

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

In the Matter of the Claim of

CORN PRODUCTS REFINING COMPANY
17 Battery Place
New York, New York

Docket No. Y-1205

Decision No. 1352

Under the Yugoslav Claims Agreement
of 1948 and the International Claims
Settlement Act of 1949

PROPOSED DECISION OF THE COMMISSION

This is a claim for \$950,000 by the Corn Products Refining Company, a corporation organized in 1906 under the laws of the State of New Jersey. The stock of Corn Products Refining Company was, and is, almost entirely owned by individual nationals of the United States. According to claimant's statement, submitted with the claim, 2,511,460 shares of 2,530,000 of outstanding common stock were owned in 1949 by 25,390 residents of the United States, and it can be fairly and reasonably assumed that the overwhelming majority of these residents of the United States are, and have been during the pertinent period, United States nationals.

The claim is for the nationalization of a plant and properties known as A.D. Za Preradu Kukuruza (Corn Products Refining Corporation) at Jabuka, near Pancevo, Yugoslavia, a corporation organized under the laws of Yugoslavia (hereinafter referred to as the "Yugoslav subsidiary"). According to the records filed by claimant in the Statement of Claim and in the Amendment of the Claim, the Corn Products Refining Company of New York, either legally or beneficially, owned all of the 6,200 shares of 6% preferred stock outstanding, and 3,000 of 4,000 shares

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of common stock outstanding of the Yugoslav subsidiary. The par value of each class of shares of stock was 1,000 dinars per share.

Ownership of Stock of A.D. Za Preradu Kukuruza

According to a report of the Yugoslav National Bank of March 15, 1954, prior to World War II certificates for 3,100 preferred shares and for 3,000 common stock shares of the Yugoslav subsidiary were deposited with the French-Serbian Bank of Belgrade in the name of or for the claimant (a few certificates covering 100 shares of common stock were in the name of persons acting as agents for the claimant).

After World War II, according to the same report, the certificates for 3,100 preferred shares have been found deposited with the Banking Corporation of Belgrade (or Bankverein) (a bank controlled by the German occupation authorities). Certificates for 2,950 shares of common stock were found deposited with the People's Bank of Pancevo (Pancevacka Pucka Banka) in the name of Deutsche Maizena Werke, A.D., of Hamburg, Germany and certificates for 50 common stock shares in the name of two persons (Robert Blattner and Vivian C. Haines) as agents and nominees of the claimant.

The claimant filed with the Statement of Claim a letter of the Belgrade office of the Banque Franco-Serbe (French-Serbian Bank) of November 28, 1946, in which that bank advised the claimant as follows:

(1) That on October 9, 1941 certificates for 50 common stock shares and certificates for 200 preferred shares deposited by claimant's subsidiary on June 11, 1941 were delivered to the Banking Corporation of Belgrade (Bankverein) at the request of claimant's subsidiary; (2) That on October 20, 1941 certificates for 3,100 preferred shares were delivered to the Banking Corporation of Belgrade (Bankverein) by

order of the German occupation authorities; and (3) That on September 7, 1944 certificates for 2,900 common stock shares were delivered to the Pancevo People's Bank (Pancevacka Pucka Banka) of Pancevo by order of the German occupation authorities.

The aforementioned 50 common and 200 preferred shares of stock appear to have been Treasury shares, because they were deposited and disposed of by the Yugoslav subsidiary itself.

Claimant also filed an affidavit executed on July 23, 1952 by Howard G. Wascher, Chairman of claimant's Executive Committee, according to which claimant owned 3,000 shares of common stock of the Yugoslav subsidiary, including the shares nominally deposited in the name of Robert Blattner and Vivian C. Haines, two employees of claimant's subsidiaries in Italy and England, respectively. In addition, claimant filed declarations by Robert Blattner and Vivian C. Haines, to the effect that they acquired the shares of stock of the Yugoslav subsidiary as nominees for the claimant. Vivian C. Haines also executed a sworn affidavit dated July 23, 1952 that he transferred certificates for 50 shares of common stock of the Yugoslav subsidiary from his name to the name of certain Yugoslav citizens, but that such transfer was not intended to create in the Yugoslav citizens beneficial ownership of the shares involved.

Claimant also filed a copy of a letter dated March 24, 1949 signed by the Acting Legal Adviser of the Department of State at Washington, D. C. in which the Department confirms claimant's position that the Deutsche Maizena Werke, A.G., (hereinafter referred to as the German subsidiary) in whose name the certificates for 3,100 shares of stock were deposited during the war, was and is a wholly beneficially owned

subsidiary of the claimant. This statement is strengthened by an affidavit of May 11, 1949 of Alfons Steinruecke and Werner Hotzel, two chartered accountants of Hamburg, Germany, in which they state that the German subsidiary was on September 1, 1939 and is, as of the date of the affidavit, wholly owned by the claimant.

From the foregoing it appears that claimant has filed satisfactory evidence that 3,100 of 6,200 shares of preferred stock and 3,000 of 4,000 shares of common stock of the Yugoslav subsidiary were owned directly by the claimant corporation prior to World War II and that they were owned by the claimant either directly or indirectly through its German subsidiary after the War in 1946.

Claimant's contention in the Amendment to the Claim of July 30, 1954 that it owned all of its Yugoslav subsidiary's 6,200 preferred shares of stock, because it had indirectly acquired the remaining outstanding 3,100 preferred shares from the Credit Bank of Pancevo (Kreditna Banka Pancevo) in 1942 through its German subsidiary, is not supported by the available evidence.

Claimant's contention is based upon an affidavit executed on July 26, 1954 by Dr. Carl Fabricius, a manager of the German subsidiary who states that the Credit Bank (Kreditna Banka) of Pancevo was the owner of preferred shares of the Yugoslav subsidiary in the amount of 3,100,000 dinars par value. In 1942 the German subsidiary purportedly bought from the Credit Bank of Pancevo 200 preferred shares of the Yugoslav subsidiary in the amount of 200,000 dinars par value which were deposited in a safe deposit with the Bank Corporation of Belgrade (Bankverein) and 2,900 preferred shares in the amount of 2,900,000 dinars par value which were deposited in a safe deposit with the Pancevo's People's Bank of Pancevo (Pancevacka Pucka Banka).

The entire evidence on record refutes the statement of the manager of the German subsidiary. Never before 1954 did the claimant assert ownership to the entire block of preferred shares of its Yugoslav subsidiary. The claimant always contended that its interest was restricted to 3,100 shares of preferred stock and to 3,000 shares of common stock. On March 12, 1945, Oreste Orestides, the authorized representative of the claimant in Yugoslavia and office manager of the Yugoslav subsidiary who spent the entire war period from 1941 to 1945 in the subsidiary's office in Yugoslavia, signed a statement destined for the Yugoslav Government, that claimant owned 3,000 shares of common stock and 3,100 shares of preferred stock. He stated at the same time that the remaining 3,100 shares of preferred stock were owned by the Pancevo Credit Bank of Pancevo. On July 16, 1945, Mr. Robert Blattner, the former general manager of the Yugoslav subsidiary signed a report for the Department of State that the preferred stock was owned one-half by the claimant and one-half by Yugoslav interests. On December 10, 1945 the claimant, through its attorney, Samuel A. McCain, informed the Secretary of State in Washington, D. C. that 3,100 of 6,200 shares of preferred stock were owned by the claimant. On November 27, 1946 the claimant made a formal registration with the Yugoslav Consulate General at New York for its holdings in the Yugoslav subsidiary and stated that it owned 3,100 shares of preferred stock thereof. During the following eight years claimant based its claim on 3,100 shares of preferred and 3,000 shares of common stock of the Yugoslav subsidiary.

The Yugoslav National Bank confirmed in its report of March 15, 1954 that certificates for 3,100 preferred shares were found deposited with the Banking Corporation of Belgrade (Bankverein). The

report is silent as to the 200 preferred shares which were allegedly deposited with the Banking Corporation of Belgrade by the Pancevo Credit Bank, and as to the 2,900 preferred shares allegedly deposited by the Pancevo Credit Bank (Kreditna Banka) with the Pancevo People's Bank. The report mentioned 3,100 shares of preferred stock which were turned over to the Pancevo People's Bank of Pancevo and stated that these 3,100 preferred shares were confiscated in favor of the Yugoslav State. It appears that these 3,100 shares were not those acquired by the German subsidiary in 1942, because according to the affidavit of Dr. Carl Fabricius, the German subsidiary held in a safe deposit box with the Pancevo's People's Bank only 2,900 preferred shares.

The Commission's own investigators in Yugoslavia learned that the books of the Yugoslav subsidiary were kept and held after December 31, 1940 in the Belgrade office of the company, which office was under the supervision of Mr. Oreste Orestides. But no records could be found in Belgrade, because during 1941 all books and records were purportedly taken to Germany. Consequently, no books or records were found which could substantiate the transaction of the 3,100 preferred shares allegedly acquired by the German subsidiary from the Pancevo Credit Bank. However, Mr. Oreste Orestides confirmed in 1945 that the claimant at that time owned only 3,100 of the 6,200 outstanding preferred shares. Mr. Orestides was in charge of the Belgrade office where the books had been kept and he should have known if the transaction was actually consummated in the manner Mr. Fabricius stated.

In any event, this purported purchase in 1942 of preferred shares by the German subsidiary appears to be one in the chain of transactions which was put into effect by the German subsidiary for the purpose of protecting the Yugoslav subsidiary from seizure or confiscation by the German military authorities in Yugoslavia.

While we are ready to discount all the transfers of stock from the claimant to the German subsidiary as war-time emergency measures without any effect on claimant's interests, we are not ready to accept claimant's contention that additional transfers in 1942 of stock from Yugoslav interests to German interests constituted an increase of claimant's interest in its Yugoslav subsidiary.

Nationalization and Other Taking of Enterprise

The records show that on February 20, 1945 the State Administration of National Property issued a decision No. 3340 by virtue of which all the managing personnel of the Yugoslav subsidiary was dismissed and one Mladen Kotschkar appointed as manager on behalf of the Yugoslav Government. This decree was put into effect on March 8, 1945 when Kotschkar took over the management and expelled the former executives, among whom was claimant's representative, Oreste Orestides, who protested in vain against the seizure of the plant.

The plant was under the management of the State Administration of National Property until December 5, 1946. On December 5, 1946, the plant was nationalized pursuant to the Law Regarding the Nationalization of Private Economic Enterprises (Official Gazette No. 98 of December 6, 1946) which provided in Article 1 that industries in certain branches of general national or republican importance are nationalized. One branch, listed in para. 32 of Article 1, involves all food industries listed as enterprises of general national or republican importance. The A.D. Za Prezadu Kukuruza was listed as such an enterprise of general national importance under No. 99 of the list published in the Official Gazette No. 59 of July 28, 1946, on page 688.

The records of the Government of Yugoslavia disclose that the enterprise was nationalized on December 5, 1946.

Valuation

As to the question of the valuation of the corporation's property, the claimant uses the following method for the establishment of the amount of its claim:

1. "For the last two years before the war, to wit: 1939 and 1940, the earnings of A.D. za Preradu Kukuruza were 3,583,832 dinars and 4,935,644 dinars, respectively. Claimant's equity in the above earnings was 2,669,874 dinars and 3,608,733 dinars, respectively, or an average of 3,138,803 dinars per annum. Capitalizing that earning capacity at ten times gives a valuation for claimant's interest in A.D. za Preradu Kukuruza of 31,388,030 dinars, which, converted to dollars (U.S. currency) at the rate of exchange of 33 dinars to the dollar, prevailing at that time, amounts to \$951,142". (See Exhibit D of the Statement of Claim.)

The claimant also shows various other methods in the computation of its claim, which result in the following figures:

2. Book valuation in accordance with the balance sheet for the year 1944: 23,480,560 dinars or \$373,498
3. Insurance valuation for the year 1939 \$555,000
4. Insurance valuation for the year 1939, plus additional valuation factors \$805,000
5. Mechanical equipment inventory valuation \$461,472
6. Cost of reproduction valuation \$860,000
7. Capitalization of original estimated earnings valuation \$760,000

However, the claimant used for the purposes of the Statement of Claim only method (1), arriving at the value of \$950,000 for the amount of the claim.

Investigators for the Commission in Yugoslavia visited the enterprise on different occasions in June and August 1954, and found among other things, that the real property upon which the plant is built, consists of 6 parcels with a total area of about 27 1/2 acres with 10 buildings thereon. The real property is recorded in Docket No. 643,

Cadastral District of Jabuka, according to a certified extract from the Land Register furnished by the Government of Yugoslavia. The main factory building is of thick brick wall construction with partial tile roof. Basically, it has two stories and a third story over one section. The wooden storage bins and wooden warehouses surrounding the property are in fair shape, particularly sections built within the past twenty years. Certain small brick buildings are in bad condition.

The equipment is mostly outdated. One steam boiler with 290 square meters output, burning three and one-half tons of coal per hour, provides most of the power. There are six small electric motors operating small units of machinery. Overhead pulleys and belts operate most of the equipment. The steam boiler was installed in about 1936 and was old then having been used in Czechoslovakia before being brought to Yugoslavia. A large used 1912 generator was installed in 1936 to replace a smaller worn-out generator. This 1936 replacement generator also wore out and had to be replaced after the war.

Four large steam vats of 12-tons each, built before 1933, as well as two added in 1936 and 1937 are still usable but two corn grinders which are more than 20 years old are badly worn out. One large starch washing vat, built in 1939 is operating efficiently as are some large drying machines brought to Yugoslavia from Czechoslovakia about 1938.

Except for the year 1939 the plant never ground more than 750 wagons (10 tons to a wagon) per year. In 1939, 1,100 wagons were ground. After 1939 production fell way off and was at a standstill for eight months in 1944.

The plant did not suffer war damage, nor was it looted during the occupation period.

The financial books of the enterprise were not located because most of them purportedly were sent to Germany by the war-time administrators of the plant. The Commission's investigators had to rely mostly on the information and data made available by the claimant and by the Government of Yugoslavia from the official records of that Government. Among these papers were financial data for the years 1934, 1935, 1936, 1938 and 1940. Data on a few accounts for 1939, 1940 and 1941 were located at the plant.

The earnings of the company, reported for tax purposes to the Yugoslav Government were as follows:

1934	709,872 Dinars
1935	1,001,450 "
1936	1,013,817 "
1937	2,544,243 "
1938	1,500,273 "
1939	809,186 "
1940	638,704 "
1944	689,607 "

An analysis of the reserves in the financial statements shows that substantial amounts were transferred to reserves or set aside for other purposes before arriving at reported earnings. The amounts of these transfers were available for the years 1938, 1939, 1940 and 1941 only, but company officials indicated that such transfers were a customary practice in earlier years also -

	1937 Total at Dec. 31	1938 Addi- tions	1939 Addi- tions	1940 Addi- tions	1941 Addi- tions
<u>Reserves, etc.</u>					
Depreciation buildings	802,781	102,339	165,502	196,412	?
Depreciation machinery	4,426,423	?	913,405	933,955	932,539
Spec. Reserve for Purchase Pfd	0	400,000	1,000,000	400,000	1,000,000
General Reserve	514,000	249,000	368,000	169,000	169,000
Construction Fund	0	903,840	0	1,096,160	0
Special Reserve Fund #2	0	0	1,500,000	1,500,000	0

The depreciation reserves for buildings and machinery were not adequate and a proper depreciation policy would appear to have required allotments of about 500,000 dinars more to depreciation reserves per year. However, the amounts transferred to reserves in the other categories constituted profits hidden in the reserves. This concealment approximated 1,550,000 dinars in 1938, 2,900,000 dinars in 1939, and 3,100,000 dinars in 1940. When these hidden profits are added to the reported profits they show earnings of approximately 3,000,000 dinars for 1938, 3,700,000 dinars for 1939, 3,700,000 dinars for 1940. A deduction of 500,000 dinars made each year for unprovided depreciation results in profits of approximately 2,500,000; 3,200,000; and 3,200,000 dinars for the three years, or, roughly, 3,000,000 dinars per year. On a five times basis, used because of the very poor condition of the property, a valuation of 15,000,000 dinars would appear justified.

On a book value basis, based on incomplete data, the company's property had the following net value:

1936	13,735,476	Dinars
1938	16,853,622	"
1940	19,072,891	"

This would indicate an average book value of 16,000,000 dinars. However, as indicated, insufficient depreciation was being taken off the cost values of the company's assets and the sum of 12,000,000 dinars would represent a more proper book value.

Giving consideration to all facts and data before it, the Commission is of the opinion that the fair and reasonable value of the enterprise A.D. za Preradu Kukuruzna at Jabuka was 15,000,000 dinars as of the year 1938.* That amount, converted into dollars at the rate of 44 dinars to \$1, the rate adopted by the Commission in making awards upon 1938 valuations equals \$340,909.

It may be noted that the certified extract from the Land Register (Docket No. 643, Cadastral District of Jabuka) furnished by the Government of Yugoslavia indicates that the real property is encumbered with the following mortgages:

- (1) 39,000,000 dinars in favor of the State Land Fund pursuant to a decision of the Tax Office of the People's Municipal Committee of Pancevo of March 22, 1946, No. 11075/46 for war profit taxes;
- (2) 3,000,000 dinars with 4 1/2% interest and 300,000 dinars for expenses in favor of the Industrial Bank of Yugoslavia pursuant to a written authorization given by the Ministry of Industry in Belgrade, No. 403/1946 on June 21, 1946.

The property is also encumbered with a record of priority in the amount of 2,000,000 dinars with 6% interest and 200,000 dinars for expenses for a mortgage to be granted to the enterprise. However, no record has been entered that such mortgage was ever actually granted and recorded. Such a record of priority becomes ineffective if the mortgage to be granted was not recorded within one year from the date of the record of priority. Therefore, this record can be disregarded as being without any legal effect.

With respect to the mortgage of 39,000,000 dinars for taxes for war profits, this encumbrance clearly represents a confiscatory measure adopted by the Government of Yugoslavia prior to the nationalization of the enterprise, but after the enterprise was taken over for management purposes. It is not necessary to point out that the amount of 39,000,000 dinars is out of any proportion with respect to the alleged war profits, because the aforestated valuation figures disclose that the plant had an average earning

of not more than 3,000,000 dinars per year. However, should we assume that the profits were much higher during the war, we never would arrive at the amount of 39,000,000 dinars, because this amount represents approximately three times the pre-war value of the plant and a taxation to such an extent is nothing else but a total confiscation of the entire property. This mortgage for war profits taxes must be, therefore, disregarded for the purposes of this valuation.

The mortgage of 3,000,000 dinars put on the property on June 21, 1946 by the Ministry of Industry in Belgrade in favor of the (State-owned) Industrial Bank of Belgrade is an encumbrance for a loan which was never requested by claimant's subsidiary corporation nor used by it, in the interest of the corporation. It represents a security for a loan granted by a bank controlled by the Government, when the Government was itself in charge of the plant. It can be fairly stated that the loan was granted without knowledge or permission of the stockholders of the corporation, who had no control of the plant since March 8, 1945 when the State Administration of National Property of Yugoslavia seized the plant. Consequently, a mortgage granted after the seizure to the Government-appointed administration of the plant at the request of that administration is not binding upon the corporation nor can it impair the value of the enterprise for the purposes of this valuation.

From the information in the claim it is indicated that the preferred shares had a preference only as to dividends and in winding up the affairs of the company up to the par value of the shares. 1800 of the 8,000 preferred shares originally outstanding had been redeemed and extinguished at par, i.e. at 1,000 dinars per share. The 6,200 preferred shares are entitled

to such redemption before the common stock shares should participate. Accordingly, 6,200,000 dinars of value are allocated to the preferred shares, or at the above rate of exchange \$140,909. Of this amount claimant is entitled to one-half for the 3,100 of 6,200 outstanding preferred shares, that is, \$70,455. Of the remaining amount of \$200,000, claimant is entitled to an award for 3,000 out of 4,000 common stock shares, that is to \$150,000. The principal award, should therefore be \$70,455, for the preferred shares plus \$150,000 for the common stock shares or a total of \$220,455.

AWARD

On the above evidence and grounds, this claim is allowed and an award is hereby made to the Corn Products Refining Company of New York, New York, claimant, in the amount of \$220,455 with interest thereon at 6% per annum from December 5, 1946, the date of taking to August 21, 1948, the date of payment by the Government of Yugoslavia, in the amount of \$22,649.55.*

Dated at Washington, D. C.

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* For the Commission's reasons for the use of an exchange rate of 44 dinars to \$1 and the allowance of interest, see attached copy of its decision in the claim of Joseph Senser.

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Decision No. 1352

Under the Yugoslav Claims Agreement
of 1948 and the International Claims
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Counsel for Claimant:

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New York 4, New York

approved
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FINAL DECISION

By Proposed Decision No. 1352 of October 13, 1954, the claimant was awarded \$220,455 with interest thereon in the amount of \$22,649.55.

The claimant has not filed objections or requested a hearing.

The Government of Yugoslavia filed objections to the Proposed Decision as amicus curiae stating, inter alia, that the award is exceedingly high and that it includes 3,100 preferred shares of stock of the firm Corn Products Refining Company, Inc., Jabuka, which the claimant sold during the war to a German company.

The value of claimant's property was amply discussed in the Proposed Decision. Our experts found that a valuation of 15,000,000 dinars appears justified taking into consideration all the circumstances. This amount was considered as the basis for the award and we are not persuaded by the objections filed by the Government of Yugoslavia that 15,000,000 dinars should not represent the basis for the value of claimant's enterprise.

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We have also considered the objections regarding the 3,100 preferred shares of stock of claimant's subsidiary in Yugoslavia. It is undisputed that these 3,100 shares of stock were originally, that is until 1941, owned by claimant and that they passed during the war into the control of the Deutsche Maizena Werke A. G., the German subsidiary of the claimant. We stated in the Proposed Decision that we are ready to discount all the transfers of stock to the German subsidiary as war-time emergency measures without any effect on claimant's interest. We do not recognize the transfers made from Yugoslav interests to the German subsidiary and we do not recognize the transfers made from American interests to the German subsidiary during the war, although the German subsidiary may be considered as wholly-owned by the claimant. Consequently, we re-iterate our finding that claimant owned 3,100 preferred shares of stock of the Yugoslav subsidiary out of 6,200 preferred shares of stock.

Having also given due consideration to the remaining objections, the Proposed Decision of the Commission, No. 1352 of October 13, 1954, is hereby affirmed and adopted as the Commission's Final Decision on the claim.

Dated at Washington, D.C.

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