that their value was \$800,000 and that the corporation had no liabilities. Such valuation is predicated upon estimated reserves of 2,000,000 tons of high grade iron ore allegedly covered by the concessions for the exploration and exploitation of iron under the assumption that a royalty of 40 cents per ton of iron ore would have been readily obtained and collected.

The Commission holds that this view is not supported by the evidence. There was no exploitation of copper or iron ore from the mines of Compania Minera Lehigh S.A. after 1956.

The record shows that these mines did not produce more than 240,516 tons of iron ore from 1952 to 1956, when mining operations were discontinued. An analysis of the production of the mines shows that the output

was steadily declining since 1953, and the discontinuance of the operations in 1956 suggests that the operations have become unprofitable.

An agreement reached in 1959 between the Compania Minera Lehigh S.A. and Desarrollo Minero "Normandie" S.A., a Cuban corporation, providing for the lease of the mining concessions, was never signed and never became operative. It is impossible to estimate how much of the ore would have been extracted had the agreement been signed and conditions had remained normal in Cuba. It is also impossible to predict whether and to what extent "Normandie", a newly organized corporation with little, if any, capital of its own, would have been able to continuously pay the royalties, especially if the exploitation of the ore would have been less satisfactory than the parties expected. In any event, it is unlikely that anything near 2,000,000 tons of iron ore would have been extracted by the operator of the mines.

This opinion is fortified by the record in the claim of Maurice M. Sokoloff, Claim No. CU-3546, pending before the Commission. Sokoloff was the owner of all the shares of stock of Desarrollo Minero "Normandie" S.A., and through the corporation, in fact, the contemplated lessee for the above mining concessions. In his original claim filed with the Commission, however, he failed to include the lease with Compania Minera Lehigh S.A. as one of the assets. Subsequently he learned that a claim had been filed by Compania Minera Lehigh S.A. and at the request of this company, Sokoloff submitted an opinion as to the value of the concessions. His opinion was based on a report prepared 60 years ago. Now he amended his claim and mentioned the loss of potential earnings in connection with the mining concessions subject of this claim but again failed to assign any value to the lease.

While the omission to include the lease as one of his assets and then his failure to assign any value to the lease does not indicate conclusively that the lease was worthless, it leaves, nevertheless, the impression that the lessee did not consider the loss of the lease as the loss of a substantially profitable venture.

No evidence as to the value of the mining concessions has been submitted, except the above-mentioned opinion signed by Mr. Maurice M. Sokoloff.

The Commission finds that this opinion is not convincing, because the facts show, as stated above, that the mining operations during the 1950's declined steadily, finally became unprofitable and terminated completely in 1956.

In the absence of any better evidence to show that the mines and concessions subject of this claim at the time of their loss had any earning capacity and commercial value, the Commission is not in the position to evaluate the assets of Compania Minera Lehigh S.A.

Accordingly, the claim of the stockholders, including this claim, must be and hereby is denied.

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

FEB 24 1971


Lyle S. Garlock, Chairman


Theodore J. Jaffe

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 (1970).)