

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

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In the Matter of the Claim of

VICTOR GEORGE HERMAN  
311 West 97th Street  
New York 25, New York

Docket No. Y-1274

Decision No. 1489

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

Counsel for Claimant:

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425 13th Street, N.W.  
Washington 4, D. C.

and

SOLOMON S. GOLDSMITH, Esquire  
60 East 42nd Street  
New York, New York

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12-29-54*

FINAL DECISION

On November 12, 1954 the Commission issued its Proposed Decision herein making an award of \$20,833.33, plus interest, to the claimant for the taking by the Government of Yugoslavia of his 1/24 interest in coal mines operated by the corporation Braca Munch Rudnik Rtanj, D.D.

Claimant filed objections to the Proposed Decision and a brief in support thereof, while the Government of Yugoslavia filed a brief as amicus curiae.

At a hearing duly held the claimant submitted evidence as to the ownership of the mines by the corporation in opposition to the Yugoslav contention that it had an operating concession only. Additionally, reports concerning the condition of the mines, their current rate of

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production, quality of the coal, etc., prepared by World Mining Consultants, Inc., and the United States Department of Interior, were filed. These reports, plus additional information obtained by the Commission from the United States Department of State, established that the quality of the coal is as stated in the Proposed Decision but that the current rate of production is approximately 75,000 metric tons per year rather than the 40,000 to 50,000 tons stated in the Proposed Decision. Based upon a number of assumptions as to the proportion of the total Yugoslav reserves controlled by the "Rtanj" corporation, the use of modern mining techniques, and equipment, etc., the World Mining Consultants estimated a present total value of \$8,250,000 for the mines. The Department of Interior report stated that the available information was not sufficient for a basis for use in placing any estimate on the possible value of the properties. Information supplied by the Department of State was to the effect that present reserves are small and that no possibility of increased production exists.

The Commission is charged with the responsibility of determining the fair and reasonable value of the claimant's interest at the time the property was taken rather than at the present. As stated in the Proposed Decision, at the time of taking, the mines were flooded and had been closed down, with the principal buildings bombed and completely destroyed. Subsequent events proved that reactivation of the old workings was impractical. No evidence has been made available to the Commission as to the financial condition, indebtedness, etc. of the corporation at the time the mines were seized. However, it has been established that the estimated post-war rate of production upon which the Commission's investigator evaluated the reserves of the

mines, and their value at the time of taking, was too low. Accordingly, the Proposed Decision should be modified and the fair and reasonable value of the claimant's interest increased.

On the basis of the foregoing and after due consideration of the brief filed by the Government of Yugoslavia, the Commission hereby adopts the Proposed Decision herein, with the following exception, as its Final Decision on the claim.

1. The amount found as the value of the claimant's interest in the coal mines is \$31,250 rather than the lesser amount set forth in the Proposed Decision.

Accordingly, in full and final disposition of the claim, an award is hereby made to Victor George Herman, claimant, in the amount of \$31,250 with interest thereon in the amount of \$734.59.

Done at Washington, D. C.

DEC 30 1954

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
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which he served when the  
by Secretary of the Executive

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60 East 42nd Street,  
New York, New York.

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Nov 10, 1954

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11-5-54

PROPOSED DECISION OF THE COMMISSION

This is a claim for \$415,000 by Victor George Herman, a citizen of the United States since his naturalization on March 4, 1946, and is for the taking by the Government of Yugoslavia of coal mines operated by the corporation Braca Munch Rudnik Rtanj., D.D., in which claimant held a 1/24th interest.

It is reported that the Munch brothers, Julius and Adolph, in 1902 formed a company to develop and operate the "Rtanj" coal properties. Following the death of Julius Munch in 1932, the company was incorporated with a capitalization of 31,000,000 dinars divided into 6,200 shares all owned by the Munch family. It is established that under the terms of the will of Julius Munch, the claimant Victor George Herman succeeded to a 1/24th interest in the coal mines

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which he owned when the property was confiscated on November 5, 1946 by Decision of the Peoples District Committee, No. 7983, pursuant to the Enemy Property Law of July 31, 1946. (Official Gazette No. 63 of August 6, 1946). Upon appeal the confiscation was affirmed on March 31, 1948.

In an affidavit dated May 27, 1947, and filed with the Department of State, the claimant stated:

" . . . The real value, however, of the mines were 250,000,000 dinars. In 1931 the amount invested only in machinery and installations amounted to about 78,000,000 dinars and with the deposits of coal the real value, as said before, was 250,000,000 dinars. This would mean \$5,749,992 and 1/24th of it amounts to \$239,583."

Claimant has submitted an affidavit dated August 29, 1951, by one Slavko Simich, who states that he was manager of the coal mines from 1926 to 1930 and a director of the corporation, that the total value of the installation was approximately 75,000,000 dinars and that, in his opinion, the value of the coal deposits was approximately 210,000,000 dinars.

The Yugoslav Government has reported that the "Rtanj" coal mines were operated as a concession, as were all coal mines in that country before World War II, in accordance with the Mining Industry Law of the Kingdom of Serbia, promulgated April 15, 1866 and amended January 27, 1900. Under Article 15 of that law all the coal was considered as under State ownership with only limited rights accruing to the holder of the concession. The property, according to the condition of the mine when taken over, was appraised by Yugoslav authorities at 15,998,864 dinars on the basis of 1938 values.

Investigations by the Commission's staff included interviews with the former assistant chief, later chief engineer, of the mine during the years 1930-1941, and with a former attorney for the Munch interests who had served as a director of "Rtanj," inspection of the properties, etc.

It was reported that by 1930 the good coal (about 20% ash) was all taken out of the mines, production had fallen from approximately 10,000 tons per month to 5,000 tons, and the quality became poorer as the ash content increased to around 40% to 50%. A briquette and washing plant was built and operated with some success, but a disastrous explosion in 1935 wrecked the interior of the mines. The present directing engineer stated that the mines were closed and flooded from 1941 to the time of liberation in 1945.

It was learned that the German invaders removed all small machinery, tools, equipment, wire, etc. In 1944 direct bomb hits were made on the two main buildings, the washing plant and the electric power plant, leaving only the walls and some floor sections remaining. The heavy machinery and girders were found in twisted masses, and the company-owned workers' houses, the mine tibble and office buildings were also destroyed by bombs. Only the mine tramway escaped serious damage during the war.

The Agreement of July 19, 1948 between the Governments of the United States and Yugoslavia settled claims for "the nationalization and other taking by Yugoslavia of property" (Article 1). War damage caused by military forces is not in our view a "nationalization" or "taking" of property by the Government of Yugoslavia. We, therefore, hold that claims for war damage of the sort involved herein were not settled by the Agreement of July 19, 1948 and are not within the jurisdiction of this Commission.

Inspection by the Commission's investigator disclosed that the old workings have been abandoned and remain flooded. Coal is presently being taken from a new tunnel driven since the liberation by the present management. Production is now at the rate of approximately 40,000 to 50,000 tons per year and declining, with a 40 to 50% ash content, which is usable commercially only under pressure.

Claimant asserts that in addition to the coal mines, Braca Munch owned 25% of the shares of Yugoslovenski Kreditni Zavod, a banking institution in Belgrade. In his affidavits of August 29, 1951 and October 8, 1954, the aforementioned Slavko Simich, swore that he was the General Manager of the Bank prior to 1941 and that the value of its shares was 7,800 to 8,000 dinars, in 1941, per share.

No documentary evidence of ownership of Bank shares by Braca Munch has been filed, nor has any <sup>Paper</sup> evidence been submitted to establish value for the alleged securities. The Commission's investigator reported that the books and records for the Braca Munch Corporation were destroyed during the war. It was also reported that Yugoslovenski Kreditni Zavod was liquidated and its shares considered worthless. The Commission is of the opinion that the claimant has not met the burden of proving ownership of an interest in Yugoslovenski Kreditni Zavod by Braca Munch nor that the shares of the bank had any value.

On the basis of all the evidence before, the Commission is of the opinion that the fair and reasonable value of the claimant's interest in mine property taken by the Government of Yugoslavia was \$20,833.33.

AWARD

On the above evidence and grounds, this claim is allowed and an award is hereby made to Victor George Herman, claimant, in the amount of \$20,833.33, with interest thereon at 6% per annum from March 31, 1948, the date of taking to August 21, 1948, the date of payment by the Government of Yugoslavia, in the amount of \$489.73.\*

Dated at Washington, D. C.

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\* 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.