

DEPARTMENT OF STATE  
INTERNATIONAL CLAIMS COMMISSION  
OF THE UNITED STATES

In the Matter of the Claim of

WALTER PETSCHEK,  
FRANKISKA PETSCHEK,  
HANS PETSCHEK,  
IVA K. PETSCHEK,  
LEOPOLD A. GALLERT,  
GRETE GALLERT,  
VIKTOR PETSCHEK,  
SIMON GILBERT BARBER,  
LOTHAR PETSCHEK STEIN, and  
PETER J. GILBERT

Docket No. Y-1195

Decision No. 265

Under the Yugoslav Claims Agreement  
of 1948 and the International Claims  
Settlement Act of 1949

PROPOSED DECISION

HARVEY, CHAIRMAN. A portion of this claim is before this Commission upon the proceeding of the Solicitor of the Commission pursuant to Section 300.16 of the Rules of Practice and Procedure of the Commission.

The portion of the claim under consideration seeks the recovery of bank deposits in Yugoslavia in the amounts set forth below:

Walter Petschek	19,028.42
Frankiska Petschek	19,028.41
Hans Petschek	19,028.42
Iva Petschek	19,028.41
Leopold Gallert	19,028.41
Leopold Gallert as Executor of the estate of Marianna Gallert	19,028.42
Grete Gallert	19,028.42
Grete Gallert as Executrix of the estate of Oswald Gallert	19,028.41
Viktor Petschek	<u>116,056.83</u>
	100,284.15

This portion of the claim is denied in whole for the reasons stated by a majority of the Commission in its Proposed Decision No. 55, In the Matter of the Claim of Anton and Frances Tabar (Y-580).

This Proposed Decision relates solely to that part of this claim which is based upon bank deposit accounts in Yugoslavia.

Commissioner McKeeugh concurs in the above.

Commissioner Baker's views are stated in his opinion filed in the said proceeding entitled In the Matter of the Claim of Anton and Frances Tabar.

July 1, 1952

I hereby certify that the within is a true and correct copy of the original decision or order on file with this Commission.

R. C. Coates  
Deputy Clerk of the Commission

DEPARTMENT OF STATE  
INTERNATIONAL CLAIMS COMMISSION  
OF THE UNITED STATES

In the Matter of the Claim of

WALTER PETSCHKEK et al

Under the Yugoslav Claims Agreement  
of 1948 and the International Claims  
Settlement Act of 1949

Docket No. Y-1195

ORDER

And now, to wit, this tenth day of December, 1952, a portion of the above entitled matter hereinafter described coming on to be heard, and it appearing that claimants were represented by John R. Stevenson, Esquire, and the Solicitor's Office by Joseph F. English, Solicitor; and it further appearing that Mr. Stevenson, attorney as aforesaid, made a statement acquiescing in the denial of that portion of the claim based upon the alleged ownership by Salay Oil Land, Ltd., of a bank deposit; and consideration having been given to a memorandum in support of suggested findings of fact filed by claimants,

IT IS ORDERED by the Commission, a majority concurring therein, that that portion of the claim based on the alleged ownership by the Salay Oil Lands, Ltd., of a bank deposit with the Prva Hrvatska Stedionica Banka in Belgrade, be and it hereby is denied on the ground that the transfer of the ownership of such deposit from Jugoceska to Salay was not effected because the transfer license required under Yugoslav law was never obtained; and that this Order shall constitute a full and final disposition of said portion of said claim above described. Such deposit will be considered by the Commission in any future proceeding with respect to the valuation of Jugoceska.

I hereby certify that the within is a true and correct copy of the original decision or order on file with this Commission.

INTERNATIONAL CLAIMS COMMISSION  
OF THE UNITED STATES

By \_\_\_\_\_  
Joshua Marvel, Jr.  
Chairman

*A. C. Coates*  
Deputy Clerk of the Commission

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

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In the Matter of the Claim of :

FRANZISKA PETSCHKEK :  
Birchall Drive :  
Scarsdale, New York :

HANS PETSCHKEK :  
Park Road :  
Scarsdale, New York :

EVA E. PETSCHKEK :  
54 Park Road :  
Scarsdale, New York :

VIKTOR PETSCHKEK :  
85 East End Avenue :  
New York, New York :

ELINOR GELLERT BARBER :                   Docket No. Y-1195  
35 Braeside Lane :  
Dobbs Ferry, New York :

RUTH PETSCHKEK STEIN :                   Decision No. 265-A  
49 Sheldrake Road :  
Scarsdale, New York :

PETER J. A. GELLERT :  
Manhattan Avenue and Park Drive :  
Rye, New York :

WALTER PETSCHKEK :  
Birchall Drive :  
Scarsdale, New York :

(1) Individually, :  
(2) As Trustee under T/I of :  
March 12, 1943 for the :  
benefit of the children of :  
Leopold R. and Marianne :  
Gellert, :  
(3) As Trustee under T/I of :  
March 12, 1943 for the :  
benefit of the children of :  
Oswald and Grete Gellert, :  
and :  
(4) As Trustee under T/I of :  
March 11, 1943 for the :  
benefit of the children :  
of Hans and Eva E. Petschek :

LEOPOID R. GELLERT  
Windcrest Road  
Rye, New York

- (1) Individually,
- (2) As Trustee under T/I of  
March 12, 1943 for the  
benefit of the children of  
Walter and Franziska Petschek,  
and
- (3) As Executor of the Estate of  
Marianne Gellert, deceased

GRETE GELLERT  
Manhattan Avenue and Park Drive  
Rye, New York

- (1) Individually, and
- (2) As Executrix of the Estate of  
Oswald Gellert, deceased

Under the Yugoslav Claims Agreement  
of 1948 and the International Claims  
Settlement Act of 1949

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Counsel for Claimants:

S. PEARCE BROWNING, Jr.  
CHARLES S. REILLEY  
JOHN R. STEVENSON  
of  
Sullivan and Cromwell  
48 Wall Street  
New York, New York

PROPOSED DECISION OF THE COMMISSION

This is a claim for \$6,021,628.43 by the ten individuals, the four trusts and the two estates named or described in this and the preceding page, and is for the nationalization or other taking by the Government of Yugoslavia of four Yugoslav corporations in which the claimants owned shares of stock and some of them were also creditors of two of these corporations.

Franziska Petschek, Hans Petschek, Eva E. Petschek, Viktor Petschek, Elinor Gellert Barber, Ruth Petschek Stein and Peter J. A. Gellert, who are claiming only in an individual capacity, have been citizens of the United States since their naturalizations in the United States on May 20, 1946, February 14, 1945, June 22, 1944, December 2, 1943, June 10, 1946, February 17, 1947 and February 23, 1945, respectively.

Walter Petschek, an individual claimant and the trustee under three trusts described in this paragraph, has been a naturalized citizen of the

United States since May 20, 1946. As these trusts were all established prior to the taking of the property upon which this claim is based, it is necessary to ascertain whether the beneficiaries were nationals of the United States at the time of such taking. Elinor G. Barber, Max E. D. Gellert, Robert J. B. Gellert, Brigitte J. W. Gellert and Donald N. Gellert, the beneficiaries of the trust created pursuant to the indenture of March 12, 1943 for the benefit of the children of Leopold R. Gellert and Marianne Gellert, have been citizens of the United States since their naturalizations on June 10, 1946, July 22, 1948, May 20, 1946, May 20, 1946 and May 20, 1946, respectively. Peter J. A. Gellert, Martin F. D. Gellert, Michael E. Gellert, Hubert J. P. Gellert and Catherine H. A. Gellert, the beneficiaries of the trust created pursuant to the indenture of March 12, 1943 for the benefit of the children of Oswald and Grete Gellert, have been citizens of the United States since their naturalizations on February 23, 1945, May 20, 1946, May 20, 1946, May 20, 1946 and May 20, 1946, respectively. Albert G. Petschek, Harry E. Petschek and Marion C. Petschek, the beneficiaries of the trust created pursuant to the indenture of March 11, 1943 for the benefit of the children of Hans and Eva E. Petschek, have been citizens of the United States since their naturalizations on February 14, 1945.

Leopold R. Gellert, an individual claimant and the trustee of the trust created pursuant to the indenture of March 12, 1943 for the benefit of the children of Walter and Franziska Petschek, has been a naturalized citizen of the United States since May 20, 1946. Alfred E. Petschek, Stephen R. Petschek and Susanne F. J. Petschek, the beneficiaries of this trust, have been citizens of the United States since their naturalizations on May 20, 1946. Leopold R. Gellert is also the Executor of the Estate of Marianne Gellert, deceased, who was a citizen of the United States from May 20, 1946 until her death on July 8, 1950. As this testatrix died subsequent to the date of the Yugoslav Claims Agreement of 1948, it is not necessary to inquire as to the citizenship of the beneficiaries of her estate.

Grete Gellert, an individual claimant and the Executrix of the Estate of Oswald Gellert, deceased, has been a naturalized citizen of the United States since May 20, 1946. The only item of the claim in which this

estate had an interest was in a bank deposit of 6,319,890 dinars in the Prva Hrvatska Stedionica in Belgrade. As it will be shown in a subsequent section entitled "Claims Against Jugoceska and Beogradska" that this interest had no value, no effort has been made to ascertain the date of death of the testator or his citizenship.

As stated before, this claim is based upon ownership of shares of stock in several Yugoslav corporations and upon creditors' rights in certain of them. These companies will now be treated in series with a subsequent discussion of the creditor aspects.

Prva Mehanicka Fabrika A.D., Pancevo

This item of the claim is based upon an ownership of 2,768 shares of stock (equal to 10.25% of a total outstanding of 27,000 shares) in this glass factory in Pancevo, Serbia, Yugoslavia (hereinafter referred to as "Pancevo"). These shares were allegedly owned by the following individual claimants in the amounts opposite their names:

<u>Name</u>	<u>Number of Shares</u>	<u>Amount of Claim</u>
Walter Petschek	554	\$ 54,084.16
Hans Petschek	554	54,084.16
Grete Gellert	553	53,986.54
Viktor Petschek	553	53,986.54
Estate of Marianne Gellert, deceased	<u>554</u>	<u>54,084.16</u>
Total	2,768	\$270,225.36

Pancevo was nationalized on December 5, 1946 pursuant to the Nationalization of Private Enterprises Act of December 5, 1946 (Official Gazette No. 98 of December 6, 1946). The Government of Yugoslavia has informed the Commission that Pancevo had 27,000 outstanding shares of stock at the time of its nationalization and that Walter Petschek, Hans Petschek, Grete Gellert, Viktor Petschek and Marianne Gellert owned 554, 554, 553, 553 and 554 shares of stock respectively in the Company at that time and that the certificates for these 2,768 shares were submitted to that Government for registration pursuant to Decree No. 345 of June 17, 1946 for Issuing and Registering Stock Shares (Official Gazette No. 50 of June 21, 1946).

These five claimants allege a value of Pancevo at the time of its nationalization of \$2,653,870.62 and their 10.25% interest therein at

\$270,225.56. In support of this valuation, they have filed a copy of a purported Balance Sheet dated November 30, 1940 for Pancevo. This statement shows total assets of 75,741,677.71 dinars which, converted into United States dollars at the rate of \$.0225 to 1 dinar (the conversion rate used by the claimants) amounts to \$1,704,187.75. The claimants have, based upon an opinion by Forter-Teichmann (Glass Factory, Engineering and Construction Company in Pittsburgh, Pennsylvania) as to the cost of reproducing a plant such as Pancevo, made certain adjustments in the value of the physical plant in arriving at total assets of \$2,927,323.24. On the basis of these adjusted figures, the net worth of Pancevo as of November 30, 1940 has been calculated to amount to \$2,590,338.14 (includes "Dividends, 1939 \$2,160.00" which appears to be "Dividends Payable" and a liability) to which goodwill of \$42,754.55 has been added to arrive at a total net value of \$2,633,092.69. Claimants have also computed the net worth of Pancevo as of December 5, 1946 to have been \$2,635,870.62 which would result in a value of \$97.64 per share of stock. In arriving at the figure of \$2,927,323.24 an item of 5,000,000 dinars for a fourth building which was admittedly ". . . destroyed by aerial bombardment during World War II . . ." was included. The Agreement of July 19, 1948 between the Governments of the United States and Yugoslavia settled claims for "the nationalization and other taking by Yugoslavia of property" (Article 1). War damage caused by military action is not in our view a "nationalization" or "taking" of property by the Government of Yugoslavia. We, therefore, hold that claims for war damage of the sort involved herein were not settled by the Agreement of July 19, 1948 and are not within the jurisdiction of this Commission.

Claimants have also submitted a statement estimating the dollar cost of building and equipping a similar glass factory in Yugoslavia (or one comparably situated in another European country), as of December 1946; a statement by a resident of Liege, Belgium, describing the production facilities of Pancevo, and the apartment buildings owned by Pancevo, located in Belgrade; a photostatic copy of a translation from Compass referring to Pancevo; several technical reports; a tentative financial report of Pancevo for the year 1939 (later approved by that Company's board of directors); and three certified copies of docket entries from the Land Records of Pancevo, Yugoslavia.

The Government of Yugoslavia reports that the net value of Pancevo based upon 1938 values was 23,329,336 dinars, and that on the basis of such value, the value per share of stock was 864.04 dinars or \$19.64 (23,329,336 dinars ÷ 27,000 shares).

The Commission has as evidence of value of the stock of Pancevo, in addition to that submitted by claimants and the Yugoslav Government, stock quotations for various years; balance sheets for the year 1938; financial statements from the company's records for the years 1935 through 1944; production records; records of purchases of the stock of Pancevo in September 1938; reports by its own industrial engineer and field investigator based upon on-the-spot examinations of the plant of Pancevo and of three of the apartment buildings (one of the buildings was destroyed during the war); and interviews with persons informed on various aspects of the company's affairs.

The Commission, on consideration of all of the evidence and data before it, is of the opinion that the fair and reasonable value of the stock of Pancevo was \$28 per share.

Crvenka Fabrica Secera A.D.

This item of the claim is based upon an ownership of 2,380 shares of stock (equal to 2.975% of the total outstanding of 80,000 shares) in this sugar factory in Crvenka, Yugoslavia (hereinafter referred to as "Crvenka"). These shares were allegedly owned by the following claimants in the amounts opposite their names:

<u>Name</u>	<u>Number of Shares</u>	<u>Amount of Claim</u>
Walter Petschek	476	\$ 4,337.55
Hans Petschek	476	4,337.55
Grete Gellert	476	4,337.55
Viktor Petschek	476	4,337.55
Estate of Marianne Gellert, deceased	<u>476</u>	<u>4,337.55</u>
Total	2,380	\$ 21,687.75

Crvenka was confiscated pursuant to Decision No. VP 4/2/1946 of December 31, 1946 of the District Court at Kula which became final on January 25, 1947. Examination of the Company's financial statements show that up to December 18, 1939, there were 80,000 shares of stock of a par value of 200 dinars outstanding, and that after that date, the capitali-

gation was successively increased until on April 22, 1940, there were outstanding 120,000 shares of stock of a par value of 500 dinars. An investigator of this Commission has reported that the outstanding capital stock of this Company was increased from 80,000 to 120,000 on April 22, 1940 and the Government of Yugoslavia has also informed the Commission that Crvenka had 120,000 shares of stock outstanding when it was confiscated on January 25, 1947. That Government has also reported that on January 25, 1947 Falter Petschek, Hans Petschek, Grete Gellert, Viktor Petschek and the Estate of Marianne Gellert, deceased, each owned 476 shares of stock of Crvenka and that the certificates for these 2,380 shares were submitted to it for registration pursuant to Decree No. 345 (supra).

In support of their allegations that these 2,380 shares had a value of \$21,687.75, the claimants rely on stock quotations in the Compass and assert that the median price of the shares during the period 1929-1937 was \$8.91 per share using a conversion rate of \$.0225 to 1 dinar.

The Commission has as evidence of value of the stock, a report by its investigator in Belgrade of a personal inspection of Crvenka's factories, stock quotations and financial statements of Crvenka.

The Commission, on consideration of all such evidence, is of the opinion that the fair and reasonable value of the stock of Crvenka was \$10 per share.

Jugoslavansko-ceska Tekstilna Industrija, D.D.  
and  
Beogradska Tekstilna Industrija, A.D.

This item of the claim is based upon an ownership of 316,000 shares of stock (equal to 79% of the total outstanding of 400,000 shares) in Jugoslavansko-ceska Tekstilna Industrija, D.D., a textile factory in Kranj, Slovenia, Yugoslavia (hereinafter referred to as "Jugoceska"). The 20,000 shares of outstanding stock of Beogradska Tekstilna Industrija, A.D., a textile factory in Belgrade, Serbia, Yugoslavia (hereinafter referred to as "Beogradska") were allegedly owned by Jugoceska; therefore, these two companies will be discussed in this section. The 316,000 shares of the parent company, Jugoceska, were allegedly owned by the following claimants and each of them had the interest opposite his or her name:

<u>Name</u>	<u>Fractional Interest</u>	<u>Number of Shares</u>
Walter Petschek, as Trustee under T/I of March 12, 1943 for the benefit of the children of Leopold R. and Marianne Gellert	9/70ths	40,628.571
Walter Petschek, as Trustee under T/I of March 12, 1943 for the benefit of the children of Oswald and Grete Gellert	9/70ths	40,628.571
Walter Petschek, as Trustee under T/I of March 11, 1943 for the benefit of the children of Hans and Eva E. Petschek	1/7th	45,142.857
Leopold Gellert, as Trustee under T/I of March 12, 1943 for the benefit of the children of Walter and Franziska Petschek	1/7th	45,142.857
Elinor Gellert Barber	1/70th	4,514.2865
Peter J. A. Gellert	1/70th	4,514.2865
Viktor Petschek	1/7th	45,142.857
Ruth Petschek Stein	1/7th	45,142.857
Louisa Russ de Jaray (widow of Frederick Petschek, and is not a claimant before the Commission)	1/7th	45,142.857
	<hr/>	<hr/>
	7/7ths	316,000
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Jugoceska and Beogradska were nationalized on December 5, 1946 pursuant to the Nationalization of Private Enterprises Act of December 5, 1946 (Official Gazette No. 98 of December 6, 1946). The Government of Yugoslavia has informed the Commission that Jugoceska and Beogradska had 400,000 and 20,000 outstanding shares of stock, respectively, at the time of their nationalization; that in compliance with the Decree on Issuing and Registering Stock Shares of June 17, 1946, the Secretary of Salay Holdings, Ltd., London (hereinafter referred to as "Salay" - the interest of this Company in these shares will be subsequently discussed), submitted a statement of ownership from which it appeared that it was the owner of 316,000 shares of stock of Jugoceska; that Jugoceska owned all the stock of Beogradska; that Salay was owned by the following persons:

<u>Name</u>	<u>Fractional Interest</u>
(1) Residuary estate of the late Paul Petschek, a Canadian citizen,	1/7
(2) Louise Petschek for herself, and the residuary estate of Frederick Petschek, a citizen of Argentina,	1/7
(3) Hans Petschek, a citizen of the United States,	1/14
(4) Eva E. Petschek, a citizen of the United States,	1/14
(5) Walter Petschek, a citizen of the United States,	1/14
(6) Franziska Petschek, a citizen of the United States,	1/14
(7) Viktor Petschek, a citizen of the United States,	1/7
(8) Grete Gellert, for herself and as trustee of the residuary estate of the late Oswald Gellert, a citizen of the United States,	1/7
(9) Marianne Gellert, a citizen of the United States, and	1/14
(10) Leopold R. Gellert, a citizen of the United States.	1/14

that the certificates for 200,000 shares of stock numbered 1 - 200,000 inclusive, were deposited before World War II with the Banque Franco-Serbe at Belgrade in the name of Mr. Francis Payne Carrington; that the certificates for the other 200,000 shares numbered 200,001 - 400,000, inclusive, were deposited before World War II with the First Croatian Savings Bank, Belgrade Branch, in the name of Lloyd's Bank, Ltd., London, which Bank allegedly held the shares on behalf of Salay (the difference between 316,000 and 400,000, or 84,000, were held by Salay for Francis Storza - a British national); that the certificates for the 200,000 shares on deposit with the Banque Franco-Serbe were withdrawn on the eve of the War and that out of this latter 200,000 shares, 100 thereof were lost when mailed to Bombay, 250 shares were given to Max Horovitz, 150 shares were deposited on behalf of the Board of Directors of Jugoceska and the certificates for the remaining 199,500 shares were taken to Sarajevo where they were allegedly burned in order not to fall into the hands of the Germans.

The Government of Yugoslavia further reports it could not corroborate all of the allegations in the statement of ownership filed by Salay.

However, it had been established that the certificates for 200,000 shares of stock of Jugoceska were deposited with the First Croatian Savings Bank in the name of Lloyd's Bank, Ltd.,; that according to a report of the National Bank, dated October 26, 1954, the certificates for 500 shares of stock of Jugoceska were deposited with the former Banking Society (Bankarsko Drustvo D.D.) Inc., Belgrade; that, according to data supplied by Jugoceska and transmitted by the National Bank in its October 26, 1954 report, 250 shares of Jugoceska were given for safekeeping to Max Horovitz, 150 shares were reserved, and 100 shares which had been sent to Bombay were confiscated and deposited, together with the remaining 400 shares of stock, with the former Banking Society, Inc., Belgrade; that none of the stock of Beogradska was ever registered although a statement of ownership as provided for by the Decree for Issuing and Registering Stock Shares was submitted with the statement of ownership filed for the shares of stock in Jugoceska. That Government has also submitted a copy of a letter from the National Bank of Federal People's Republic of Yugoslavia, dated May 22, 1951, to the Ministry of Finance of the Federal People's Republic of Yugoslavia, Office for the Protection of Yugoslav Property Abroad, which reads in part:

"The former 'Jugoceska,' Inc., - the Yugoslav Czech Textile Industry, Inc., of Kranj, was nationalized. The same had issued 400,000 stock shares in total value of 40,000,000.-Dinars. From our Records it is evident that the entire capital of the said Company was owned by the English firm Salay Holding, of London, which firm reported 84,000 stock shares in favor of a certain Franc Storce, of India, and 316,000 stock shares in favor of various persons and firms of London."

The Government of Yugoslavia suggests that claimants be awarded compensation based on the number of shares of Jugoceska to which they establish ownership.

Claimants allege they acquired their respective interests in Jugoceska and Beogradska under the following circumstances. In 1930 Jugoceska purchased all of the outstanding shares (20,000) of Beogradska and held a 100% interest in this Company thereafter. In 1937 the Petschek family owned 79% of the outstanding stock of Jugoceska (158,000 shares of 200,000) and the remaining 21% thereof was owned by one Emil Storza (father of Francis).

As of March 13, 1939, of the 158,000 shares of stock of Jugoceska held by the Petschek family, 116,000 were carried on the books of Petschek & Company in the names of the following individual partners: Paul Petschek - 16,572, Frederick Petschek - 16,572, Hans Petschek - 16,572, Viktor Petschek - 16,572, Walter Petschek - 20,712, Grete Gellert (nee Petschek) - 14,500 and Marianne Gellert (nee Petschek) - 14,500. The other 42,000 shares which were purchased in 1936 by the Petscheks from Bohumil Stein continued to be carried on the books of the Company in his name as nominee for the partners of Petschek & Company. Various debt obligations of Jugoceska and of Beogradaska (described hereinafter) to Petschek & Company were carried on the books of Petschek & Company as assets of the partnership.

When the Germans invaded Czechoslovakia in March 1939, the Petscheks were afraid the Nazis would obtain control of their Yugoslav assets through seizure of control of Petschek & Company, a Czechoslovakian partnership. To escape this possibility, Walter Petschek, as agent for the partners of Petschek & Company, transferred to Salay, by an Agreement of March 13, 1939, supplemented by an Agreement of May 26, 1939, the following property for which Salay issued income debenture stock in the amount of \$350,000 in payment thereof, in equal parts, to the seven partners named in the paragraph immediately preceding:

- (1) 79% (158,000) of the shares of Jugoceska
- (2) Claims against Jugoceska:
  - (a) U. S. Gold \$269,533, including accrued interest to March 15, 1939
  - (b) U. S. Gold \$723,904, including accrued interest to March 15, 1939
  - (c) One-half of U. S. \$224,731.75, including accrued interest to March 15, 1939
  - (d) One-half of U. S. \$56,993.89, including accrued interest to April 15, 1939
  - (e) One-half of U. S. \$87,190.97, including accrued interest to April 15, 1939
- (3) 79% of a claim of 47,061,300 dinars against Beogradaska
- (4) 61,290 shares of Zagyvapalfalvaer Glasfabrik (a Hungarian company).

At the same time, Francis Storza transferred the following property to Salay:

- (1) 21% (42,000) of the shares of stock of Jugoceska
- (2) 21% of the claim of 47,061,300 dinars against Beogradska
- (3) Claims against Jugoceska:
  - (a) 50% of \$224,731.75
  - (b) 50% of \$ 56,993.89
  - (c) 50% of \$ 87,190.97

(Salay, an English company, incorporated on January 30, 1929, changed its name from "Salay Oil Lands, Ltd.," to "Salay Holdings, Ltd." in 1944.)

On June 22, 1939 the shares outstanding of Jugoceska were increased from 200,000 to 400,000 and Salay subscribed for the total increase of 200,000 of which 158,000 were for itself and the remaining 42,000 for Francis Storza. These new shares were paid for by reducing certain of the receivables held by Salay from Jugoceska. After the aforesaid purchase of the new stock of Jugoceska, Salay then held the following equities in Jugoceska and indirectly in Beogradska for the income debenture stockholders and for Storza:

- (1) 100% of the shares of Jugoceska (79% thereof against its income debenture stock for the seven members of the Petschek family and 21% thereof for Storza).
- (2) 100% of the capital stock of Beogradska owned by Jugoceska.
- (3) Debt claims against Jugoceska with interest up to and including April 30, 1940 as follows:
  - (a) \$734,650.89 in Gold with \$1,215.56 thereof held for Storza and the balance against the income debenture bonds.
  - (b) \$152,932.38 with one-half thereof held for Storza and the remainder held against the income debenture bonds.
- (4) A debt claim against Beogradska of 47,965,709.87 dinars which included interest up to November 1, 1939, with 37,892,910.80 thereof being held against the income debenture bonds and the balance of 10,072,799.07 held for Storza.

The claimants have furnished an affidavit of May 22, 1951 by Francis Storza regarding the disposition of the certificates for 200,000 shares of Jugoceska (those other than the 200,000 deposited with the First Croatian Savings Bank in the name of Lloyd's Bank, Ltd., on behalf of Salay), 20,000 shares of Beogradska and 6,000 shares of Cotonia. The affiant stated that in January 1941 he and Mr. Max Horovitz, the General Manager of Jugoceska, removed the certificates for 199,850 bearer shares of Jugoceska (numbers 151 - 200,000) and 20,000 shares of Beogradska (numbers 1 - 20,000 from safe deposit box #11 at the Banque Franco-Serbe

in Belgrade. (This safe was rented in the name of Francis Payne Carrington, a Director of Salay). These shares of Jugoceska and Beogradska, with newly issued 6,000 shares of Cotonia (discussed hereafter), were hidden in the affiant's apartment in the Beogradska plant. On March 7, 1941, the certificates for 100 shares of Jugoceska (numbers 152,501 - 152,600) were mailed to Francis Klein in Bombay, India but they were lost in transit.

The affiant alleges that he and Mr. Horovitz had been authorized by Salay to burn the certificates for these shares rather than permit them to fall into the hands of the Germans, and that they had been instructed to do so if possible in the presence of a notary and mail the notarial document certifying destruction to an allied country. It is alleged that these two individuals had determined, in the event of a German invasion, to send the certificates to Sarajevo to be held there by Dr. Oto Horovitz, brother of Max, and by Dr. Radaslav Budimlic's sister, whose married name the affiant does not know. After the affiant's departure from Belgrade on March 9, 1941, he had no further direct knowledge of the disposition of the certificates for the shares of Jugoceska, Beogradska and Cotonia. However, the affiant allegedly was in Prague from June to August 1947 when he talked with Mr. Joseph Kricner, the Technical Manager of the Beogradska plant, whom he left in charge on his departure in March 1941, and when he visited Salzburg, Austria in September 1947, he talked with his former secretary, Mrs. Xenija Asseiew, who had remained at the Beogradska plant until October 1944.

The affiant states that on the basis of these conversations, and prior correspondence with Mr. Kricner and Mrs. Asseiew, he alleges, upon information and belief, that on or about March 25, 1941 Mr. Max Horovitz removed the certificates for 250 shares of Jugoceska (numbers 152,701 - 152,950) from their hiding place to be used as Directors' qualifying shares. On March 30, 1941 Mr. Kricner, after consulting with Mr. Iesic, General Manager of the Anglo-Prague Bank in Belgrade, sent the remaining shares (199,500 of Jugoceska, 20,000 of Beogradska, and 6,000 of Cotonia) to Sarajevo to be held by Dr. Oto Horovitz and Dr. Budimlic's sister. Dr. Budimlic later informed Mr. Kricner that the certificates for the shares had been hidden by his sister and that when the Germans were

approaching Sarajevo the certificates were burned in the presence of Dr. Oto Horovitz (who was deported from Yugoslavia by the Germans and has not been heard from) and the sister of Dr. Radaslav Budimlic on the order of Dr. Oto Horovitz but no Notary Public was present to certify as to their destruction.

The claimants have furnished an affidavit of June 20, 1951 by Ernesto Lechner, in which he stated that "the attached document is a cable received by me from Mr. Josef Kricnar on October 25, 1945." This document appears to be a radiogram (on a printed form entitled "RADIOGRAMA-S.A. Radio Argentina" with a stamped receipt date of 1945 Oct 25) and the verified translation thereof states:

"MK 36 WMM JG  
Chrudim 25 25 1200

Ernest Lechner Reconquista 336 Argentina

The shares of Belgrade Jugoceska at Sarajevo  
have been burnt. We should meet again greetings.

Josef Kricnar Chrudim Rio 1 113"

(It should be noted that no reference is made to the shares of Cotonia and Beogradska unless Belgrade refers to either or both.)

The circumstances regarding the issuance of the 6,000 shares of Cotonia are explained as follows: Claimants have filed an affidavit of May 22, 1951 by Francis Storza wherein the affiant alleged that the owners of Jugoceska were apprehensive in 1940 of the German invasion of Yugoslavia and feared that when the Germans reached Kranj, which was only a short distance from the Austrian border, they would seize Jugoceska and thereby control Beogradska even though they did not invade Serbia and occupy Belgrade. Max Horovitz, the General Manager of Jugoceska and the affiant, after conferring with Mr. Walter Petschek and Mr. Lechner, decided to form a new Yugoslav holding corporation to take over the ownership of Beogradska and Jugoceska. The new company was incorporated on August 14, 1940 as a Serbian corporation under the name of Cotonia and registered on August 29, 1940. The original capitalization of Cotonia was 6,000 shares of 500 dinars per share. The shares were to be purchased by Salay but were to be issued to Serbian nominees. In the fall of 1940, Cotonia concluded a Purchase Agreement with Jugoceska under which the entire capital stock of Beogradska was purchased for 15,000,000

dinars, 3,000,000 dinars being paid at the time of signing the Purchase Agreement, four annual instalments of 1,000,000 dinars each to be made from 1941 through 1944 and instalments of 2,000,000 dinars each to be made from 1945 to 1948. The share certificates were printed and allegedly turned on instructions of Salay's representative in Yugoslavia. After the occupation of Yugoslavia, the German authorities annulled the entire transaction by which Beogradska had been sold to Cotonia, and ordered the refund to Cotonia of 3,000,000 dinars paid as the first instalment on the purchase price. In addition, the German Board of Directors increased the capitalization for Beogradska from 10,000,000 to 20,000,000 dinars, appropriating for this purpose a 10,000,000 dinar deposit of Jugoceska with the Izvezna Banka in Belgrade. Forty thousand of the new shares of the par value of 500 dinars per share were issued and the 20,000 old shares (turned at Sarajevo, although the Germans did not know that at the time) were declared invalid. However, the amortization notice referring to the old shares was published in the daily newspaper rather than the official Bulletin as required under Yugoslav law. The information furnished to the Commission by the Government of Yugoslavia regarding Cotonia agrees substantially with the foregoing.

Pursuant to an Agreement of November 20, 1947, the income debenture bonds in the amount of £350,000, which were issued by Salay to various members of the Petschek family in 1939 in payment for certain assets assigned to it, were cancelled and Salay transferred the following property to Charles A. Martin and Harry Hollitscher for the benefit of the four trustees and five individuals named on page 8 hereof:

- (1) 316,000 shares of stock of Jugoceska. (Jugoceska owned all of the stock of Beogradska).
- (2) Claim of U. S. Gold \$973,543.47 (including accrued interest to December 31, 1940, and after giving effect to exchange rates) against Jugoceska.
- (3) Claim of \$79,588.56 against Jugoceska (including accrued interest to December 31, 1940).
- (4) Claim of 40,402,403.02 dinars (including accrued interest to December 31, 1940) or \$909,054.07 at \$.0225 to the dinar against Beogradska.

The assets which were transferred to Martin and Hollitscher by Salay on November 20, 1947 were not the same as those received from the Petscheks in 1939, for example, the outstanding shares of stock of Jugoceska had

been increased from 200,000 to 400,000 all of which were acquired by Salay; therefore, 316,000 shares of Jugoceska were transferred by it to Martin and Hollitscher although only 158,000 had been received from the Petscheks. The creditor rights against Jugoceska received by Salay from the Petscheks were used to finance the additional shares. It should also be noted that the persons named or described in the first paragraph of page 11 hereof who assigned certain assets to Salay in 1939 for which they received income debenture bonds of that Company are not the same as those persons who are the beneficiaries of the assets transferred to Martin and Hollitscher by Salay in 1947. The present beneficiaries are the four trustees and five individuals named or described on page 8 hereof. This change was the result of certain of the original transferors conveying their income debenture bonds to various trusts for the benefit of their children. The aforesaid Charles A. Martin and Harry Hollitscher have requested the Commission to make any awards for the property transferred to them by Salay directly to the four trustees and the five individuals named on page 8 hereof.

On the basis of all evidence before it, the Commission is of the opinion that the four trustees and the five individuals named or described on page 8 hereof were the owners of the number of shares of stock of Jugoceska opposite their names and that Jugoceska was the sole owner of Beogradska when the latter Company was nationalized by the Government of Yugoslavia on December 5, 1946.

In addition to data and documents purporting to establish the values claimed for the properties taken, the claimants submitted evaluation reports by Sanderson & Porter, consulting engineers. Sanderson & Porter, unable to visit the property, perforce had to rely upon information furnished to it by claimants and former employees of Jugoceska and Beogradska. With this and other information on hand, the balance sheets of Jugoceska and Beogradska were adjusted as of December 31, 1940 ". . . in order to reflect the actual depreciated value on that date of real estate, plant and equipment . . ." Certain additional technical adjustments were also made and a net worth for Jugoceska of \$2,533,123.66 and for Beogradska of \$890,331.73, were found. Sanderson & Porter then capitalized the 1940 earnings (as reported by the claimants) in excess of 6% on a five-times

basis and arrived at goodwill values of \$812,280.75 for Jugoceska, and \$153,333.90 for Beogradska. Sanderson & Porter next estimated, assuming the properties had remained ". . . in substantially the same condition except for normal depreciation . . .", that between the 1940 balance sheet date and December 31, 1946, the depreciated value of Jugoceska would have increased \$666,000, and Beogradska \$500,000.

Claimants rely primarily on the Sanderson & Porter estimates which ascribe total values, upon the bases indicated hereinabove, of \$4,031,404.41 for Jugoceska and \$1,543,665.63 for Beogradska.

In summary, the Government of Yugoslavia reports the values of Jugoceska and Beogradska as follows:

(a) Jugoceska. The District Court in Kranj, relying upon Yugoslav evaluation experts, evaluated the net property by decision (No. 11.R.837/54 rendered October 23, 1954) at 18,115,195.25 dinars in terms of 1938 values. Converted to dollars the evaluation given amounts to \$411,708.98, or \$1.03 per share for each of the 400,000 shares outstanding.

(b) Beogradska. The District Court in Belgrade, relying upon Yugoslav evaluation experts, evaluated the net property by court decision (No. 74/53 rendered October 26, 1954) at 19,822,262.25 dinars in terms of 1938 values. Converted to dollars the evaluation given amounts to \$450,505.95, or \$22.53 for each of the 20,000 shares outstanding.

Two of the Commission's investigators examined the properties during the summer of 1954. They worked independently of each other, visiting the plants at different times, turning in separate evaluation reports. Their reports show that Jugoceska, located near Ljubljana on about 40 acres, had been the principal textile property and that, at the time of the occupation in 1941, the machinery and equipment was relatively new, automatic and efficient. The Germans, upon taking over the factory in April 1941, promptly removed all machinery and equipment related to the textile business. Some was sent to Germany and Austria, and some to other factories in Yugoslavia, i.e., to Intex, to Jugobruno, and to Thaler. On August 1, 1941, the Germans brought in machinery for the making of precision instruments, electronic equipment, etc. No books or records relating to the

operations prior to 1941 were found and it was reported that such records were all destroyed during the war.

The Germans in 1945 moved out most of the machinery and equipment installed by themselves in 1941 and it is estimated that the "German" machinery left in the plant had a value of about \$100,000. There was considerable war damage to the buildings from bombings and artillery fire, but the Germans repaired the buildings promptly and our investigators report that the repairs restored the buildings so that, in effect, there was no final war damage loss.

Certain financial data respecting the operations of Jugoceska as a going concern during the 1930's were found in "COMPASS" but it was not possible to determine whether intercompany items with Beogradska, its wholly-owned subsidiary in Belgrade, were included.

In view of the fact that the Government of Yugoslavia did not take over a going concern, as regards Jugoceska, but merely land, buildings and machinery left by the Germans and some former power equipment unrelated to the textile business, our investigators, ignoring any concept of going-concern value, evaluated the physical property taken in 1946 in terms of 1938 values. One found a physical value of \$700,000 and one found \$726,000. Neither included in the above valuations an amount of \$100,000 as the value of the machinery left by the Germans.

Our investigators report that Beogradska, located in Belgrade, was located on a  $9\frac{1}{2}$  acre tract; that although there was an expansion (after acquisition by Jugoceska) in 1932-34, the machinery and equipment installed was neither new nor automatic as claimed; as an example, an affidavit that Sanderson & Porter perforce relied on says 200 new, modern machines were installed in Beogradska. Our investigators could not find evidence that such machinery was ever installed in Beogradska. That about one-half of the buildings and half of the machinery at Beogradska were destroyed in 1941, 1944 and 1945 bombings; that, although the occupier made some repairs, the war damage was and remained very severe; that, upon occupation in 1941, the Germans took all products without payment; that, upon liberation in 1945, a mob of people following the army ransacked the premises taking nearly everything movable. However, the plant was in operation as a going textile concern when taken by the Government of Yugoslavia.

There were no books or records respecting operations in the 1930's (all having been destroyed during the war) and no reliance was placed in "COMPASS" data as the treatment, if any, accorded intercompany items could not be determined. (Compass indicated small earnings for Beogradska during the 1930's [except for the war year 1939] and also for the year 1940). The reliable financial data which was available was insufficient to justify an evaluation as a going concern.

Our two investigators independently evaluated the physical property, which was taken by the Government of Yugoslavia, at \$700,000 and \$741,000, based on 1938 values, with no consideration having been given to the other assets and to the liabilities.

The Commission finds that, based upon all the information before it, the reports of evaluation respecting Jugoceska and Beogradska submitted by claimants, do not substantiate the claims made for the following reasons:

- (1) The Yugoslav Government did not take over a going concern in respect to Jugoceska, with goodwill value and other attributes of a going concern;
- (2) The data upon which Sanderson & Porter relied was not accurate in respect to Beogradska, as the automatic machinery and certain other machinery purportedly installed in the early 1930's was neither present as represented to Sanderson & Porter and to this Commission; and
- (3) No reliable financial data were found to support the net worth values claimed.

Based upon an analysis of the information furnished by claimants, by the Government of Yugoslavia, by our investigators resulting from visits to the properties, interviews with present directors, discussions with Yugoslav officials, and from information in the files of the Government of Yugoslavia and from information in its own files, the Commission is of the opinion that the fair and reasonable value of Jugoceska and Beogradska (with a consideration of all the assets and of all the liabilities as reflected by Balance Sheets of these two companies dated May 9, 1945 and November 25, 1944, respectively) was \$825,000 and \$575,000, respectively. The consolidated total of \$1,400,000 represents the true value of the

400,000 shares of Jugoceska for that Company was the sole owner of Beogradska at the time of its nationalization by the Government of Yugoslavia, and the Balance Sheet of May 9, 1945 for Jugoceska does not contain an investment account for its holding in Beogradska. Each share of Jugoceska had, therefore, a value of \$3.50.

Claims Against Jugoceska and Beogradska

- (1) By the four trustees and the five individuals named or described on page 8 hereof of the following claims:
- (a) U. S. Gold of \$973,543.47 (including accrued interest to December 31, 1940 and after giving effect to exchange rates) against Jugoceska.
  - (b) \$79,588.56 (including accrued interest to December 31, 1940) against Jugoceska.
  - (c) 40,402,403.02 dinars (including accrued interest to December 31, 1940) or \$909,054.07 (conversion rate of \$.0225 to the dinar) against Beogradska.
- (2) By the following persons of claims of 2,876,139.02 Czech crowns, or \$99,802.02 (as converted by claimants and including accrued interest through December 31, 1940) and of 6,916,074.62 dinars, or \$155,611.67 (as converted by claimants and including accrued interest through December 31, 1940) against Jugoceska and Beogradska, respectively:

<u>Name</u>	<u>Interest</u>
(a) Walter Petschek	1/7th
(b) Hans Petschek	1/7th
(c) Grete Gellert	1/7th
(d) Viktor Petschek	1/7th
(e) Estate of Marianne Gellert, deceased	1/7th
(f) Louisa Russ de Jaray	1/7th
(g) Estate of Paul Petschek, deceased	<u>1/7th</u>
Total	<u>7/7ths</u>

The persons named or described in (f) and (g) above are not claimants herein. Salay has acted as Trustee for these seven persons for these two debt claims since July 1, 1939 and May 14, 1939, respectively.

(3) For a bank account of 6,319,890 dinars, or \$126,397.80 with Prva Hrvatska Stedionica in Belgrade for the account of Salay. As Salay was owned entirely by the following persons, this deposit was owned indirectly by them:

<u>Name</u>	<u>Interest</u>
(a) Walter Petschek	1/14th
(b) Franziska Petschek	1/14th
(c) Hans Petschek	1/14th
(d) Eva Petschek	1/14th
(e) Leopold Gellert	1/14th
(f) Grete Gellert	1/14th
(g) Estate of Marianne Gellert, deceased	1/14th
(h) Estate of Oswald Gellert, deceased	1/14th
(i) Viktor Petschek	1/7th
(j) Louisa Russ de Jaray	1/7th
(k) Estate of Paul Petschek, deceased	<u>1/7th</u>
Total	<u>7/7ths</u>

(The persons named or described in (j) and (k) above are not claimants herein.)

The Commission has consistently held that creditor claims do not come within the purview of the Yugoslav Claims Agreement of 1948; therefore, those claims described as (1) and (2) in the paragraph immediately preceding are denied. By Proposed Decision No. 265 of July 1, 1952, item (3) in the paragraph immediately preceding was denied and at a hearing held before the Commission on December 10, 1952, evidence was introduced that a license had not been obtained from the Yugoslav Government by Jugoceska to make such a deposit; therefore, the account continued to be an asset of the Company whereupon the Proposed Decision was made final. The fact that this deposit was an asset of Jugoceska was considered in arriving at the value of that Company.

As stated above, Ruth Petschek Stein, an individual claimant, became a national of the United States on February 17, 1947, and Max E.D. Gellert, one of the beneficiaries under the Trust Indenture of March 12, 1943 in which Walter Petschek was named as Trustee for the benefit of the children of Leopold R. and Marianne Gellert, became a citizen of the United States on July 22, 1948. The Agreement of July 19, 1948, between the Governments of the United States and Yugoslavia settled "all claims of nationals of

"the United States" for the "nationalization or other taking by Yugoslavia of property" (Article 1), who were nationals of the United States "at the time of nationalization or other taking" (Article 2). It expressly excluded nationals of the United States "who did not possess such nationality at the time of the nationalization or other taking" (Article 3). As to Max E. D. Gellert, it is contended that since Walter Petschek, the Trustee, became a national on May 20, 1946, a date prior to the date of the nationalization of the corporations involved in the claim, he (Max E. D. Gellert) as one of the beneficiaries under the trust, is eligible for an award under the Yugoslav Claims Agreement of July 19, 1948.

It is conceded that Walter Petschek, as Trustee, was the legal owner of the assets of the trust which included an interest in Jugoceska but the equitable owners of such assets were the beneficiaries of the trust, one of whom was Max E. D. Gellert. The Government of the United States in its diplomatic espousal of claims looks to the citizenship of the real or equitable owner of the claim as distinguished from the nominal or ostensible owner (Borchard, The Diplomatic Protection of Citizens Abroad, pp. 642-643). It is also a well settled principle of international law that to justify diplomatic espousal, a claim must be national in origin; that it must, in its inception, belong to those to whom the state owes protection and from whom it is owed allegiance (Borchard, supra, p. 666). Not only was Max E. D. Gellert not a citizen at the time of the nationalization, but he did not become a citizen until July 22, 1948, a date subsequent to the Agreement of July 19, 1948, between the Governments of the United States and Yugoslavia. Since claimants Ruth Petschek Stein and Max E. D. Gellert were not nationals of the United States at the time of taking, their claims were not settled by the Agreement of July 19, 1948, and they are not, therefore, within the jurisdiction of this Commission.

#### DECISION

On the above evidence and grounds, the claims by Eva E. Petschek, Franziska Petschek, Leopold Gellert, Ruth Petschek Stein and the Estate of Oswald Gellert, deceased, are denied.

The claims of the following-named persons are allowed and awards are hereby made to them in the amounts opposite their names, with interest thereon at 6% per annum from the dates of taking of the property by the Government of Yugoslavia, to August 21, 1948, the date of payment by that

	<u>Principal</u>	<u>Interest</u>
<u>Hans Petschek:</u>		
(1) 554 shares of Pancevo at \$28 per share, which Company was nationalized on December 5, 1946	\$ 15,512	\$ 1,593.70
(2) 476 shares of Crvenka at \$10 per share, which Company was confiscated on January 25, 1947	<u>4,760</u>	<u>447.57</u>
Total	\$ 20,272	\$ 2,041.27

<u>Viktor Petschek:</u>		
(1) 553 shares of Pancevo at \$28 per share, which Company was nationalized on December 5, 1946	\$ 15,484	\$ 1,590.83
(2) 476 shares of Crvenka at \$10 per share, which Company was confiscated on January 25, 1947	4,760	447.57
(3) 45,142,857 shares of Jugoceska at \$3.50 per share, which Company was nationalized on December 5, 1946	<u>158,000</u>	<u>16,232.92</u>
Total	\$ 178,244	\$ 18,271.32

<u>Elinor Gellert Barber:</u>		
4,514,2865 shares of Jugoceska at \$3.50 per share, which Company was nationalized on December 5, 1946	\$ 15,800	\$ 1,623.29

<u>Peter J. A. Gellert:</u>		
4,514,2865 shares of Jugoceska at \$3.50 per share, which Company was nationalized on December 5, 1946	\$ 15,800	\$ 1,623.29

<u>Walter Petschek (individually):</u>		
(1) 554 shares of Pancevo at \$28 per share, which Company was nationalized on December 5, 1946	\$ 15,512	\$ 1,593.70
(2) 476 shares of Crvenka at \$10 per share, which Company was confiscated on January 25, 1947	<u>4,760</u>	<u>447.57</u>
Total	\$ 20,272	\$ 2,041.27

	<u>Principal</u>	<u>Interest</u>
Walter Petschek, as Trustee under T/I of March 12, 1943, for the benefit of the children of Leopold R. and Marianne Gellert:		
40,628.571 shares of Jugoceska at \$3.50 per share, which Company was nationalized on December 5, 1946	\$ 142,200	\$ 14,609.63
Less the 1/5th interest of Max E. D. Gellert, who was not a national of the United States on December 5, 1946, in the 1/7th interest of the Trustee in Jugoceska (1/5 of \$158,000)	<u>31,600</u>	<u>3,246.58</u>
Net	\$ 110,600	\$ 11,363.05
	<u><u>          </u></u>	<u><u>          </u></u>

Walter Petschek, as Trustee under T/I of March 12, 1943, for the benefit of the children of Oswald and Grete Gellert:		
40,628.571 shares of Jugoceska at \$3.50 per share, which Company was nationalized on December 5, 1946	\$ 142,200	\$ 14,609.63
	<u>          </u>	<u>          </u>

Walter Petschek, as Trustee under T/I of March 11, 1943, for the benefit of the children of Hans and Eva Petschek:		
45,142.857 shares of Jugoceska at \$3.50 per share, which Company was nationalized on December 5, 1946	\$ 158,000	\$ 16,232.92
	<u>          </u>	<u>          </u>

Leopold R. Gellert, as Trustee under T/I of March 12, 1943 for the benefit of the children of Walter and Franziska Petschek:		
45,142.857 shares of Jugoceska at \$3.50 per share, which Company was nationalized on December 5, 1946	\$ 158,000	\$ 16,232.92
	<u>          </u>	<u>          </u>

	<u>Principal</u>	<u>Interest</u>
Leopold R. Gellert, as Executor of the Estate of Marianne Gellert, deceased:		
(1) 554 shares of Pancevo at \$28 per share, which Company was nationalized on December 5, 1946	\$ 15,512	\$ 1,593.70
(2) 476 shares of Crvenka at \$10 per share, which Company was confiscated on January 25, 1947	<u>4,760</u>	<u>447.57</u>
Total	\$ 20,272	\$ 2,041.27
	<u><u>          </u></u>	<u><u>          </u></u>

Grete Gellert:

(1) 553 shares of Pancevo at \$28 per share, which Company was nationalized on December 5, 1946	\$ 15,484	\$ 1,590.83
(2) 476 shares of Crvenka at \$10 per share, which Company was confiscated on January 25, 1947	<u>4,760</u>	<u>447.57</u>
Total	\$ 20,244	\$ 2,038.40
	<u><u>          </u></u>	<u><u>          </u></u>

Dated at Washington, D. C.

NOV 29 1954

I hereby certify that the within is a true and correct copy of  
the original Proposed Decision on file with the Commission.

A. C. Coates  
Deputy Clerk of the Commission

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

In the Matter of the Claim of

FRANCESKA HETSCHER,  
Birchhill Drive,  
Scarsdale, New York.

HANS HETSCHER  
Park Road,  
Scarsdale, New York.

EVA H. HETSCHER,  
54 Park Road,  
Scarsdale, New York.

VICTOR HETSCHER,  
85 East End Avenue,  
New York, New York.

ELINOR GILBERT BARNER,  
35 Bronxide Lane,  
Dobbs Ferry, New York.

RUTH HETSCHER STEIN,  
49 Shehrake Road,  
Scarsdale, New York.

PETER J. A. GELLART,  
Huntington Avenue and Park Drive,  
Ivy, New York.

WALTER HETSCHER,  
Birchhill Drive,  
Scarsdale, New York.

- (1) Individually,
- (2) As Trustee under T/I of December 22, 1942 for the benefit of the children of Leopold H. and Marjorie Gellart,
- (3) As Trustee under T/I of December 22, 1942 for the benefit of the children of Oswald and Grete Gellart, and
- (4) As Trustee under T/I of March 11, 1943 for the benefit of the children of Hans and Eva H. Hetscher.

Docket No. F-1195

Decision No. 265-A

REGINALD N. GELBERT,  
Windsor Road,  
Rye, New York.

- (1) Individually,
- (2) As Trustee under T/1 of  
December 22, 1942 for the  
benefit of the children of  
Walter and Franziska Potochok,  
and
- (3) As Executor of the Estate of  
Bertranne Gelbert, deceased

GRACE GELBERT,  
Manhattan Avenue and Park Drive,  
Rye, New York.

- (1) Individually, and
- (2) As Executrix of the Estate of  
Oswald Gelbert, deceased

Under the Yugoslav Claims Agreement  
of 1948 and the International Claims  
Settlement Act of 1949

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Counsel for Claimants:

S. THOMAS BROWNE, Jr.  
CHARLES S. BULLLEY  
JOHN R. STEWERSCH  
of  
Sullivan and Crosswell,  
48 Wall Street,  
New York, New York.

**EQUAL DECISION**

On November 29, 1954, the Commission issued its Proposed Decision herein making awards to various claimants (10 individuals, 4 trusts and 2 estates named and described in the Proposed Decision) totaling \$859,704 principal and \$88,113.63 interest. The awards were based on the nationalization or other taking by the Government of Yugoslavia of 4 Yugoslav corporations, in which the claimants owned shares of stock either directly or indirectly. The Commission determined that each share of stock of Piva Mehanicka Fabrika A.D., Pancevo (hereinafter referred to as "Pancevo") should be valued at \$28; that each share of stock of Crvenka Fabrica Sekera A.D. (hereinafter referred to as "Crvenka") should be valued at \$10; and that

each share of Jugoslaviansko-ovska Tekstilna Industrija, D.O. (hereinafter referred to as "Jugosovka") should be valued at \$3.50. Beogradska Tekstilna Industrija, A.O. (hereinafter referred to as "Beogradina") was wholly owned by Jugosovka, and the net value of Beogradina was included in the assets of Jugosovka in determining the value of a share of stock of the latter company. Both the Government of Yugoslavia and the claimants have filed objections to the Proposed Decision.

As set forth above, among the claimants herein, were 4 trusts. The Proposed Decision recites that Walter Peteschek, in addition to being a claimant individually, is a claimant in the following capacities: As Trustee under a Trust Indenture of March 12, 1943 for the benefit of the children of Leopold R. and Marianne Gellert; as Trustee under a Trust Indenture of March 12, 1943 for the benefit of the children of Oswald and Grete Gellert. The correct date of these two Trust Indentures referred to, is December 22, 1942, and not March 12, 1943 as shown in the Proposed Decision. The Proposed Decision also sets forth that Leopold R. Gellert, in addition to being a claimant individually, is a claimant as a Trustee under a Trust Indenture of March 12, 1943 for the benefit of the children of Walter and Franziska Peteschek. The correct date of this last Trust Indenture is December 22, 1942. Correcting the dates of the several Trust Indentures will not change the substance of the Proposed Decision.

The Government of Yugoslavia has filed a brief as ~~amicus curiae~~ which has been duly considered by the Commission. Claimants object (a) to the value of \$28 placed by the Commission on each share of "Pancevo", contending that each share should be valued at "not less than its book value on December 31, 1938, less appropriate deduction for the apartment building destroyed during the war" and (b) to the

value of \$3.50 placed by the Commission on each share of stock of Jugoskoin, alleging that this amount failed to include a building in Belgrade owned by Jugoskoin.

In arriving at the value of \$28 per share for Pancevo, the Commission had in addition to the material filed by the claimants and the Government of Yugoslavia, stock quotations for various years; balance sheets for the year 1938; financial statements from the company's records for the years 1935 through 1944; production records; records of purchase by one of the claimants of the stock in September 1938; reports by its own industrial engineer and field investigator based upon on-the-spot examinations of the plant of Pancevo and of three of the apartment buildings (one of the buildings was destroyed during the war); and interviews with persons informed on various aspects of the company's affairs. Claimant submitted a brief in support of these objections, drawing certain conclusions from a balance sheet of Pancevo for December 31, 1938, and alleging that the reasonable value of a share of stock of Pancevo was not less than its book value on December 31, 1938, less a deduction for an apartment building destroyed during the war.

On December 9, 1954, a hearing was held before this Commission, pursuant to another claimant's request, at which hearing additional evidence and argument in support of that claimant's contention that the value of each share of stock of Pancevo was more than \$28 was presented.

In determining the value of property taken by the Government of Yugoslavia, the Commission is not bound by any one item of evidence but arrives at a value after consideration of all the evidence and data before it. After careful review and consideration of all of the evidence and data now before the Commission, including claimants' written objections, the additional evidence and oral argument submitted at the December 8, 1954, hearing, the Commission is of the opinion that the fair and reasonable value of each share of stock of Pancevo was \$32 per share.

In arriving at a value of \$3.50 for each share of Jugoska, the Commission determined that the assets of Jugoska were \$425,000 and the assets of Beogradska were \$575,000, respectively, the consolidated total of \$1,400,000 representing the value of the 400,000 shares of Jugoska. In arriving at the aforementioned totals, the Commission gave consideration to information furnished by claimants, by the Government of Yugoslavia, by its investigators resulting from visits to the properties, interviews with present directors, discussions with Yugoslav officials and the assets and liabilities as reflected by a balance sheet of these two companies dated May 9, 1945 and November 25, 1944.

Claimants assert that the Commission's investigators in evaluating the physical property of Jugoska did not include a building in Belgrade owned by Jugoska, which building they value at \$57,353.30. Investigation has disclosed that this parcel of real property was not in their valuations of the physical property of Jugoska. By a report dated December 10, 1954, the Commission's investigator in Belgrade has reported that this parcel of real property is recorded as parcel No. 725 under Docket No. 1089 of the Central District of Belgrade; that it has an area of 504.5 square meters; that it was purchased in 1939 by Jugoska from Avram Koca and was transferred in 1943 to Beogradska; that all the improvements on the lot were destroyed by bombing during the war; that the land is now a small park; and that its reasonable valuation in 1938 was 605,400 dinars.

The Commission is of the opinion, on the basis of all evidence and data before it, that the fair and reasonable value of the real property recorded under Docket No. 1089, which was taken by the Government of Yugoslavia, was 605,400 dinars as of the year 1938. That amount converted into dollars at the rate of 44 dinars to \$1, the rate adopted by the Commission in making awards based upon 1938 valuations, equals \$13,759.09.

After careful review and consideration of all evidence and data now before it, including claimants' written objections and the additional evidence submitted by claimant and by its investigators, the Commission is of the opinion that the consolidated total assets of Jugoskita and Beogradskita was \$1,413,799.09, and that the fair and reasonable value of each share of stock of Jugoskita was \$3.53 per share.

Claimants, without questioning the findings of the Commission, evidence concern that certain statements in the Proposed Decision relating to machinery in Beogradskita in 1954 (the date of the investigation made by the Commission's investigator) or on December 5, 1946 (the date of nationalization) may be subject to the implication that they misrepresented the facts when supplying information as to such machinery. Specifically, claimants feel that the statement on page 22 of the Proposed Decision that, "Our investigators report that Beogradskita, located in Belgrade, was located on a  $9\frac{1}{2}$  acre tract; that although there was an expansion (after acquisition by Jugoskita) in 1932-34, the machinery and equipment installed was neither new nor automatic as claimed; as an example, an affidavit that Sanderson & Porter purports relied on says 200 new, modern machines were installed in Beogradskita," and that sub-head (2) on page 23 may create a misleading impression that they represented both the age of the machinery and that the machinery was in the plant in 1946. Claimants assert that in describing the machinery they did not make any representation as to its age, merely stating that the average age was 12 years as of December 31, 1940, and hence 18 years old on the date of nationalization.

Similarly, they assert that they did not represent that the machinery was in the plant in 1946. It is noted that the Commission's

Investigators made an investigation of Neogradiska in 1944, while claimants supplied information as to the machinery as of December 31, 1940. It is also noted that the Commission's investigators reported -- and the Proposed Decision so stated -- that half of the machinery was destroyed in 1941, 1944 and 1945. It is clear, therefore, that the difference both as to the age of the machinery and whether or not it was in the plant in 1946, may well be attributable to the time differences, between the date the Commission's investigators made their investigation (1944) and the date with respect to which claimants supplied the information (December 31, 1940) and to the war damage, and not to any misrepresentation by the claimants, and nothing in the Proposed Decision is to be construed as a reflection upon the integrity of the claimants.

The Commission hereby adopts the Proposed Decision, with the changes which have been already made herein and with the following changes, as its Final Decision on the claim:

1. The value of each share of stock of Banovo is found to be \$32 rather than the lesser amount set forth in the Proposed Decision.
2. The value of each share of stock of Jugosaska is found to be \$3.53 rather than the lesser amount set forth in the Proposed Decision.

Accordingly, in full and final disposition of the claim, awards are hereby made to the following-named persons in the amounts opposite their names, with interest thereon at 6% per annum, from the dates of taking of the property by the Government of Yugoslavia, to August 21, 1948, the date of payment by that Government:

Principal                      Interest

Petachek:

(1) 554 shares of Pancevo at \$32 per share, which Company was nationalized on December 5, 1946	\$ 17,728	\$ 1,821.37
(2) 476 shares of Crvenka at \$10 per share, which Company was confiscated on January 25, 1947	<u>4,760</u>	<u>447.57</u>
Total	<u>\$ 22,488</u>	<u>\$ 2,268.94</u>

Dr. Petachek:

(1) 553 shares of Pancevo at \$32 per share, which Company was nationalized on December 5, 1946	\$ 17,696	\$ 1,818.09
(2) 476 shares of Crvenka at \$10 per share, which Company was confiscated on January 25, 1947	4,760	447.57
(3) 45,142,857 shares of Jugoselka at \$3.53 per share, which Company was nationalized on December 5, 1946	<u>159,354</u>	<u>16,172.03</u>
Total	<u>\$ 181,810</u>	<u>\$ 18,637.69</u>

Mr. Jolley Barber:

4,514,2865 shares of Jugoselka at \$3.53 per share, which Company was nationalized on December 5, 1946	\$ 15,935	\$ 1,637.16
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Mr. J. A. Gallett:

4,514,2865 shares of Jugoselka at \$3.53 per share, which Company was nationalized on December 5, 1946	\$ 15,935	\$ 1,637.16
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After Petachek (individually):

(1) 554 shares of Pancevo at \$32 per share, which Company was nationalized on December 5, 1946	\$ 17,728	\$ 1,821.37
(2) 476 shares of Crvenka at \$10 per share, which Company was confiscated on January 25, 1947	<u>4,760</u>	<u>447.57</u>
Total	<u>\$ 22,488</u>	<u>\$ 2,268.94</u>

	<u>Principal</u>	<u>Interest</u>
Walter Peteschek, as Trustee under 2/1 of December 22, 1942, for the benefit of the children of Leopold R. and Marianne Gellert:		
40,628,571 shares of Jugosaska at \$3.53 per share, which Company was nationalized on December 5, 1946	\$ 143,419	\$ 14,734.87
Less the 1/5th interest of Max E. D. Gellert, who was not a national of the United States on December 5, 1946, in the 1/7th interest of the Trustee in Jugosaska (1/5 of \$199,354)	<u>31,870</u>	<u>3,274.32</u>
Net	\$ 111,549	\$ 11,460.65

Walter Peteschek, as Trustee under 2/1 of December 22, 1942, for the benefit of the children of Oswald and Grete Gellert:		
40,628,571 shares of Jugosaska at \$3.53 per share, which Company was nationalized on December 5, 1946	\$ 143,419	\$ 14,734.87

Walter Peteschek, as Trustee under 2/1 of March 11, 1943, for the benefit of the children of Rene and Eva Peteschek:		
45,142,857 shares of Jugosaska at \$3.53 per share, which Company was nationalized on December 5, 1946	\$ 159,354	\$ 16,372.03

Leopold R. Gellert, as Trustee under 2/1 of December 22, 1942, for the benefit of the children of Walter and Marianne Peteschek:		
45,142,857 shares of Jugosaska at \$3.53 per share, which Company was nationalized on December 5, 1946	\$ 159,354	\$ 16,372.03

Leopold B. Gellert, as Executor of the Estate of Marianne Gellert, deceased:

	<u>Principal</u>	<u>Interest</u>
(1) 554 shares of Fandervo at \$32 per share, which Company was nationalized on December 5, 1946	\$ 17,728	\$ 1,821.37
(2) 476 shares of Orvenica at \$10 per share, which Company was confiscated on January 25, 1947	<u>4,760</u>	<u>447.57</u>
Total	<u>\$ 22,488</u>	<u>\$ 2,268.94</u>

Erna Gellert:

(1) 553 shares of Fandervo at \$32 per share, which Company was nationalized on December 5, 1946	\$ 17,696	\$ 1,818.09
(2) 476 shares of Orvenica at \$10 per share, which Company was confiscated on January 25, 1947	<u>4,760</u>	<u>447.57</u>
Total	<u>\$ 22,456</u>	<u>\$ 2,265.66</u>

Dated at Washington, D. C. DEC 30 1954

I hereby certify that the within is a true and correct copy of the original Final Decision on file with the Commission.

A. C. Coates  
Deputy Clerk of the Commission