

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

SILESIAN AMERICAN CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. G-2333

Decision No. G-2179

Counsel for claimant:

Cahill, Gordon & Reindel
by: Dudley B. Tenney, Esquire

PROPOSED DECISION

This claim in the amount of \$3,136,055.00 against the Government of the German Democratic Republic, under Title VI of the International Claims Settlement Act of 1949, as amended by Public Law 94-542 (90 Stat. 2509), is based upon twenty year eight and one-half percent mortgage bonds due in 1945, issued by Bergwerksgesellschaft Georg von Giesche's Erben (Erben), a German corporation with headquarters located before World War II in Breslau (now Wroclaw, Poland).

Under section 602, Title VI of the Act the Commission is given jurisdiction as follows:

"The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of claims by nationals of the United States against the German Democratic Republic for losses arising as a result of the nationalization, expropriation, or other taking of (or special measures directed against) property, including any rights or interests therein, owned wholly or partially, directly or indirectly, at the time by nationals of the United States whether such losses occurred in the German Democratic Republic or in East Berlin. . ."

The definition of the term "property" as used in the statute is set forth in section 601(3) as follows:

"The term 'property' means any property, right, or interest, including any leasehold interest, and debts owed by enterprises which have been nationalized, expropriated, or taken by the German Democratic Republic for which no restoration or no adequate compensation has been made to the former owners of such property."

The identical bonds for which claim is herein made were also the subject of a claim filed by claimant and adjudicated by the Commission in Claim No. PO-4174, Decision No. PO-8336, under the Polish Claims Agreement of 1960 and the International Claims Settlement Act of 1949, as amended. In the Commission's decision rendered in that claim, the Commission made the following finding:

"Claim is also made for compensation under Article 2(c) of the Agreement for loss sustained as a result of nationalization of property owned by 'Bergwerksgesellschaft Georg von Giesche's Erben', a West-German corporation which mortgaged certain of its real properties in the area over which Poland is now sovereign, to claimant. The Commission finds that the properties securing claimant's mortgages were nationalized by Poland on February 5, 1946, at which time the debt secured by the said mortgages amounted to \$3,981,291.66. Accordingly, the Commission finds that pursuant to Article 2(c) of the Agreement, the above amount should be included in the amount of loss found to have been sustained by claimant."

Pursuant to the terms of the agreement with Poland, claimant was awarded 50.32 percent of its total losses which percentage was equal to the interest in claimant owned by natural persons who were nationals of the United States at the time of the nationalization of Erben's properties. No objection was made by claimant to the finding of the Commission above set forth or the award of the Commission. As the total amount of all awards made by the Commission in that program was in excess of the claims fund provided for payment of awards, claimant has received only partial payment of the award made by the Commission.

At the close of World War II Erben moved its headquarters to Hamburg which is located in what is now the Federal Republic of Germany. According to the assertions of claimant in its Statement of Claim, Erben subsequently made some partial payment of its outstanding debts and then entered bankruptcy. Claimant, through counsel, by letter dated December 21, 1978, stated that:

"It is not claimed by SACO that any action taken by the German Democratic Republic affected property which was in a technical legal sense security for the Erben debt to SACO. On the contrary, all of the property specifically securing that debt was located east of the Oder Neisse line, was nationalized by Poland, and was dealt with in the Polish claims program."

Claimant, however, asserts that it has information that Erben had some assets located in the German Democratic Republic and in particular had a zinc electrolysis plant located in Magdeburg. Claimant believes that machinery from the Magdeburg plant was dismantled at the end of the war and removed to the Soviet Union and does not know what happened to the remaining assets but assumes they were at some time expropriated by the German Democratic Republic.

Claimant predicates its claim upon the theory that because Erben had assets in the German Democratic Republic which were lost to it, it had fewer assets to pay its debts and that claimant, as a creditor, was damaged.

Putting aside the fact that no evidence has been submitted concerning the value of any assets owned by Erben which may have been expropriated by the German Democratic Republic, it is clear that there has never been a de jure nationalization of Erben by the German Democratic Republic. Additionally, Erben's principal mining properties were located outside the German Democratic Republic.

Therefore, based upon the present record there is no evidence that claimant owned any property which was nationalized, expropriated or otherwise taken by the German Democratic Republic. Any property which was expropriated by the German Democratic Republic was property owned by Erben. The property in which claimant had a security interest was expropriated by the Government of Poland.

The fact that Erben's financial condition may have been weakened by the loss of certain property shipped to the Soviet Union by way of reparations or by the loss of some assets which were expropriated by the German Democratic Republic and that this weakened financial condition of Erben may have caused claimant to receive something less in its debt repayment than it would otherwise have received, does not provide a basis to conclude that claimant was an owner of property which has been taken by the German Democratic Republic, as required for a claim to be found compensable.

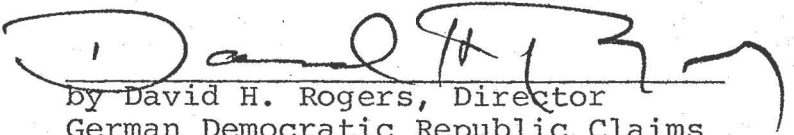
Claimant, through counsel, appears to agree that there is no specific language in Public Law 94-542 evidencing an expectation that losses of this kind would be entitled to compensation. Claimant suggests, however, that the Commission should "accept the registration" of this claim so that it can be asserted in future negotiations with the German Democratic Republic. The Commission's authority, however, is limited to making a determination of the compensability of claims as defined in Public Law 94-542. As this claim does not fall within definitions set forth in section 602 of the statute, this claim must be and hereby is denied.

The Commission finds it unnecessary to make determinations with respect to other elements of this claim.

Dated at Washington, D.C.
and entered as the Proposed
Decision of the Commission.

MAY 7 1980

For Presentation to the Commission


by David H. Rogers, Director
German Democratic Republic Claims
Division

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on SEP 10 1980


Executive Director

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, a Final Decision based upon the Proposed Decision will be issued upon approval by the Commission any time after the expiration of the 30 day period following such service or receipt of notice. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended.)