

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

IN THE MATTER OF THE CLAIM OF

GENERAL ELECTRIC COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. G-3764

Decision No. G-3274

Counsel for Claimant:

Pierson, Semmes, Crolius and
Finley
by: Theodore F.T. Crolius, Esq.

Hearing on the Record held on MAY 13 1981

FINAL DECISION

This claim in the amount of \$34,672,448.00 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 losses of Allgemeine Elektrizitaets Gesellschaft (AEG) and the "Osram" Konzern in which claimant has ownership interests.

By Proposed Decision dated February 25, 1981, the Commission granted claimant an award in the total amount of \$330,578.89, plus interest, for its interest in the loss of certain real property in East Berlin, Leipzig and Weisswasser, owned by Osram. The award was made only for the real property, which remained after war damage for which an award had been granted under Public Law 87-846, and for 108,076.02 reichsmarks in cash taken from Osram by Soviet military authorities on or shortly after August 2, 1945.

That portion of the claim based upon the claimant's interest in the losses of AEG was denied for the reason that claimant sold its interest in AEG on April 2, 1976, prior to filing a claim under Public Law 94-542, and the Commission found that there was no evidence in the record to establish that claimant had expressly or impliedly reserved the right to claim for any losses based upon its interests in property owned by AEG, which had been nationalized or otherwise taken in the German Democratic Republic. Accordingly, the Commission concluded that by the sale of its ownership interest in AEG prior to filing a claim with the Commission, claimant divested itself of any rights or interests in a claim against the German Democratic Republic which it might have had under Public Law 94-542, which was enacted on October 18, 1976, through its ownership interest in AEG.

The following portions of the claim, based upon claimant's ownership interest in Osram, were also denied for the reason that the record contained no evidence to establish that such items were lost as the result of a nationalization or other taking of property owned by Osram:

1. Assets of Osram in claimant's asserted amount of 36,088,000 reichsmarks.
2. Machinery in the process of construction at Works "D" and the "Main Office" in the amount of 1,813,000 reichsmarks.
3. Machinery and equipment at Weisswasser, Plauen and Zwickau in the total amount of 5,580,000 reichsmarks.
4. Machinery and installations at Works "D" and the "Main Plant" in the amount of 6,355,000 reichsmarks.
5. Tools and equipment at Works "D" and the "Main Plant" in the amount of 1,800,000 reichsmarks.
6. Raw materials at Works "D" and the "Main Plant" in the amount of 5,460,000 reichsmarks.
7. Semifinished goods at Works "D" and the "Main Plant" in the amount of 10,940,000 reichsmarks.
8. Finished goods in the amount of 2,127,000 reichsmarks.
9. Loss of cash in bank accounts and on hand at the "Main Plant" and Works "D", checks and postal accounts in the total amount of 11,533,127 reichsmarks.
10. Securities, mortgages, long-term loans and receivables in the total asserted amount of 25,391,294 reichsmarks.

By letter dated March 10, 1981, the Commission was advised that the claimant intended to file an objection to the Proposed Decision.

By Commission letter dated March 19, 1981, claimant was advised that an oral hearing had been scheduled for April 21, 1981, at the Commission's office in Washington, D.C.

The Commission was then informed by letter dated April 6, 1981, that present counsel had been retained and a continuance of the oral hearing scheduled was requested. No statement of any error in law or in fact in the Proposed Decision had been asserted nor had any new evidence in the possession of the claimant been submitted in support of the objections as of that date. Claimant was advised, through counsel, that the oral hearing could not be continued due to the expected press of Commission business remaining before the statutory completion date of May 15, 1981 for claims filed against the German Democratic Republic under Public Law 94-542. However, claimant was advised that additional time would be granted, until April 30, 1981, for the submission of a brief and new evidence, but that such materials would be considered as a hearing on the record. Claimant, through counsel, informed the Commission that its brief and new evidence would be submitted by April 30, 1981.

The first objection cited in claimant's brief is that the Commission erred in finding in the Proposed Decision that claimant divested itself of its claim against the German Democratic Republic for losses resulting from the nationalization or other taking of property in the German Democratic Republic owned by the company known as the Allgemeine Elektrizitaets-Gesellschaft (AEG).

The Commission's finding to which claimant takes exception was based upon evidence in the record that established that claimant sold its 18.3% ownership interest in AEG on April 2, 1976 to the Dresdner Bank. Since the claimant apparently transferred all rights and interests in AEG by the sale of its shares of stock in the company, the Commission was constrained to conclude that claimant had also transferred all rights to make any claim for the losses of AEG and, therefore, had no ownership interest in either the company that sustained the losses or in the claim which arose from the taking of AEG's property by the German Democratic Republic.

This finding is supported by previous determinations of the Commission. In the Claim of Herbert Latkin, Claim No. CU-1613, Decision No. CU-0454A, filed under Title V of the Act, the Commission determined that a sale of stock transfers all rights and interests thereto, including the right to claim for any losses based on such ownership interest. The fact that the buyer is not a United States national is immaterial. In that claim, claimant purchased 100 shares of stock in a Cuban corporation which had been nationalized on August 6, 1960. Claimant sold these shares on April 25, 1961. The Commission found that the record did not establish that any interest was retained and, accordingly, the claim based upon these shares was denied.

Counsel for claimant cites the Claim of Harry Kelvin, Claim No. CU-1684, Decision No. CU-480 for the proposition that where a business interest is sold prior to the filing of a claim, but the seller had explicitly reserved all receivables from the sale, claimant has proved he retained an interest in the property, the taking of which gives rise to a compensable claim.

However, in that claim the holding of the Commission was much narrower, in fact. The Commission found that where the accounts receivable in the company sold by the claimant were expressly reserved by the claimant and the record contained evidence of the actual sale of certain goods, the fact that the Cuban Government acted to preclude transfer of funds out of Cuba to the claimant for the receivables interfered with the contractual rights of the claimant and, accordingly, claimant was entitled to an award for the total amount due for the proven receivables which was not transferred to him due to the actions of the Cuban Government.

In the instant claim of GENERAL ELECTRIC COMPANY, there is no express retention of any rights by the claimant in the claim associated with its previous ownership interest in AEG, nor is there alleged any action on the part of the German Democratic Republic which affected the exercise of rights, contractual or otherwise, owned by the claimant. Rather, claimant voluntarily sold its ownership interest in AEG, and the Commission finds that claimant has the burden of proof with respect to establishing that it retained the right to claim against the German Democratic Republic for losses associated with its ownership interests in AEG.

Counsel for claimant submits that the burden would be met if it could be established that it was the intention of the parties to the sale of claimant's interests in AEG that any claim for losses which might be contemplated by the United States on behalf of United States nationals would remain with the seller.

To establish this intention claimant has submitted a copy of a letter dated March 6, 1973, from Walter H. Beaman, Counsel, to claimant's Washington Corporate Office discussing the potential claim which might arise should a claims settlement agreement be reached between the United States and the German Democratic Republic. Also submitted is a copy of a letter dated April 22, 1981, from the director of the firm J. Henry Schroder Wagg & Co. Limited, London, to the claimant, which states in full:

As requested, I hereby confirm that at no time during the negotiations for Dresdner Bank's purchase of General Electric Company's interest in AEG was the subject of a claim under U.S. war claims or war reparations legislation discussed or considered in fixing the consideration for the purchase.

It is an elementary rule of contract law that the intention of the parties, where the contract is written, is ineffective, unless expressed in writing.

In response to the Commission's request that claimant submit evidence of the terms of the sale of its interest in AEG, a copy of the letter of sale from J. Henry Schroder Wagg & Co., Limited, London, dated December 12, 1980, agreeing to sell on behalf of claimant its shares in AEG to the Dresdner Bank, Frankfurt, was submitted. The terms of the sale were spelled out in this letter.

Claimant also submitted a copy of an agreement to sell its ownership interest in the German company known as Osram. This seven section agreement spelled out the sale of claimant's interest in somewhat more detail.

While the letter dated December 12, 1980 is quite brief, there is no doubt that the claimant was bound by the terms thereof. There is no doubt that claimant was aware of its interest in a potential claim for losses in the German Democratic Republic, as evidenced by the copy of the letter of March 5, 1981, submitted in evidence. And, finally, there is no doubt that the claimant took no action to expressly reserve any of its rights to claim for losses in the German Democratic Republic.

Accordingly, having reviewed all the evidence concerning this portion of the claim and the argument in support of claimant's objections, the Commission finds that the evidence of record is insufficient to support a finding that claimant retained a right to claim for losses sustained by AEG in the German Democratic Republic after the sale on April 2, 1976 of its ownership interest in the corporation.

The second part of claimant's objection is directed to the finding of the Commission as to the compensability of the asserted losses sustained by Osram and the value of such losses.

At the time of filing the claim it was stated that the claimant's interest in the losses of Osram totalled \$4,847,485. This asserted amount was based upon machinery, equipment, inventory and installations in East Berlin, finished goods, and other assets of Osram in the territory of the German Democratic Republic and East Berlin.

In its Proposed Decision on this claim, the Commission granted claimant an award in the total amount of \$323,000 for real property owned by Osram and \$7,378.89 for reichsmarks taken on or shortly after August 2, 1945 by Soviet Military authorities.

However, the Commission has held in the Claim of International Telephone & Telegraph Corporation, Claim No. G-2401, Decision No. G-3164, heard on appeal on April 21, 1981, that losses resulting from takings by the Soviet military authorities after World War II but prior to a nationalization or other taking by the German Democratic Republic or other East German authorities are not compensable under Public Law 94-542 for the reason that the German Democratic Republic was neither a party to such takings nor is there a basis under international law to hold the German Democratic Republic liable for such takings. Accordingly, the Commission now finds that the award for \$7,378.89 granted in the Proposed Decision was in error and that this award must be and it is hereby vacated.

In the Proposed Decision, the Commission also denied that portion of this claim based upon some 23,194,054 reichsmarks of inventory and installations assertedly located in Osram's factories in East Berlin for the reason that the evidence of record did not establish that Osram owned additional assets over and above the 12,893,946 reichsmarks worth of assets for which claimant received an award for its interest in W-8612 under Public Law 87-846. The Commission now finds, upon review and in light of the recent final determination rendered in the Claim of International Telephone & Telegraph Corporation, cited above, that the finding by the Commission in the Final Decision on Claim No. W-8612 that the 23,194,054 reichsmarks of inventory and installations were dismantled and confiscated as reparations under the Potsdam Agreement prior to the nationalization or other taking of Osram facilities by the East German authorities in what is now the German Democratic Republic, including East Berlin, precludes a favorable finding for such losses, even if ownership by Osram on the date of loss of such inventory and installations were to be established. Accordingly, the denial of this portion of the claim is hereby affirmed.

With respect to the value of the assets of Osram taken by the East German authorities on February 8, 1949, the Commission now finds, based upon a copy of what is termed an opening balance statement dated April 1, 1949, prepared by the Deutsche Treuhand Gesellschaft, that the value of such assets according to the statement was 11,063,672 marks on the date of loss. This includes a value for real property for which an award was granted in the Proposed Decision. Therefore, it is ordered that the award of \$323,000 made in the Proposed Decision be vacated; the Commission now finds that claimant is entitled to compensation in the total amount of \$719,402.09 for its 27.31% interest in all the assets of Osram taken on February 9, 1949, as compensation under section 602 of the Act.

As to the other items included on the statement identified as "Blocked Values as a Result of Credit Closings", property values "Excluding the 4 Occupied Zones", value of property "Assumed by Russian Military Administration" and the value of "War Damage Claims", the Commission finds that none of these losses are compensable for the reason that there is no evidence to establish that any of these losses resulted from a nationalization or other taking of property for which the German Democratic Republic is responsible under the Act.

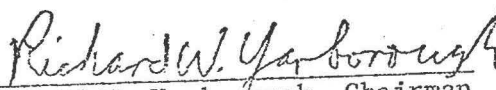
Accordingly, full consideration having been given to the entire record in this matter, including argument submitted in support of claimant's objections and new evidence submitted, it is ordered that the award to claimant be restated as set forth below and that the foregoing be entered in the Commission's final determination on this claim.

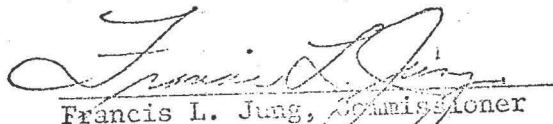
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Claimant, GENERAL ELECTRIC COMPANY, is therefore entitled to an award in the amount of Seven Hundred Nineteen Thousand Four Hundred Two Dollars and Nine Cents (\$719,402.09), plus interest at the rate of 6% simple interest per annum from February 9, 1949 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic.

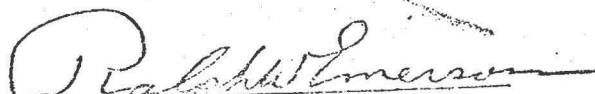
Dated at Washington, D.C.
and entered as the Final
Decision of the Commission.

MAY 13 1981


Richard W. Yarborough, Chairman


Francis L. Jung, Commissioner

is a true and correct copy of the decision
Commission which was entered as the final
ion on MAY 13 1981


Ralph W. Emerson, Commissioner


Executive Director

G-3764

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

IN THE MATTER OF THE CLAIM OF

GENERAL ELECTRIC COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. G-3764

Decision No. G-3274

Counsel for Claimant:

Walter H. Glass, Esquire

PROPOSED DECISION

This claim in the amount of \$34,672,448.00 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 losses of Allgemeine Elektrizitaets Gesellschaft and the "Osram" Konzern in which claimant had ownership interests.

GENERAL ELECTRIC COMPANY and "IGE Co., Inc.", have been nationals of the United States within the meaning of section 601(1)(b) at all times pertinent to this claim.

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 . . ."

A portion of this claim is based upon the losses of a German corporation known as Allgemeine Elektrizitaets Gesellschaft (AEG) in which claimant had an 18.3% interest as determined by the Commission in Claim No. W-8612 filed by claimant in the General War Claims Program under Public Law 87-846.

Claimant has submitted evidence which establishes and the Commission finds that its stock interest in AEG was sold on April 2, 1976 to the Dresdner Bank in Frankfurt, Federal Republic of Germany. From the foregoing, the Commission concludes that claimant sold all its rights and interests in AEG on April 2, 1976, including any right to claim for losses of AEG resulting from the nationalization or other taking of property in the German Democratic Republic including East Berlin. (See Claim of ROSS A. BALLINGER, Claim No. CU-7163, Decision No. CU-4705 and the Claim of HERBERT LATKIN, Claim No. CU-1613, Decision No. CU-0454A, which were decided under Title V of the Act.)

Accordingly, the Commission concludes that the claim of GENERAL ELECTRIC COMPANY for the losses of AEG under Public Law 94-542 must be and it is hereby denied for the reason that the claim for such losses was not owned by the claimant at the time of filing as required for compensation under the Act.

With respect to that portion of this claim based upon the claimant's interest in the "Osram" Konzern (Osram), the Commission finds, based upon the evidence of record including the record in Claim No. W-8612, that claimant's predecessor in interest, IGE Co., Inc., was the owner of a 27.31% interest in Osram, which consisted of the following entities:

- (1) Osram G.m.b.H., Kommanditgesellschaft, Berlin;
- (2) Osram G.m.b.H., Berlin; and
- (3) OSA Industrielle Beteiligungen A.G., Zurich, Switzerland.

The evidence of record establishes and the Commission finds that, with respect to Osram, claimant is the successor in interest to IGE Co., Inc., and that claimant sold its interest in Osram in September of 1978, which is subsequent to the date the instant claim for the losses of Osram in the German Democratic Republic was filed with the Commission by the claimant and subsequent to the statutory deadline for filing claims against the German Democratic Republic under Public Law 94-542.

With respect to the sale of this interest in Osram, the Commission finds that, since such sale occurred after the date of filing the claim with the Commission and after the deadline for filing such claims under Public Law 94-542, claimant's transfer or assignment of its ownership interest in September of 1978 in Osram will not be deemed to have divested claimant of its claim under Public Law 94-542 based upon its interest in the losses of Osram. (See the Claim of the BATAVIAN NATIONAL BANK, Claim No. SOV-40,987, Decision No. SOV-2003, adjudicated under Title III of the International Claims Settlement Act of 1949, as amended.)

As to the losses of Osram resulting from a nationalization or other taking of property in the German Democratic Republic, the Commission finds, based upon all the evidence of record including the record in Claim No. W-8612, that Osram owned certain real property in East Berlin, Leipzig and Weisswasser in what is now the German Democratic Republic which was taken on or about February 9, 1949; that the improvements to such property were damaged during World War II; and that the remaining real property had a value of \$323,000 at the time of loss.

The Commission notes that claimant received an award under Public Law 87-846 for the war damage to the improvements to the real property owned by Osram. The Commission has no authority under Public Law 94-542 to grant awards for war damage losses.

The Commission further finds that Osram owned 108,076.02 reichsmarks in cash in what is now the German Democratic Republic, including East Berlin, which was apparently taken by Soviet military authorities on or shortly after August 2, 1945, the date of the Potsdam Agreement. The Commission has held in the Claim of INTERNATIONAL TELEPHONE & TELEGRAPH, Claim No. G-2401, Decision No. G-3164, that losses resulting from dismantling or other takings by the Soviet military authorities for reparations on or after the date of the Potsdam Agreement will be deemed losses for which the German Democratic Republic is responsible and that losses prior to August 2, 1945, being in the nature of war damage losses, are not compensable under Public Law 94-542. The Commission therefore concludes that the claimant herein is entitled to compensation in the amount of \$7,378.89 as compensation for its 27.31% interest in this loss.

Accordingly, claimant is entitled to compensation in the total amount of \$330,378.89 for its losses under section 602 of the Act.

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)).

The Commission notes that in the Final Decision on Claim No. W-8612 under Public Law 87-846 the Commission found that: claimant had asserted losses in the total amount of 36,088,000 reichsmarks for its interest in the losses of Osram during World War II; that 12,893,946 reichsmarks was the value of the war damage losses compensable under Public Law 87-846; and that any remaining interest of Osram would have been taken under the terms of the Potsdam Agreement. The Commission affirms this determination, however, the Commission finds that the evidence of record does not provide a basis for determining that Osram owned any property interests over and above the assets for which an award was granted in W-8612 or the cash for which an award is made herein which was taken by the Soviet military authorities on or about August 2, 1945. Accordingly, any claim for such additional assets must be and it is hereby denied.

The Commission further notes that, in addition to real property owned by Osram, claim is made for the following items:

1. Machinery and equipment at Weisswasser, Plauen and Zwickau in the total amount of 5,580,000 reichsmarks.
2. Machinery in the process of construction at Works "D" and the "Main Office" in the amount of 1,813,000 reichsmarks.
3. Machinery and installations at Works "D" and the "Main Plant" in the amount of 6,355,000 reichsmarks.
4. Tools and equipment at Works "D" and the "Main Plant" in the amount of 1,800,000 reichsmarks.
5. Raw materials at Works "D" and the "Main Plant" in the amount of 5,460,000 reichsmarks.
6. Semifinished goods at Works "D" and the "Main Plant" in the amount of 10,940,000 reichsmarks.
7. Finished goods in the amount of 2,127,000 reichsmarks.

With respect to the foregoing, the Commission finds that the evidence of record, including the evidence submitted in support of W-8612, is insufficient to establish that the items claimed above were in addition to the property for which an award was granted in Claim No. W-8612 or that such property or any part thereof was in fact taken by the Soviet military authorities on or after August 2, 1945 or that such property was on hand in 1949 when Osram was found to have been expropriated. Accordingly, this portion of the claim must be and it is hereby denied.

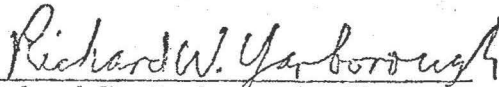
A portion of this claim is based upon the loss of cash in bank accounts and on hand at the "Main Plant" and Works "D", checks and postal accounts in the total amount of 11,533,127 reichsmarks. However, the Commission finds that the evidence of record is insufficient to establish that such funds, over and above the 108,076.02 reichsmarks for which an award is granted herein, were taken either by the Soviet military authorities on or after August 2, 1945 or by the East German authorities in 1949. Accordingly, this portion of the claim must be and it is hereby denied.

With respect to the remaining portion of this claim based upon the asserted loss of securities, mortgages, long-term loans and receivables in the total asserted amount of 25,391,294 reichsmarks, the Commission finds that the evidence of record is insufficient to establish the existence or value of such property interests of Osram at the time of expropriation. The Commission notes that the asserted value of these items is based simply upon balance sheet entries on July 1, 1945, and that there is no evidence that such assets had the values asserted at the time of loss or that losses were sustained with respect to these items as the result of actions attributable to the German Democratic Republic as required for compensation under the Act. Accordingly, this portion of this claim must be and it is hereby denied.

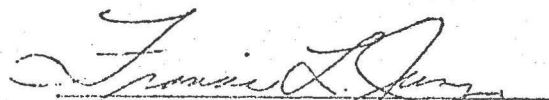
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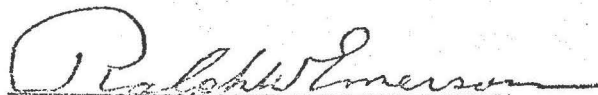
Claimant, GENERAL ELECTRIC COMPANY, is therefore entitled to an award in the amount of Three Hundred Thirty Thousand Three Hundred Seventy-Eight Dollars and Eighty-Nine Cents (\$330,378.89), plus interest at the rate of 6% simple interest per annum with interest on \$7,378.89 from August 2, 1945 and on \$323,000.00 from February 9, 1949 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 Proposed
Decision of the Commission.


Richard W. Yarborough, Chairman

FEB 25 1981


Francis L. Jung, Commissioner


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.)