

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON 25, D. C.

IN THE MATTER OF THE CLAIM OF

SKINS TRADING CORPORATION
263 West 30th Street
New York 1, New York

Claim No. CZ-3978

Decision No. CZ- 734

Under the International Claims Settlement
Act of 1949, as amended

GPO 942329

Counsel for Claimant:

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PROPOSED DECISION

This is a claim against the Government of Czechoslovakia under Section 404 of the International Claims Settlement Act of 1949, as amended, by SKINS TRADING CORPORATION, a New York corporation. The claim is based upon a sum of money allegedly owed to the claimant by the firm of Arnstein & Pick of Na Maninach 315, Prague VII, Czechoslovakia, a company assertedly nationalized by the Government of Czechoslovakia. Claimant contends that the nationalization of this company by the Government of Czechoslovakia constituted a taking of its property within the meaning of Section 404 of the Act.

Section 404 of the Act provides, inter alia, for the determination by the Commission in accordance with applicable substantive law, including international law, of the validity and amount of claims by nationals of the United States against the Government of Czechoslovakia for losses resulting from the nationalization or other taking on and after January 1, 1945, of property, including any rights or interests therein, owned at the time by nationals of the United States.

Section 404 of the Act does not purport to compensate United States nationals for every kind of loss or damage suffered by them as a result of action by the Government of Czechoslovakia but embraces only those claims which arose out of the nationalization or other taking of property of United States nationals. A majority of the Commission has consistently held in this regard that the nationalization of a debtor company does not constitute a taking of the property of a creditor of the nationalized company, where there has been no annulment or repudiation of the debt.^{1/} Obviously, a showing that property has been taken is a sine quo non for an award under a provision of law which affords relief solely for the "nationalization or other taking" of property. There is no showing in the instant claim that the debt which forms its res was ever annulled by the Government of Czechoslovakia so as to constitute a taking of the claimant's property;^{2/} and a mere failure on the part of the Government of Czechoslovakia to pay a debt will not give rise to a compensable claim under Section 404 of the Act.

The Commission also rejects the contention that even though the nationalization of a corporation is not a taking of its creditors' property, the nationalization results in a loss to the creditors, giving rise to a claim under section 404 "for losses resulting from the nationalization or other taking ... of property". This argument is negated by the specific expressions in the Committee reports of both houses of Congress that the purpose of the legislation is to compensate United States citizens whose property was nationalized or otherwise taken subsequent to World War II by the Government of Czechoslovakia. This statement of purpose excludes a claimant who suffered a loss as a result of the taking of another person's property, unless he has succeeded to that person's claim. Even were this not so,

^{1/} Dec. No. Rum 547, In the Matter of the Claim of Universal Oil Products Company, Claim No. RUM-30,531.

^{2/} Dec. No. CZ-135, In the Matter of the Claim of John Stipkala, Claim No. CZ-1616

such a claim would be defeated by the weight of authority under international law to the effect that such losses as a creditor may suffer as a result of a wrongful act committed against his debtor are not the proximate result of the wrongful act, and are too remote or indirect to sustain an award to the creditor.^{3/} Wartime events, postwar economic conditions, foreign currency control restrictions, and chaotic conditions in general very likely played a greater role in weakening the claimant's ability to collect the debt than did nationalization of the debtor. Final straws are not to be equated with proximate cause in the circumstances here under consideration.

Additionally, a reading of the legislative history of Section 404 of the Act leads to the conclusion that it was Congressional intent to exclude therefrom ordinary debt claims.

In testimony before the respective committees of the two Houses of Congress, the position of the Department of State was that: "The United States Government, in its negotiations with the Government of Czechoslovakia, has been seeking a lump-sum compensation settlement for the nationalization or other taking by that Government of American-owned property, not for creditors' claims". Pointing out that Congress could, if it wished, provide compensation for creditor claims (as, indeed it did, for certain limited Bulgarian, Hungarian, and Rumanian creditor claims in Title III by adding section 303(3)), the representatives of the Department said it "wishes to point out the basis upon which the Department has been negotiating with Czechoslovakia, and that such payments to creditors out of the limited fund would result in a diminution of recovery to the nationalization claimants".

The House and Senate Committee reports ^{4/} on the bills which became Public Law 85-604 and added Title IV to the Act, show unmistakably that the Congress did not wish to provide compensation under

^{3/} Dec. No. HUNG-1605, In the Matter of the Claim of European Mortgage Series B, Corporation, Claim No. HUNG-22,020

^{4/} Report No. 2227, House of Rep., 85th Congress, 2nd Session.
Report No. 1794, Senate Report, 85th Congress, 2nd Session.

section 404 for creditor claims, but elected to utilize available funds as partial compensation for those claims which had been the subject of negotiations between the two Governments. Thus in the House Report, it is said, "At the present time, negotiations are being conducted with Czechoslovakia with respect to claims which are the subject of this legislation, with a view to obtaining a lump-sum settlement from that nation of all such claims. Unless an agreement is entered into before the expiration of 1 year after enactment covering such claims, the funds for the payment of such claims will be derived from the proceeds of the sale by the United States of certain Czechoslovakian steel mill components ..." (emphasis supplied). The claims which are the subject of this legislation then are the claims which were (and are) the subject of negotiation, and do not include creditor claims.

Additionally, the following paragraph from the Senate Report on the bill is significant in showing the clear intent to restrict creditor claims to those authorized under section 403 and not to compensate such claims under section 404:

The committee recognizes that by limiting actions in the United States Court of Claims under section 403 to the claims of persons who have been deprived of property without just compensation it may not be affording relief to persons, such as creditors, who may have valid claims against Czechoslovakian debtors. It believes, however, that if any portion of the proceeds referred to in section 402 were allowed to be used for the satisfaction of creditors or other persons whose claims are not based upon an actual interest in the steel mill equipment or its proceeds, this action would deplete, perhaps seriously, the amounts which could be recovered by Americans whose property was nationalized by Czechoslovakia.

For the foregoing reasons, this claim must be, and it hereby is denied. The Commission finds it unnecessary to make determinations with respect to other elements of the claim.

Dated at Washington, D. C.

MAY 23 1960

BY DIRECTION OF THE COMMISSION:

A handwritten signature in cursive script, reading "Francis T. Masterson". The signature is written in dark ink and is positioned above the typed name and title.

Francis T. Masterson
Clerk of the Commission.