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DEPARTMENT OF STATE
INTERNATIONAL CLAIMS COMMISSION
OF THE UNITED STATES

In the Matter of the Claim of

WESTHOLD CORPORATION

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

Docket No. Y-1235

Decision No. 54

PROPOSED DECISION

MARVEL, CHAIRMAN. This claimant seeks the recovery of over ninety thousand dollars, based upon the ownership of certain shares of stock and accounts receivable, which are alleged to have been nationalized or taken by the Yugoslav Government in 1946.

The claim is before this Commission upon the proceeding of the Solicitor of the Commission pursuant to Section 300.16 of the Rules of Practice and Procedure of the Commission.

The evidence before the Commission shows that the claimant is a Delaware corporation whose shares of stock are beneficially owned by aliens, although more than eighty per cent of the registered shareholders are American citizens.

This claim raises the question, whether, in this situation, an award may be made under the Yugoslav Claims Agreement of 1948 and the International Claims Settlement Act of 1949.

The Agreement of 1948 provides, so far as juridical persons are concerned, that the only corporate claims settled in Article 1 are those of the category of juridical persons defined in Article

2 (B) of the Agreement.

Article 2 of the Agreement specifies that the claims referred to in Article 1 "include those respecting property, and rights and interests in and with respect to property, which at the time of nationalization or other taking were:

* * *

- (B) Directly owned by a juridical person organized under the laws of the United States, or a constituent state or other political entity thereof, twenty percent or more of any class of the outstanding securities of which were at such time owned by individual nationals of the United States, directly, or indirectly through interests in one or more juridical persons of whatever nationality, or otherwise; or
- (C) Indirectly owned by * * * a juridical person within category (B) above, through interests, direct, or indirect in one or more juridical persons not within category (B) above, or otherwise."

It is apparent that a corporation is an eligible claimant only if:

(1) the corporation was organized under the laws of the United States, or state or other political entity thereof, and (2) twenty percent of the "outstanding securities" of the corporation were "owned" by individual nationals of the United States, directly or indirectly. As the claimant is a Delaware corporation, it satisfies the first condition above mentioned.

Further, if by the word "owned" is meant record or legal ownership, the claimant would satisfy the second condition, for well over twenty percent of the corporate stock -- a class of outstanding securities -- was registered in American citizens or legal title was in American citizens or corporations at all pertinent times. If, however, the word "owned" means beneficial ownership, the corporation does not satisfy the second condition, for the entire beneficial

ownership of its stock was in aliens at the time of the alleged nationalization or taking and at all time subsequent to December 1940.

The Agreement has, of course, pierced the corporate veil to expose ownership of the stock. Has it taken the additional step and pierced the veil of record ownership to expose the beneficial owner of the stock?

The criteria adopted by nations in determining what claims they will espouse against other nations are often not susceptible of being elucidated into a well-defined international law. This is particularly the case in the espousal of corporate claims. Nations have variously used the siege social (principal place of business), the test of "control", and finally the place of incorporation as criteria in determining whether to espouse a corporate claim. See Feller, The Mexican Claims Commission, p. 115. (It is observed that under the British-Yugoslav Agreement all companies, firms or associations incorporated under the laws of the United Kingdom or its territories are British nationals.)

The Yugoslav Claims Agreement, however, as has been noted, imposes the additional requirement that twenty percent of the outstanding securities be "owned" by American individuals.

The criteria which the Department of State utilized in determining whether to espouse corporate claims consist of two elements.

First, it has required that the corporation be incorporated under laws of the United States or a constituent state. See Borchard, Diplomatic Protection of Citizens Abroad, pp. 620-1; Hackworth, Digest of International Law, Vol. V, pp. 831 et seq. This requirement has, of course, been explicitly incorporated in Article 2 of the Yugoslav Claims Agreement of 1948.

Secondly, the Department has required that there be a beneficial American interest in such corporation to authorize diplomatic espousal of a claim. See Borchard, supra, pp. 621-2.

In the Report of the Senate Committee on Foreign Relations reporting out H. R. 4406 (Public Law 455), it is stated:

Under international law, governments have been known to espouse claims of their corporations, although all of the corporate stock be foreign held. This Government, in its negotiations with the Yugoslav Government, did not take this extreme position, being of the view that a substantial American beneficial interest should exist in an American juridical entity prior to espousal of the entity's claim. It was agreed that this substantial interest would be "20 percent or more of any class of outstanding securities which were at such time (the time of the nationalization or other taking of the property) owned by individual nationals of the United States". It is conceivable that the remaining 80 percent might be held by foreign nationals, resident or non-resident in the United States * * * . Calendar No. 810, Report No. 800, 81st Congress, 1st Session, pp. 10 and 11.

The conclusion therefore must be that the requirement as to twenty percent of the stock ownership in American nationals was to assure a substantial American beneficial interest.

From the above we can only conclude that the words of the Agreement of 1948 in Article 2 (B), "twenty percent or more of any class of the outstanding securities of which were at such time owned by individual nationals of the United States * * * " mean beneficially owned by individual nationals of the United States.

As it has not been shown that twenty per cent of any class of the outstanding securities of the claimant corporation was beneficially owned by individual nationals of the United States at the time of nationalization or other taking of its property by the Government of Yugoslavia, this claim must be denied in whole.

May 22, 1952