

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

IN THE MATTER OF THE CLAIM OF

JOHN HERBERT BACKER
c/o U. S. Mission, Berlin
APO 742, Postmaster
New York, New York

Claim No. CZ-2,785

Decision No. CZ-1214

Under the International Claims Settlement
Act of 1949, as amended

Counsel for Claimant:

Karl R. Price, Esq.
World Center Building
Washington, D. C.

ORDER AND FINAL DECISION

The Commission issued its Proposed Decision on this claim on August 1, 1960, granting claimant an award in the principal amount of \$70,547.97 plus interest thereon in the amount of \$43,822.28 for a total award of \$114,370.25 based on the loss which claimant sustained as the result of the nationalization of his enterprise (Bratri Bacherove & Spol, Rumburk) by the Government of Czechoslovakia. In arriving at the principal amount of the award, the Commission adopted the net worth of the subject enterprise as fixed by its balance sheet as of March 31, 1948, with minor adjustments.

Claimant filed objections to the Proposed Decision contending, in effect, that while the Commission correctly read the balance sheet, one of the assets listed therein namely machinery and equipment had been understated. In support thereof, claimant submitted the following new evidence:

- (a) A letter from "Felix" (Pollak) the former manager of the enterprise reciting the facts and circumstances under which the balance sheet was drawn up "by the Auditors of the National Corporation" and signed by him, and indicating that the book value of the machinery and equipment as listed in the balance sheet was below its actual value.

- (b) Certified appraisals by Eng. Ferd. Kaeser, "Permanently sworn in as court expert", fixing the value of the heavy mechanical looms and appurtenant equipment which formed part of the machinery and equipment of the enterprise
- (c) Affidavit by Erwin Schierz, formerly Assistant Technical Manager of the subject enterprise, listing the machinery and equipment contained in and belonging to the enterprise and value of the separate items mentioned in said list.
- (d) Affidavit by claimant in which he avers, in substance, that he visited and inspected the plant of the subject enterprise in 1947 at which time the machinery and equipment referred in item "c" above was present and fully operating in said plant.

Due consideration having been given to the entire record, including the result of the Commission's independent investigation in this matter, the Commission finds that the net worth of the subject enterprise when nationalized by the Government of Czechoslovakia on January 1, 1948 was \$208,513.09. It is therefore,

ORDERED that the Proposed Decision herein be and it is hereby amended by increasing the principal amount of the award to \$208,513.09 and interest to \$132,649.77 for a total award of \$341,162.86. In all other respects the Proposed Decision is hereby affirmed as the Final Decision on this claim. It is further

ORDERED that the award as restated below be certified to the Secretary of the Treasury.

A W A R D

Pursuant to the provisions of Title IV of the International Claims Settlement Act of 1949, as amended, an award is hereby made to JOHN HERBERT BACKER in the principal amount of Two Hundred Eight Thousand Five Hundred Thirteen Dollars and Nine Cents (\$208,513.09),

plus interest thereon at the rate of 6% per annum from January 1, 1948 to August 8, 1958, in the amount of One Hundred Thirty-two Thousand Six Hundred Forty-nine Dollars and Seventy-seven Cents (\$132,649.77), for a total award of Three Hundred Forty-one Thousand One Hundred Sixty-two Dollars and Eighty-six Cents (\$341,162.86).

Dated at Washington, D. C.

MAR 21 1962

Edward J. Al
Theodore Jaffe
Lavern R. Dilweg

COMMISSIONERS

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Claim No. CZ-2,785

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Under the International Claims Settlement
Act of 1949, as amended

GPO 942329

Counsel for Claimant:

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PROPOSED DECISION

This is a claim in the amount of \$4,963,750.00 against the Government of Czechoslovakia under Section 404 of the International Claims Settlement Act of 1949, as amended, by JOHN HERBERT BACKER, a national of the United States since his naturalization on January 22, 1943.

The claim is based on the nationalization of an enterprise named "Bratri Bacherove & spol" which was engaged in manufacturing carpets and furnishing material at Rumburk, Czechoslovakia.

Claimant computes his claim as follows:

(a) Adjusted book value (of enterprise)	\$ 680,250.00
(b) Good will	4,283,500.00
Total	<u>\$4,963,750.00</u>

Section 404 of the Act provides, inter alia, for the determination by the Commission in accordance with applicable substantive law, including international law, of the validity and amount of claims by nationals of the United States against the Government of Czechoslovakia for losses resulting from nationalization or other taking on and after January 1, 1945, of property including

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any rights or interests therein, owned at the time by nationals of the United States.

The Commission finds:

(1) That claimant was the sole owner of "Bratri Bacherove & spol" (hereinafter called enterprise).

(2) That the enterprise was nationalized, without compensation, by the Government of Czechoslovakia on January 1, 1948 pursuant to Law No. 114/1948 dated April 28, 1948, effective retroactively as of January 1, 1948.

(3) That the net value of the enterprise, on the basis of which it was taken over by the Government of Czechoslovakia, was \$70,547.97.

(4) That the part of the claim described by the claimant as "good will", is based on the loss of (prospective) profits from 1949 to 1958, and is not compensable under the Act. The profits or earnings of the enterprise, if any, which may have been realized during that period, did not belong to claimant since his title in and to the enterprise was extinguished in 1948. However, claimant will be awarded interest on the value of the enterprise, as determined above, at the rate of 6% per annum from April 1, 1948, the date of the actual "taking over", to August 8, 1958, the date of enactment of Title IV of the Act.

It may be added that claims based on loss of prospective earnings are, generally, not allowed under international law. Edwin M. Borchard discusses this matter in his recognized treatise entitled "Diplomatic Protection of Citizens Abroad". In Section 172 thereof, Mr. Borchard cites the historic "Alabama Arbitration", and goes on to say:

"This award (in the Alabama case), including the finding that 'prospective earnings cannot properly be made the subject of compensation, inasmuch as they depend in their nature upon future and uncertain contingencies,' has been regarded as a reliable precedent by numerous other arbitral tribunals, which have disallowed indirect claims based upon loss of anticipated profits, loss of credit, and similarly consequential elements of loss."

"Acts of Congress authorizing domestic commissions to distribute international awards have followed the general rule excluding anticipated profits and indirect losses from consideration as elements of damage. - - - Domestic commissions have reached the same conclusion without specific direction from Congress." 1/

Accordingly, the Commission concludes that claimant is entitled to an award under Section 404 of the Act in the principal amount of \$70,547.97, plus interest thereon in the amount of \$43,822.28.

A W A R D

Pursuant to the provisions of Title IV of the International Claims Settlement Act of 1949, as amended, an award is hereby made to JOHN HERBERT BACKER in the principal amount of Seventy Thousand Five Hundred Forty-seven Dollars and Ninety-seven Cents (\$70,547.97), plus interest thereon in the amount of Forty-three Thousand Eight Hundred Twenty-two Dollars and Twenty-eight Cents (\$43,822.28), for a total award of One Hundred Fourteen Thousand Three Hundred Seventy Dollars and Twenty-five Cents (\$114,370.25).

Dated at Washington, D. C.

AUG 1 1960

BY DIRECTION OF THE COMMISSION:

Francis T. Masterson

Francis T. Masterson
Clerk of the Commission

1/ This Commission has so held "In the Matter of the Claim of UNITED SHOE MACHINERY CORPORATION", Claim No. SOV-40,353, Decision No. SOV-3122 ("Foreign Claims Settlement Commission of the United States, Tenth Semiannual Report to the Congress," at page 238).