FOREIGN CLAIMS SETTLEMENT COMMISSION

OF THE UNITED STATES

Washington 25, D. C.

In the Matter of the Claim of LENA SILBERG 31 Eagle Avenue New York 40, New York Under the Polish Claims Agreement of 1960 and the International Claims Settlement Act of 1949, as amended	Claim No. PO-1758 Decision No. PO- 62

Counsel for Claimant:

Lyonel J. Meyer, Esquire
516 Fifth Avenue
New York 36, New York

PROPOSED DECISION OF THE COMMISSION

This claim is based upon the asserted ownership and loss by the claimant, LENA SILBERG, of property located in Niemviesz, Powiat Niemviesz and in Krzywosayn and Ostrow, Powiat Baranowicze, which are situated in the so-called Polish Eastern Territories, now a part of the U.S.S.R.

For the reasons stated in the attached copy of the Proposed Decision of the Commission In the Matter of the Claim of Gertrude A. Turkel, Claim No. PO-1006, the claim is hereby denied.

Dated at Washington, D. C.

APR 19 1961

BY DIRECTION OF THE COMMISSION

Francis T. Masterson
Clerk

FOREIGN CLAIMS SETTLEMENT COMMISSION

OF THE UNITED STATES

Washington 25, D. C.

In the Matter of the Claim of		
LENA SILBERG 31 Nagle Avenue New York 40, New York	Claim No.	PO-1758
	Decision No.	PO-62
and		
MUSIA MOGILANSKI 4500 Broadway New York 40, New York	Claim No.	PO-1759
	Decision No.	PO-63
Under the Polish Claims Agreement of 1960 and the International Claims Settlement Act of 1949, as amended		

Counsel for Claimants:

Lyonel J. Meyer, Esquire
516 Fifth Avenue
New York 36, New York

FINAL DECISION OF THE COMMISSION

These claims are based upon the asserted ownership and loss by the claimants, LENA SILBERG and MUSIA MOGILANSKI, of property situated in Nieswiez, Krzywoszyn, and Ostrow in which each claims a one-half interest. The loss was alleged to have occurred after World War II, when territory including these three communities was ceded to the U.S.S.R.

Under Section 4(a) of the International Claims Settlement Act of 1949, as amended, the Commission is given jurisdiction over claims of nationals of the United States included within the terms of the Polish Claims Agreement of 1960, Article 2 of which provides:

> Claims to which reference is made in Article 1 and which are settled and discharged by this Agreement are claims of nationals of the United States for
>
> (a) the nationalization or other taking by Poland of property and of rights and interests in and with respect to property;

(b) the appropriation or the loss of use or enjoyment of property under Polish laws, decrees or other measures limiting or restricting rights and interests in and with respect to property ...; and

(c) debts owed by enterprises which have been nationalized or taken by Poland and debts which were a charge upon property which has been nationalized, appropriated or otherwise taken by Poland. (underlining added)

If an award is to be made on a claim filed under the Agreement, the Commission must find that the claim comes within the purview of the above-quoted Article. Hence, a claim may be compensable only if based upon a loss arising from a nationalization, appropriation, or other taking of property by the Government of Poland.

In Proposed Decisions issued on April 19, 1961, the Commission found that Nieswiez, Krzywoszyn, and Ostrow are situated in the so-called Polish Eastern Territories which are now a part of the U.S.S.R., and that the Government of Poland had no control over these territories after September 17, 1939, and no sovereignty over the territories after August 16, 1945. It was concluded that there could not have been a nationalization, appropriation, or other taking of property there by the Government of Poland after September 17, 1939, and the claims accordingly were denied.

The claimants have objected, stating that the Eastern Territories remained under Polish sovereignty until August 16, 1945; that in July 1944 a Polish army, formed in the U.S.S.R., liberated the Eastern Territories with the help of the Soviet Army; that when Lublin (in present-day Poland) was freed, a Committee of National Liberation proclaimed itself the Provisional Government of Poland; that between July 1944 and August 1945 this government confiscated all Jewish property, acting under Polish law in territory under Polish sovereignty, and administered the property confiscated in the Eastern Territories until cession of the area to the Soviet Union.

The Commission has stated that the Eastern Territories have been under the sovereignty of the U.S.S.R. since August 16, 1945, and this is

not disputed. The Commission has not held, and does not now hold, that sovereignty passed to the Soviet Union on any earlier date, it being sufficient for the purpose of this decision to find, as was done in the Proposed Decision, that the territory was beyond the control of the Polish Government after September 17, 1939. Claimants' allegations regarding events between July 1944 and August 1945 are found to be contrary to fact.

Except for a short-lived "Congress Poland" (1815-1832), there was no independent state of Poland from the time of the Third Partition in 1795 until the close of World War I. Although the Allied Governments agreed upon a reconstitution of Poland, the Paris Conference of 1919 was unable to settle the matter of its eastern boundary, and hostilities continued between Poland and Russia in 1919 and 1920. The Curzon Line, which approximates the present boundary, had its origin when the northern half of the present line was proposed on December 8, 1919 by the Supreme Council of the Allied and Associated Powers for purposes of an armistice. It was rejected by both belligerents. Polish forces drove deep into Russia in the spring of 1920, but by July 10, 1920 had retreated to the gates of Warsaw, and announced that they would accept an armistice along the proposed line. In a note to the Russians, Lord Curzon, the British Foreign Secretary, extended the line southward to its present length. Russia declined the proffered armistice, and the conflict continued with the Poles prevailing until the Treaty of Riga was signed on October 12, 1920, establishing a border well to the east of the Curzon Line, and embracing between the two lines the Eastern Territories of interest herein. Both governments approved the treaty on March 18, 1921. It was recognized by the Council of the League of Nations on February 3, 1923, by the Conference of Ambassadors on March 15, 1923, and by the United States on April 5, 1923, and remained unchallenged until 1939. During this period, privately owned property in the Eastern Territories was located within Poland and might have been subjected to Polish nationalization measures had the Government of Poland embarked upon any such programs.

Shortly before the onslaught of World War II, the Ribbentrop-Molotov agreement was signed on August 23, 1939, binding Germany and the U.S.S.R. to mutual non-aggression. By a secret protocol to the agreement, spheres of interest were laid down for application "in the event of a territorial and political rearrangement." Such an event occurred when Germany invaded Poland on September 1, 1939, and Russia followed suit on September 17, at which time the Polish Government fled the country to operate in exile from Rumania, France, and finally London. Poland was occupied completely by German and Russian forces, meeting at the Ribbentrop-Molotov line, which corresponded partially with the Curzon line and otherwise was more favorable to the Soviet Union. This line was formalized by German-Russian treaty on September 29, 1939. The Polish Government in Exile rallied Polish armed forces to Allied support, but was at no time able to enforce its will in Poland.

On June 22, 1941, Germany attacked Russia. The British then moved to reconcile its old and new allies, Poland and Russia. After a month of negotiations, during which the Russians insisted that their western frontier was not open to discussion, an agreement was signed in London on July 30, 1941 by representatives of Poland and the U.S.S.R., which stated, among other things, that earlier German-Russian agreements had lost their validity, but was silent as to where the Russo-Polish frontier should be fixed. The Poles had wanted more than mere dissolution of the Ribbentrop-Molotov line, and had striven for specific treaty recognition of the 1921 boundaries; but they signed the agreement in the knowledge that they could get nothing better.

In the meantime, however, the Eastern Territories had been incorporated formally into the Soviet Union, supposedly according to the will of the inhabitants as freely expressed in a "plebiscite" held shortly after the 1939 Russian invasion. Immediately upon occupation of Eastern Poland in 1939, Soviet authorities had removed all members of State and local

government administrations from office, arresting most of them, and appointing so-called "temporary administrations" in their place, composed principally of Red Army officers and Soviet officials. On October 6, 1939 an election was scheduled for October 22, 1939 of National Assemblies for the Western Ukraine and Western White-Ruthenia, which between them would govern the Eastern Territories. On the latter date, elections were conducted by the Red Army, NKVD, and Communist organizers. The two National Assemblies convened in Lwow and Bialystok, and on October 27 and 29, enacted resolutions for incorporation of their territories into the U.S.S.R. Formal incorporation of Western Ukraine was accomplished by Decree of the Supreme Council of the U.S.S.R. on November 1, 1939, and of Western White-Ruthenia on November 2, 1939.

The Poles now hopefully interpreted the London Agreement of July 30, 1941 as Soviet recognition of the pre-1939 boundary, but the Soviet Government would not commit itself, and made no move to disincorporate the territories. At every opportunity, the London Poles expressed their claim to all territory within their pre-war boundaries, but were met with official silence. In any event, all of Poland and the Eastern Territories was now under German control, with the battle line well into Russian territory. As they had advanced, the Germans had incorporated Western Poland into the Reich in two Gaus---Danzig and Warthegau. The rest of Poland up to the Ribbentrop-Molotov line was given the name General Government. Lands east of the line were administered separately, as part of German-occupied Russia.

Friction arose between the London Poles and the Soviet Government over many things, not least over the citizenship status of Poles who had fled or been deported to Russia. On November 29, 1939, a Soviet Decree stated that all citizens of Western districts of the Ukrainian and White-Ruthenian Soviet Socialist Republics who were present in those districts on November 1 and 2, 1939, acquired Soviet citizenship. As evidence of "good will", the Soviet Government exempted persons of

"Polish origin" from this automatic Soviet citizenship; but on January 16, 1943 they eliminated this exception.

On February 19, 1943 an article appeared in Radianska Ukraina, setting forth in print for the first time since the agreement of July 30, 1941, the Russian claim to retention of the Eastern Territories, and characterizing Polish pretensions as wholly unjustified. A stiff Polish note of February 25 elicited a Soviet reply of March 1, 1943 invoking the Atlantic Charter of August 14, 1941 as justification for the Curzon Line. Then, in April 1943, the Germans announced the discovery at Katyn of a mass grave of thousands of Polish officers who had been missing since taken as prisoners-of-war by the Russians. The Poles appealed to the International Red Cross for an investigation, whereupon the Soviet Union broke off diplomatic relations with the Polish Government in Exile, stating that the motive for the Katyn accusations was to wrest concessions from them regarding the Eastern Territories.

The British now began urging the London Poles to accept the inevitability of the Curzon Line. With the tide of battle running in its favor, the Soviet Government issued a statement on January 11, 1944 that the injustices of the 1921 Riga Treaty had been rectified by the 1939 incorporation of the Eastern Territories into the Soviet Union, and that Poland must be reformed by the acquisition of German lands in the west. The eastern boundary was to be the Curzon Line, but willingness to negotiate adjustments therein as warranted by population majorities was expressed. It was already apparent, however, that the Kremlin would not be satisfied to see the Polish Government in Exile restored to power. In Moscow, a Union of Polish Patriots had been formed among pro-Soviet Poles in 1943, and was groomed for eventually taking over the government of a liberated Poland. Pro-Soviet resistance elements from Poland were added, and the group became the Polish Committee of National Liberation, pledged to recognize the Curzon Line as their eastern frontier.

In July 1944 the Red Army crossed the Curzon Line at the Bug River, and so, in the official Soviet view, entered Poland. As Soviet troops moved westward, the Polish Committee of National Liberation moved with them, establishing themselves in Lublin, and receiving from the Red Army the responsibility for civil administration behind the front. On December 31, 1944, they proclaimed themselves the Provisional Government of Poland and were recognized as such by the Soviet Government on January 5, 1945.

At the Yalta Conference in February 1945, Roosevelt, Churchill, and Stalin agreed formally on the Curzon Line, with slight modifications in Poland's favor, and decided that the Lublin Government must be reorganized to include democratic leaders from the West, and must then hold free elections. A commission established to work out details was unable to agree, and a months-long deadlock ensued. The deadlock was broken by Mr. Harry Hopkins, representing President Roosevelt in a June visit to Moscow, after which the commission quickly agreed upon a list of leaders. On June 28, 1945 the new Polish Provisional Government of National Unity was installed, with a twenty-man Cabinet including sixteen Lublin members. British and United States recognition came on July 5, 1945. The new government and the Soviet Union formalized their mutual frontier by the treaty of August 16, 1945, since which time the Eastern Territories have been indisputably under Soviet sovereignty.

From the above historical narrative, 1/ it will be seen that at no time since September 17, 1939 could there have been a nationalization or other taking of property in the Eastern Territories by a Polish Government. During a six-month period from January 5, 1945 to July 5, 1945, there were two rival Governments of Poland---the Lublin group which was recognized by the Soviet Union, and the London group recognized by

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1/ Sources include: Mikolajczyk, The Pattern of Soviet Domination; Churchill, The Second World War; Kirkien, Russia, Poland and the Curzon Line; Shotwell & Laserson, Poland and Russia, 1919-1945; Grabski, The Polish-Soviet Frontier; Jordan, Poland's Frontiers.

Britain, the United States, and other nations. The London Poles, who had held out for reestablishment of the 1921 eastern frontier, never regained power within the country from which they had been exiled. The Lublin group, the only one to which the claimants' allegations could refer, was the pro-Soviet group which had pledged its acceptance of the Curzon Line as the eastern boundary of Poland before any Polish territory was liberated. As the liberation progressed, it was this group which received civil authority over lands west of the Curzon Line, and evolved into the postwar Government of Poland. The claimants' allegations of circumstances under which Polish taking of property in the Eastern territories might have been accomplished between July 1944 and August 1945 are without foundation and contrary to fact.

In the instant claims, there is no evidence that the property of the claimants was nationalized or otherwise taken by the Government of Poland or any other government at any time. True, there was a transfer of sovereignty, from Poland to the U.S.S.R., of the territory in which the property was located; but, whether this occurred on August 16, 1945 or earlier, the transfer of sovereignty did not constitute a taking of the private property of individuals within the territory, and in itself did not disturb the title of private individuals to property. A taking by the Government of Poland of property owned by United States nationals in the Eastern Territories, when that government had the sovereign right and the power to effectuate such a taking, might give rise to a compensable claim under the Agreement. The loss of sovereignty over the territory was not a taking of private property within the territory by the Government of Poland; and a later taking of such property by the new sovereign is not within the purview of the Polish Claims Agreement.

Notwithstanding the claimants' allegations to the contrary, the Commission affirms its findings that the Eastern Territories were beyond the control of a Polish Government after September 17, 1939,

and outside the sovereignty of the Government of Poland after August 16, 1945. Inasmuch as the claimants' property was located within the Eastern Territories, it is manifest that there could not have been a nationalization or other taking thereof by the Polish Government during or after World War II. Accordingly, the claims are denied.

Dated at Washington, D. C.

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Edward D. R.

Theodore

LaVern R. Dilweg

COMMISSIONERS