

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

In the Matter of the Claim of

LEOPOLD PILZER  
Hotel Gladstone  
114 East 52nd Street  
New York 22, New York

LAURA PILZER  
Hotel Gladstone  
114 East 52nd Street  
New York 22, New York

JOHN L. WEILL  
1314 North 5th Street  
Sheboygan, Wisconsin

BRUNO R. WEILL  
Country Club Manor  
York, Pennsylvania

MONIQUE WEILL  
Country Club Manor  
York, Pennsylvania

ALICE D. SEDLAK  
2 East 86th Street  
New York 28, New York

STEPHANIE WEILL  
1314 North 5th Street  
Sheboygan, Wisconsin

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

Docket No. Y-1264

Decision No. 1449

Counsel for Claimants:

PAUL L. WEIDEN, Esq.,  
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New York 6, New York

PROPOSED DECISION OF THE COMMISSION

I. General

This is a claim for \$209,184 by the following persons, citizens  
of the United States since their naturalization on the dates given  
below:

*OK  
gms  
on 28, 1954*

*OK  
11-3-54*

*Russian ownership  
ownership to be filed before  
decision made prior - 3215*

*AMZ  
ZRR*

Leopold Pilzer, naturalized on March 21, 1944 ✓

Laura Pilzer, naturalized on April 20, 1944 ✓

John L. Weill, naturalized on August 6, 1946 ✓

Stefanie Weill, naturalized on November 12, 1946 ✓

Bruno Weill, naturalized on November 20, 1946 ✓

Monique Weill, naturalized on November 20, 1946 ✓

Alice Sedlak, naturalized on August 26, 1948. ✓

The claim is for the taking by the Government of Yugoslavia of a plant and properties known as "THONET-MUNDUS CROATIAN BENTWOOD FURNITURE FACTORY, INC." at Varazdin, Yugoslavia, a corporation organized under the laws of Yugoslavia, hereinafter referred to as the "Yugoslav Company", in which the claimants beneficially owned a certain amount of shares of stock, through ownership directly and indirectly of the stock of a holding company known as "MUNDUS" GENERAL TRADING AND MANUFACTURING CORPORATION OF ZUG, SWITZERLAND, hereinafter referred to as the "Swiss Holding Company." In addition, a claim is made for the compensation of certain debt claims, owed by the Yugoslav Company and for the loss of profits for the years 1939 to 1945, purportedly realized by the Yugoslav Company.

## II. Ownership of Stock

According to the records filed by claimants and admissions by the Government of Yugoslavia, prior to the nationalization or taking of the plant in Yugoslavia, the Swiss Holding Company was the owner of record of 12,250 shares of common stock out of a total of 12,500 shares outstanding, of 100 dinars par value each, of the Yugoslav Company. Pursuant to the Decree on the Issuance and Registration of Shares of June 17, 1946, certificates for 4,450 shares of common stock were registered in the name of the Swiss Holding Company by the Swiss Bank Corporation in London, England, and certificates for 7,800 shares of common stock also in the name of the Swiss Holding

Company by the Banking Corporation of Belgrade. Consequently, the Swiss Holding Company was the record owner of 98% of the shares of stock of the Yugoslav Company at the time of registration of the stock in 1946.

According to the records on file the Swiss Holding Company had an authorized capital stock of 10,000,000 Swiss Francs divided in 100,000 shares of stock, each of 100 Swiss Francs par value. The Bank of Manhattan Company, 40 Wall Street, New York 15, New York, stated in a letter dated August 8, 1952, that the bank was holding as of November 26, 1945 for the following depositors, in safekeeping, the respective number of shares of the Swiss Holding Company:

Leopold Pilzer	27,269 shares
Laura Pilzer	22,000 shares
John L. Weill	1,000 shares
Stephanie Weill	1,000 shares
Alice D. Sedlak	2,000 shares

No documentary evidence was submitted as to the holdings of Bruno Weill and Monique Weill, as of November 26, 1945.

Claimants allege that even though the authorized capital stock of the Swiss Holding Company was 10,000,000 Swiss Francs divided in 100,000 shares of stock, an amount of 10,000 shares of stock represented Treasury stock of the Swiss Holding Company. This Treasury stock, in the opinion of the claimant, should be deducted from the total capital stock. In support of this allegation, claimants submitted an affidavit of August 5, 1952, executed by one Carl Klaus, a partner of Blankart & Cie, a private bank of Zuerich, Switzerland, in which it is stated that on November 26, 1945, Blankart & Cie held in safekeeping for Mr. Leopold Pilzer, 10,000 shares of stock of the Swiss Holding Company. Leopold Pilzer, in turn, swears in an affidavit of August 20, 1952, that these 10,000 shares of stock were deposited by him as a trustee for the International Furniture, Inc., of Panama City, Panama, another company controlled to a great extent by the Pilzer family.

It appears from the records on file that the Pilzer family owned two holding companies for the shares of stock of several manufacturing companies scattered over the world. One holding company was the Mundus General Trading and Manufacturing Corporation of Zug, Switzerland, which held the shares of stock of the European manufacturing companies, including the shares of stock of the Yugoslav Company. The other holding company was the International Furniture Inc., of Panama City, Panama, which held the shares of stock of the manufacturing companies in North and South America. In 1948, these two holding companies were merged into one company, the THONET INDUSTRIES, INC. of 1 Park Avenue, New York, New York.

Until 1948 the two holding companies in Switzerland and Panama were two distinct legal entities. Therefore, we cannot accept claimants' position that the 10,000 shares of stock of the Swiss Holding Company owned by the Panama Holding Company, through Leopold Pilzer as trustee, were Treasury stock of the Swiss Holding Company. Treasury stock is defined as stock which has been issued as fully paid to stockholders and, subsequently, acquired by the corporation to be used by it in furtherance of its corporate purpose (1951 Black's Law Dictionary, page 1673). The aforesaid 10,000 shares of stock had not been acquired by the Swiss Holding Company but they were owned by the Panama Holding Company. Consequently, they cannot be treated as Treasury stock. They should, however, be treated as stock in which claimants held an additional interest through International Furniture Inc., Panama City, Panama.

According to the affidavit of October 16, 1947, executed by J. O. Allina, Secretary of the International Furniture Inc., the total capital of this corporation was divided in 100,000 shares of common stock with a par value of \$2 each. The letter of the Bank of the Manhattan Company of New York of August 8, 1952, disclosed that

the bank was holding as of November 26, 1945 for the following depositors in safekeeping the same numbers of shares of stock of the International Furniture Inc. as for the Swiss Holding Company, to wit:

Leopold Pilzer	27,269 shares
Laura Pilzer	22,000 shares
John L. Weill	1,000 shares
Stephanie Weill	1,000 shares
Alice D. Sedlak	2,000 shares

It follows that the aforesaid claimants held indirectly through International Furniture Inc., Panama City, Panama, an additional interest in the Swiss Holding Company. This additional interest increases the participation of the individual claimants at the ratio of their holdings of shares of stock in the International Furniture, Inc. Therefore, they participate in the shares of stock of the Swiss Holding Company as follows:

	Owned Directly by Claimants	Owned thru 10% Participation of Panamanian Holding Company	Total Interest
Leopold Pilzer	27,269 shares	2,727 shares	29,996 shares
Laura Pilzer	22,000 "	2,200 "	24,200 "
John L. Weill	1,000 "	100 "	1,100 "
Stephanie Weill	1,000 "	100 "	1,100 "
Alice Sedlak	2,000 "	200 "	2,200 "

We conclude that the claimants named below had the following interest in the Swiss Holding Company, and through a 98% participation of the latter in the Yugoslav Company, the following interest in the Yugoslav Company:

	<u>Interest in the Swiss Holding Company</u>	<u>Participating 98% Interest in the Yugoslav Company</u>
Leopold Pilzer	29.996%	29.396%
Laura Pilzer	24.2	23.716
John L. Weill	1.1	1.078
Stephanie Weill	1.1	1.078
Alice Sedlak	2.2	2.156

No documentary evidence was filed that the two remaining claimants, Bruno Weill and Monique Weill, had any direct or indirect interest

in the two aforesaid companies, as of November 26, 1945.

### III. Ownership of Debt Claims

According to the Statement of Claim and to the additional presentation by the claimants, the Swiss Holding Company had two direct claims against the Yugoslav Company at the pertinent time of nationalization or taking of the Yugoslav Company:

- (1) In the amount of Swiss Francs 109,153.55 with interest;
- (2) In the amount of Dutch Guilders 35,000 with interest.

These claims had allegedly arisen prior to 1939 out of loans granted to the Yugoslav Company by other subsidiaries of claimants' business concern for the purpose of purchasing machinery and equipment or for shipments of machinery and furniture parts.

### IV. Nationalization or Taking of Yugoslav Company

The claimants assert that the Yugoslav Company was confiscated by a decision of the District Court of Varazdin on November 26, 1945, under KZP No. 236/45. The Government of Yugoslavia and the Commission's investigators in Yugoslavia report that the Yugoslav Company was confiscated by a sentence of the District Court of Varazdin, No. T236/45 of October 26, 1945, which became final on March 5, 1946.

Consequently, we conclude that the date of taking of the Yugoslav Company occurred March 5, 1946. The claimants, John L. Weill, Stefanie Weill, Bruno Weill, Monique Weill, and Alice Sedlak, all became nationals of the United States subsequent to that date of taking. The Agreement of July 19, 1948, between the Governments of the United States and Yugoslavia settled "all claims of nationals of the United States" for the "nationalization or other taking by Yugoslavia of property" (Article 1), who were nationals of the United States "at the time of nationalization or other taking" (Article 2). It expressly excluded nationals of the United States "who did not possess such nationality at the time of the nationalization or other

taking" (Article 3). Since claimants John L. Weill, Stefanie Weill, Bruno Weill, Monique Weill and Alice Sedlak were not nationals of the United States at the time of taking, their claims were not settled by the Agreement of July 19, 1948, and are not, therefore, within the jurisdiction of this Commission. Their claims, consequently, must be denied.

V. Valuation of Yugoslav Company

The claimants use the following method for the establishment of the amount of the claim in the Statement of Claim: They use the balance sheet of the Yugoslav Company as of June 30, 1939, and compute the book value of the shares of stock by adding to the capital and surplus all the reserves, including the reserves for depreciation. Thus, they arrive at a book value of approximately 3,000,000 dinars, or, at the rate of exchange of \$2.30 for 100 dinars, approximately \$69,000. To this amount they add a "difference between book and actual value" for fixed assets in the amount of \$90,000 and a "difference between book and actual value of inventory" in the amount of \$35,000 and a "goodwill" of \$25,000, thus arriving at an amount of \$219,000 for the entire value of the plant.

Investigators for the Commission in Yugoslavia visited the plant on various occasions and made a thorough survey and analysis of the property, in order to ascertain its value. As a result of such investigations, the following summary can be given:

The plant is located on the edge of Varazdin. It consists of 34,482 square meters of land, of which 4,398 square meters are occupied by various industrial structures including sheds, shops, offices, storage space, and 2,073 square meters for residences. The more substantial buildings (four in number) are all old and for the most part not built for, nor particularly suited to, the manufacture of the low grade, poorly styled chairs, costumers and tables produced. Most of

the remaining buildings (except for two independent residences) consist of wooden sheds and frame buildings. Approximately one-half of the area is utilized as open storage for lumber in the early stages of the manufacturing process. Approximately 10,000 meters are in gardens and roads. The equipment consists largely of boilers for steam generation, treating rooms (for preparing the lumber for forming), saws, forms and dies (for pressing and forming), sanders and sprayers. The equipment is simple and old and generally characteristic of a plant set-up to utilize the cheap labor available to the maximum extent possible.

The plant continued in operation during the war. The present managers stated that war damages amounted to 933,409 dinars at 1945 prices. The current capacity is reported by the managers to be equivalent to 74,000 chairs per year. The claimants represent the capacity as 200,000 per year before the war. In this connection it should be noted that some new equipment has been installed since the taking which presumably increased the plant's capacity but obviously not very materially as implied by the management.

Based on the balance sheet information available the book value of the company's assets (exclusive of the accounts payable to affiliates) amounts to approximately 2,300,000 dinars, and on the statistical information with respect to earnings and dividends, as obtained from the ledgers at the plant, to approximately 1,250,000 dinars. It is noted that a new plant at a different location is nearing completion to take over the operation performed at this plant, thus indicating the poor character and low operating efficiency of this enterprise even under the low cost labor factor and controlled economy obtaining.

Based upon the character and operating efficiency of the plant, the book value of the common stock (including the size and nature of the reserve funds), the amount of the accounts receivable and the accounts payable (taking into consideration the debts due foreign



affiliates), war damages and valorization, the amount earned and the dividends paid, the value of the enterprise as a going concern and the value of its land, buildings, inventory and other assets as individual items in liquidation, the information furnished by the claimant and by the Yugoslav Government, interviews with persons familiar with the company's affairs, and a physical inspection of its assets in Varazdin, we find that the fair value of the common stock equity in the enterprise taken by the Yugoslav Government at the time of taking was 2,400,000 dinars based on 1938 values.

As previously stated, claimants assert an additional claim with respect to two direct claims of the Swiss Holding Company against the Yugoslav Company based on obligations in the amounts of 109,153.55 Swiss Francs, with interest, and 35,000 Dutch Guilders, with interest, respectively.

If this claim were based solely on these debts, it would not appear to be compensable from the fund created by Article 1 of the Yugoslav Claims Agreement for the reason that the debts remained valid and subsisting obligations and had not been "taken" by the Government of Yugoslavia. Article 4 (c) of the Agreement provides:

"The Government of Yugoslavia recognizes the obligation of the successor enterprises created by it with respect to debts valid under Yugoslav law which were incurred prior to the nationalization or other taking, for the benefit of the enterprises nationalized or otherwise taken . . ."

The debts in question would appear to fulfill the conditions set out in that Article and, accordingly, since Yugoslavia recognized the debts, no claim would arise for their "taking."

However, the claimants have based their claim not only on the debts owed by the Yugoslav Company to the Swiss Holding Company, but on the nationalization or taking of the Yugoslav Company by the Government of Yugoslavia. The provisos immediately following the quotation above recited:

" . . . provided, however, that there shall be deemed fully settled and discharged all debt obligations of enterprises, nationalized or otherwise taken, owing to nationals of the United States whose claims against the Government of Yugoslavia with respect to the nationalization or other taking of such enterprises are claims which are fully settled and discharged by this agreement; and further that all debt obligations of such enterprises to juridical persons through which the claims of such claimants are derived shall be settled and discharged in the same proportion as such claimant's interests in such enterprises, at the date of the nationalization or other taking thereof, have to the total ownership interests therein." (Emphasis supplied.)

That provision of the Agreement was explained by the Senate Committee on Foreign Relations in its report on the bill which became the International Claims Settlement Act of 1949 as follows:

"In Article 4(c) the Yugoslav Government recognized the obligation of successor enterprises for the valid debts of predecessor enterprises nationalized or otherwise taken. An exception is contained as to a limited category of such debts. Where a person participates in the \$17,000,000 distribution as the owner of an enterprise, he releases the Yugoslav Government from a debt obligation to the same person with respect to the same enterprise. The negotiators understood such cases of creditor-owner to be few in number and subject to the criticism that owners having control of an enterprise might have been in a position to enter questionable debts on its records. It was agreed that should an owner exercise the option of claiming dollar compensation for his ownership interest, he would release the Yugoslav Government of the debt obligation, such obligations being in all then known instances dinar obligations."\* (Senate Report No. 810, p. 11, 81st Congress, 1st Session.)

It may also be remarked in this connection that the Senate Report contains the following statement with respect to debt claims generally:

" . . . the claims settled do not include creditor interests. They are confined to ownership interests in property, either legal or beneficial, direct or indirect. This is consistent with traditional United States policy in connection with espousals."

On the basis of the foregoing we hold that the debt claims of Leopold Pilzer are not covered by the Agreement and must be denied. The debt claims of the other claimants must likewise be denied since they are also based on creditor interests.

\* This report reflects the views of the State Department Officials who negotiated the Agreement with Yugoslavia and testified before the Senate Committee with respect to the claims embraced by the Agreement.

As to the claim for the loss of profits for the years 1939 to 1945 and goodwill, predicated by claimants in their Statement of Claim and in subsequent presentations, this Commission, in its determination of claims against Yugoslavia, is directed by the International Claims Settlement Act of 1949 to apply (1) the terms of the Agreement with that country and (2) the applicable principles of international law, justice and equity, in that order. The Agreement between the Governments of the United States and Yugoslavia contains no specific provision regarding loss of use of property, loss of profits, and the like. Generally, international and domestic arbitral tribunals in the determination of international claims allow compensation for indirect damages such as loss of use of property, loss of profits and the like, if such losses are reasonably certain and are ascertainable with a fair degree of accuracy. They do not allow compensation for indirect damages if they are conjectural or speculative or not reasonably certain or susceptible of accurate determination. See Diplomatic Protection of Citizens Abroad, Edwin M. Borchard, Sections 172, 173 and cases cited therein.

We are of the opinion that it has not been proven that it was reasonably certain that the profits allegedly lost or the goodwill claimed would have been realized by claimants if there had been no nationalization or taking of the enterprise. The claim for such profits and goodwill must therefore be denied. However, claimants may be compensated in terms of interest for the loss of the use of the compensation they were entitled to receive on the date the property was taken, from the date of taking to the date of payment by the Yugoslav Government.

The property confiscated is found to have had a value of 2,400,000 dinars or \$54,545.45 at the time of taking, based on 1938 values\* and Leopold Pilzer and Laura Pilzer are found to have had interests of 29.396% and 23.716%, respectively.

DECISION

On the above evidence and grounds awards are hereby made to Leopold Pilzer in the amount of \$16,034.18 and to Laura Pilzer in the amount of \$12,936 with interest thereon at 6% per annum from March 5, 1946, the effective date of taking, to August 21, 1948, the date of payment by the Government of Yugoslavia, in the amount of \$2,369.55 for Leopold Pilzer and \$1,911.70 for Laura Pilzer.\*

The claims of John L. Weill, Stephanie Weill, Bruno R. Weill, Monique Weill and Alice D. Sedlak are hereby denied.

Dated at Washington, D. C.

NOV 3 1954

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

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Counsel for Claimants:

PAUL L. WEIDEN, Esquire,  
61 Broadway,  
New York 6, New York.

FINAL DECISION

Thirty days having elapsed since the claimant(s) herein and  
the Government of Yugoslavia were notified of the Commission's  
Proposed Decision on the above claim, and the claimant(s) having  
filed no objections thereto, and a brief filed by the Government

Docket No. Y-1264

Decision No. 1449

*Approved*  
*HE*  
*12-14-54*

*322*  
*HMM*

of Yagularia having received due consideration, such Proposed Decision is hereby adopted as the Commissioner's Final Decision on the claim.

Dated at Washington, D. C. DEC 15 1954