

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

In the Matter of the Claim of

CISATLANTIC CORPORATION,
525 Park Avenue,
New York, New York.

and

STEVEN AUSNIT,
525 Park Avenue,
New York, New York.

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

Docket No. Y-1113

Decision No. 951

Counsel for Claimants:

JOHN D. GARRISON and/or
SAUL L. SHERMAN,
c/o Lord, Day & Lord,
25 Broadway,
New York, New York.

and/or

JOHN W. WYATT,
Wyatt Building,
Washington 5, D. C.

approved
PK
12-20-54

PK
WJ
12-20-54

approved
12-22-54
PCP

FINAL DECISION

A Proposed Decision was entered in this claim on June 24, 1954, denying the claim of the Cisatlantic Corporation on the ground that 20% or more of any class of the outstanding securities of the corporate claimant were not owned by individual nationals of the United States at the time the property, for which claim was made, was taken by the Government of Yugoslavia.

Subsequent to the issuance of the Proposed Decision, the Cisatlantic Corporation and Steven Ausnit moved for leave to amend the claim by adding Steven Ausnit as a party claimant for the

RV

amount of \$551,420 with interest. At the same time Cisatlantic Corporation and Steven Ausnit excepted to the Proposed Decision insofar as it held that the Commission was not called upon under the Statement of Claim as originally filed to determine the rights of Steven Ausnit as owner of a 50% beneficial interest in the claim filed by Cisatlantic Corporation.

While we do not consider the exception has merit, the issue is moot since we grant the petition to add Steven Ausnit as a party claimant.

No hearing was requested by Cisatlantic Corporation on the denial of its claim and a claim on its behalf has apparently been abandoned. Since the Proposed Decision was issued both this Commission's investigator and the Yugoslav Government confirm that SARTID was nationalized on December 5, 1946, pursuant to the Law Regarding Nationalization of Private Economic Enterprises (Official Gazette No. 98 of December 6, 1946). Accordingly, we hereby affirm the Proposed Decision in denying the claim of the Cisatlantic Corporation.

The rationale of the claim now asserted by claimant Steven Ausnit is that he was the beneficial owner of one-half of the 34,535 SARTID shares legally owned by Cisatlantic. Although certain of the evidence on which he relies was referred to or quoted in the Proposed Decision, we shall set it out again here to some extent in the interests of clarity and cohesion.

The background of the transaction is described in an affidavit of Max Ausnit, claimant's father. In 1939, Max Ausnit as a prominent Rumanian industrialist of Jewish origin, unable to leave the country and fearing imminent arrest, determined to transfer a block of 5,960 shares of CEPI to his oldest son, Steven. CEPI was the Monacan holding company in which a large part of the shares he owned

in Rumanian and Yugoslav corporations were concentrated. Since Max Ausnit, in addition to arrest, also faced the possibility of death, Steven in such case would have received a major testamentary portion of his estate, and out of love and affection Max Ausnit signed a notarized document before two lawyers on November 6, 1939, in Bucharest, which reads as follows:

"Dear Stephan:-

As very serious situations may arise, which will make further correspondence with you impossible, I herewith transfer into your property

5,960 (fivethousand ninehundredsixty)

CEPI-shares, which are deposited with Messrs. Vickers-Armstrongs, Ltd., of London, and on which there is a small balance to pay.

Yours,

/s/ Max Ausnit"

Two days later, Max Ausnit was arrested and imprisoned although he could communicate with his lawyers and also with Mr. Marcel Barde, who was CEPI's manager and Consul General of France, thus enjoying diplomatic privileges. Through Mr. Barde, Max Ausnit communicated with his brother Edgar, who, like Steven, was in London. The sense of these communications was that because of the Nazi sweep through Europe it was highly possible that CEPI assets in Yugoslavia could fall into German hands, and that these assets could be removed from this eventuality by transfer to Cisatlantic Corporation in exchange for CEPI shares.

Mr. Barde's participation in these negotiations is confirmed by his affidavit which recites:

"I was staying in Bucharest, Rumania, when Mr. Max Ausnit, of the Company Titan, Nadrag, Calan Works, was arrested, on the 8th November, 1939, for political reasons. Few days later I found an opportunity to meet him at the hospital where Mr. Max Ausnit was removed for a short period and I was then requested by him to transmit to his brother, Mr. Edgar Ausnit, who was then dwelling in London, a transfer deed of 5960 shares of the COMPAGNIE EUROPEENNE de PARTICIPATIONS INDUSTRIELLES from the Max Ausnit's ownership to Mr. Steven Ausnit, son of Mr. Max Ausnit. In the same time I had to obtain the assent from Mr. Steven Ausnit to a transaction by which 4000 shares of the COMPAGNIE EUROPEENNE de PARTICIPATIONS INDUSTRIELLES (whose 2000 were to be given by Mr. Steven Ausnit) should be exchanged against some participations owned by the COMPAGNIE EUROPEENNE, and amongst them, namely: 34.535 shares of the SARTID joint stock Company, Belgrade (Srpsko Akcionarsko Rudarsko i Topionicko Industrijsko Drustvo) and 226.810 shares of the BROD joint stock Company, Zagreb, (Jugoslavenska Tvornica Vagona Strojeva i Mostova). Some weeks later, in December 1939, I was able to perform the Max Ausnit's instruction when I came in London and met Mr. Edgar Ausnit. The above-mentioned transaction was embodied in an Agreement dated 27th May, 1940, for which I have previously made a separate statement."

Claimants have filed the following letter dated in London on February 18, 1940, addressed to Steven Ausnit and signed by Edgar

Ausnit on behalf of Cisatlantic Corporation:

"We confirm herewith that in agreement with the transfer of 5960 CEPI shares from your father, Mr. Max Ausnit, to you, and with your father's authorization we will use 2000 CEPI shares out of the above together with 2000 CEPI shares held by us to acquire from CEPI the following assets:

40.333 actions Metalunit
34.535 " Sartid (Srpsko Akcionarsko Rudarsko I Industrijsko Drustvo)
12.737 (Caisse d'Epargne Croate)
15.037 (Westminster Bank)
6.761 (Titan-Nadrag-Calan)
226.810 actions Brod (Jugoslavenska Tvornica Vagona, Strojeva I Mostova)
22.843 " Pier.Fabryka Lokomotyw, deposees a la Warschauer Disconto Bank, Varsovie
12.000 " Osias Ausschnitt, Galatz
68.854 Zlotys chez la Warscher Disconto Bank, Varsovie
830.614.90 Dinars chez la Sartid, Belgrade,
£ 23.304.14.6 " do

"Whatever should be recovered from the above mentioned assets in whatever currency or shape, shall be divided 50-50 between you and our Corporation."

In addition, claimants have filed a letter dated in Monte Carlo on May 27, 1940, from GEPI to Cisatlantic Corporation, c/o Edgar Ausnit, which recites:

"Referring to negotiations with your representative, Mr. Pablo Serwischer, you are placing at our disposal 4000 shares of our Company, nominal value 1000 francs. The shares placed at our disposal with orders to the respective depositors which you have remitted are the following:

2000 shares by order Sogeval (Edgar Ausnit) deposited with the National Provincial Bank, London
2000 shares by order Steven Ausnit, deposited with Vickers, Ltd., Vickers House, London

In return for these shares, we are ceding to you:

40.333 shares Metalunit
34.535 shares Sartid (Srpsko Akcionarsko Rudarsko I Industrijsko Drustvo)

Deposited at:

12.737 (Caisse d'Epargne Croate - Croatian Savings Bank)
15.037 (Westminster Bank)
6.761 (Titan-Nadrag-Calan)

* * * * *

With respect to the three depositories referred to in the above letter, claimants have filed the following letters:

- (1) Letters from the Croatian Savings Bank, dated February 20, 1940, and November 2, 1940 in which the Bank confirms to CEPI that it is holding 12,737 SARTID shares and that, pursuant to a letter of June 8, 1940, from CEPI it has placed at the disposal of Cisatlantic these 12,737 shares.
- (2) A letter from "Titan, Nadrag, Calan" of Bucharest, dated January 23, 1940, confirming to CEPI that it holds on deposit for the latter 6,761 SARTID shares; and a letter of January 10, 1947, from the same institution to Cisatlantic Corporation that it had deposited 6,761 SARTID shares, the property of Cisatlantic, with the Yugoslav Legation in Bucharest.
- (3) A photocopy of a letter of December 19, 1938, from Westminster Bank, Ltd., to CEPI that it was holding 15,037 shares of SARTID for CEPI's account; a letter of October 15, 1946, from CEPI to Cisatlantic, to the effect that CEPI had advised the Westminster Bank to deposit "the 15,037 shares of the S.A.R.T.I.D. Company which are lying under our name, but are your property as per Agreement of the 27th May 1940, with

"the Iougoslavian Embassy, London, and to register them on your name"; a letter from the Westminster Bank to Max Ausnit dated May 29, 1951, stating: "At the request of Compagnie Europeene de Participations Industrielles, I enclose a list, with numbers of the 15,037 shs. Soc. Anon. Serbe Miniere et Metallurgique shares held for their account."

The fact that the Westminster Bank considered that it was holding the SARTID shares in 1951 for the account of CEPI and not of Cisatlantic is, of course, inconsistent with claimant's position that Cisatlantic had acquired these shares from CEPI in 1940. Nevertheless, the 1943 "Compass," the financial yearbook for Yugoslavia, states, with respect to SARTID, that "The company belongs to the organization of the holding company Cisatlantic Corporation, New York" and contains this footnote: "About 35,000 shares are to be found in the portfolio of Cisatlantic Corporation of New York." Furthermore, in a decision of January 29, 1946, issued by the Yugoslav Ministry of Mines with respect to SARTID, it was held "That a majority of the stock of the Societe Anonyme Serbe Miniere et Metallurgique 'SARTID' is held by foreigners, to wit:

"the financial group Cisatlantic Corporation, New York, with 69% . . ."

There is no need to set out or otherwise describe the other evidence which claimants have adduced to prove the purchase by the Cisatlantic Corporation of the SARTID stock and of Steven Ausnit's beneficial ownership of 50% of that stock. The remainder of the voluminous documentation submitted by claimants, is, in general, collateral material dealing with background to the transactions. We take special note, however, of the affidavit dated June 26, 1954 by Paul Dumollard, controller of CEPI, that the minutes of the shareholders meetings of CEPI from 1940 to the present show Steven Ausnit as the holder of 1,960 shares and the other evidence filed with respect to the disposition of the remaining 2,000 shares

of the original 5,960 CEPI shares transferred to him. This evidence corroborates claimant's position that the transfer of the CEPI shares to him in 1939 was a valid and bona fide gift inter vivos.

We are satisfied from the evidence that on December 5, 1946, the Cisatlantic Corporation was the legal owner of 34,535 shares of the 50,000 shares outstanding of SARTID. We are further satisfied from evidence that of these 34,535 shares of SARTID, Steven Ausnit was the beneficial owner of 17,267 $\frac{1}{2}$ shares.

Concerning claimant's claim with respect to BROD shares, the Government of Yugoslavia states as follows:

"Regarding the sale of the stockshares of 'BROD' by the Cisatlantic Corporation, we are transmitting enclosed the letter of the National Bank of December 1, 1952, with seven exhibits from which it may be seen that 226,810 stockshares of the 'BROD' had been sold by the Cisatlantic Corporation to the Savings Bank of the Banovina of Croatia for the amount of 9,072,400 dinars and that this amount had been given by the purchaser, the Savings Bank of the Banovina of Croatia, to the 'SARTID' Company as a loan granted by the Cisatlantic Corporation to the 'SARTID' and that Cisatlantic Corporation instructed the Savings Bank of the Banovina of Croatia to transfer the right of ownership to 226,810 stockshares to the 'BROD' deposited in the name of the Cisatlantic Corporation in favor of the Savings Bank of the Banovina of Croatia.

"Accordingly, the Cisatlantic Corporation was no longer the owner of the above mentioned stockshares and by the payment made by the purchaser, the Savings Bank of the Banovina of Croatia, to the 'SARTID', for account of the Cisatlantic Corporation, this Corporation became the creditor of the former Company 'SARTID'"

In the absence of any persuasive evidence to the contrary, we accept the above statement and evidence as to the sale of BROD shares and the disposition of the proceeds. Therefore, the claim with respect to BROD will be treated as an element in the evaluation of SARTID.

With respect to valuation the claimant, Steven Ausnit, has submitted a brief and additional evidence. The brief primarily addresses itself to an analysis of available balance sheets and makes certain contentions regarding adjustment for debts owed by SARTID.

As evidence of value, the Government of Yugoslavia has filed an appraisal of SARTID which finds its value as follows:

ASSETS

1. Building lot:	247,000 dinars
2. Buildings:	13,228,000 "
3. Machinery and installations:	21,958,440 "
4. Raw materials:	6,411,697 "
5. Semi finished and finished products:	1,426,533 "
6. Finished products:	1,353,661 "
7. Securities:	75,520 "
8. Foreign claims:	1,678,233 "
9. Cash on hand:	46,789 "
10. Claims from banks	<u>230,776</u> "
ASSETS, TOTAL	46,656,649 dinars

LIABILITIES

1. Funds:	460,009 dinars
2. Purchaser paid in advance:	1,357,529 "
3. Suppliers of the commodities:	554,456 "
4. Debts to Bank	2,578,716 "
5. Debts abroad	7,758,498 "
6. Debts in this country	132,511 "
7. Other obligations	<u>1,301,210</u> "
LIABILITIES, TOTAL	14,142,929 dinars

NET

32,513,720 dinars

This appraisal was based on 1938 values.

Our Field Branch has submitted an evaluation, likewise based on 1938 values, which finds the net worth of SARTID to be 55,589,197 dinars. In addition, an expert employed by the Commission has analyzed all evidence and data filed, including the available balance sheets. Based on his recommendation as to the value of SARTID, we find its value to be 55,600,000 dinars as of 1938. Since SARTID had 50,000 shares of stock outstanding, the value of 1 share was 1,112 dinars. Therefore, the value of the 17,267½ shares beneficially owned by Steven Ausnit was 19,201,460 dinars or \$436,396.82.

Therefore, in full and final disposition of this claim, the claim of Cisatlantic Corporation is denied, and the claim of Steven Ausnit is allowed, and an award is hereby made to Steven Ausnit in the amount of \$436,396.82, with interest thereon at 6% per annum from December 5, 1946, the date of taking, to August 21, 1948, the date of payment by the Government of Yugoslavia, in the amount of \$44,835.41.

Dated at Washington, D. C. DEC 29 1954

INTERNATIONAL CLAIMS COMMISSION OF THE UNITED STATES
DEPARTMENT OF STATE
Washington, D. C.

570
427
7/11 1954

In the Matter of the Claim of

CISATLANTIC CORPORATION
525 Park Avenue
New York, New York

Docket No. Y-1113

Decision No. 951

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

Counsel for Claimant:

SAUL L. SHERMAN, Esquire
Lord, Day and Lord
25 Broadway
New York 4, New York

PROPOSED DECISION OF THE COMMISSION

This is a claim by the Cisatlantic Corporation and is for compensation in the amount of \$1,102,840 for the nationalization or other taking by the Government of Yugoslavia of securities and proceeds from the sale of shares of stock assertedly owned by claimant.

Claimant was incorporated under the Laws of the State of New York on February 21, 1939. Among its broad purposes as set forth in its charter are: " . . . to act as agent, broker, attorney in fact, or factor, on commission or otherwise, for any person . . . ; to aid and assist, promote and conserve the interests of, and afford facilities for the convenient transaction of business by its principals and patrons in all parts of the world . . . to purchase, acquire, hold, sell, transfer,

Approved
1/10/54
4/21/54

B.7.

assign, exchange, pledge, or otherwise dispose of bonds, shares of capital stock, mortgages, debentures, notes, securities, obligations, contracts and evidences of indebtedness of any other corporation whether domestic or foreign . . . " The charter provides for the issuance of two classes of stock: (1) 100 shares at par value of \$100 each, designated as Class A; and (2) 100 shares without par value, designated as Class B. All Class A shares, except for a few qualifying shares to directors, were issued to Edgar Ausnit, who has always been president of the corporation. The ownership of the Class A stock, described by Edgar Ausnit as "100% stock ownership" continued in Edgar Ausnit at least until March 21, 1946, when it is alleged that he transferred 40 shares to a trust established for the benefit of his son, Peter Charles Ausnit. No shares of Class B stock or other securities of any kind were issued by the corporation.

Edgar Ausnit was born on July 18, 1894, at Galati, Rumania. He was admitted to United States citizenship on December 20, 1948. His son, Peter Charles Ausnit was born on October 11, 1931, in Austria, and was naturalized in the United States on April 7, 1947.

The Government of Yugoslavia has not submitted advice with respect to this claim. However, it is understood that the Yugoslav property for which compensation is sought was taken before April 7, 1947, that is before either Edgar or Peter Ausnit became United States citizens, a point which hereinafter will be discussed in some detail. We will, therefore, proceed to a determination as to whether the claimant corporation is eligible to receive an award under the Agreement of July 19, 1948, between the Governments of the United States and Yugoslavia. That Agreement settled claims of "nationals of the United States . . . on account of the nationalization and other taking by

Yugoslavia of property and of rights and interests in and with respect to property which occurred between September 1, 1939 and the date hereof [July 19, 1948]" (Article 1). It provided, with respect to juridical persons, that the only corporate claims settled in Article 1 are those of the category of juridical persons defined in Article 2 (B). 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;"

* * * *

Since claimant was organized under the laws of the State of New York it is eligible as to place of organization. Assuming that the transfer to a trust for the benefit of Peter Ausnit was effective, a question we need not decide, prior to April 7, 1947, the date of his naturalization, claimant was not eligible because none of its "outstanding securities" as we understand those words, were owned by citizens of the United States.

Claimant, however, asserts that the meaning of the phrase "any class of the outstanding securities" of a corporation "is as broad as the phrase 'financial interest' or investment in a corporation." From this premise, it argues that the term "any class of the outstanding securities" embraces assets of the claimant in the form of shares of

stock of other corporate entities and the proceeds of the sale of any such shares of stock. It is noted in this connection that claimant's quotation from the Act fails to include the significant phrase "of which," which in our view is a clear reference to the issuance of securities by a corporate claimant.

The significance of claimant's position as to the breadth of the phrase "any class of outstanding securities" relates to a transaction in 1940 between the corporation and a nephew of Edgar Ausnit, one Steven Ausnit. That transaction, claimant asserts, gives it eligibility to maintain a claim under Section 2 (B) of the Agreement. The circumstances incident to that transaction are briefly as follows:

According to affidavits and other material filed by claimant, the transaction originated with, and it seems was largely controlled by, Max Ausnit, father of Steven. In 1939, Max Ausnit resided in Rumania which was the country of his birth. Mr. Ausnit owned shares of stock in various industrial enterprises located in several European countries including Yugoslavia. Among these holdings was 5,960 shares of the stock of a holding company called Compagnie Europeenne de Participations Industrielles (hereinafter called CEPI), which had been organized in Monaco, and which owned stock in several industrial enterprises, all located outside the United States. Among CEPI's interests was ownership of stock in two industrial operating enterprises in Yugoslavia: Sprsko Akcionarsko Rudarso I Topionicko Industripko Drustvo, Sartid (hereinafter called "SARTID") and Prva Jugoslavenska Twornica Vagona Strojjeva I Mostova, Brod (hereinafter called "BROD"). Because of the unrest in Europe, and in anticipation of confiscatory measures against his interests, Max Ausnit directed a letter dated November 6, 1939, to his son Steven, a minor,

residing in London: "A very serious situation may arise, which will make further correspondence with you impossible, I herewith transfer into your property 5,960 (five thousand nine hundred sixty) CEPI-shares, which are deposited with Messrs. Vickers-Armstrongs, Ltd., of London, and on which there is a small balance to pay." Soon thereafter, Max Ausnit and his brother, Edgar Ausnit, president of Cisatlantic, determined that effort should be made to obtain cash or other securities in exchange for 2,000 shares of the 5,960 total of CEPI stock held on behalf of Steven and for an additional 2,000 shares of CEPI stock held by Cisatlantic. Accordingly, it was agreed - apparently orally - between Max and Edgar Ausnit that any recovery from the disposition of the 4,000 shares of CEPI stock would be equally divided between Cisatlantic and Steven Ausnit. The arrangement was evidenced by a letter from Cisatlantic dated February 18, 1940, to Steven at London, in the following terms:

"We confirm herewith that in agreement with transfer of 5,960 CEPI shares from your father, Mr. Max Ausnit, to you, and with your father's authorization we will use 2,000 CEPI shares out of the above together with 2,000 CEPI shares held by us to acquire from CEPI the following assets:

"40.333	Actions Metalunit
34.535	" Sartid (Srpsko Akcionarsko Rudarsko I Topionicko Industrijsko Drustvo)
	12.737 (Caisse d' Epargne Croate)
	15.037 (Westminster Bank)
	6.761 (Titan-Nadrag-Calan)
226.810	Actions Brod (Jugoslavenska Tvornica Vagona, Strojeva I Mostova)
22.843	" Pier, Fabryka Lokomotyw, deposees a la Warshauer Disconto Bank, Varsovie
12.000	" Osias Ausschnitt, Galatz
68.854	Zlotys chez la Warscher Disconto Bank, Varsovie
830.614.90	Dinars chez la Sartid, Belgrade
123.304.14.6	" do

"Whatever should be recovered from the above mentioned assets in whatever currency or shape, shall be divided 50-50 between you and our Corporation."

We are not convinced that a transfer of ownership was effected between Max Ausnit and his son. This alleged transfer may have been no more than a convenient vehicle for removing, temporarily, an asset of Max Ausnit from possible confiscation. However, it is unnecessary to decide this question.

In pursuance of the arrangement between Cisatlantic and Steven Ausnit, the 4,000 shares of CEPI stock were exchanged for 34,535 shares of Sartid stock (out of a total issuance of 50,000 shares) and for 226,810 shares of Brod stock, along with other assets not here of interest. Proceeds from the intended disposition of these stocks were never realized. The Sartid company allegedly was nationalized by the Yugoslav Government and, as to the Brod shares, it is stated that an agreement had been reached for the sale of these shares for the sum of 12,500,000 dinars, plus an additional 1,200,000 dinars, but the agreement was frustrated due, first, to the Nazi invasion and, later, by the taking by the Government of Yugoslavia of the Brod corporation. In the light of these circumstances, claimant's position is that the shares of Sartid and Brod stock constitute "any class of the outstanding securities" of Cisatlantic; that more than 20 percent of the 4,000 shares were held by Steven Ausnit; that Steven Ausnit became a naturalized citizen of the United States on October 27, 1944; and that at the time of nationalization or other taking, Steven Ausnit was an individual national of the United States. Claimant's theory of eligibility seems to be based upon the proposition that Steven Ausnit transferred "legal" ownership of 2,000 shares of CEPI stock to Cisatlantic, thereby conferring ownership upon the corporation; but, at the same time, retained an investment interest in the total 4,000 shares of CEPI stock; and that Steven thereby was a national of the United States owning 50 percent

of the outstanding securities of the claimant. The record shows that Steven Ausnit has been a national of the United States since his naturalization on October 27, 1944.

The rationale of claimant's argument is spelled out somewhat as follows: Steven Ausnit "invested, by transfer of legal title, 2,000 shares thereof in a common enterprise with Cisatlantic Corporation . . . to make a common pool of 4,000 shares," in return for which Cisatlantic "agreed, by necessary implication, to lend its efforts to realize cash, or equivalent value, from the Cepi assets transferred to it." The parties thus "engaged in a common venture"; "the Cisatlantic Corporation - Steven Ausnit confirmation of February 18, 1940 was a 'security' and that it was of the class of securities known as 'investment contract'"; that the speculative character of the transaction is immaterial; and that "The agreement created a present right to future participation in the assets of a business (Cisatlantic Corporation) carried on for profit."

We believe the facts and argument as presented by claimant provide an obvious answer to the problem posed. Claimant asserts that it acquired legal title to Steven Ausnit's 2,000 shares of CEPI stock. If that were so, what did Steven Ausnit obtain in return? The answer given is that he acquired "a substantial financial interest in an American corporation," with the qualification, however, that Cisatlantic had "No obligation . . . to Steven Ausnit, other than to use its best efforts to recover assets for him and divide profit or returns equally upon the happening of a future event or events . . ." If there is an intended inference by the quoted statement that Steven Ausnit acquired a substantial interest in the corporation's business as a whole, that matter may be put to rest immediately. The entire arrangement was too clearly confined to a single

transaction of specific purpose and scope to permit of any encroachment upon the substantial business and interests of the corporation in its normal and usual function. It is observed that, in a report filed with the United States Treasury Department in January 1943, a copy of which was filed herein, claimant reported property interests in enterprises located in Monaco, England, Romania, Luxembourg, and France, its interests in Yugoslav property being limited to the Sartid and Brod companies. The transaction must be viewed as the facts suggest - an arrangement limited to intended profits resulting from the conversion of shares of CEPI stock for other assets, presumably money, as the end result of the effort.

Claimant's candid admission of its narrow obligation in the transaction provides a clear and full answer to its own argument. It intended, so it states, merely to use its best efforts to recover assets for Steven Ausnit and to divide profits upon realization of its plan of conversion. An arrangement whereby Cisatlantic would act on behalf of a principal as an agent, broker, or other intermediary would be well within its charter authority. It would also presumably be within its competence as an organization familiar with dealings in foreign securities. Consequently, if Cisatlantic's ownership of any shares of CEPI stock were not involved, the transaction would appear simply to involve a business dealing whereby the corporation would have used "its best efforts to recover assets for him . . . upon the happening of a future event or events," the amount of compensation for the effort being of no great moment. By adding its own shares, Cisatlantic acquired a considerable personal advantage. The 4,000 shares of CEPI stock enabled it to

acquire sufficient control of the Sartid and Brod enterprises so as to direct further transactions leading in the direction of stock liquidation for money returns.

The transaction also may be tested by the circumstance that if nothing had been done with the CEPI shares, beyond recognizing the transfer of possession from Steven Ausnit to the corporation, there is little doubt but that Steven would have had a right to their return. This follows from claimant's own statement of the scope of its obligation in the premises. From the foregoing, it follows that claimant did not acquire as its own Steven Ausnit's 2,000 shares of CEPI stock.

In any event, even if the total 4,000 shares of CEPI stock are treated as belonging to the claimant corporation, that circumstance would not aid it in establishing eligibility. The Agreement does not refer to outstanding securities "owned by" a claimant. If that had been intended we believe that the Agreement would have so provided. It was clearly not the intention of the Agreement to predicate eligibility based upon the assets owned by a corporate claimant. It was the ownership characteristics of the corporation which was of interest. Just as individuals must be nationals of the United States to qualify as claimants, ownership interests in a corporation by individual United States nationals of at least 20 percent was made an absolute requirement. The fact that the term "security" may embrace an "investment contract" has no relevance in determining individual ownership of a corporation. It is basic that an owner, i.e. stockholder, has no defined right in individual assets of a corporation. The question of interest here simply is whether an individual United States national acquired sufficient securities issued by a corporation

of domestic organization so that his nationality may be attached to the corporate entity. Such an inquiry must be satisfied before examination is made of the corporation's assets. The CEPI shares were issued by a foreign corporation and represent assets of the claimant, just as a piece of machinery or an office desk similarly would represent property owned by a corporation. These have no significance, however, in determining whether this Government would be justified in espousing the claims of an American corporation against a foreign government. This was made clear by the legislative history incident to the Agreement and the International Claims Settlement Act of 1949:

"It is well known that many American corporations have stockholders who are foreign nationals.

"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 the negotiations with the Yugoslav Government, did not take this extreme position, being of the view that a substantial American 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 'twenty percent or more of any class of outstanding securities which were at such time (the time of the nationalization or other taking of property) owned by individual nationals of the United States'". (Emphasis supplied). (Sen. Rep. No. 800, 81st Cong., 1st Sess., pp. 10-11).

The following statements were made during the debate in the House on H.R. 4406, 81st Congress, 1st Session:

"MR. RUBICOFF. * * * It [the Agreement] sets up the procedure as to how these claims will be paid. It is provided that if 20 percent of the corporation is owned by citizens of the United States, then the entire corporation receives its recompense" (Cong. Rec. July 5, 1949, p. 9016 (unbound)).

* * * *

"MR. BECKWITH. * * *

"I repeat, the chief beneficiaries under this legislation are American corporations, foreign corporations, where American citizens own 20 percent of their

stock . . . " (Cong. Rec. July 6, 1949, p. 9153 (unbound)).

"MR. LODGE. * * *

"This injustice is more the evident, when it is noted that under the Yugoslav agreement, article 2, Section B, it was provided that the national of any country, even an enemy, could recover from the \$17,000,000 fund if he owned stock in an American corporation, 20 percent of whose stock was owned by United States nationals" (Cong. Rec. March 7, 1950, p. 3011 (unbound)).

* * * *

"MR. RICHARDS. * * * this settlement goes to American citizens or nationals, or American corporations with 20 percent ownership by Americans . . . " (Cong. Rec. March 7, 1950, p. 3014 (unbound)).

Although we have given somewhat extended treatment to the question raised by claimant, we have no difficulty reaching the conclusion that the shares of CEPI stock did not constitute "any class of the outstanding securities" of Cisatlantic within the meaning of Article 2 of the Agreement, and that the 20 percent requirement was not at any time satisfied. It is not necessary or appropriate to speculate upon the rights of Steven Ausnit as an individual national of the United States in regard to the 2,000 shares of CEPI stock since he has not filed a claim with the Commission and the time for doing so has expired.

Claimant also asserts eligibility on another ground. It states that, by instrument dated June 26, 1944, a trust was created by Edgar Ausnit for his son Peter, then a minor; that on March 21, 1946 40 Class A shares of Cisatlantic were transferred to that trust; and that those shares of stock have since remained as assets of the trust. As previously indicated, Peter Ausnit became a national of the United States on April 7, 1947. With respect to the nationalization or other taking, claimant states:

"By transfer to Yugoslav Government national enterprises of legal title to SARTID and BROD under the provisions of Law No. 677 of December 5, 1946 (Sluzbeni List, No. 98 of December 6, 1946).

"Claimant relies on November 29, 1947 as the date of nationalization, i.e. the actual formal transfer of ownership rights from the former owners to the 'state' under Article 18 of the aforesaid law."

Item 18 is one of 42 categories of industries specified in the first Nationalization Act: Law Regarding Nationalization of Private Economic Enterprises, effective, according to its terms, December 5, 1946 (OFFICIAL GAZETTE No. 98, December 6, 1946), and refers particularly to the chemical industry. Claimant's specific selection and reliance upon item 18 is not clear. The record indicates that both Sartid and Brod were engaged, at least primarily, in the manufacture of heavy machinery, steel, shipbuilding, and the production of equipment and implements covered by other categories of the Nationalization Act. However, for present purposes, there is no apparent significance to claimant's selection of that category.

From the foregoing, it is apparent that if the date of nationalization or other taking is determined to be November 29, 1947, eligibility would be based upon the then nationalization status of Peter Ausnit, owner of 40 percent of claimant's stock. If December 5, 1946 is accepted as the crucial date, eligibility is lacking.

By letter to Cisatlantic, dated August 23, 1946, the Economic Advisor, Office of the Commercial Attache, Yugoslav Embassy, at Washington, D.C., advised:

"Reference is made to your letter of January 30, to which a reply from Yugoslavia has been received only today. The 'Drzavna uprava narodnih dobara' (State Committee for Social Welfare) has given us the following reply:

'All installations of the firm 'Sartid' are now under state direction according to Article II of the Law AVNOH of 21 November 1944 for the carrying out of aims stated in Article 5 of the same law.

'The owners of shares have at their disposal all prescriptions of our positive legislation for intention of establishing owners rights.'

The so-called Enemy Property Law of November 21, 1944, was published in Official Gazette No. 2 on February 6, 1945, and became effective on that date. Article 2 provides that property of persons absent during the occupation because of forcible deportation by the enemy or by voluntary action "shall pass under the State Administration of People's Property." Article 5 sets forth the purpose of such nationalization as being in aid of and in accord with the philosophy of exploitation for the benefit of the State. It may well be, therefore, that the property of Sartid was taken on February 6, 1945 - at least that was the position of the Yugoslav Government and specific notice of that official view was given to the claimant corporation. That circumstance would eliminate a claim to eligibility based upon Peter Ausnit's ownership and naturalization.

Passing to the Nationalization Act of December 5, 1946, Article 1 of that law provided:

"On the day this Law becomes effective, all the private economic enterprises of general national and republican importance in the following branches of economy are nationalized and pass into State ownership:"

The Sartid and Brod operations apparently fall within the 42 categories of industries specified in Article 1.

Article 2 of that Act provided:

"All enterprises, declared, before the effective date of the present law by the Edict of the Presidium of the National Assembly of the Federal People's Republic of

Yugoslavia or by the Presidium of National Assembly of the People's Republic, as being of nationwide importance or of importance for a People's Republic, shall be considered as being of nationwide importance or of importance to a People's Republic, within the meaning of the present Law."

Both the Sartid and Brod companies had theretofore been specifically listed by name in a published official document as being of nationwide importance (OFFICIAL GAZETTE No. 59, Decree Designating Enterprises of General National Importance, July 23, 1946; No. 19 - Brod and No. 233 - Sartid). The later date of November 29, 1947, cited by claimant, apparently refers to the date of entry of the name of the Sartid company in a register maintained by the Yugoslav Ministry of Finance. The purpose of that register or the significance thereof is not disclosed by the record. There is, consequently, no support in the record for the allegation relating to November 29, 1947, as the date of nationalization or other taking.

As hereinbefore stated, the law of December 5, 1946, specifically embraced enterprises theretofore designated as being of national importance. We are of the view that the date of nationalization or other taking with reference to the claim herein is December 5, 1946.

For the foregoing reasons, the claim is denied.

Dated at Washington, D. C.

JUN 24 1954