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

IN THE MATTER OF THE CLAIM OF KREUTOLL REALIZATION COMPANY, LTD. 10 Light Street Baltimore, Maryland Under the International Claims Settlement Act of 1949, as amended	Claim No. HUNG-21,800 Decision No. HUNG-662

Counsel for Claimant:

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FINAL DECISION

This is a claim against the Government of Hungary under the provisions of Section 303 of the International Claims Settlement Act of 1949, as amended, by KREUTOLL REALIZATION COMPANY, LTD., a Maryland corporation, or by a Protective Committee constituted under a Debenture holders' Protective Agreement of April 8, 1932, and a Protective Committee constituted under a Deposit Agreement of May 11, 1932, or the two Protective Committees as agents for the holders of Certificates of Deposit issued by them.

The claim is based upon certain 5½% Land Reform Mortgage Bonds issued by the Hungarian Cooperative Society for the Financial Liquidation of Land Reform, guaranteed by four mortgage institutions in Hungary, and secured by mortgages on a large number of small Hungarian farms. Stating that "it is likely that all or a part of the land secured by the pledged mortgages has been nationalized by the Hungarian Government," claimant alleges a taking of the property forming the security for the bonds, and asserts a claim under Section 303(2) of the Act, which authorizes receipt and determination of claims of nationals of the United States against the Government of

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Hungary for its failure to:

> pay effective compensation for the nationalization, compulsory liquidation, or other taking, prior to the effective date of this title, of property of nationals of the United States in...Hungary.....

In a Proposed Decision issued on November 6, 1957, the claim was found not compensable under Section 303(2), inasmuch as no property belonging to the claimants had been taken by the Hungarian Government, their interest having been that of creditors rather than owners. In objecting to the Proposed Decision, claimants argue that as secured creditors they had property rights which were taken when the collateral for the debt was taken. However, it appears that the bonds issued by the Cooperative Society were secured by a pool of mortgages on several hundred thousand acres of small farms, and that no specific identifiable piece of property was pledged as security for any particular bond. In a similar case, the Commission has held that nationalization of the mortgaged realty securing a bond issue did not give rise to a compensable claim by a bondholder "since it has not been established that any interest in identifiable nationalized property belonged to any bondholder, or that any such property was security for any specific bond." (In The Matter of the Claim of Detroit Bank and Trust Co., Trustee UAW Dessa E. Palmerlee, Claim No. HUNG-20,760, Decision No. HUNG-687.) Claimants herein did not have, as a property right, the right to have certain specific pieces of property subjected to the payment of the bonds forming the basis of this claim. Hence, even if nationalization of land in the mortgage pool could be established (and it is known that small land holdings of individual farmers in Hungary largely escaped nationalization), this would not constitute a taking of the property of the claimants within the meaning of Section 303(2) of the Act.

As stated in the Proposed Decision, the bonds themselves were not taken, but continued to express a valid obligation despite any taking of items of collateral; and any claim arising from such obligation must depend upon the application of Section 303(3) of the Act, under which

the Commission may determine claims against the Government of Hungary arising from its failure to:

> meet obligations expressed in currency of the United States arising out of contractual or other rights acquired by nationals of the United States prior to...September 1, 1939, in the case of Hungary...and which became payable prior to September 15, 1947.

In the Proposed Decision, the claim was denied under Section 303(3), even assuming the bonds to represent an obligation of the Hungarian Government, because there was no failure of that Government to meet obligations arising out of contractual rights acquired by nationals of the United States prior to September 1, 1939. The bonds here involved were issued originally to the Swedish Match Company, and transferred by it to its controlling Swedish corporation, A. B. Kreuger & Toll. The latter deposited the bonds as part of the collateral for debentures which it sold largely in the United States. After Kreuger & Toll became bankrupt in 1932, the two Protective Committees named herein as alternative claimants were formed by debenture holders who deposited their debentures with the Committees in return for Certificates of Deposit. The two Committees formed a Canadian corporation, Kreutoll Realization Company, Ltd., which purchased the collateral for the debentures, including the Land Reform Mortgage Bonds, at a bankruptcy sale in October 1936. This corporation was liquidated in October 1940, transferring the bonds to the newly formed Maryland corporation of the same name.

It is seen, then, that none of the alternative claimants acquired the bonds prior to September 1, 1939. From that date until October 1940, they were held by Canadian Kreutoll, which was not a national of the United States as defined in Section 301(2) of the Act.

On this point, claimant argues that the real beneficial owners of the bonds are the Protective Committees or the holders of their Certificates of Deposit. The Protective Committees, it is said, act as trustees for the certificate holders, whereas the corporations (both Canadian and Maryland) were mere tools employed for sales, claims, transfers, etc. Nevertheless, it was the Canadian corporation,

and none other, which was the legal owner of the bonds on September 1, 1939. When the Protective Committees formed the Canadian corporation, they acquired certain rights with respect to the corporation; but these are not the rights out of which the obligation of the Hungarian Government arose. It was the corporation which acquired such rights when it bought the bonds. They were enforceable only by the corporation, and were not owned by its stockholders. The stockholders had the right to receive aliquot shares of such assets as the corporation might have at the time of legal distribution; but these were not rights against the Hungarian Government, or rights out of which that Government's obligation arose.

Having given full consideration to the objections raised and the arguments presented at a hearing, the Commission remains of the opinion that, under the facts as alleged herein, there has been no taking of the property of nationals of the United States, and no failure to meet obligations arising out of contractual rights acquired by nationals of the United States prior to September 1, 1939. Accordingly, the Proposed Decision is affirmed, and the claim is denied.

Dated at Washington, D. C.

MAR 12 1958

Whitney Gillilland

Paul Rice

Henry J. Clay

COMMISSIONERS

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

IN THE MATTER OF THE CLAIM OF

KREUTOLL REALIZATION COMPANY, LTD.
10 Light Street
Baltimore, Maryland

Under the International Claims Settlement Act of 1949, as amended

Claim No. HUNG-21,800

Decision No. HUNG- 662

Counsel for Claimant:

Sullivan & Cromwell
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New York 5, New York

George C. Sharp, Esquire

PROPOSED DECISION

This is a claim under the provisions of the International Claims Settlement Act of 1949, as amended, against the Government of Hungary, for the failure of the said government to meet its contractual obligations, or, in the alternative, for the nationalization, compulsory liquidation, or other taking of certain property without effective compensation. The identity of the claimant is likewise alternatively stated, as: (1) Kreutoll Realization Company, Ltd., a Maryland corporation, or (2) a Protective Committee constituted under a Debentureholders' Protective Agreement of April 8, 1932 and a Protective Committee constituted under a Deposit Agreement of May 11, 1932, or (3) the two Protective Committees as agents for the holders of Certificates of Deposit issued by them. Request was made for a pre-trial hearing for the purpose of determining which of the above is the proper claimant---a question which has become academic inasmuch as analysis of the claim as presented reveals that it must, in any event, be denied.

The following narration of circumstances underlying the claim is based upon acceptance, for the purpose of this decision, of statements made in the claim on information and belief.

In 1928, the Hungarian government was seeking a method of placing on a long-term basis the mortgages on land which had been granted to small farmers during a land reform program inaugurated after World War I. A Swedish corporation, the Swedish Match Co., offered a loan of funds to facilitate this purpose, as partial consideration for a match monopoly agreement with the Hungarian Government. The Hungarian Government caused to be organized the Cooperative Society Established for the Financial Liquidation of Land Reform, a non-profit organization whose shares were held by four existing mortgage institutions in Hungary, the majority of the shares of which were held, in turn, by the Hungarian government. The Cooperative Society issued bonds to the Swedish Match Co., secured by farm mortgages. The bonds were in three series, A, B,, and C, each series in the principal amount of $12,000,000. Series A and B bonds are the subject of this claim. Bonds in these series were transferred to A. B. Kreuger & Toll, a Swedish corporation which controlled the Swedish Match Co. Kreuger & Toll deposited the bonds as part of the collateral for its 5% Secured Sinking Fund Gold Debentures, previously issued in the principal amount of $50,000,000.

In 1932 Kreuger & Toll became bankrupt. Its Debentures (66.8% initially distributed in the United States) were secured by collateral in the hands of a Trustee, including the Series A and B Hungarian bonds. The two Protective Committees (appearing herein as alternative claimants) were formed in the United States in 1932 to safeguard the interests of Debenture holders. Of all Debentures outstanding, 94.97% were deposited with the Committees in return for Certificates of Deposit. In 1936, the two committees, anticipating a sale by the Trustee of the collateral for the Debentures, joined in forming Kreutoll Realisation Co., Ltd. (Canadian Kreutoll), a corporation organized under the laws of the Dominion of Canada. At an auction sale held from October 27 to 29, 1936, Canadian Kreutoll purchased certain items of collateral, including Series A bonds in the principal amount of $11,800,000, and Series B bonds in the principal amount of $12,000,000. Debentures were stamped for their pro rata share of the purchase price which, for the bonds, was

$3,571,000. Except for the Hungarian bonds, Canadian Kreutoll sold all securities purchased, and proceeds were distributed by the two Committees to holders of Certificates of Deposit. Service on the bonds having been suspended or reduced, Canadian Kreutoll negotiated with the Hungarian Ministry of Finance to secure interest payments, and in this manner disposed of all coupons maturing prior to January 15, 1941. On October 3, 1940, a separate corporation, Kreutoll Realization Company, Ltd. (an alternative claimant herein), was organized under the laws of the State of Maryland, to hold the remaining assets; and the Hungarian bonds were transferred thereto by Canadian Kreutoll, which was then liquidated.

Claimant alleges that through a series of mergers, beginning in 1936, the four Hungarian mortgage institutions which held the shares of the Cooperative Society (and which also gave their joint and several guarantee to the Society's bonds by endorsement thereon) became one, known as the National Cooperative Credit Institution. Claimant relates that "For a time the activities of the Cooperative Society appear to have been taken over by the National Cooperative Credit Institution." Later, these activities allegedly were "taken over directly by the Hungarian Treasury." Also, says claimant, "it is likely that all or a part of the land secured by the pledged mortgages has been nationalized by the Hungarian Government, under some legislation or acts." Information on the present status of the mortgages is not available. Nor is any value placed on the security for the bonds thus allegedly taken, other than that it was deemed a reasonable security for the obligation expressed by the bonds at the time of the loan.

From the above circumstances, claimant asserts a taking, prior to August 9, 1955, of real and personal property in Hungary which formed the security for the bonds; i.e., mortgages on land or the land itself, and assets of the Cooperative Society (obligor on the bonds) and the guaranteeing mortgage institutes, in which claimant has a beneficial interest as obligee, mortgagee, or guarantee. This is a theory of claim under Section 303(2) of the Act, which vests the

Commission with authority to receive and determine claims of nationals of the United States against the Government of Hungary for its failure to:

> pay effective compensation for the nationalization, compulsory liquidation, or other taking, prior to the effective date of this title, of property of nationals of the United States in...Hungary... (underlining added)

We find no merit in the claim on this theory for the reason that (assuming the production of adequate proof of all allegations) there has been no taking of property of nationals of the United States; and this is true regardless of which of the alternative claimants presses the claim. At most, there has been exhibited a creditorship interest, and not an ownership interest, in the property taken. The holders of Certificates of Deposit, Debentures, or the bonds themselves, can in no sense be regarded as the owners of the mortgages, the mortgaged farms, the Cooperative Society, or the guaranteeing institutions. The bonds were not taken. They continued to express a valid obligation, despite any taking of items of collateral. Any claim arising from such obligation must depend upon the application of Section 303(3) of the Act, under which the Commission may determine claims against the Government of Hungary arising from its failure to:

> meet obligations expressed in currency of the United States arising out of contractual or other rights acquired by nationals of the United States prior to ...September 1, 1939, in the case of Hungary...and which became payable prior to September 15, 1947. (underlining added)

Serious question exists as to whether the bonds of the Cooperative Society represent a direct obligation of the Government of Hungary. While the existence of such an obligation is prerequisite to an award under this portion of the Act, the question need not be resolved since the claim must be denied upon other grounds; namely, that the rights were not acquired by nationals of the United States prior to September 1, 1939, whichever alternative be selected as the proper party claimant.

Kreutoll of Maryland, which qualified as a United States national, and which held the bonds when the defaults upon which this claim is based began to accrue in January 1941, did not acquire the bonds, and indeed did not exist, until October 3, 1940. For the preceding four years, the bonds were owned by Canadian Kreutoll, a corporation not organized under the laws of the United States, and therefore not a "National of the United States" as that term is defined in the Act (Section 301(2)).

Accordingly, the Commission finds that there has been no taking of the property of nationals of the United States, and no failure to meet obligations arising out of contractual rights acquired by nationals of the United States prior to September 1,1939, and the claim is, therefore, denied. No purpose will be served by determination of other elements of the claim.

Dated at Washington, D. C.

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FOR THE COMMISSION:

Donald G. Benn

Donald G. Benn, Director
Balkan Claims Division

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