

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

IN THE MATTER OF THE CLAIM OF

HERMAN B. JOHN
GEORGE W. JOHN
MARTHA L. JONES
ROBERT E. JOHN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. G-2906

Decision No. G-3254

PROPOSED DECISION

This claim in the amount of \$39,475.00 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 the loss of improved real property in Wildau, German Democratic Republic.

The evidence of record establishes that claimants HERMAN B. JOHN, GEORGE W. JOHN, MARTHA L. JONES and ROBERT E. JOHN were born citizens of the United States on June 5, 1924, September 12, 1925, November 13, 1927, and April 23, 1946, respectively.

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 evidence of record in this claim includes the materials submitted and the decision issued for file W-4272 under Title II of the War Claims Act of 1948, as amended. Pursuant to the Final Decision issued in the War Claims program, Erwin John, the father of the four claimants herein, was found to have been the owner of a one-fifth share of unimproved land in Wildau, Germany. He was awarded \$16,540.00 for the loss of his interest in the land pursuant to special measures of the Nazi regime. According to a report of the Department of the Treasury, this award has been paid in full.

In the instant claim, claimants have submitted photographs and information indicating that, after World War II, apartments and other improvements were constructed on the subject property. They therefore assert that they have title to those improvements and are entitled to compensation for the loss of them.

In the War Claims program, Erwin John had asserted that the property in Wildau had originally been improved by a brick factory. An extract from the land registry of Wildau establishes this fact to be true. Erwin John had further asserted that the Nazi government had removed the brick factory and erected barracks in 1943 to house foreign workers for the Allgemeines Elektrizitäts-Gesellschaft (AEG). A letter in the War Claims file from AEG verifies the fact that the Building Inspector General of the Third Reich had ordered the construction of barracks on the subject property in Wildau for the use of AEG. The Commission, however, in the War Claims program had found that the evidence was not sufficient to establish the existence and loss of a brick factory during the statutory period of September 1, 1939 through May 8, 1945, and did not award Erwin John for the loss of that factory or for any value inuring to him for the construction and use of the barracks.

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From the documentation in the War Claims file, it appears that, as of 1947, the Mayor of Wildau had assumed control over the subject land in Wildau, but that title to the land was still in Erwin John and other members of the family. Accordingly, the Commission finds that the property in Wildau would have been taken by the German Democratic Republic pursuant to the decree of September 6, 1951, which took under administration foreign-owned assets in the German Democratic Republic. The Commission has further held that, absent evidence of specific date of taking, such property will be considered to have been taken on August 11, 1952, the date of the first implementing regulation for the above decree.

On the date of taking, it is not clear from the evidence submitted whether or not the apartment buildings and other improvements had already been built. Photographs submitted by the claimants were assertedly taken in 1964. If such improvements had been placed on the land after August 11, 1952, then the claimants, as the heirs of Erwin John who died in 1971, would have no right to them, inasmuch as all rights of ownership would have terminated on the date of loss, August 11, 1952.

If the improvements had been built after the end of World War II but before August 11, 1952, they would have been constructed with the resources and labor of either the German Democratic Republic or the Government of the Soviet Zone of Germany. Accordingly, the Commission finds that claimants would not have a right to compensation for the loss of these buildings, inasmuch as they had been built with the resources of the very government which later took them over. The Commission notes that, even under municipal law of the United States, claimants might receive title to the improvements since they were erected on their land, but that an equitable adjustment would then be warranted to the party who had improved the land. Accordingly, the claim for the loss of the improvements on the subject property at Wildau must be and hereby is denied.

As of the close of World War II, however, the subject property in Wildau had been improved by barracks built by the Nazi government to house workers of AEG. As the Nazi government had been responsible for removing the brick factory originally on the land; as the brick factory would have had a greater value than the barracks later constructed; and as the barracks were erected on claimants' land without their permission and thereby became a part of the land, the Commission finds that claimants are entitled to the value of the land on the date of loss, and the value of the barracks which were there at the time the postwar government assumed control over the land.

There is no evidence in the file establishing the actual value of the barracks. As such structures were, by nature, temporary and unadorned, the Commission finds that they had a value of \$5,000.00. The unimproved land had been valued in the War Claims program at \$82,700.00, with the one-fifth interest of Erwin John totalling \$16,540.00. Therefore, the value of Erwin John's one-fifth interest in the land, plus one-fifth the value of the barracks totalled \$17,540.00. Considering the increase in the property due to appreciation between the years of the war and August 11, 1952, the Commission finds that the one-fifth interest in the land and barracks had a value of \$23,328.00 on the date of taking by the German Democratic Republic.

Section 605 of the Act provides that payment received for the loss of the same property must be offset against an award issued in the current program:

"In determining the amount of any claim, the Commission shall deduct all amounts the claimant has received from any source on account of the same loss or losses, including any amount claimant received under section 202(a) of the War Claims Act of 1948, as amended, for losses which occurred as a direct consequence of special measures directed against such property in any area covered under this title."

Accordingly, as claimants, or their predecessor, had received full payment of the War Claims award of \$16,540.00, the Commission finds that the claimants are entitled to an award under the Act of \$6,788.00, or \$1,697.00 each.

Since claimants inherited their right to claim for the subject property from their father, Erwin John, they will share a consolidated award for the loss of this property.

Section 606 of the Act provides:

"With respect to any claim under section 602 of this title which, at the time of the award, is vested in persons other than the person by whom the original loss was sustained, the Commission shall issue a consolidated award in favor of all claimants then entitled thereto, which award shall indicate the respective interests of such claimants therein, and all such claimants shall participate, in proportion to their indicated interests, in any payment that may be made under this title in all respects as if the award had been in favor of a single person."

The Commission has concluded that in granting awards on claims under section 602 of Title VI of the Act, for the nationalization or other taking of property or interests therein, interest shall be allowed at the rate of 6% per annum from the date of loss to the date of settlement. (Claim of GEORGE L. ROSENBLATT, Claim No. G-0030, Decision No. G-0100 (1978)).

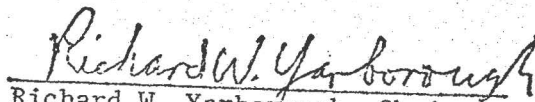
A W A R D

A consolidated award is made to the heirs of Erwin John in the amount of Six Thousand Seven Hundred Eighty-Eight Dollars (\$6,788.00), plus interest at the rate of 6% simple interest per annum from August 11, 1952, until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic, as follows:

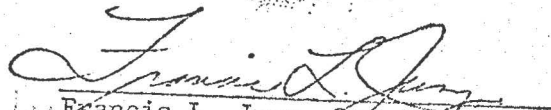
HERMAN B. JOHN	(1/4)	\$1,697.00
GEORGE W. JOHN	(1/4)	\$1,697.00
MARTHA L. JONES	(1/4)	\$1,697.00
ROBERT E. JOHN	(1/4)	\$1,697.00


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

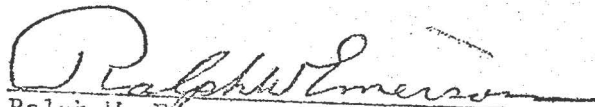
FEB 25 1981


Richard W. Yarborough, Chairman

This is a true and correct copy of the decision of the Commission which was entered as the final decision on APR 8 1981


Francis L. Jung, Commissioner


Executive Director


Ralph W. Emerson, Commissioner

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, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5 (e) and (g), as amended.)