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

In the Matter of the Claim of SIEGFRIED ARNDT 45 Gateway Drive Great Neck, Long Island New York Under the Yugoslav Claims Agreement of 1948 and the International Claims Settlement Act of 1949	Docket No. Y-595 Decision No. 1536

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FINAL DECISION

On November 26, 1954, the Commission issued its Proposed Decision herein which, for the reasons therein stated, denied this claim in its entirety. Thereafter, pursuant to applicable Commission procedures, objections to such decision were duly filed and a hearing held thereon. The claimant did not appear at the hearing but was represented by counsel who, at that time, presented additional evidence, filed a brief and made oral argument in support of such objections. Pursuant to leave granted at the hearing, additional evidence was also introduced thereafter.

Upon the entire record now before it, the Commission has concluded that its Proposed Decision should not be followed and that an award should be made to the extent hereinafter indicated.

It is established that the claimant has been a citizen of the United States since his naturalization on September 5, 1944. His claim allegedly derives from the taking by the Government of Yugoslavia of: (1) the assets of Odol Kompanija D.D., a Belgrade corporation, (hereinafter referred to as "Odol"); (2) the assets of

Hrvatsko Odol Drustov, D.D. (Croatian Odol Corporation), a Zagreb corporation, (hereinafter referred to as "Croatian"); and (3) a parcel of real estate located in Crna Bara, Yugoslavia which, while admittedly entered in the title records in the name of one Paul Zonda, was assertedly held by him as trustee for Odol.

As set forth in the Proposed Decision, all of these properties were admittedly taken subsequent to the claimant's naturalization, the Odol property on February 12, 1945, Croatian by a series of proceedings which were completed on February 12, 1946, and the Crna Bara property on February 6, 1945.

The claimant's interest in these properties, as of the date of their taking, is allegedly an indirect interest, derived through his asserted 100% ownership at that time of a German corporation, Kohlensaure Industrie A.G., of Dusseldorff, Germany (formerly named Bank feur Industrie und Verwaltung A.G.), which is hereinafter referred to as "Kohlensaure", and which, it is also asserted, then owned 87.3% of the then outstanding shares of another German corporation, Lingnerwerke A.G. (hereinafter referred to as "Lingner") which, in turn, is said to have owned, at the time of their taking, the two Yugoslav enterprises above mentioned, as well as, through the alleged trusteeship of Paul Zonda, the above referred to real property.

In the Proposed Decision, the claim was denied, on the record then before the Commission, upon two general grounds, first, that the alleged ownership with respect to the various links in this chain of title had not adequately been established and, second, that the sale by the claimant, in June 1954, of 45% of his interest in Kohlensaure, the top holding company, (of which sale the Commission did not become aware until November 23, 1954) appeared to have the effect of divesting the claimant of at least that portion of his claim.

Since the issuance of its Proposed Decision, the Commission has received and considered, in regard to the problem last mentioned, the affidavit of the claimant, dated December 9, 1954, and a confirming affidavit, dated December 13, 1954, of Dr. Leo Fromer, a Swiss attorney who, it is indicated, acted as the representative of the purchasers in the sale of such 45% interest. It appears from such affidavits that it was the intent of the parties to this transaction that the sale of such stock interest in Kohlensaure did not carry with it any transfer of the claimant's interest in the claim here involved; but that all of his pre-existing rights in that regard were to be reserved. The Commission is satisfied, upon the basis of the foregoing and related information in the record, that, in legal effect, this transaction did not divest the claimant of any interest in this claim which he may theretofore have owned.

The proofs, now to be considered, with respect to the questions of ownership in the chain of title above recited are numerous and complex. As indicated above, the record now before the Commission in those respects has been augmented considerably since the issuance of the Proposed Decision.

Ownership by Claimant of Kohlensaure.

The Commission pointed out in its Proposed Decision that, at the time of the taking of the Yugoslav assets, the claimant was not the nominal owner of any interest in Kohlensaure; but that it is contended that he was at that time and continuously thereafter the sole beneficial owner of Kohlensaure by virtue of a "cloaking" arrangement entered into in 1933 between him and some of his business associates, principally one Ernst Schneider, for the purpose of avoiding the consequences of the anti-Jewish measures by the Hitler regime in Germany; and that it was not until 1950 that full

nominal ownership could be restored.

In this regard, the Commission has received from the claimant and has obtained, on its own initiative, a multitude of evidence and data bearing on this question, including, among other material, certified copies of the restitution proceedings referred to in the Proposed Decision, the affidavits of the claimant, dated November 20, 1954, and of Ernst Schneider, dated November 30, 1954, the "cloaking" agreements themselves, a photostatic copy of a comprehensive report prepared, originally at the request of the Property Control Division of the British Military Government offices in Germany, by Kontinentale Treuhandgesellschaft M.B.H, a Berlin auditing firm, which report (later submitted to United States Military Government authorities in Berlin) included a comprehensive analysis of the claimant's property interests in Germany (and related exhibits), a sworn certificate dated May 16, 1951, by the Industrieberatung und Pruefung G.M.B.H., which describes itself therein as a "certified corporation entrusted with the examination of business enterprises," and similar pertinent material. The Commission has also examined files of the Department of State including various reports of investigations made by the American Embassy in London, the Office of the United States Political Adviser for Germany, and other agencies of the United States Government, regarding the relationship between the claimant and the various German enterprises referred to above.

The Commission is satisfied from all of the evidence and data now before it in that regard that, at the time of the taking of the Yugoslav assets involved, the claimant was in fact the sole beneficial owner of Kohlensaure.

The Commission is also satisfied from the above evidence and related data before it that at the time of the taking of such assets

in Yugoslavia, Kohlensaure was the owner of 87.3% of the entire capital stock of Lingner.

The remaining problems of ownership in the chain of title asserted herein, therefore, are those of ownership by Lingner of the two Yugoslav corporations above mentioned and of the ownership by Odol, one of such corporations, of the real estate above described, recorded in the name of Paul Zonda.

1. Odol.

It is asserted that Odol was organized in 1930 by the Odol Company of Vienna, with a share capital of 1,000,000 dinars, divided into 200 shares, and that all of the shares of Odol became the property of Lingner in 1939 when the Odol Company of Vienna was merged with Lingner.

It is further asserted that the capitalization of Odol was thereafter increased to 1,500,000 dinars; and there was submitted in support of this assertion, a letter dated November 28, 1940 from the Berliner Handels-Gesellschaft, to Bank Fuer Industrie, (Kohlensaure) indicating that pursuant to instructions "by order of Lingner Werke A.G. Berlin" the Berliner Handels-Gesellschaft had remitted 1,500,000 dinars to the Allgemeiner Jugoslavische Bankverein A.G., Belgrade in favor of Odol. It is also asserted that thereafter, in 1941, the capitalization of Odol was further increased by 2,500,000 dinars; and, in that connection, there was submitted a letter dated February 25, 1941 from Berliner Handels-Gesellschaft to Bank Fuer Industrie indicating that "by order of Lingner-Werke A.G. Berlin" the Berliner Bank had remitted 2,500,000 dinars to the same bank in Belgrade in favor of the Odol Company as "balance payment - capital increase". This latter remittance would thus appear to reflect, as of that time, a total capitalization of 5,000,000 dinars.

The claimant has also submitted a photostatic copy of a certificate, dated February 14, 1941, from the Allgemeiner Jugoslavische Bankverein A.G. of Belgrade to Lingner, to the effect that the bank then had 200 shares of Odol of the face value of 5,000 dinars each (a total of 1,000,000 dinars face value) for the account of Lingner "which were delivered to us by the Odol-Kompanija A.G. Belgrade". No similar certificate has been submitted in reference to any of the other outstanding stock certificates which presumably were issued upon the increases in capitalization above referred to. It may reasonably be inferred, however, that such shares as were issued in consideration of those capital increases were in fact issued to Lingner. It is asserted by the claimant that the certificates in this connection, located in Yugoslav banks, have apparently been lost. The affidavit, dated December 8, 1954, of Ernst Schneider, the chairman of the board of directors of Lingner, states that Lingner was the sole nominal and beneficial owner of Odol from the time of its organization until its confiscation.

The official report of investigation received from the Government of Yugoslavia in connection with the Commission's consideration of this claim indicates that, as of the date of taking of Odol, its total capitalization amounted to 5,000,000 dinars, divided into 1,000 shares of 5,000 dinars par value each. It is also reported that none of such shares were deposited for registration with Yugoslav authorities pursuant to the Yugoslav Regulation of 1946 requiring the declaration and registration of shares in Yugoslav corporations. However, it is reported by the Government of Yugoslavia that "according to another information" (the nature of which is not specified) Lingner "had had 800 shares of Odol stock deposited with the Banking Society, Belgrade, which shares, as confiscated, were turned over to the State Investment Bank on April 24, 1946"; and the Government of Yugoslavia has stated that, if all other

preconditions to an award are satisfied, an award on account of the taking of Odol should be limited to one based upon such 800 shares.

It is suggested by the claimant that the apparently missing 200 shares (which would make up the total outstanding shares of 1,000) are those referred to as on deposit with the Allgemeiner Bank, in accordance with its certificate of February 14, 1941, referred to above, and that evidently such shares were lost in some manner.

Since, as indicated in the report of the Government of Yugoslavia, none of the total of 1,000 shares was deposited for registration with it and since there is no indication of ownership of any interest by any person or firm other than Lingnerwerke, the Commission is satisfied, upon consideration of all the surrounding circumstances, that Lingnerwerke was in fact the sole owner of Odol at the time of its taking.

2. Croatian.

It is asserted, in regard to this corporation, that it was organized in 1941 with an original capitalization of 1,000,000 kunas which was thereafter increased by 1,000,000 kunas in 1942, by an additional 2,000,000 kunas in 1943 and by an additional 4,000,000 kunas in 1944, thus making a total capitalization by the time of the taking of Croatian of 8,000,000 kunas. The latter amount of capitalization is confirmed in the report of the Government of Yugoslavia aforementioned which states that this capital was divided into 800 shares of 10,000 kunas par value each.

There were submitted in this connection (a) a photostat of a letter dated October 28, 1941 from the Berliner Handels-Gesellschaft to Bank Fuer Industrie, indicating that the Berlin Bank had remitted "by order of Lingner-Werke A.G., Berlin RM 100,000 - equivalent of kuna 2,000,000 . . . for disposition by the founding committee" of Croatian "for the purpose of depositing the founding capital of said

firm"; and (b) a photostat of a certificate dated March 13, 1942 from Bankverein A.G., through its branch office in Zagreb, to Lingner to the effect that the bank then had on deposit to the credit of Lingner 100 shares of "Odol A.G. Zagreb" of par value 10,000 kunas each "consisting of one interim certificate dated March 1, 1942 which we received through Dr. Fran Bunck Zagreb".

It is asserted in the Statement of Claim that the capital increases of 1943 and 1944 (aggregating 6,000,000 kunas, or three-fourths of the total capitalization) "were financed for account of Lingner-Werke A.G. by trustees (not specified) who held the shares of the increased capital for account of the Lingner-Werke A.G. and were liable to account for this property to Lingner-Werke A.G. and to follow the instructions of Lingner-Werke A.G. with regard to these shares".

In this regard, as indicated in the Proposed Decision, the report of the Government of Yugoslavia states that 200 of the total of 800 of the shares of Croatian outstanding at the time of its taking were apparently owned by Lingner with the remaining ownership in the individuals named in that portion of the Proposed Decision which relates to the taking of the Croatian assets. It is added in that report that, pursuant to the Yugoslav decree requiring the registration of shares of stock, the claimant "submitted a statement of ownership for 300 shares of the Croatian Odol Inc., Zagreb, with the remark that the receipt for these shares was issued in the name of Mr. Georg Pany, a Yugoslav national." No indication of any interest of either the claimant personally or of Lingner in the remaining 300 shares (those represented in the Yugoslav Government report to be owned by Frano Mikso and Matija Vrtovec) appears in that report.

In the affidavit of Ernst Schneider aforementioned, it is stated that, at the time of the confiscation of Croatian, Lingner was the nominal owner of only 25% of its capital stock but that "75% of the

capital, which represented subsequent capital increases, were held by nominees acting for and on behalf of Lingner Werke A.G."

In this regard, there has been submitted the affidavit, dated December 6, 1954, of one Josef Wastl who states that he was the "concern auditor" of Lingner who handled the organization of Croatian and that Fran Miksa and Mathias Vrtovec were "trustees" for Lingner with respect to their ownership of the specified number of Croatian shares.

In the report of the Government of Yugoslavia, it is stated that the 200 shares held by Fran Miksa were voluntarily given to the Government of Yugoslavia "as a gift". There has been submitted to the Commission, however, an affidavit of Mr. Miksa, dated December 1, 1954, in which he indicates that those shares were paid for out of funds supplied to him by Lingner and that he at all times held them as trustee for Lingner.

With respect to the 300 shares held by or in the name of Georg Pany, the Commission has also received and considered a variety of evidence, including statements from Dr. L. F. Meyer, a Swiss attorney, which indicate that Georg Pany also held such 300 shares as trustee for Lingner. The Commission is advised that Georg Pany is now deceased.

Upon all of the evidence and in consideration of the surrounding circumstances, the Commission is also satisfied with the assertion that the 100 shares which the Government of Yugoslavia has reported as formerly held by Matija Vrtovec and which were assertedly "voluntarily given as a gift to the state" were also held by him as trustee for Lingner.

Upon the record now before it, the Commission is satisfied that at the time of the taking of Croatian, sole beneficial ownership thereof was vested in Lingner.

The Yugoslav Government has urged that this portion of the claim (that based upon the taking of Croatian) should be denied in its entirety on the ground that "a property, created entirely during the war, is involved, and it may be rightly presumed that a German property is involved". While it does, in fact, appear that Croatian was created during the war and during German occupation, neither the Yugoslav Claims Agreement nor the International Claims Settlement Act of 1949 makes this circumstance a ground for denial of a claim otherwise compensable; and this contention will, therefore, have to be rejected.

3. The real property in Crna Bara held in the name of Paul Zonda.

It is established that this property was acquired by Paul Zonda in 1943. It appears from various documents submitted in this connection that Paul Zonda was the managing director of the Odol Company in Zagreb; and it is asserted that this property, undeveloped agricultural land, was purchased for the purpose of growing "peppermint plants to produce peppermint oil which was to be used in the manufacturing processes of Odol Kompanija A.G. Belgrade". The contract of purchase for this property (a photostatic copy of which was submitted) was entered into on August 20, 1943 and indicates a purchase price of 345,000 dinars. Pursuant to the application required by local law, for the recording of title, the transaction of purchase was duly recorded in the appropriate real estate registry, it being indicated in the notification of such recording (a photostat of which has been submitted) that the purchase price was 345,000 dinars.

There was also submitted in this connection a photostatic copy of a document dated January 29, 1944 entitled "Trust Agreement",

which appears to be an agreement between Paul Zonda, therein described as "Director of the Odol Works d.d." and Odol, in which it is acknowledged that "Paul Zonda, acting as trustee, has bought in his own name on behalf of the Odol Works A.D. Belgrade and with its funds, the real estate" (which is then described as the parcel of real estate here under consideration).

The Commission is satisfied from the foregoing and related evidence in the record that this property was in fact acquired and, at the time of the taking of Odol, was being held by Paul Zonda as nominee or trustee for Odol, and an award will be made on account of this property, as an additional asset of Odol.

The Government of Yugoslavia has urged here again that, even assuming that this property was in fact the ownership of Odol, this item of claim should be denied on the ground that it was "property acquired during the occupation." For reasons already indicated with respect to the same contention regarding the Croatian property, the Commission is of the opinion that this contention must also be rejected.

Upon the basis of all of the evidence and data now before it, the Commission finds that, at the time of the taking of the various Yugoslav properties above described, Lingner wholly owned Odol; that Lingner also then wholly owned Croatian; that 87.3% of Lingner was then owned by Kohlensaure; and that the claimant was then the true owner of 100% of Kohlensaure. An award will be made, accordingly, to the extent of 87.3% of the value, now to be considered, of the various properties so taken.

Valuation of Odol.

In this regard, the claimant has submitted an unauthenticated photostat of what purports to be the "most recent balance sheet in

the possession of the claimant", that of July 31, 1944. With respect to such items therein as are of significance on a valuation as of the date of taking, the balance sheet reflects a total net valuation for land and building, machinery and equipment and other tangible personal property, of approximately 1,200,000 dinars (after deduction of stated reserves). The Government of Yugoslavia has reported that evaluation of the Odol plant property made under its auspices, in terms of 1938* prices, reflected a total of 808,618.01 dinars for the real and personal property of the corporation, it being further stated that no records of other assets or liabilities, as of the time of taking, were available. The Commission's investigators have been unable to locate any such other records or pertinent data. However, analysis of the aforementioned balance sheet and of other relevant data indicates that consideration of any such other asset and liability items would not significantly alter the result reached by an evaluation of the tangible assets alone.

The aforementioned balance sheet of Odol apparently does not purport to include the real estate held in the name of Paul Zonda. Clearly, the aforementioned appraisal by the Yugoslav authorities does not include it. This, however, as indicated above, is an asset item which the Commission has concluded should be added, for the purposes of this determination, to the valuation of Odol.

As already indicated, the cost of this real estate in 1943, as reflected by the purchase contract, was 345,000 dinars. It is asserted, however, that the true purchase price was 1,916,108.37 dinars. This, it is said, is evidenced by the fact that a receipt dated November 18, 1943, given by the sellers to Paul Zonda (a photostat of which has been submitted) indicates the payment of 1,716,108.37 dinars in addition to a down payment of 200,000 dinars which, it is said, was made on May 29, 1943. On its face, however,

the receipt does not indicate what it was given for. The down payment is evidenced, it is said, by a document dated May 29, 1943 (a photostat of which has been submitted) signed by the sellers therein named and entitled "Declaration" which purports to be an acknowledgement that the sellers "have sold today to Mr. Paul Zonda" approximately 44 yokes of land at 45,000 dinars per yoke (this would amount to approximately 1,980,000 dinars). This document recites that it is contemplated that a formal contract would be executed thereafter "upon receipt of the consent on the part of the competent authority."

Investigators for the Commission have appraised this property, in terms of 1938 values, at a total of 516,000 dinars.

Upon the basis of all of the evidence and data before it, the Commission is of the opinion that the fair and reasonable value of all of the assets of Odol (including the property held in the name of Paul Zonda) at the time of their taking, in terms of 1938 values, was 1,325,000 dinars.

Valuation of Croatian.

In this regard, the claimant has submitted only what purports to be a copy of a balance sheet as of December 31, 1943, prepared in terms of kunas. The corporation is not said to have owned any real property. The Commission's investigators have been unable to locate any pertinent books or records; and the Government of Yugoslavia has reported that its representatives were unable to locate any records except "the list of movable property, debts and claims, made during the taking over of the company's property, on July 7, 1945".

That list, it is further reported, reflected total assets, as of the date last mentioned, in terms of 1938 values, as follows:

Assets		Dinars
Inventory, raw material, equipment and "auxiliary" material		4,875,445.94
Current account debtors		7,356.40
Debtors for commodities		325.82
	Total	4,883,128.16

Liabilities		
Current account creditors		19,607.37
Creditors for commodities		1,637.54
	Total	21,244.91

This list would thus reflect a net worth, as of July 7, 1945, in terms of 1938 prices, of 4,861,883.25 dinars.

Upon the basis of all the evidence and data available to it, the Commission has concluded that the fair and reasonable value of the assets of Croatian, as of the date of its taking, was, in terms of 1938 values, 4,862,000 dinars; that, as indicated above, the value of Odol (including the real property in Crna Bara) was, in the same terms, 1,325,000 dinars; and that the combined value of the property of both of the corporations involved, at the time of their taking, was thus 6,187,000 dinars.

It having been found that Lingner was the sole owner of both of the corporations involved at the time of their taking; that Kohlensaure then owned an 87.3% interest in Lingner; that the claimant was the sole beneficial owner of Kohlensaure at the time of the taking of such assets in Yugoslavia; and that neither the validity or the amount of his claim has been affected by the recent sale of some of the claimant's interest in Kohlensaure, discussed above, an award will be made herein in an amount equal to 87.3% of the above mentioned total sum of 6,187,000 dinars, or 5,401,251 dinars. The latter amount,

converted to dollars at the rate of 44 dinars to one dollar, the rate adopted by the Commission in making such awards,* equals $122,755.70.

AWARD

Upon the above evidence and grounds, this claim is allowed and an award is hereby made to Siegfried Arndt, claimant, in the amount of $122,755.70 with interest thereon at 6% per annum as follows: (a) on $26,289, on account of the taking of Odol, from February 12, 1945, the date of taking, to August 21, 1948, the date of payment by the Government of Yugoslavia, in the amount of $5,557.42; and (b) on $96,466, on account of the taking of Croatian, from February 12, 1946, the date of taking, to August 21, 1948, the date of payment by the Government of Yugoslavia, in the amount of $14,588.75, or a total of interest in the amount of $20,146.17.

Dated at Washington, D. C. DEC 30 1954

* For the Commission's reasons for use of 1938 valuations, use of exchange rate of 44 to 1, and the allowance of interest, see attached copy of its decision in the claim of Joseph Senser.

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approved
11-26-54

PROPOSED DECISION OF THE COMMISSION

This is a claim for an unspecified amount by Siegfried Arndt, a citizen of the United States since his naturalization on September 5, 1944, and allegedly derives from the taking by the Government of Yugoslavia of: (1) the assets of Odol Kompanija D.D., a Belgrade corporation, (hereinafter referred to as "Odol"); (2) the assets of Hrvatsko Odol Drustov, D.D. (Croatian Odol Corporation), a Zagreb corporation, (hereinafter referred to as "Croatian"); and (3) a parcel of real estate located in Crna Bara which, while admittedly entered in the title records in the name of one Paul Zonda, was assertedly held by him as trustee for Odol.

It is reported by the Government of Yugoslavia that the property of Odol was taken by confiscation on February 12, 1945 pursuant to a decision of that date by the City Commission for Confiscating German Property, in Belgrade (Decision No. 552/1798).

The property of Croatian, it is similarly reported, was also taken in 1945. This was effected, it is stated in the report of the

Government of Yugoslavia, by confiscation proceedings directed against 200 shares of Croatian belonging to the "German company Lingerwerke" (by decision of the People's Committee of the City of Zagreb, of August 22, 1945, No. 8502/45); by similar proceedings directed against 300 shares which then belonged, as stated in the report of the Government of Yugoslavia, to one Georg Pany (by decision of the County Court for the City of Zagreb on February 12, 1946 (No. 560/45); and, with respect to what is reported to be the balance of the outstanding shares (totalling 800), it is said that 200 shares belonging to one Frano Mikso and 100 shares belonging to Matija Vrjovec "were voluntarily given as a gift to the State".

It is also so reported that the real property referred to above, assertedly held for Odol by Paul Zonda, was taken by confiscation on February 6, 1945, pursuant to the decision of the Commission for Confiscation of the People's District Committee in Novi Knezevac (Decision No. 335-336/45).

The claimant's interest in these properties, as of the date of their taking, is allegedly an indirect interest, derived through his asserted 100% ownership of a German corporation, Kohlensaure Industrie A.G., of Dusseldorff, Germany (formerly named Bank feur Industrie und Verwaltung A.G.), which is hereinafter referred to as "Kohlensaure", which, it is also asserted, owned 87% of the then outstanding shares of another German corporation, Lingnerwerke A.G. (hereinafter referred to as "Lingner") which, in turn, is said to have owned, at the time of their taking, the two Yugoslav enterprises above mentioned, as well as, through the alleged trusteeship of Paul Zonda, the above referred to real property.

Some evidence has heretofore been submitted in support of the claim of Odol's ownership of the real property in Crna Bara, and of the ownership by Lingner of both Odol and Croatian. Evidence has also been submitted respecting the ownership of Lingner by Kohlensaure.

In respect of some of these matters, additional corroborative evidence suggested by the Commission has not as yet been submitted. In any event, however, in view of the following, it is unnecessary for the Commission at this time to make any determinations with respect to ownership of either the Yugoslav assets or of Lingner.

The evidence now before the Commission respecting the alleged ownership by the claimant of a 100% interest in Kohlensaure, the top holding company, is ambiguous, apparently conflicting, and inconclusive and therefore cannot provide a proper basis for the issuance of an award herein. Without adequate proof in regard to this link in the alleged chain of title, no award could be made even if ownership as to the subsequent links were conclusively established.

The evidence originally submitted with the Statement of Claim in that regard, consisted of an authenticated certificate, dated May 16, 1951, by a Dusseldorf accounting firm, Industrieberatung und Pruefung G.M.B.H., which describes itself as "a certified corporation entrusted with the examination of business enterprises".

In that certificate, it was stated simply that the claimant "is and was the sole owner of all of the shares of" Kohlensaure. Pursuant to subsequent request by the Commission for more specific information as to the claimant's ownership of these shares as of the date of his naturalization and thereafter, a further similar certificate from the same accounting firm, dated November 19, 1951, was submitted; in that certificate it was stated that "Mr. Siegfried Arndt even prior to September 5, 1944 and subsequently was uninterruptedly the sole owner of the entire capital stock of" Kohlensaure. These documents apparently purported to declare the existence of full legal and nominal ownership in the claimant, to the extent indicated, between sometime prior to 1944 and the date of the certificate, November 19, 1951.

It appeared, however, from an examination by the Commission of certain documents submitted by the claimant or his counsel to the Department of State in 1946, that the claimant at that time represented to the Department of State (particularly in his affidavit of October 11, 1946) that his alleged ownership was then and since 1935 had been, not full nominal ownership as suggested by these two certificates from the above-named accounting firm, but rather a "beneficial interest of at least 75% in the assets of these corporations", subject to a "right to reacquire full control and ownership of the minority interest of 25%, an option which I intended to exercise as soon as business conditions will permit such action". It was indicated in that affidavit that under a certain agreement (the details of which were not specified) one Ernst Schneider in 1935, "took over final control of the concern" and agreed that "beneficial ownership for interest of 75% of all assets involved was to be retained by me (the claimant)".

The Commission thereupon made further inquiry into these matters. It was explained by counsel for the claimant that in 1933, the claimant, in an effort to avoid the consequences of anti-Jewish measures by the Hitler regime, undertook what appears, on investigation, to have been an elaborate "cloaking" arrangement with certain of his business associates, including Mr. Schneider, for the purpose of concealing the true ownership of the claimant's business interests in Germany, including those in Kohlensaure. And it was further explained that after the war, in 1950, pursuant to proceedings instituted in the Restitution Office of the District Court in Berlin, a judgment was entered (based, apparently, upon the consent of all parties in interest) directing the return of claimant's interest in Kohlensaure. A variety of evidence was introduced in that regard, including evidence relating to the decree issued by the District Court.

Further in that connection, the Commission also requested evidence of the actual retransfer to the claimant of his Kohlensaure shares

pursuant to the determination in the restitution proceedings; and there was thereafter submitted a sworn certificate, dated August 26, 1954, by the Rheinisch-Westfaelische Bank of Dusseldorf, Germany reading as follows:

> "We acknowledge herewith that the following shares of
> Kohlensaeure-Industrie Aktiengesellschaft,
> Duesseldorf (formerly Berlin)
> have been deposited in the foreigners' safe deposit of
> Dr. Siegfried Arndt, 45 Gateway Drive, Great Neck,
> L.I., N.Y., U.S.A.:
>
> On January 12, 1949 par RM 4,300,000 shares Class A
> On September 13, 1951 par RM 700,000 shares Class A.
>
> This total of par RM 5,000,000 shares Class A was exchanged on December 1, 1951, according to the conversion resolution of the stockholders' meeting of September 5, 1951 against:
>
> par DM 6,000,000 shares Class A.
>
> On June 12, 1952 an additional par DM 200,000 shares Class B were deposited in the above safe deposit.
>
> Under the provisions of par. 4 of the by-laws of Kohlensaeure-Industrie A.G. as of September 5, 1951 the above share certificates constituted the entire capitalization of Kohlensaeure-Industrie A.G., Duesseldorf."

However, pursuant to a subsequent request by the Commission for additional proof in this and other respects, the claimant submitted his own affidavit, dated November 20, 1954, in which, in respect of his alleged interest in Kohlensaure, he says:

> "As I am now advanced in age and living in the United States, I decided recently to reduce my participation in my European business and on June 30, 1954 sold a 45% interest in Kiag (the claimant's own abbreviation of Kohlensaure) to a Swiss group".

An apparent inconsistency thus arises between the above-mentioned certificate of the Rheinisch-Westfaelische Bank, which appears to indicate that on August 26, 1954, the date of the certificate, the bank then had on deposit for the claimant's account the shares indicated, representing the "entire capitalization" of Kohlensaure, and, on the other hand, the most recent statement by the claimant that on June 30, 1954, before the issuance of the bank's certificate, he had sold a 45% interest therein.

Counsel for the claimant has offered, by letter of November 24, 1954, the following explanation of this apparent discrepency. He states that while the certificate from the Rheinisch-Westfaelische Bank is dated August 26, 1954, the statements made therein relate only to the dates on which the indicated deposits of shares were made; that it does not purport to indicate that the claimant still had such shares on deposit on August 26, 1954; and that this certificate was submitted only for the purpose of demonstrating that the claimant did actually recover his shares after the restitution proceedings.

In respect of the claimant's sale of his 45% interest in June 1954, counsel states that, at the time of such sale, it was understood by the parties thereto that the transaction did not relate to any of the assets of Kohlensaure located outside of Germany, including those in Yugoslavia, which had theretofore been confiscated or otherwise taken; that it was considered that none of such assets were then still owned by Kohlensaure; and that any claims for the confiscation of such assets would continue to be owned by the claimant personally.

However, whatever legal significance such explanations may have, no documentation thereof has as yet been submitted to the Commission; and the Commission cannot find, upon this record, that these phases of this claim have been sufficiently clarified to justify a favorable holding in that respect.

Moreover, the problem raised by the recent sale by the claimant of a substantial portion of his interest in Kohlensaure, is a serious one, in any event.

In proceedings of this kind, the continued ownership by a claimant of his entire claim, including all the shares of stock or other interests through which his claim is derived, from the time the claim arose until its assertion in a formal Statement of Claim of the kind filed with this Commission and thereafter until the final determination of the claim, is generally regarded as an essential prerequisite to the making of an award thereon. In any event, it is always assumed, as

the Commission must, as a matter of practical administration, that the claim--and the statement of facts upon which it is based--for which an award is requested contimues to be, until such final determination and unless contrary advice is received, the same claim, and for the same amount, as that originally asserted before the Commission.

In the absence of an express reservation or other provision to the contrary, the transfer of shares of stock through which such a claim is asserted, would generally convey to the transferee and divest the transferor of the right to assert a claim based upon such stock ownership, either before this Commission or elsewhere. It would thus appear, prima facie, that the transfer by the claimant of a 45% interest in his Kohlensaure shares, even as late as June 1954, would have the effect of entitling him to an award only to the extent of 55% of what his claim would otherwise amount to, assuming that the facts in regard to this transfer were duly documented.

The Commission must also be cognizant, in such matters, of the possibility that the transferring of any such partial interest in a claim theretofore asserted before it would place the transferee in a position where he could appear to be entitled to assert still another claim, either before some other agency of the United States or that of some other government, upon the basis of his stock interest so acquired; and the Commission believes that it is under an obligation, as an instrumentality of the United States Government, to guard against this possibility of a duplication of claims.

The Commission is of the opinion, therefore, that it may properly expect of a claimant the duty to advise the Commission of any change in the ownership status of any claim filed by him, or of any part of such claim, from the time it is originally filed throughout the period in which it is still under consideration; so that such further inquiry into and consideration of the claim

may be made as is indicated by the circumstances disclosed. While counsel's explanation of the claimant's failure so to advise the Commission is not questioned, this phase of the matter, upon the record before the Commission, is considered of sufficient importance to prevent the issuance of an award.

For the foregoing reasons, this claim must be and hereby is denied.

Dated at Washington, D. C.

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