

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES

WASHINGTON 25, D. C.

IN THE MATTER OF THE CLAIM OF

ROBERT HAGGIAG

Via Archimede 97

Rome, Italy

Claim No. IT-10,656

Decision No. IT-222-2

Under the International Claims Settlement
Act of 1949, as amended

GPO 942329

Counsel for Claimant:

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Washington 4, D. C.

FINAL DECISION

This is a claim to be determined by the Commission under the provisions of Section 2, Public Law 85-604, for damage to real property, the Miramare Theatre, and loss of and damage to personal property located therein, situated in Tripoli, Libya, Africa, and for loss of revenue and profits, and economic rent, as a result of the explosion of Axis munition ships in the harbor of Tripoli in 1941, during the war in which the Government of Italy was engaged from June 10, 1940 to September 15, 1947.

The Commission, by its Proposed Decision No. IT-222-2, denied this claim for the reason that claimant had failed to prove his ownership of the subject property, a theater, on the date of damage thereto, i.e., in 1941, as a result of an explosion of Axis munition ships in the harbor at Tripoli, or that the claim was continuously owned by a United States national or nationals from the date of loss to the date of filing.

Objections were duly filed by counsel on behalf of the claimant, and an oral hearing set for 10:00 A. M. on August 11, 1959 in Room 162 of the Commission's offices. However, on motion of the claimant, the date of hearing was advanced to 10:00 A. M., August 7, 1959. On said date, the claimant and one of his counsel, Mr. Samuel Herman, appeared. Counsel's arguments were heard and the claimant gave testimony on his own behalf as to his acquisition of the damaged property.

Claimant became a United States citizen on June 17, 1946.

The record reveals that at the time of loss, the subject property was owned by Societa per Alberghi, Ristoranti, Teatri (hereinafter designated as "S.P.A.R.T."), a Libyan corporation in which claimant had acquired no interest.

Claimant asserts that since 1946 he has engaged in business as sole owner of the firm known as "Trans World Films;" that in 1947 the said firm acquired a 50% ownership of the stock of "S.P.A.R.T.," and in 1951 owned 100% thereof.

The evidence of record discloses that in March 1953, by an agreement between the officers, directors and legal representatives of S.P.A.R.T. and of the Societa Tripolina Arte Ritrovi Spettacoli, these corporations were merged, and claimant received in exchange for his 100% of the shares of S.P.A.R.T. 78.929% of the new corporation, "United Theatres of Libya, Inc.," and in addition thereto he acquired the right to claim for war damages sustained by S.P.A.R.T., owner of the damaged Miramare Theatre.

It is contended that under the provisions of Section 2 of Public Law 85-604 there is no requirement that the claimant must have been the owner of the property at the time of loss or damage and that the statute requires only that a claimant be a natural person and a United States citizen on August 9, 1955.

The Commission cannot agree with the contention that the requirement of ownership of property by a United States national or nationals at the time of loss has been, or was intended to be waived by the provisions of Section 2 of Public Law 85-604.

It is noted that Section 2, Public Law 85-604, does not speak specifically of nationality at the time of taking, and that the statutory requirement to determine claims of nationals of the United States in accordance with the substantive rules of international law has not been removed.

It is a well established principle of international law that, in order for a claim espoused by the United States to be compensable, the property upon which it is based must have been owned by a national or nationals of the United States at the time of loss, and the claim which arose from such loss must have been owned by a United States national or nationals continuously thereafter.

(Borchard, "Diplomatic Protection of Citizens Abroad", p. 351; Whiteman, "Damages in International Law", Vol. 1, p. 96; Judge Parker in Administrative Decision No. V, the Mixed Claims Commission, United States and Germany, "Decisions and Opinions" 1928, pp. 145, 176-177; Jessup, "A Modern Law of Nations", p. 99; Moore, "Digest of International Law", Vol. VI, pp. 636-637; Hackworth, "Digest of International Law", Vol. V, p. 802; Ralston "The Law and Procedure of International Tribunals", pp. 161-162; Hyde, "International Law as Applied by the United States", Vol. II, p. 893; Nielsen, "International Law Applied to Reclamations", p. 13; Oppenheim, "International Law", 6th Ed. Vol. I, p. 314, edited by Lauterpacht.)

In view of the general application and long acceptance of the rule and in the absence of clear and positive language, an intent on the part of the Congress to override it is scarcely to be presumed. That the Congress in enacting Public Law 85-604 had no such intent is clearly shown in the Report of the Foreign Relations Committee (Senate Report No. 1794, 85th Congress, pp. 8-9).

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Careful consideration of the matter leads to the conclusion that without doubt Congress had in mind reaffirming the rule rather than overriding it.

An international claims settlement is founded on the wrong done to a nation itself through injuries to its nationals. (Feller, The Mexican Claims Commission, p. 83 et. seq., and authorities cited supra.) A settlement fund when received, and at least unless otherwise committed by the terms of the settlement agreement, belongs to the nation whose nationals suffered the injuries. (First National City Bank of New York vs. Gilliland, 257 F. 2d 223, 227.)

Under the amendment to Section 304 (Public Law 85-604), the rights of persons who have valid claims under rules of international law have been preserved. Congress, by enacting that amendment, merely provided for the disposition of any balances which may remain in the fund received from Italy after the payment of claims determined under Public Law 285, 84th Congress.

Accordingly, it is determined that as a prerequisite to eligibility under Section 304 of the Act, as amended by Public Law 85-604, claimant is required to establish, among other things, that he was a citizen of the United States on August 9, 1955, and (1) that his claim originally arose in his favor, or (2) that he succeeded to a claim, by inheritance or otherwise, which originally arose in favor of a national of the United States and which claim, until such succession, was continuously thereafter owned by a national of the United States.

The Commission further is not in accord with the argument advanced by counsel that the statute requires that claimant be a natural person and a United States citizen on August 9, 1955.

The definition of a United States national, set forth in Public Law 285, reads in part as follows:

"'National of the United States' means (A) a natural person who is a citizen of the United States"

The Commission has found that the definition is not intended for use as a substantive rule under Section 304, inter alia, of the Act. It is a guidepost for the determination of whether or not a claimant is and was a United States citizen at a particular time and is irrelevant in establishing the date on which such nationality must have been found to have existed if an award is to be made under the Act, as amended.

Section 2 of Public Law 85-604 amended Section 304 of Public Law 285 by adding at the end thereof a directive to the Commission which provides in part that "the Commission shall determine the validity and amount of any claim under this section (304) by any natural person who was a citizen of the United States on the date of enactment of this title" (Parenthetical material added.) Thus, the language of Section 304 as amended, in its ordinary interpretation and application, would appear to relate to persons, nationals of the United States, who suffered damage to or loss of property, and who by the application of international law continuously owned the claim from the date of loss to the date of filing.

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Therefore, it appears that Section 304 provides that the Commission shall determine the validity of claims in accordance with substantive law, including international law, and it also is patently apparent that the congressional intent was to make available the benefits of Section 304 to persons who acquired United States citizenship prior to the enactment of Public Law 285 but, in so doing, intended that the provisions of international law relating to other factors of eligibility should be observed and applied by the Commission.

Since, in the instant claim, claimant has failed to establish that the claim originally arose in his favor or that he had succeeded to a claim which originally arose in favor of a national or nationals of the United States, and which was continuously owned by a national of the United States, his claim, therefore, must be, and hereby is, denied.

It is therefore ORDERED that the Proposed Decision of the Commission, except insofar as it may be modified by this decision, be affirmed.

Washington 25, D. C.

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Whitney Hilliland
Paul Pace
Robert L. Kunzig

COMMISSIONERS

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES

WASHINGTON 25, D. C.

IN THE MATTER OF THE CLAIM OF

ROBERT HAGGIAG
Via Archimede 97
Rome, Italy

Claim No. IT-10,656

Decision No. IT-222-2

Under the International Claims Settlement
Act of 1949, as amended

GPO 942329

Counsel for Claimant:

PAUL NEUBERGER, Esquire
16 West 46th Street
New York, New York

SAMUEL HERMAN, Esquire
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Washington 4, D. C.

PROPOSED DECISION

This timely filed claim for a possible \$250,000.00 is before the Commission by virtue of an amendment to Section 304 of the International Claims Settlement Act of 1949, as amended, pursuant to Section 2, Public Law 85-604.

This claim was previously denied for the reason that it did not meet the necessary nationality requirements under Section 304 of the Act in that said claim was not continuously owned by a national of the United States from the date of loss to the date of filing. Since the claim was denied for the foregoing reason, other factors with respect to claimant's eligibility were not considered, nor was the Commission required to do so.

On August 8, 1958, the following amendment to Section 304 (Sec. 2, Public Law 85-604, 72 Stat. 531) was approved:

Section 304 of the International Claims Settlement Act of 1949, as amended, is amended by adding at the end thereof the following: "Upon payment of the principal amounts (without interest) of all awards from the Italian Claims Fund created pursuant to Section 302 of this Act, the Commission shall determine the validity and amount of any claim

under this section by any natural person who was a citizen of the United States on the date of enactment of this title and shall, in the event an award is issued pursuant to such claim, certify the same to the Secretary of the Treasury for payment out of remaining balances in the Italian Claims Fund -----."

The Commission has construed the language in the amendment as requiring it to "determine the validity and amount of any claim" of persons who were citizens of the United States on August 9, 1955, notwithstanding the fact that the claim may have been denied under Section 304 of the Act prior to the amendment for reasons other than claimant's failure to meet the test of nationality.

In the light of the foregoing, the claim has been re-examined and it has been determined that the claimant herein, Robert Haggiag, is a citizen of the United States since his naturalization on June 17, 1946.

The subject claim is based on structural damages to a theater located in Tripoli, Libya, North Africa, and loss of revenue or profits as a result of such damages caused by an explosion of Axis munition ships in Tripoli's harbor in 1941. It is asserted that no other person, firm, corporation or other legal entity has any interest in the claim asserted by claimant.

In a photostatic copy of an unidentified document dated 24th October 1955 relating to "Compensation of 30,000 pounds Paid in Respect to Damage of the Miramare Theatre, Tripoli, Libya," appears the following statements:

"British Troops occupied the theatre on the 23rd January 1943 and the theatre was released on the 10th December 1953. The theatre belonged to the Societa per Alberghi ristoranti Teatro (S.P.A.R.T.)

"Mr. Robert Haggiag acquired 80% interest in this Company as follows:-

"2,150 Shares in June 1947	
600 " "	1949
1,800 " "	1950
250 " "	November 1951

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"Later this Company was merged with another Libyan Company and is now operating as United Theatres of Libya Company Limited. This is a Company which belongs as to 80% to Mr. Robert Haggiag personally."

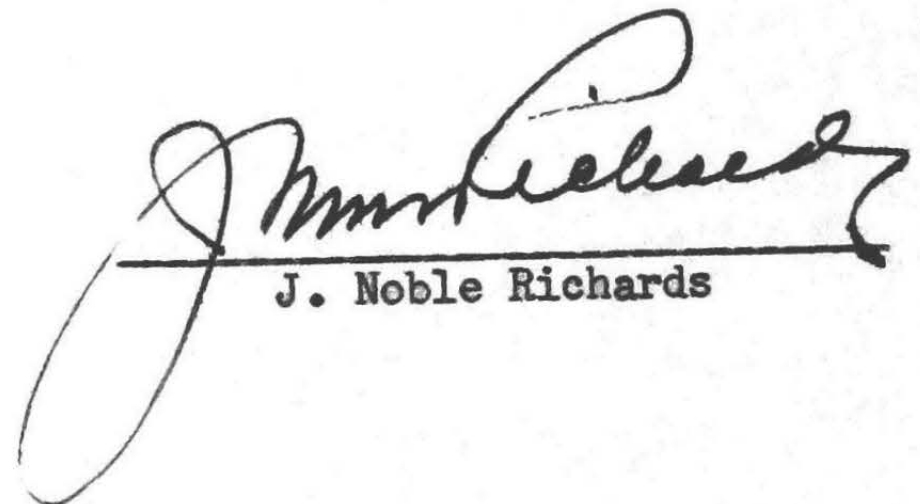
The burden of proof in establishing a claim rests on the claimant. In the instant claim, the burden of proving that the property for which claim is made, was owned by the claimant at the time the asserted damage and loss occurred, has not been met, and since the claimant has thus failed to meet that burden, with respect to the establishment of his claim, the claim must be, and hereby is, denied.

Other elements bearing on eligibility have not been considered.

Dated at Washington, D. C.

JUL 13 1959

FOR THE COMMISSION:


J. Noble Richards

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

IN THE MATTER OF THE CLAIM OF

ROBERT HAGGIAG
Via Archimede 97
Rome, Italy

Claim No. IT-10,656

Decision No. IT-222

Under the International Claims Settlement
Act of 1949, as amended

GPO 16-72126-1

Counsel for claimant:

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FINAL DECISION

A decision on this claim issued on March 20, 1957 proposing a denial based upon the fact that claimant was not a national of the United States at the time his losses were sustained as required under international law. The losses upon which the claim is based consist of structural damages to a theater located in Tripoli, Libya, North Africa as a consequence of military action and for the resulting loss of revenue. Objections were raised by the claimant on the proposed denial and the claim was set for an oral hearing on June 6, 1957. Prior to such hearing date, a supplemental memorandum was filed by claimant in support of his claim and in opposition to the proposed decision.

Claimant objects to the conclusion contained in the proposed decision concerning the governing principle of international law with respect to the nationality requirements of claimants under the Act in that claimants must be nationals of the United States at the time the

loss or damage occurred. It is contended that on the date of the property loss or damage there was no existing right, in international law, to demand recompense from Italy and, therefore, that no claim arose on that date. It is further contended that the claim arose on August 14, 1947, the date of the "Memorandum of Understanding between the Government of the United States of America and the Government of Italy regarding Italian assets in the United States of America and certain claims of United States Nationals," and consequently that he qualifies as an eligible claimant under the rules of international law inasmuch as he was a national of the United States on such date and has remained in that status continuously to the present time.

The primary issue involved in the instant claim is the ascertainment of the date the claim arose, and, secondly, whether the claimant was a national of the United States on such date.

It has been established that the claimant became a citizen of the United States by virtue of his naturalization on June 17, 1946. On the other hand the damage to his property is found to have occurred during the early part of the war.

It appears that the objections raised by claimant can be limited to the construction of the term "the date the claim arose". Claimant asserts that his right to recover for his losses springs from the provisions of the above Memorandum of Understanding. Under this Memorandum, Italy agreed to pay the United States 5 million dollars, "this sum to be utilized, in such manner as the Government of the United States may deem appropriate, in application to the claims of United States nationals arising out of the war with Italy and not otherwise provided for." No rights as such accrued under the foregoing language inasmuch as the utilization of this fund is

clearly subject to whatever the Congress of the United States wishes to make with respect to claims of its nationals.

Concerning the rights of claimants, with respect to analogous situations, it has been determined by the Supreme Court of the United States on at least two occasions (U. S. v. Weld, 127 U. S. 51; Williams v. Heard, 140 U. S. 529) that the fund deposited with the United States under the Treaty of Washington dated May 8, 1871, was transferred to this Government as a nation and that it was under no legal or equitable obligation to pay the proceeds to the claimants.

The decision by the Court in the Williams case states, in part, as follows:

"It was held in United States v. Weld, 127 U. S. 51 8 Sup. Ct. Rep. 1000, that this award was made to the United States as a nation. The fund was, at all events, a national fund, to be distributed by Congress as it saw fit. True, as citizens of the United States had suffered in person and property by reason of acts of the Confederate cruisers, and as justice demanded that such losses should be made good by the government of Great Britain, the most natural disposition of the fund that could be made by Congress was in the payment of such losses. But no individual claimant had, as a matter of strict legal or equitable right, any lien upon the fund awarded, nor was Congress under any legal or equitable obligation to pay any claim out of the proceeds of that fund.

" . . . While, as already stated, there were no means of compelling Congress to distribute the fund received in virtue of the Geneva award, and while the claimant was remediless with respect to any proceeding by which he might be able to retrench his losses, nevertheless there was at all times a moral obligation on the part of the government to do justice to those who had suffered in property . . . But the act of Congress did not create the rights. They had existed at all times since the losses occurred. They were created by reason of losses having been suffered. All that the act of Congress did was to provide a remedy for the enforcement of the right." (Emphasis supplied).

The Commission is authorized to consider the validity of claims against Italy arising out of the war in which that nation was engaged during the period June 10, 1940 to September 15, 1947. The dates

specified, of course, merely identify the war as distinguished from the period during which the loss must have been incurred. The statute contemplates, however, a direct and proximate connection between the war in which Italy was engaged and the claim. In determining the date of origin of the claim the date of loss must be first ascertained.

In view of the foregoing it is concluded that the term "the date the claim arose" and the term "the date of loss" are considered synonymous. The term "the date the claim arose" does not denote a sense of obligation or liability on either the United States or Italy nor is it derived from any rule of international law creating a right under the treaty or Memorandum of Understanding. It is merely used in stating a rule of international law insofar as it relates to the nationality requirements of claimants. We are concerned with the intent of the Congress and the provisions of the statute as the limitations within which the Commission must operate. Since the date the claim arose and the date of loss have one and the same meaning under the Act, it is purely a matter of choice in the use of such terms.

Moreover, to follow claimant's contention completely, it would seem more reasonable to conclude that the date of enactment of the statute establishing the claims program would be the governing date for requisite citizenship. Nevertheless, the Commission is constrained to adopt the view expressed by the Supreme Court in the Williams case, *supra*. That this was the intention of the Congress in the ultimate enactment of the statute is implicit in Senate Report No. 1050, 84th Congress, 1st Session, Section 6.

Therefore the Commission finds on the issue of claimant's eligibility, that he does not meet the necessary nationality requirements under the Act in that he was not a national of the United States at the time of his loss. Accordingly, it is

ORDERED that the proposed decision be and the same is hereby sustained and affirmed.

Washington 25, D. C.

SEP 11 1957

Whitney Gilliland
Henry S. Clay

COMMISSIONERS

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

In the Matter of the Claim of

ROBERT HAGGIAG
Via Archimede 97
Rome, Italy

Claim No. IT-10,656

Decision No. IT-221

Under Section 304 of the International
Claims Settlement Act of 1949, as amended

PROPOSED DECISION

This is a claim for \$150,000.00 to \$250,000.00 filed by Robert Haggiag for damage to business property in Tripoli, Libya, Africa arising out of the war in which Italy was engaged from June 10, 1940 to September 15, 1947.

Section 304 of the aforesaid Act provides for the receipt and determination by the Commission, in accordance with the Memorandum of Understanding and applicable substantive law, including international law, of the validity and amounts of claims of nationals of the United States against the Government of Italy arising out of the war in which Italy was engaged from June 10, 1940 to September 15, 1947, and with respect to which provision was not made in the treaty of peace with Italy.

The claimant herein alleges that he became a citizen of the United States during April of 1946; he further alleges that the damage to or loss of his property occurred during World War II.

Under a well established principle of international law, eligibility for compensation requires that the property which was the subject of damage or loss must have been owned by a United States national at the time the damage or loss occurred and that the claim arising as a result of such damage or loss, must have been continuously owned thereafter by a United States national or nationals.

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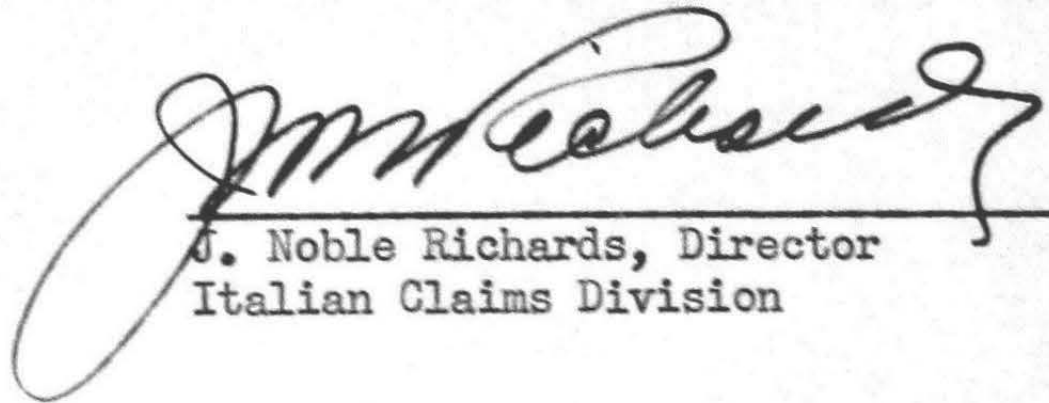
The Commission's records disclose that the claimant was not a national of the United States at the time the damage or loss occurred.

For the foregoing reason, the claim must be, and is hereby denied. Other elements bearing upon eligibility have not been considered.

Dated at Washington, D. C.

MAR 20 1957

FOR THE COMMISSION:



J. Noble Richards, Director
Italian Claims Division