

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

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In The Matter Of The Claim Of

ELLA WYMAN and FRANK H. WYMAN as  
Trustees under Indenture of Trust  
dated January 21, 1949, known as  
ELLA WYMAN B TRUST

Claim No. CZ-4347

ELLA WYMAN and THOMAS G. WYMAN as  
Trustees under Indenture of Trust  
dated January 21, 1949, known as  
ELLA WYMAN C TRUST  
C/o Frank H. Wyman  
375 Park Avenue  
New York 22, New York

Claim No. CZ-4348

Decision No. CZ-3529

Under the International Claims Settlement  
Act of 1949, as amended

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Counsel for Claimants:

Gardner, Morrison & Rogers  
Suite 1126 Woodward Building  
Washington 5, D. C.

FINAL DECISION

The Commission issued its Proposed Decision denying these claims on June 29, 1962. A copy of the Proposed Decision was duly served upon the claimants.

Claimants filed objections, submitting a brief and additional evidence in support thereof. Pursuant to claimants' request a hearing was held on August 15, 1962, at which time the Commission heard testimony, and the arguments of claimants' representative. Upon consideration of the entire record, it is

ORDERED that the Proposed Decision be amended as follows, and as amended be entered as the Final Decision on these claims:

These claims were each filed in the amount of \$247,691.03 against the Government of Czechoslovakia under Title IV of the International Claims Settlement Act of 1949, as amended.

The claims are each based on a one-quarter interest in:



- (1) 15,810 shares of Westbohmischer Bergbau Aktienverein
- (2) 225 shares of Aussiger Chemische
- (3) a claim against Pojizerske Bavlarske Zavody, Narodni Podnik

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

Section 405 of the Act provides as follows:

A claim under Section 404 of this title shall not be allowed unless the property upon which the claim is based was owned by a national of the United States on the date of nationalization or other taking thereof and unless the claim has been held by a national of the United States continuously thereafter until the date of filing with the Commission.

The trust indenture of January 21, 1949, named no beneficiaries but the grantor, ELLA WYMAN, reserved the right to appoint the trust funds among family members. ELLA WYMAN became a national of the United States by naturalization on November 22, 1946. It is further stated that Hans Wyman, a national of the United States since his naturalization on May 27, 1946, owned 500 shares, or a one-half interest in the assets of "Aktiengesellschaft fur Montanwerte," a Swiss corporation, hereinafter referred to as Montanwerte, including the three items which are the subject of these two claims; that on May 15, 1952, he gave his interest in Montanwerte to his son, Ralph M. Wyman, and created seven trusts for the benefit of his grandchildren; and that on January 24, 1956 Hans Wyman, acting as trustee of these seven grandchildren's trusts and as attorney for Ralph Wyman, sold the 500 Montanwerte shares in equal parts to the claimants herein.

The corporations referred to under Items (1) and (2) above and/or the property of said corporations came within the purview of Czechoslovak nationalization Decree No. 100/45 Sb., effective as of October 27, 1945.



As indicated above Hans Wyman, who owned the interests herein at that time, did not become a national of the United States until May 27, 1946. In the absence of proof that the properties of the said corporations were taken on or subsequent to May 27, 1946, the portions of the claims based on Items (1) and (2) are not compensable. (Section 405 of the Act, supra.)

With respect to Item (3) above, the Commission finds that this represented a claim expressed in Swiss francs due to Montanwerte from two Czechoslovakian textile firms from a time prior to the war, that the firms were nationalized in 1945 and transferred to Pojizerske (national enterprise). Thereafter Pojizerske agreed to repay the debt within a year without interest or within five years with 3% interest. By letter of September 18, 1947, Pojizerske confirmed that the amount as of December 31, 1938 was 1,635,166.40 francs, and by letter of February 13, 1950 Pojizerske stated that the Czechoslovak Ministry of Finance refused transfer of Swiss francs and further indicated that the obligation was considered to fall within the purview of the Czechoslovak-Swiss Agreement of December 22, 1949. By a letter of March 26, 1956, the Swiss Commission for Indemnities in connection with Nationalizations advised that under the Protocol of December 22, 1949, Montanwerte should not claim its capital claim against Pojizerske by way of Switzerland and further stated that the interest claims of Montanwerte were not settled by the Agreement of December 22, 1949. In 1949 Montanwerte was owned by United States citizens.

The Commission has considered this matter in light of its previous decision that "creditor claims" as a general rule are not compensable under Section 404 of Title IV of the Act unless there has been an annulment.<sup>1/</sup> On the basis of the entire record, the Commission concludes that the evidence herein establishes that the action of the Government of Czechoslovakia constituted an annulment of the debt claim against Pojizerske. It is therefore concluded that claimants are entitled to compensation for this loss.

<sup>1/</sup> Decision No. CZ-734, affirmed January 4, 1961, In the Matter of the Claim of SKINS TRADING CORPORATION, Claim No. CZ-3978.



The Commission further finds that a one-quarter interest in the debt was 408,791.60 Swiss francs, equivalent to \$93,502.20 converted at the official rate of exchange of 4.372 Swiss francs to one dollar in 1938, that the interest thereon at the rate of 3% from December 31, 1938 to February 13, 1950 is \$31,182.98, a total of \$124,685.18, and that each claimant herein is entitled to compensation in this amount.

Accordingly, it is

ORDERED that the following awards be certified to the Secretary of the Treasury:

A W A R D S

An award is hereby made to ELLA WYMAN and FRANK H. WYMAN as Trustees under Indenture of Trust dated January 21, 1949, known as ELLA WYMAN B TRUST in the principal amount of One Hundred Twenty Four Thousand Six Hundred Eighty-Five Dollars and Eighteen Cents (\$124,685.18) plus interest thereon at the rate of 6% per annum from February 13, 1950 to August 8, 1958, the effective date of Title IV of the Act, in the amount of Sixty Three Thousand Four Hundred Sixty-Four Dollars and Seventy-Six Cents (\$63,464.76) for a total award in the amount of One Hundred Eighty Eight Thousand One Hundred Forty-Nine Dollars and Ninety-Four Cents (\$188,149.94);

and an award is hereby made to ELLA WYMAN and THOMAS G. WYMAN as Trustees under Indenture of Trust dated January 21, 1949, known as ELLA WYMAN C TRUST in the principal amount of One Hundred Twenty Four Thousand Six Hundred Eighty-Five Dollars and Eighteen Cents (\$124,685.18) plus

interest thereon at the rate of 6% per annum from February 13, 1950 to August 8, 1958, the effective date of Title IV of the Act, in the amount of Sixty Three Thousand Four Hundred Sixty-Four Dollars and Seventy-Six Cents (\$63,464.76) for a total award in the amount of One Hundred Eighty Eight Thousand One Hundred Forty-Nine Dollars and Ninety-Four Cents (\$188,149.94).

Dated at Washington, D. C.

SEP 14 1962

Edward S. Mc  
Theodore Joffe  
LaVern R. Diweg

COMMISSIONERS



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

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375 Park Avenue  
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Decision No. CZ-3523

Under the International Claims Settlement  
Act of 1949, as amended

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Counsel for Claimants:

Gardner, Morrison & Rogers  
Suite 1126 Woodward Building  
Washington 5, D. C.

PROPOSED DECISION

These claims were each filed in the amount of \$247,691.03  
against the Government of Czechoslovakia under Title IV of the Inter-  
national Claims Settlement Act of 1949, as amended.

The claims are each based on a one-quarter interest in:

- (1) 15,810 shares of Westbohmischer Bergbau Aktienverein
- (2) 225 shares of Aussiger Chemische
- (3) a claim against Pojizerske Bavlnarske Zavody, Narodni  
Podnik

Section 404 of the Act provides, inter alia, for the determina-  
tion 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 any rights or interests therein,  
owned at the time by nationals of the United States.



Section 405 of the Act provides as follows:

A claim under Section 404 of this title shall not be allowed unless the property upon which the claim is based was owned by a national of the United States on the date of nationalization or other taking thereof and unless the claim has been held by a national of the United States continuously thereafter until the date of filing with the Commission.

It is said that the trust indenture of January 21, 1949, names no beneficiaries but that the grantor, ELLA WYMAN, has reserved the right to appoint the trust funds among family members. ELLA WYMAN became a national of the United States by naturalization on November 22, 1946. It is further stated that Hans Wyman, a national of the United States since his naturalization on May 27, 1946, owned 500 shares, or a one-half interest in the assets of "Aktiengesellschaft fur Montanwerte," a Swiss corporation, hereinafter referred to as Montanwerte, including the three items which are the subject of these two claims; that on May 15, 1952, he gave his interest in Montanwerte to his son, Ralph M. Wyman, and created seven trusts for the benefit of his grandchildren; and that on January 24, 1956 Hans Wyman, acting as trustee of these seven grandchildren's trusts and as attorney for Ralph Wyman, sold the 500 Montanwerte shares in equal parts to the claimants herein.

The corporations referred to under Items (1) and (2) above and/or the property of said corporations came within the purview of Czechoslovak nationalization Decree No. 100/45 Sb., effective as of October 27, 1945. As indicated above Hans Wyman, who owned the interests herein at that time, did not become a national of the United States until May 27, 1946. In the absence of proof that the properties of the said corporations were taken on or subsequent to May 27, 1946, the portions of the claims based on Items (1) and (2) are not compensable. (Section 405 of the Act, supra.)

With respect to Item (3) above, it is said this represented a claim expressed in Swiss francs due to Montanwerte from two Czechoslovakian textile firms from a time prior to the war, that the firms were nationalized in 1945 and transferred to Pojizerske. Thereafter, according to



the record, Pojizerske is said to have agreed to repay the debt within a year without interest or within five years with 3% interest. By letter of April 28, 1947 to Montanwerte, the Národní Banka Československa stated that debts owed by the firms Tannwalder Baumwollspinnfabrik and Lederer & Wolf or their successors (Pojizerske) would be treated in the same way as other claims of Swiss creditors of said firms. By letter of September 18, 1947 Pojizerske confirmed that the amount as of December 31, 1938 was 1,635,166.40 francs, and further advised that the agreement was subject to approval by the National Bank, which was refused according to another letter from Pojizerske of September 23, 1947.

There has been submitted a letter of February 13, 1950 from Pojizerske concerning Montanwerte, stating that based on an instruction of the Czechoslovak Ministry of Finance, Pojizerske was unable to transfer the amount of 180,000 Swiss Francs, and further indicating that the obligation was considered to fall within the purview of the Czechoslovak-Swiss Agreement of December 22, 1949. By a letter of March 26, 1956 (the record does not disclose what may have occurred in the intervening time), the Swiss Commission for Indemnities in connection with Nationalizations advised that under the Protocol of December 22, 1949, Montanwerte should not claim its capital claim against Pojizerske by way of Switzerland and further stated that the interest claims of Montanwerte were not settled by the Agreement of December 22, 1949.

The Commission has consistently held that the nationalization of a debtor company does not constitute a taking of the property of an unsecured creditor of the nationalized company where there has been no annulment or repudiation of the debt. The Commission is of the opinion that the record does not establish that this debt was annulled or repudiated by the Government of Czechoslovakia so as to constitute a taking of the claimants' property. A mere failure on the part of the



Government of Czechoslovakia to pay an unsecured debt will not give rise to a compensable claim under Section 404 of the Act. (Decision No. CZ-734, affirmed January 4, 1961, In the Matter of the Skins Trading Corporation, Claim No. CZ-3978). This does not deny that a claim for such debts exists but rather that the statute does not provide for such claims.

Accordingly, for the reasons stated above, the claims must be and hereby are denied.

Dated at Washington, D. C.

**JUN 29 1962**

BY DIRECTION OF THE COMMISSION:

A handwritten signature in cursive script, reading "Francis T. Masterson". The signature is written in dark ink and is positioned above the printed name and title.

Francis T. Masterson  
Clerk of the Commission