

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

IN THE MATTER OF THE CLAIM OF

GENERAL MOTORS CORPORATION

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. G-3729

Decision No. G-1270

Counsel for Claimant:

John C. Schluer, Esquire

Oral Hearing held on October 20, 1981

FINAL DECISION

This claim in an unstated amount 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), was originally based upon the loss of two factories owned by Adam Opel A.G., located in Brandenburg and Magdeburg and the loss of the assets of Edmund Becker A.G., located in Leipzig.

By Proposed Decision issued September 5, 1979, the claim was denied in its entirety on the ground that the evidence submitted by claimant was insufficient to establish that, and if so, to what extent, property owned by United States nationals was nationalized, expropriated or otherwise taken under circumstances for which the German Democratic Republic was responsible under international law.

Claimant objected to this denial and requested an oral hearing which was held on October 20, 1980. In addition to its objection, claimant requested to amend its claim to include additional claims for the loss of certain tools and dies owned by Adam Opel A.G. and for the loss of property of Frigidaire G.m.b.H.

At the time of the oral hearing an amicus brief and extensive oral argument was also presented on behalf of International Telephone and Telegraph Company as legal issues common to both present claim and the claim of ITT were presented.

Subsequently, the Commission issued a Proposed Decision in Claim No. G-2401 which had been filed by ITT. After objection to that Proposed Decision by ITT and further submission of written briefs and oral argument, the Commission issued a Final Decision in Claim No. G-2401. The Commission therein determined that the German Democratic Republic was not responsible for the loss of assets belonging to German companies which were owned in whole or in part by United States nationals, where such assets were removed by Soviet authorities to the Soviet Union.

Certain of the claims herein presented were the subject of awards under the War Claims Act of 1948 as amended by Public Law 87-846 (76 Stat. 1107) for losses due to "special measures" directed against property in such countries or territories during the respective period specified, because of the enemy or alleged enemy character of the owner, which property was owned, directly or indirectly by nationals of the United States at the time of such loss, damage or destruction. Partial payments have been received by claimant for such losses. Under section 605 of Public Law 94-542 the Commission is required to deduct such amounts received. In determining such deduction, the Commission has divided the total amount received on all awards (\$10,941,784.20) by the total amount determined by the Commission to represent the loss suffered by claimant (\$33,218,307.17) before the deduction of income tax credits. The resulting percentage (32.94%) has been deducted by way of offset in the Commission's determination of an award in the present claim.

Claimant, GENERAL MOTORS CORPORATION, was incorporated under the laws of the State of Delaware on October 13, 1916 and at all times up to and including the date of filing of the present claim more than 50% of the shares of GENERAL MOTORS CORPORATION had

been vested directly or indirectly in United States nationals and the Commission finds that GENERAL MOTORS CORPORATION is a national of the United States within the meaning of section 601(1)(b) of the Act. At all times herein relevant, Adam Opel A.G. was a wholly owned subsidiary of claimant; Edmund Becker A.G. was a wholly owned subsidiary of Adam Opel A.G.; and Frigidaire G.m.b.H. was a wholly owned subsidiary of Adam Opel A.G. Claimant asserts separate losses involving these companies which will be addressed hereinafter individually:

Opel A.G. Brandenburg Truck Plant

Opel A.G. operated a plant in Brandenburg. The record including photographs establishes that between May 1945 and January 1946 the entire plant was dismantled by Soviet authorities and that the entire factory including its machinery and inventories were shipped to the Soviet Union. For reasons set forth in its decision in the Claim of International Telephone and Telegraph Company, Claim No. G-2401, Decision No. G-3164, the Commission finds that this part of claimant's loss is not compensable under Public Law 94-542.

As to the remaining land, no specific evidence has been presented establishing the date of its expropriation. If not taken prior thereto, the land would have come under the provision of the decree of September 6, 1951 which placed under government administration all foreign owned property. The Commission has held that the effects of such administration constituted a taking as that term is used in Public Law 94-542 and absent specific evidence will find that this occurred on August 11, 1952, the date of the first implementing regulations of that decree. The Commission, therefore, finds that the remaining land was taken on August 11, 1952. Based upon the entire record and the findings of the Commission in the General War Claims program, the Commission finds that the land had a value of \$311,755.00 and that claimant has been compensated in the amount of \$102,692.00 and therefore is entitled to an award in the amount of \$209,063.00.

Opel A.G. Magdeburg Branch

The record including the findings by the Commission of the General War Claims program indicates that Adam Opel A.G. operated a sales and service branch in Magdeburg. Claimant asserts, based upon its 1948 financial report, and the Commission finds, that the facilities in Magdeburg were expropriated by East German authorities in 1948, and absent specific evidence finds that this occurred on January 1, 1948. Based upon the entire record and its findings in the General War Claims program, the Commission finds that claimant suffered a loss in the amount of \$412,061.00 for which claimant has been compensated in the amount of \$135,733.00 and therefore is entitled to an award in the amount of \$276,328.00.

Edmund Becker A.G. Leipzig

Edmund Becker and Company A.G. operated a foundry in Leipzig. These facilities were confiscated pursuant to SMAD Order #124 on October 30, 1945. With the expiration of that order, the facilities were taken by the government of the State of Saxony in 1948 under SMAD Order #64. The company was then incorporated into V.V.B. "G.U.S." as of July 1948. Upon recognition that all ownership of Edmund Becker Company A.G. was held by Adam Opel A.G., which was 100% American owned, the previous order of confiscation was cancelled, however, the plant came under government administration and at no time was claimant allowed to exercise any direction or control or granted any other indicia of ownership over these facilities. Based upon this set of events, the Commission finds that the facilities of Edmund Becker Company A.G. were effectively taken as of October 30, 1945.

Based upon the entire record, including the determination of the Commission under the General War Claims program, the Commission determines that the value of Edmund Becker A.G. facilities in Leipzig was in the amount of \$448,738.00 and that claimant has received compensation in the amount of \$147,814.00 and is entitled to an award in the amount of \$300,924.00.



Frigidaire G.m.b.H.

Frigidaire G.m.b.H. operated a plant in West Berlin. In June of 1945 pursuant to an order from the Russian Military Commander of the City of Berlin, under the direction of Russian military officers and with the assistance of Russian soldiers and German civilians employed by the Soviet authorities, machinery and inventory were loaded on trucks and removed. For the reason set forth in Claim of International Telephone and Telegraph Company, Claim No. G-2401, Decision No. G-3164, the Commission finds the German Democratic Republic is not responsible for this loss and, therefore, denies this part of claimant's claim.

Opel Kadett tools and dies

Starting in 1936, Opel A.G. produced at their plant in Ruesselsheim, the "Kadett" automobile. With the outbreak of war the tools and dies used to produce this vehicle were placed in storage in Ruesselsheim where they remained having avoided damage from the hostilities of World War II. Because of the overall damage to building installations, however, it was not possible in the immediate postwar period to resume production of the Kadett model. On October 31, 1945, a request was made by Russian military authorities, ostensibly on behalf of Edmund Becker and Company A.G. in Leipzig, for 2,000 sets of cast iron castings for the Kadett motor. The custodian of Adam Opel A.G. sought the opinion of the military government authorities in West Germany concerning this request. Before he received any definitive directions, the Soviet military administration, Berlin, Karlshorst, made a request in January 1946 to the U.S. military government authorities in Berlin for the release of 700 tons of dies for the production of Opel Kadett bodies. On March 15, 1946, the Economic Division of the U.S. Office of Military Government for Germany replied to the Russians that such items could be procured by Edmund Becker and Company A.G. from Adam Opel A.G. The Office of Military Government

in Hesse informed the custodian of Opel A.G. that the transfer was to be handled as a "business transaction" between Adam Opel A.G. and Edmund Becker and Company A.G. The record shows a number of protests made by Adam Opel A.G. and GENERAL MOTORS CORPORATION. It appears that the contention of American military authorities was that, as the tools and dies were not currently being used by Adam Opel A.G. for the productions of automobiles, they should be "loaned" to Edmund Becker A.G. where they could be used for the production of automobiles needed by the German economy. Adam Opel A.G. pointed out the fact that the facilities in Leipzig of Edmund Becker A.G. constituted a foundry totally inappropriate for the manufacture of automobiles and noted that there was not even sufficient space in the facilities of Edmund Becker to store the tools and dies. Despite these protests, authorization was made by the Allied military authorities for the transfer. On June 13, 1946, Colonel Boris A. Swetow stating that he was an authorized member of the Soviet delegation and purportedly representing Edmund Becker and Company A.G., did acknowledge receipt of 849.91 tons of dies, jigs, fixtures, drawings and photographs for the Opel Kadett body. Colonel Swetow signed a certificate stating the shipment was based upon a "loan agreement" as stipulated in the report of Property Control given to Adam Opel A.G. by Property Control Section of Office of Military Government for Greater Hesse dated for June 1946. It is clear the dies were never shipped to Edmund Becker A.G. in Leipzig but were in fact shipped to Moscow where they were used apparently as early as March 1947 for the production of the "Moskvitch" automobile. According to a newspaper article in the New York Herold Tribune of March 12, 1948, the Moskvitch automobile was being sold to the general public. The article states that "while the Moskvitch has not been on open sale previously, it has been very visible in the capital streets as it has been coming off the production line for more than a year." For the tools and dies to have been installed

in a plant in Moscow so that production of an automobile could commence in early 1947 would indicate that the tools and dies must have been shipped immediately to the Soviet Union. Claimant in its submission in the General War Claims program makes a statement that the tools and dies were originally shipped to Schwarzenberg, near the Czechoslovakia border, and that "some Kadett units were produced." The evidence to which the Commission was referred in support of this statement however does not appear to support the statement either that the tools and dies were shipped to Schwarzenberg or that any Kadett units were produced with those tools and dies at that site. The evidence consists rather of a letter from an Ernest Gallasch stating that in December 1945 the Russian military administration in Berlin enlisted him as a designer and sent him to Schwarzenberg ". . .to work out the necessary plans for the production of the four door Opel Kadett." No reference is made in the letter to the arrival of the tools and dies at that site or to the actual manufacture of any Kadett automobiles there. The second document to which the Commission is referred is a report by Mr. Gallasch dated September 8, 1947. In relevant part the report states:

"In December 1945, an experimental designer's office was set up in Schwarzenberg, on the premises of the firm of Frederick Volk by the Russian Military Administration of Berlin-Karlshorst.

It was the task of this office to create the designs and drawings necessary for the series (mass) production of the 4-door Opel Kadett Sedan at the Moscow Automobile Works.

The designers required for this purpose were furnished by Ambi-Budd-Presswerk, Berlin, and Auto Union, Zwickau, and were directly subordinated to Col. Setow and Lt. Col. Dybow.

All we had at our disposal to accomplish this was 1 old, outdated drawing of the 2-door Kadett Sedan and a used 4-door Opel Kadett car.

All four of these body types were made by hand by our experimental station, mounted on an Opel Kadett Chassis in running order and shipped to Moscow.

According to our information, one reason why the Opel-Kadett was selected for production in Russia was that a considerable number of Opel Kadett cars and spare parts, such as molded parts etc., are in possession of the Russians."

The Commission finds no basis in either of these documents to conclude that the tools and dies in question were ever shipped to Schwarzenberg or that any Kadett models were produced there. What the letters do establish is that the facility at Schwarzenberg was totally under command of the Soviet military authorities and that the sole purpose of the work carried out at that sight was for shipment to the Soviet Union to facilitate the production of a Soviet car by the Soviet Union.

Based on these facts and the reason set forth by the Commission in Claim of International Telephone and Telegraph Company, Claim No. G-2401, Decision No. G-3164, the Commission finds no basis to hold the German Democratic Republic responsible for the loss of these assets of Adam Opel A.G.

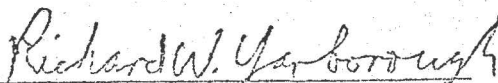
The Commission has concluded that in granting awards on claims under section 602 of Title VI of the Act, for the nationalization or other taking of property or interests therein, interest shall be allowed at the rate of 6% per annum from the date of loss to the date of settlement. (Claim of GEORGE L.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



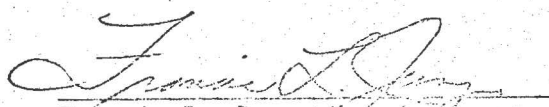
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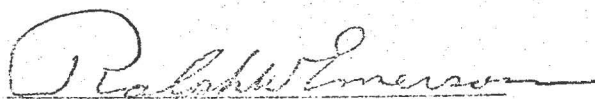
Claimant, GENERAL MOTORS CORPORATION, is therefore entitled to an award in the amount of Seven Hundred Eighty-Six Thousand Three Hundred Fifteen Dollars (\$786,315.00), plus interest at the rate of 6% simple interest per annum on \$209,063.00 from August 11, 1952 and interest on \$276,328.00 from January 1, 1948 and interest on \$300,924.00 from October 30, 1945 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic.

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

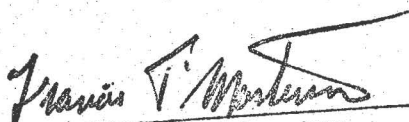
  
Richard W. Yarborough, Chairman

MAY 15 1981

  
Francis L. Jung, Commissioner

  
Ralph W. Emerson, Commissioner

This is a true and correct copy of the decision  
of the Commission which was entered as the final  
decision on MAY 15 1981

  
Executive Director

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

IN THE MATTER OF THE CLAIM OF

GENERAL MOTORS CORPORATION

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. G-3729

Decision No. G-1270

Counsel for claimant:

John C. Schluer, Esquire

PROPOSED DECISION

This claim in an undetermined amount 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 two factories owned by Adam Opel A.G., located in Brandenburg and Magdeburg, and the loss of the assets of Edmund Becker and Company A.G., located in Leipzig.

Claimant, GENERAL MOTORS CORPORATION, previously filed claim number W-10619 under Title II of the War Claims Act of 1948, as amended by Public Law 87-846. In this claim, hereinafter referred to as the War Claim, claimant asserted losses resulting from war damage and special measures taken against certain subsidiaries, including Adam Opel A.G.; losses occurring as a result of hostilities at certain locations outside of the territory of the German Democratic Republic; and losses to Adam Opel A.G. occurring within the German Democratic Republic. Evidence was submitted by claimant in the War Claim, which evidence is available to the Commission in determining the present claim. In Decision No. W-21487, issued in the War Claim, the Commission found that claimant, GENERAL MOTORS CORPORATION, was a national of the United States;

that Adam Opel A.G. was a wholly owned subsidiary of claimant, GENERAL MOTORS CORPORATION; and that Adam Opel A.G. in 1942 had acquired all outstanding shares of Edmund Becker and Company A.G.

The Commission found that claimant, GENERAL MOTORS CORPORATION, had suffered a loss as a result of war damage and special measures in the amount of \$33,218,307.17, from which was deducted the amount of \$16,831,806.21 as federal tax benefits received by claimant as the result of the losses. An award was, therefore, made to claimant, GENERAL MOTORS CORPORATION, in the amount of \$16,386,500.96.

In support of its claim under Public Law 94-542, claimant has submitted a claim form, certain summaries and has referred the Commission to particular exhibits and evidence previously submitted in the War Claim.

It appears to be claimant's contention that claimant is entitled to an award in the amount previously determined in the War Claim for losses of tangible property at the Adam Opel A.G. factories in Brandenburg and Magdeburg and for losses of tangible property in Leipzig belonging to Edmund Becker and Company A.G., in addition to the value of intangible property at those three sites, from which total should be deducted the proportionate amount received in payment on the award previously given in the War Claim. Claimant asserts that the amount of loss of tangible property is the amount determined for such loss by the Commission in the War Claim and the value of the intangible property is to be determined by the books of the corporation as of 1942.

In its determination of the War Claim the Commission found that the property at the three locations was taken under the custodianship of the then German Government as enemy owned property and that, as none of this property was returned after the conclusion of World War II, the claimant was entitled to an award for the entire value of the tangible property in 1942, without further determination of what physical losses may have occurred from hostilities or otherwise during the period of custodianship

by the Third Reich. The Commission denied the claim for intangible property because the definition of property set forth in Title II of the War Claims Act of 1948, as amended by Public Law 87-846, was limited to tangible property only.

Claimant's contention appears to be based upon an interpretation of Public Law 94-542 which would allow computation of damages by claimant as set forth above.

The Commission, however, is of the opinion that the interpretation apparently given to the statute by claimant is not tenable.

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. . ."

Section 605 of the statute reads as follows:

"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.

It is the Commission's view that a claimant is entitled to an award under Public Law 94-542 only as to the value of property, tangible or intangible, which the claimant has proved to have been in existence in the German Democratic Republic or East Berlin after the conclusion of World War II and which was nationalized, expropriated or otherwise taken by or on behalf of the German Democratic Republic.

The Commission has no doubt that some assets of Adam Opel A.G. survived World War II to be taken by the German Democratic Republic. As to the assets which existed in 1942, the Commission cannot disregard the fact that they may have been subject to




physical destruction due to the hostilities, dissipation during the custodianship of the Third Reich or may have been removed from East Germany during or after the end of World War II, either without any governmental authorization or by way of reparations.

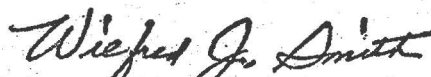
Therefore, the Commission finds that the evidence submitted by claimant is insufficient to establish that, and if so, to what extent, property owned by a United States national was nationalized, expropriated or otherwise taken under circumstances for which the German Democratic Republic is responsible under international law. For this reason, the claim must be and hereby is denied.

The Commission notes that under its regulations claimant is entitled to file an objection to the Proposed Decision of the Commission to assert any legal or factual arguments in opposition to the Proposed Decision. In the event that subsequent determinations by the Commission require a reasonable extension of time to produce particular evidence in support of the claim, the Commission would favorably consider such a request.

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

SEP 5 1979

  
Richard W. Yarborough, Chairman

  
Wilfred J. Smith, 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.)

G-3729