

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

IN THE MATTER OF THE CLAIM OF

BERWIND CORPORATION

Claim No. CU-0538

Decision No. CU-30

Under the International Claims Settlement
Act of 1949, as amended

Appeal and objections from a Proposed Decision entered on January 25, 1967;
Oral hearing requested,

Oral hearing held August 22, 1967.

ORDER and FINAL DECISION

By Proposed Decision entered on January 25, 1967, the Commission certified that claimant, BERWIND WHITE COAL MINING COMPANY, succeeded to and suffered a loss in the amount of \$1,336,938.13, representing a loss, through nationalization by the Government of Cuba, on October 24, 1960, of the business of its former, wholly owned subsidiary, Havana Coal Company.

Claimant objected to the Proposed Decision of the Commission and requested an oral hearing before the Commission, which was held on August 22, 1967. At this hearing the Commission considered all the evidence presented in support of this claim including statements and appraisals in support of claimant's objections, presented by the testimony of witnesses. In addition, the Commission considered claimant's petition for a change of the corporate name based upon evidence which establishes that as of January 2, 1967, BERWIND WHITE COAL MINING COMPANY changed its name to BERWIND CORPORATION.

The claim has permitted the Commission to examine, in depth, Section 503(a) of the Act, which provides (in part) as follows:

. . . In making the determination 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 (i) fair market value, (ii) book value, (iii) going concern value, or (iv) 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." The Commission has concluded that this phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property, and that it is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider; i.e., fair market value, book value, going concern value, or cost of replacement. There can be no doubt that under certain circumstances the book value is clearly the most appropriate to the property and equitable to the claimant, whereas, under other circumstances it would not be appropriate.

In the claim here under consideration, the Commission has received additional evidence, subsequent to the Proposed Decision, which warrants a determination as to value based upon factors other than book values. Claimant has submitted documentary evidence, in the form of appraisals, corporate correspondence, and estimates from third parties; in addition, expert testimony has been adduced at the oral hearing. The expert who testified before the Commission has provided evidence and information which, coupled with other proof, permits a finding of values higher than those set forth as book values.

Based upon all evidence of record, including appraisals and testimony of the expert witness, Luis Parajon, the Commission finds that the property known as the "Casa Blanca" lands, had a total of 29,025 square meters, including the so-called "concession" area. The Commission further finds that 6,852.50 square meters of this property, on the waterfront, had a value of \$30 per square meter, and the remaining 22,172.50 square meters had a value

of \$20 per square meter, resulting in a total value for said lands of \$649,025. This represents an increase of \$211,934.58 over the book value of said lands as included in the Proposed Decision.

The Commission also finds that the San Nicolas lands were in two parts, the first consisting of 44,472 square meters, and that 4,000 square meters thereof had a value of \$20 per square meter, and that 40,472 square meters had a value of \$15 per square meter, resulting in a value for these portions of \$687,080. The second part of this property measured 30,498.39 square meters valued by the expert at \$7.00 per square meter before the deduction of about \$200,000 for necessary work. Accordingly, the Commission finds that this property had a value of \$13,488.73 at the time of loss. Thus the value of the San Nicolas land is found as \$700,568.73, an increase of \$388,337.11 over the book value of said land as included in the Proposed Decision.

With respect to the other portions of the claim considered at the oral hearing, the Commission finds that claimant's assertions of higher values are not supported by persuasive evidence of record. Accordingly, the Commission finds no basis for values greater than those found in the Proposed Decision.

Full consideration having been given to the entire record including the evidence submitted in support of claimant's objections, it is

ORDERED that the BERWIND CORPORATION be, and the same is hereby substituted as the proper party claimant in the place and stead of the BERWIND WHITE COAL MINING COMPANY; and it is further

ORDERED that the finding of increased value recited herein be, and the same is hereby incorporated in the Final Decision of the Commission.

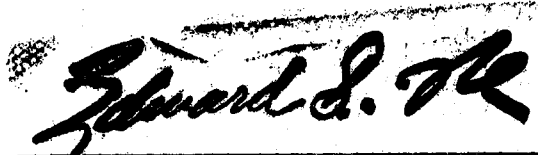
Accordingly, the certification of loss as restated below, will be entered, and the Proposed Decision as amended herein is affirmed as the Commission's Final Decision in this matter.

CERTIFICATION OF LOSS

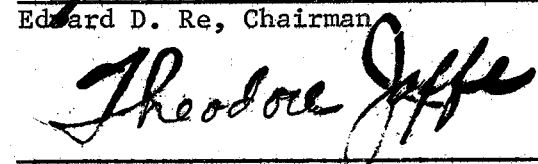
The Commission certifies that the BERWIND CORPORATION succeeded to and suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Million Nine Hundred Thirty-Seven Thousand Two Hundred Nine Dollars and Eighty-Two Cents (\$1,937,209.82) with interest thereon at 6% per annum from the date of loss to the date of settlement.

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

FEB 7 1968



Edward D. Re, 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.

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

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 Reolution 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	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>

<u>LIABILITIES</u>			
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 Employes 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

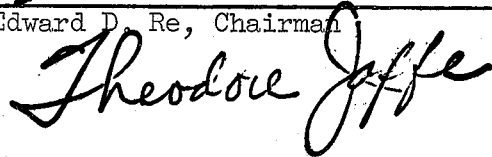
amount of One Million Three Hundred Thirty-six Thousand Nine
Hundred Thirty-eight Dollars and Thirteen Cents (\$1,336,938.13),
with interest thereon at 6% per annum from October 24, 1960 to
the date of settlement.

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

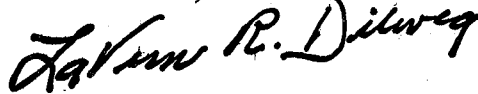
25 JAN 1967



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))