

Key

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

In the Matter of the Claim of :

JOHN A. ZVETINA, Receiver :
FIRST AMERICAN YUGOSLAV EXPORT- :
IMPORT CORPORATION :

c/o Nelson, Boodell & Will :
105 LaSalle Street :
Chicago 3, Illinois :

Docket No. 1454

Decision No. 1531

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

PROPOSED DECISION OF THE COMMISSION

This is a claim for \$853,222.79 by John A. Zvetina, as Receiver of the First American Yugoslav Export-Import Corporation, an Illinois corporation, and is for the nationalization by the Government of Yugoslavia of a mining concession called "Vencac-Crasac," along with equipment, machinery, improvements, buildings and all other property appurtenant thereto, located in the District of Jasenica, in Arandjelovac, and owned by the First American Yugoslav Export-Import Corporation, and for indemnity and damages sustained by the corporation by reason of an illegal action of a District Court in Yugoslavia in appointing and giving possession of said property to a receiver from August 1, 1931 to July 15, 1940.

Evidence before the Commission establishes that the First American Yugoslav Export-Import Company was incorporated on or about September 19, 1918 pursuant to the laws of the State of Illinois; that the original capital stock of \$250,000 was fully subscribed, and that a decree dissolving the corporation was entered by the Superior Court of Cook County in Chancery, No. 25818, on October 4, 1926. It is also established by evidence of record that John A. Zvetina was appointed as Receiver of the

corporation by the United States District Court for the Northern District of Illinois (Civil Action No. 54 C 1588) on November 4, 1954.

It is also established by evidence of record that at least 20% of the outstanding securities of the First American Yugoslav Export-Import Corporation are owned by individual nationals of the United States, and that this claim comes within the terms of Article 2(b) of the Agreement of July 19, 1948 between the Governments of the United States and Yugoslavia.

According to documentary evidence filed by the claimant, the Government of Yugoslavia, and admissions of that Government, the First American Yugoslav Export-Import Corporation was the owner of certain real and personal property in Yugoslavia, including a concession to extract marble from a quarry known as "Vencac," which was nationalized by the Government of Yugoslavia on December 5, 1946, pursuant to the Law Regarding the Nationalization of Private Economic Enterprises (OFFICIAL GAZETTE No. 98 of December 6, 1946).

Claimant asks \$540,272.74 for all of the property, exclusive of the quarrying concession. As evidence of value, claimant filed an inventory and report made on January 22, 1925 by the Trade Commission of the Ministry of Forests and Mines, which was certified by the Ministry for the County of Jasenica, Arandjelovac, under No. 18,791, on October 8, 1926, to the effect that the value of the property, exclusive of the concession, was worth 27,013,637 dinars. Claimant also filed a photostatic copy of a decision dated January 13, 1931, No. PL.1708/38, of the Court of Appeals of the Third Section in Belgrade, to the effect that the property owned by "Vencac," pursuant to a court inventory of August 1, 1931, No. 27724, was worth 1,247,460 dinars.

Other evidence before the Commission shows that the corporation obtained a one-half interest in the "Vencac" mining property, including the concession, from Ivan Milosevic in consideration for the cancellation of a \$46,000 note and the payment to him of 2,000,000 dinars.

The Government of Yugoslavia has filed an appraisal dated November 14, 1923, P. No. 9591, in which the real property, equipment, machinery, tools, furniture, vehicles and miscellaneous materials, is valued at that time at 5,871,000 dinars. That Government has advised the Commission that the value of the marble quarry, vacant lot, business (administration) building, ground-floor residential building, a one-story residential building, joiner's workshop, canteen and residential building, stone-cutting shop, machine workshop, one-story residential building with shed and other constructions had a value of 282,948 dinars, on the basis of 1938 values. That Government also advised that all of the machines found on the premises were "worn out" and that parts of the machines were carried away during the occupation and other machines were taken by the occupator. Upon the basis of that data the Government of Yugoslavia appraised the remaining personal property, in accordance with 1938 values, at 75,400 dinars. It is alleged that the personalty was depreciated 80% because of the limited life of the mining concession.

An investigator for this Commission inspected the property and made an independent appraisal thereof. On the basis of that appraisal the Commission finds the following values in dinars:

<u>DESCRIPTION</u>	<u>VALUATION</u>
5,740 hectares of land	69,600
Administrative building	121,250
Residential building	31,580
Residential building	99,810
Carpenter shop	108,860
Canteen & residential building	122,860
Shop	144,400
Machine shop	200,340
Residence	311,560
Other improvements	110,000
Machinery	282,750
TOTAL	1,666,040

The above values take into account damages caused the property by military activity. The Yugoslav Government and the Commission's investigators have reported that some of the machinery was taken away by enemy or occupation forces and that other property was destroyed as a result of military activities before the property was taken by Yugoslav authorities. 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). The Commission has consistently held that loss or destruction of property by forces or causes such as those mentioned above is not a "nationalization" or "taking" of property by the Government of Yugoslavia and that losses of that kind were not settled by the Agreement of July 19, 1948 and are not within the jurisdiction of this Commission.

Upon consideration of all the evidence before it, the Commission is of the opinion that the gross value of all of the property, exclusive of the concession, taken by the Government of Yugoslavia, was 1,666,040 dollars, based upon 1939 values.

The Government of Yugoslavia has filed a certified extract from the Land Registry Office of the Cadastral District of Panja (Docket No. 390) for the property involved. According to that extract the following liens are recorded against it:

1. Received: August 30, 1938, Dn. No. 1.692/38. Upon the Report and on basis of the Certificate of the District Court in Arandjelovac, No. 1.510/38 and 926/29, and Art. 46, mortgage right on the land under A List, for unpaid taxes amounting to 235,966 dinars, priority line as of December 26, 1929, entered in favor of SPAND LAND FUND of the Kingdom of Yugoslavia.
2. Received: August 30, 1938, Dn. No. 2004/38. Upon the Report and on basis of the Certificate of the District Court in Arandjelovac, No. R. 1525/38, I. No. 745/30, and Art. 46 of the Law (?), mortgage right on the land under A List, for the debt amounting to 100,000 dinars, at 6% interest, priority line as of July 9, 1930, entered in favor of PETROVIC V. VELJKO, a lawyer of Belgrade.
3. Received: August 27, 1938, Dn. No. 1.647/38. Upon the Report and on basis of the Certificate of the District Court in Arandjelovac, No. R-2.269/33, and Art. 46 of the Law on Reg. Books, mortgage right on the land under A List, for the debt amounting to 2,500,000 dinars, priority line as of May 28, 1931, entered in favor of MICHEL DUCICH, an industrialist of Cary, Indiana, then:
4. Mortgage right on the above cited claim, for the sum of 1,600,000 dinars, at 7½% interest, from the expired time limit until paid, priority line as of July 7,

1932, entered in favor of NATIONAL BANK OF THE KINGDOM OF YUGOSLAVIA, Belgrade.

5. Received: August 30, 1938, Dr. No. 1691/38. Upon the Report and on basis of the Certificate of the District Court in Arandjelovac, No. R. 1510/38, I. No. 274/33, and Art. 46 of the law on Reg. Books, mortgage right on the land under A, for unpaid direct taxes amounting to 260,004 dinars, priority line as of November 10, 1933, entered in favor of STATE LAND FUND OF THE KINGDOM OF YUGOSLAVIA.

In addition to the above, the Government of Yugoslavia has advised that the Mining Registry Books show Item No. 3 above and the following encumbrances on the concession:

1. Note for guaranteeing promissory note debt amounting to 300,000 dinars in favor of Ermenij Doric;
2. Note for guaranteeing of debt amounting to 84,787 dinars in favor of Obrad Blagojevic;
3. Mortgage right for guaranteeing of debt amounting to 73,162.68 dinars in favor of Joven Miljus, a merchant of Pittsburgh;
4. Mortgage right for guaranteeing of debt amounting to 1,350,000 dinars in favor of Amerikansko-Srpska Banka, d.d. (American-Serb Bank, Inc.), Sarajevo.

Claimant has filed no evidence with respect to the above obligations.

On the basis of the foregoing, the Commission finds that the liabilities of the First American Yugoslav Export-Import Corporation exceed the value of its physical assets.

Claimant also asks compensation for the value of the mining concession. No particular value is given to it but it is alleged that,

"Marble industry 'Vencac' was a concession . . . The concession was originally issued . . . on August 8, 1912, and had a term of 50 years. It would expire . . . on August 7, 1962."

As evidence of value of the concession, claimant has filed data with respect to operations from 1923 to 1931. Claimant operated the quarry for approximately ten months during 1931. Claimant did not operate the quarry thereafter. It appears that since 1931 claimant has been engaged in numerous law suits, some of which have not yet been resolved. This Commission is not in a position to determine the merits of the suits. Also, in the absence of further evidence regarding the value of the concession the Commission is not in a position to find that it had a value in excess of the liens against it.

Claimant also asks compensation for the value of the original concession for an additional period of fifty years on the ground that,

"The term of any concession, as to which the owner entered into possession and operated for a set period of years, was automatically and by law extended for fifty years beyond the initial expiration date."

It is our understanding that mining concessions are regulated by the Mining Industry Law of the Kingdom of Serbia, promulgated April 15, 1866 as amended January 27, 1900. According to that law, the holder of a concession receives the right to mine for a fixed period and a renewal is not automatic and can be obtained only with the approval of the Government.

This Commission has consistently held that the burden of establishing a claim rests with each claimant. It is our view that claimant has not met that burden with respect to the value, if any, of the concession. Accordingly, these items of the claim must be denied.

Claimant also asks compensation for claims of "Vencac" for loss of possession of the property from August 1, 1931 to July 15, 1940,

on account of the illegal action of the District Court in appointing and giving possession of the property to a receiver, which action and decision were set aside and held by the Appellate Court to have been illegal. Claimant states that this item of the claim is based upon the following suits now pending in the District Court of Belgrade, Yugoslavia.

1. An action on behalf of First American Yugoslav Export-Import Corporation in the District Court of Belgrade, on September 25, 1939, Po-644/39 for indemnity (damages) for the amount of 14,543,077.03 dinars (\$290,861.54), which suit is still pending and undetermined;
2. An action brought on behalf of First American Yugoslav Export-Import Corporation in the District Court of Belgrade, on June 3, 1940, Po-424/40, for indemnity (damages) in the amount of 981,978.75 dinars (\$19,639.57), which suit is still pending and undetermined; and
3. An action brought on behalf of First American Yugoslav Export-Import Corporation in the District Court of Belgrade, on March 1, 1941, Po-193/41 for indemnity (damages) for the amount of 122,749.34 dinars (\$2,454.94), which suit is still pending and undetermined.

It would appear from the evidence filed that claimant has a cause of action for damages. Whether that cause of action will result in a judgment in his favor is conjectural and not susceptible of determination by this Commission. However, assuming that a judgment would be rendered in claimant's favor, his claim would then be a debt claim. This Commission has consistently held that debts of this nature were not included in the Agreement of July 19,

1948 between the Governments of the United States and Yugoslavia. In this regard, it may be noted that the Senate Report (810, 81st Cong., 1st Sess.), which reflects the views of the officials of the United States Government who negotiated the Agreement with Yugoslavia contains the following statement with respect to debt claims:

"... The claims settled do not include creditor interests. They are confined to real interest in property, either legal or beneficial, direct or indirect. This is consistent with traditional United States policy in connection with espousals."

On the other hand, the claim for the allegedly illegal deprivation of possession of the quarry is likewise not within the jurisdiction of this Commission because the Agreement of July 10, 1948, supra, settled claims "of nationals of the United States against the Government of Yugoslavia on account of the nationalization and other taking by Yugoslavia of property and of rights and interests in and with respect to property, which occurred between September 1, 1939 and the date hereof (July 10, 1948)."

For the foregoing reasons, this claim is denied in its entirety.

Dated at Washington, D. C.

NOV 26 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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Under the Yugoslav Claims Agreement
of 1948 and the International Claims
Settlement Act of 1949

FINAL DECISION

On November 26, 1951, the Commission issued its Proposed Decision denying the claim herein in its entirety on the ground that there appeared to be liens against the property in excess of the value of the physical assets of the "Vencac" quarry, and that there was insufficient evidence to determine the value of the mining concession.

Claimant has filed objections, with a brief in support thereof, and a hearing has been held at which additional documentary evidence was filed and argument had as to such objections. Each of the claimant's objections will be considered *seriatim*.

Objection to the deduction of encumbrances existing against the property at the time of taking is in conflict with a principle consistently adhered to by the Commission, in its determination of all claims before it. The Commission, in its determination of claims against Yugoslavia, is directed by the International Claims Settlement Act to apply (1) the terms of the Agreement with that country and (2) the applicable principles of international law,

justice and equity, in that order. The agreement contains no specific provision regarding mortgages. We have found no applicable decisions of arbitral tribunals, international or domestic, having responsibility for the determination of claims which were satisfied by the payment of a lump-sum. (Because of the comparatively recent acceptance of lump-sums in settlement of large blocks of international claims, it is doubted that there are reported decisions directly in point.)

It is our view that justice and equity to all claimants require a deduction for mortgages under the circumstances involved in the claims before us, whether the property was taken before or after the above-mentioned Yugoslav debt settlement law became effective. The lump-sum of \$17,000,000 has been provided for the satisfaction of all claims. As the claims filed aggregate many times that amount, the fund may be insufficient to pay all claims allowed in full. In these circumstances, we believe we are obligated to limit our awards to actual proven losses and not to make awards for contingent losses which may never materialize. We also believe that when many claimants have to share in a fund which may prove inadequate, one claimant should not receive a windfall or be enriched at the expense of other claimants. That would be the case if a claimant who was awarded the full value of his property made no payment on the mortgage, or satisfied the mortgage debt by payment of only 10% of the mortgage pursuant to the Yugoslavia debt settlement law. Accordingly, we hold that, in the absence of evidence that a mortgage of record has been satisfied, a deduction for the mortgage must be made in order to reflect the actual amount of claimant's loss.

However, in this claim, there has been submitted documentary evidence as to the satisfaction or discharge of certain of the encumbrances of record against the property. Upon examination thereof, it appears that the second of two tax liens recorded is actually a cumulative figure, so that only the amount of 260,994 dinars was due at the time of taking rather than two separate tax items. Claimant, by documentary evidence, has also made a showing that the mortgages listed as item 2 on page 5, and items 2 and 4 on page 6, of the Proposed Decision were paid and discharged prior to the date of taking. It has been established that the mortgage right of 1,600,000 dinars in favor of the National Bank of the Kingdom of Yugoslavia was to secure a line of credit of which the amount of 1,000,000 dinars was outstanding and owed at the time of taking. With respect to item 1 on page 6 of the Proposed Decision, claimant has conceded that it has no evidence as to payment and the debt balance of 300,000 dinars in favor of Arsanji Peric must be considered as outstanding.

There remains for consideration, with reference to the encumbrances, the mortgages of 2,500,000 dinars and 73,163 dinars in favor of Michel Ducich and Jovan Milus. Both of these individuals have been identified as stockholders in the First American Yugoslav Export-Import Corporation. Having both an ownership and a debtor interest in the corporation, they are estopped, under the Agreement, from asserting both. The filing of this claim by the Receiver for the corporation may be considered, in effect, as an election of these shareholders to seek compensation for the ownership interest under the Agreement. To

deduct these two shareholder mortgages from the value of the corporation assets would only reduce the Receiver's fund (assuming an award were made) to which the two creditors still may look for payment of the mortgage debts. Indeed, evidence has been filed that Michel Duzich has already instituted an action on the debt against the corporation. To deduct these encumbrances here would manifestly be inequitable.

The Commission concludes from the entire record that the sum of 1,560,924 dinars must be considered as outstanding encumbrances against the property at the time of taking.

Claimant's second objection relates to the failure of the Proposed Decision to ascribe a value to the mining concession -- such conclusion being due to lack of evidence. The claimant has filed production and income statistics for the years 1926-1930, and the affidavits of the former quarry manager and a Yugoslav mining engineer as to the annual rate of production, the amount of marble quarried, past profits and estimated value of the concession. The former manager gave 500,000 dinars as his estimate of the annual net income for the remaining life of the concession. The local mining expert's opinion was that there would be a total net profit of 2,500,000 dinars annually. The estimate of the former manager appears to be much more realistic as to the operating potential of the quarry since the production figures upon which his calculations were based are more nearly in agreement with the actual figures filed with the Yugoslav Mining Department of the Ministry of Forests and Mines for the period prior to the "illegal" bankruptcy.

Claimant contends that the concession was owned in perpetuity and should not be limited to the sixteen-year period from the date of taking to the end of the original fifty-year grant. The Mining Law for the Kingdom of Serbia of April 15, 1866, as amended July 21, 1877, February 6, 1896 and January 27, 1900, provided:

"Whoever has a license on a certain mine for 15 years, properly extracts ores and minerals, and exactly performs his obligations under the present law, upon the report of the Ministry of the National Economy, shall acquire the ownership of the mine by decree of the Cabinet, provided he filed a petition." (Article 47)

The obligations referred to included regular, continuous working of the mine, assuring the general safety and safety of the workmen employed, and the filing of an annual report on the work done and the plan of work for the following year (Articles 32, 76 and 81). Another article of the law provides for renewal of the concession upon application, in the event ownership has not been obtained.

Claimant contends the law made it mandatory upon the Government to grant ownership to one who operated the quarry for fifteen years and, accordingly, the claimant should be considered as outright owner. Whether the law is mandatory or discretionary is of secondary significance in this instance because there is no evidence in the record as to the satisfaction of the conditions precedent to an application for ownership rights or renewal of the concession. The evidence of record clearly shows that the quarry was not worked regularly since work was stopped in 1941. As to the other conditions, the record is silent. In any event, no certificate from the Yugoslav authorities or other evidence has been filed to indicate that ownership rights had been granted, nor even that application

was made. Likewise, whether or not the concession would have been renewed, is mere conjecture. Accordingly, the value of the quarry reserves must be calculated upon the basis of a concession with sixteen years yet to run at the time of the taking.

Claimant's contention that compensation should be awarded for the period of "illegal" bankruptcy following September 1, 1939, is rejected since such deprivation of possession is not within the contemplation of the term "nationalization or other taking" as found in the Agreement of July 19, 1948. With respect to the claim for compensation for damages arising out of the "illegal" bankruptcy from 1931 to 1939, it would appear from the evidence filed that claimant has prevailed in his court action in Yugoslavia, but that his claim for damages is an unliquidated one. With no evidence as to the value, if any, of such claim, it is impossible to include for consideration that item as an asset.

On the basis of the entire record, the Commission concludes that the fair and reasonable value of the property, including the present worth of the sixteen-year concession, and minus the outstanding encumbrances, taken by the Government of Yugoslavia, was 3,642,146 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 \$82,776.05.*

Accordingly, the Commission hereby adopts the Proposed Decision as its Final Decision in the claim herein, with the following exceptions:

Instead of a denial of the claim in its entirety, the Commission finds the value of the property taken to be \$82,776.05 and, accordingly,:

In full and final disposition of the claim, an award is hereby made to John A. Zvetina, Receiver for the First American Yugoslav Export-Import Corporation, claimant, in the amount of \$82,776.05, with interest thereon at 6% per annum from December 5, 1946, the date of nationalization, to August 21, 1948, the date of payment by the Government of Yugoslavia, in the amount of \$8,504.41.*

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. Costis
Deputy Clerk of the Commission

* For the Commission's reasons for use of 1938 valuations, use of exchange rate of 44 to 1, and the allowance of interest, see attached copy of its decision in the claim of Joseph Senger.