

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

**IN THE MATTER OF THE CLAIM OF**

MATTHEW ZIMMERMAN  
MARIA ZIMMERMAN  
ANNA NOVAK  
JULIA PFERSCHI  
JOHN DYAK

Claim No. Y2- 1090

Decision No. Y2- 589

**Under the Yugoslav Claims Agreement of 1964  
and Title I of the International Claims  
Settlement Act of 1949, as amended**

PROPOSED DECISION

This claim, in the amount of \$23,000.00, is based upon the asserted ownership and loss of improved real property and personal property located in Yugoslavia. Claimants MATTHEW ZIMMERMAN, MARIA ZIMMERMAN, JULIA PFERSCHI and JOHN DYAK have been nationals of the United States since their nationalization on June 14, 1957, June 14, 1957, April 24, 1958 and June 10, 1955, respectively. The record contains no information concerning the nationality of claimant ANNA NOVAK.

Under Section 4(a) of the International Claims Settlement Act of 1949, as amended (64 Stat. 13 (1950), 22 U.S.C. §1623(a) (1958)), the Commission is given jurisdiction over claims of nationals of the United States included within the terms of the Yugoslav Claims Agreement of November 5, 1964 and the Commission is directed to apply the following in the following order:

(1) The provisions of the applicable claims agreement as provided in this subsection; and (2) the applicable principles of international law, justice and equity.

Among other things, the Agreement provides as follows:

Article I. (a) The Government of Yugoslavia agrees to pay, and the Government of the United States agrees to accept, the sum of \$3,500,000 United States currency in full settlement and discharge of all pecuniary claims of nationals of the United States, whether natural or juridical persons, against the Government of Yugoslavia, on account of the nationalization and other taking of property and of rights and interests in and with respect to property which occurred between July 19, 1948 and the date of this Agreement.

Article II. The claims of nationals of the United States to which reference is made in Article I of this Agreement refer to claims which were owned by nationals of the United States on the date on which the property and rights and interests in and with respect to property on which they are based was nationalized or taken by the Government of Yugoslavia and on the date of this Agreement. (Agreement between the Government of the United States and the Government of the Socialist Federal Republic of Yugoslavia Regarding Claims of United States Nationals, November 5, 1964, [1965] 16 U.S.T. 1, T.I.A.S. No. 5750 (effective January 20, 1965).)

Thus, where property was owned by a natural person at the time of its nationalization or other taking, a claim based upon such loss of property is not compensable under the Agreement unless such person was a national of the United States at the time of nationalization or other taking which must also have occurred between July 19, 1948, and the date of the Agreement.

For a definition of the term "nationals of the United States," reference is made to Section 2(c), Title I, of the International Claims Settlement Act of 1949, as amended (supra), which provides that:

The term "nationals of the United States" include  
(1) persons who are citizens of the United States, and  
(2) persons who, though not citizens of the United States, owe permanent allegiance to the United States. It does not include aliens.

As to item (1), the term citizen of the United States includes all persons born or naturalized in the United States, and subject to the jurisdiction thereof (U.S. Const. Amend. XIV §1). Also, a person does not become a citizen of the United States by way of naturalization until the procedure of naturalization is fully complied with and the order divesting the person of his former nationality and making him a citizen is signed by the judge of the court having jurisdiction (Petition of Sproule, 19 F. Supp. 995 (S.D. Cal. 1937)).

As to item (2), the Commission has held that persons who though not citizens of the United States owe permanent allegiance to the United States are those who were born in certain outlying insular possession of the United States or born elsewhere of parents already possessing that status and does not include an alien who resides in the United States, who is an employee of

the United States Government and has sworn allegiance thereto. (See Claim of Edward Krukowski, Claim No. PO-9532, 21 FCSC Semiann. Rep. 27 [July-Dec. 31, 1964/].) Neither does it include a person who in the course of applying for his United States citizenship filed a declaration of intention and a petition of naturalization and took certain oaths. (See Final Decision in Claim of Walter Ludwig Koerber, Claim No. W-3917.)

In the matter of the Claim of Jacob Meisler, Claim No. PO-4436, 16 FCSC Semiann. Rep. 30 [Jan.-June 1962/], and the Claim of Vlad Metchik, Claim No. PO-1907, 17 FCSC Semiann. Rep. 45 [July-Dec. 31, 1962/], the Commission held that the principle of international law regarding the nationality of a claimant seeking espousal by one state of his claim against another state, which has been expressed as requiring that the aggrieved person be a national of the espousing state at the time the claim or loss accrued or arose, applies to claims authorized under Section 4(a) of Title I of the International Claims Settlement Act, as amended (supra).

The Regulations of the Commission provide:

The claimant shall be the moving party, and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d), as amended, 32 Fed. Reg. 412-13 (1967).)

The issues involved in claims before the Commission include the nationality of claimant and of all predecessors from whom claimant's interest in the claim is derived from the date of loss to the date of filing of the claim, claimant's ownership of the subject property or the extent of such ownership interest therein, the dates and circumstances of the asserted loss, and the value of the property at the time of loss. To sustain the burden of proof, claimant is required to submit evidence upon which the Commission can base findings of fact and conclusions of law with respect to each of the elements discussed above.

By Commission letters dated October 9, 1967 and December 22, 1967 claimants were advised of the scope of the Agreement. Also, suggestions were made as to the type of evidence necessary to establish a compensable claim and the sources from which it may be obtained. This evidence has not been received to date.

Claimants assert that the property on which this claim is based was nationalized or otherwise taken in 1946, and that they became nationals of the United States subsequent thereto.

In view of the foregoing, the Commission finds that claimants have failed to establish that the subject property was nationalized or otherwise taken from nationals of the United States by the Government of Yugoslavia between July 19, 1948, and January 20, 1965, the period covered by the Agreement. Therefore, this claim is not a claim of nationals of the United States as defined by Articles I and II of the Yugoslav Claims Agreement of November 5, 1964 and it is, accordingly, denied.

The Commission deems it unnecessary to consider other elements of this claim.

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

**APR 24 1968**

*Leonard v. B. Sutton*

Leonard v. B. Sutton, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. §531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)