

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

IN THE MATTER OF THE CLAIM OF

HOWARD E. HOLTZMAN  
MORTON L. PERRY  
LOUIS SUKONIK

Claim No. CU -2168

Decision No. CU -3522

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for claimants:

Talianoff and Waller

AMENDED PROPOSED DECISION

Under date of March 19, 1969, the Commission entered its Final Decision certifying losses in favor of claimants as follows:

HOWARD E. HOLTZMAN - \$303,023.72 plus interest;  
MORTON L. PERRY - \$202,015.82 plus interest; and  
LOUIS SUKONIK - \$303,023.72 plus interest.

These amounts represented claimants' stock interests in Fomento Ball-Brothers, S.A. (Fomento), a Cuban corporation which was operating certain mines in Cuba pursuant to a lease from the Sandy Mining Company, a Cuban corporation. In determining the values of claimants' 30%, 20% and 30% stock interests, respectively, in Fomento, the Commission deducted Fomento's liabilities from its assets to find the net worth of Fomento. Since the record indicated that the 10% royalty with respect to ore at the mine site, valued at \$350,000.00, had been paid, no deductions were made in this respect.

A claim was presented by Sandy Fryer, sole owner of the Sandy Mining Company, Fomento's lessor, Claim No. CU-1617. In that claim, the Commission found in the basis of the entire record, including the record in this case, that on March 1, 1959, the date of loss, Fomento owed its lessor a royalty of \$35,000.00 with respect to the ore at the mine site which had not been taken into consideration in determining this claim.

The valuations of claimants' stock interests in Fomento were based upon Fomento's assets and liabilities, aggregating \$1,061,079.08 and \$51,000.00, respectively. The Commission now finds that Fomento's liabilities on the date of loss amounted to \$86,000.00. Therefore the net worth of Fomento on March 1, 1959 was \$975,079.08, and claimants' 30%, 20% and 30% stock interests, respectively, had values of \$292,523.72, \$195,015.82 and \$292,523.72.

Accordingly, the Final Decision of March 19, 1969 is set aside and the Proposed Decision of February 19, 1969 is amended; the Certifications of Loss in the Proposed Decision are set aside and the following Certifications of Loss will be entered, and in all other respects the Proposed Decision is affirmed.

CERTIFICATIONS OF LOSS


The Commission certifies that HOWARD E. HOLTZMAN 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 Ninety-Two Thousand Five Hundred Twenty-Three Dollars and Seventy-Two Cents (\$292,523.72) with interest at 6% per annum from March 1, 1959 to the date of settlement;

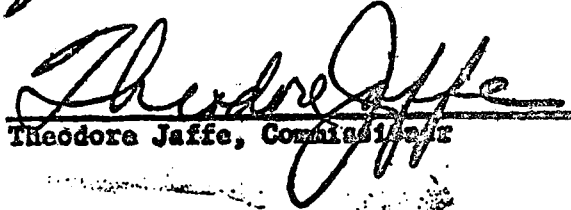
The Commission certifies that MORTON L. PERRY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Ninety-Five Thousand Fifteen Dollars and Eighty-Two Cents (\$195,015.82) with interest at 6% per annum from March 1, 1959 to the date of settlement; and

The Commission certifies that LOUIS SUKONIK 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 Ninety-Two Thousand Five Hundred Twenty-Three Dollars and Seventy-Two Cents (\$292,523.72) with interest at 6% per annum from March 1, 1959 to the date of settlement.

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

OCT 20 1971

  
Lyda B. Garlock, Chairman

  
Theodora 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.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Amended 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).)

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HOWARD E. HOLTZMAN

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Claim No. CU -2168

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3522

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for claimants:

Talianoff and Waller

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented originally by Fomento Ball-Bro, S.A., based upon the asserted loss of \$737,886.57, sustained as a result of the taking of its personal property by the Government of Cuba.

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.

The record discloses that the original claimant, Fomento Ball-Bro, S.A., hereafter referred to as Fomento, was organized under the laws of Cuba and does not qualify as a corporate "national of the United States" defined by Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. In this type of situation, it has been held previously that a stockholder in such a corporation is entitled to file a claim based upon his ownership interest therein. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

Accordingly, HOWARD E. HOLTZMAN, MORTON L. PERRY and LOUIS SUKONIK, nationals of the United States since birth and stockholders of Fomento, have been substituted as claimants, and as claimants they have increased the amount of their claim to \$1,188,516.57.

The record includes the minutes of a meeting of the stockholders of Fomento, affidavits and stock certificates, on the basis of which the Commission finds that HOWARD E. HOLTZMAN, MORTON L. PERRY, and LOUIS SUKONIK owned 30 shares, 20 shares, and 30 shares, respectively, of Fomento, representing 80% of the total outstanding capital stock of Fomento. The remaining 20 shares were owned by a nonnational of the United States.

The evidence establishes that Fomento entered into an agreement on September 5, 1957 with the Sandy Mining Company, a Cuban corporation, pursuant to which Fomento leased two mining sites known as "El Americano" and "Demasia A Josefina" for the purpose of mining and extracting manganese ore deposits. The lease was for one year, and was renewable

from year to year at the option of Fomento, the maximum period being 30 years. Fomento was required to pay royalties to the lessor of 10% of the sales price for each long ton (2,240 pounds) mined less certain expenses, and a minimum rental was also included. Other procedural and related matters were set forth in a lease, which was executed between HOWARD E. HOLTZMAN, President of Fomento, and the President of the lessor.

It appears that Fomento had acquired the right to exploit the "Josefina" mine from the predecessor in interest of Sandy Mining Company. On the basis of this right and a preliminary geological report, dated June 29, 1956, Fomento entered into an agreement in February 1957 with a Delaware corporation, E. J. Lavino and Company, referred to as Lavino, providing for the sale of 10,000 tons of manganese dioxide to Lavino during the period ending April 30, 1958. The agreed price was \$90.00 per dry ton for the first 5,000 dry tons and the balance at \$85.00 per dry ton, with a penalty against Fomento of \$2.50 for each percent of manganese dioxide below 84%, and Lavino was authorized to reject any ore with less than 84% manganese dioxide. Lavino was to advance \$50,000.00 to Fomento in consideration of which Fomento was to pledge its lease of "Josefina" to Lavino and credit Lavino \$10.00 per dry ton on the first 5,000 tons delivered to Lavino in liquidation of said advance.

The record shows that mining operations were begun by Fomento and shipments were made to Lavino. The record contains a copy of a document marked "Final Settlement Statement" from Lavino to Fomento, dated November 19, 1957. That statement indicates the receipt by Lavino at its Philadelphia, Pennsylvania office on October 29, 1957 of 103.4184 dry tons of ore which, upon analysis, was found to contain 81.75% manganese dioxide. Accordingly, the statement indicates that deductions were made pursuant to the penalty clause of the agreement as well as for certain expenses, likewise covered by the agreement.

The evidence also includes affidavits from individuals having personal knowledge of the facts, attesting that on March 1, 1959 Cuban militiamen seized the two mines and offices of Fomento together with all of Fomento's machinery, equipment and other personal property related to the operation of the mines. These affiants also stated that Fomento's officers and employees had been prohibited from entering upon the premises and that they had later observed that the mines continued to be operated on behalf of the Cuban Government.

On the basis of all the evidence of record, the Commission finds that Fomento owned certain personal property appurtenant to its mining operations of the "El Americano" and "Josefina" mines and an inventory of mined ore on March 1, 1959 when all of said property was seized by the Government of Cuba. It is therefore concluded that the three claimants herein sustained losses within the meaning of Title V of the Act.

In determining the value of the personal property thus taken, exclusive of the inventory of mined ore, the Commission considered the nature of Fomento's operations, affidavits from claimants and others having personal knowledge of the facts as well as lists of the various items of personalty present when Cuba seized the property.

One of the itemized lists appears as part of the affidavit of HOWARD E. HOLTZMAN, dated June 13, 1958, which aggregates the sum of \$612,516.57. This list, however, includes the amounts of \$3,600.00 and \$450,000.00, for inventory of ore discussed separately below, thereby reducing this sum to \$158,916.57. According to this affidavit, many of the items of machinery and equipment were purchased in 1956, some in 1957 and others were purchased from local concerns or built on the sites, apparently during those dates, and the amounts set forth are the prices paid for these items of property. Considering the nature of the personalty and the use to which it was devoted, the Commission concludes that it would be fair and equitable to

apply a depreciation factor of 15% in order to determine the reasonable value of the property on the date of loss. Accordingly, the Commission finds that the said personal property had a value of \$135,079.08 on the date of loss.

A second list of items of property claimed includes the following:

Stoping, mucking and shafting of mines	\$ 60,000.00
Exploration and staking of ore sites	22,000.00
Road building	<u>18,000.00</u>
	\$100,000.00

This list also included "Leaseholds" in the amount of \$26,000.00, which will be discussed below.

The Commission finds that the items appearing on the foregoing list were necessary appurtenances to the mining operations and enhanced the value of the mines. The Commission finds that the values asserted for these items are fair and reasonable, and that these items of property had an aggregate value of \$100,000.00 on the date of loss.

With respect to the inventory of ore, claimants have computed their claim on the basis of \$90.00 per ton, asserting in effect that the ore was at least 84% manganese dioxide and applying the price included in Fomento's 1957 agreement with Lavino.

It is noted in this connection that the geologist's report of June 29, 1956 estimated the existence of 125,000 tons which would yield 16,875 tons of 85% ore by the use of conventional methods, and that with special procedures it could yield another 8,125 tons of 85% ore, or 25,000 tons. He stated furthermore that more exploration may yield as much as 50,000 tons, but that there was a "lack of openings into the ore and lack of actual plant tests on the ore." An affidavit of December 5, 1968 from Franz R. Dykstra, a geologist formerly employed by Lavino from 1949 to 1965, states that he recommended the agreement between Lavino and Fomento in 1957. The



"Final Settlement Statement" of November 19, 1957 from Lavino to Fomento would appear to indicate an end of relations. Moreover, there is insufficient evidence to establish that the inventory of ore taken by Cuba on March 1, 1959 was 84% or more pure manganese dioxide, or that its market or fair value on that date was \$90.00 per dry ton, as asserted by claimants. The Commission also takes note of statements in Mr. HOLTZMAN's affidavit of June 13, 1958 that from January 1956 through July 1956 Fomento sold lower grade ore extracted from its leased mines at \$40.00 per ton, and from July 1956 to April 1959, Fomento sold lower grade ore at \$60.00 per ton.

Additionally, certain rentals, royalties and other expenses were involved even if sales at \$90.00 per ton were made.

The record does not contain any balance sheets or other financial statements concerning Fomento, it appearing that all records are in Cuba and unavailable to claimants. Mr. HOLTZMAN has stated, however, in answer to the Commission's inquiries that on the date of loss the only obligations of Fomento were \$45,000.00 to Lavino and salaries payable in the amount of \$6,000.00. He further stated that the monthly payroll was about \$24,000.00. Even if it could be shown that the value of the inventory were as asserted, other expenses would have to be taken into account as well, such as freight charges, loading and unloading fees, etc.

Upon careful consideration of this matter, the Commission concludes that the evidence does not warrant the finding that the inventory of ore, amounting to 5,040 tons according to Mr. HOLTZMAN's affidavit, had a value of \$90.00 per ton on the date of loss. Taking all of the circumstances into consideration, the Commission finds that the fair and equitable value of the inventory of ore at the mine sites was \$350,000.00.

The remaining items for which claim is made are "Leaseholds" in the amount of \$26,000.00, and the "fair market value of the company's mining operations as a going business." Considering the fact that the lease granted Fomento the right to mine the two sites for a period of 30 years, less than 2 years of which had expired as of the date of loss, the Commission finds that the fair and reasonable value of the leasehold was \$26,000.00, as stated by claimants.

The Commission has carefully considered the claim for the value of the "mining operations as a going business." The geologist's report of June 29, 1956, before operations commenced, indicates a potential of at least 25,000 tons of high grade ore with the possibility of mining another 25,000 tons of high grade ore if certain special procedures were followed. On the basis of all the evidence of record the Commission finds that the fair and reasonable value of the mines as a going business was \$450,000.00 on the date of loss.

The Commission further finds that the aggregate amount of losses sustained by Fomento was \$1,061,079.08, less liabilities of \$51,000.00, as stated by Mr. HOLTZMAN, or a net loss of \$1,010,079.08. It therefore concludes that claimants, HOWARD E. HOLTZMAN, MORTON L. PERRY AND LOUIS SUKONIK, sustained losses within the meaning of Title V of the Act in the amounts of \$303,023.72, \$202,015.82, and \$303,023.72, respectively, based upon their stock interests in Fomento.

The Commission has decided that in the certification of losses 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.

#### CERTIFICATION OF LOSS

The Commission certifies that HOWARD E. HOLTZMAN 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 Three Hundred Three Thousand Twenty-three Dollars and Seventy-two Cents (\$303,023.72), with interest thereon at 6% per annum from March 1, 1959 to the date of settlement;

the Commission certifies that MORTON L. PERRY 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 Two Thousand Fifteen Dollars and Eighty-two Cents (\$202,015.82), with interest thereon at 6% per annum from March 1, 1959 to the date of settlement; and

the Commission certifies that LOUIS SUKONIK 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 Three Hundred Three Thousand Twenty-three Dollars and Seventy-two Cents (\$303,023.72), with interest thereon at 6% per annum from March 1, 1959 to the date of settlement.

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

**FEB 19 1969**

*Leonard v. B. Sutton*

Leonard v. B. Sutton, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*Sidney Freidberg*

Sidney Freidberg, Commissioner

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