FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON 25, D. C.

IN THE MATTER OF THE CLAIM OF

VLAD METCHIK
659 Hillcrest Avenue
Westfield, New Jersey

Claim No. PO-1907

Decision No. PO-314

Under the Polish Claims Agreement of 1960 and the International Claims Settlement Act of 1949, as amended

Counsel for Claimant:

William A. Ancier, Esquire
744 Broad Street, Suite 723
Newark 2, New Jersey

FINAL DECISION OF THE COMMISSION

This claim was denied by Proposed Decision issued on February 14, 1962, on the ground that it was not owned continously by nationals of the United States from the date of loss of the property upon which it is based to July 16, 1960, the effective date of the Polish Claims Agreement of 1960, and therefore is not a claim of a national of the United States as defined in the Agreement. The property in which the claimant had an ownership interest, a telephone exchange in Rovno (now in the U.S.S.R.), appears to have been confiscated by the Polish army in 1919, and taken over by the Polish Ministry of Posts and Telegraph in 1921. The claimant became a national of the United States on August 3, 1927.

The claimant has filed objections to the Proposed Decision, alleging that at some time after he became a national of the United States, his brother, who had been a partner in the enterprise operating the telephone exchange, entered into a written agreement with the Polish Government providing for the payment of a specific amount as

compensation for the property taken, but that payment was not made. Although there is indication in the record that the claimant's brother carried on extended negotiations with Polish military and civil authorities, refused one offer which he considered too low, and filed suit against the Government which subsequently was withdrawn, there is no evidence to establish that any agreement for the payment of compensation was concluded. Even if there were such an agreement, the Commission's conclusion that the claim is not compensable would not be altered.

The claimant's contention is that although the telephone exchange was taken at a time when he was not a national of the United States, in view of the negotiations for compensation culminating in an agreement which was not fulfilled, the "loss arose" after he had acquired United States nationality. The principle of international law regarding the nationality of a claimant seeking espousal by one state of his claim against another state has been expressed variously as requiring that the aggrieved person be a national of the espousing state at the time the loss accrued 1/, or the injury was suffered 2/, or the claim accrued or

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1/ VI Moore, International Law Digest, 638 (1906), citing Mr. Bayard, Sec. of State, to Mr. Curry, April 9, 1886, MS. Inst. Spain, XX.183.

V Hackworth, Digest of International Law, 803-04 (1943), citing German-American Mixed Claims Commission, Admin. Decn. II, Decisions and Opinions (1925-26) 8.

2/ V Hackworth, Digest of International Law, 803-04 (1943), citing German-American Mixed Claims Commission, Admin. Decn. II, Decisions and Opinions (1925-26) 8.

V Hackworth, Digest of International Law, 803 (1943), citing The Panevezys-Saldutiskis Railway Case. Per. Ct. Int. Jus., Judgment, Feb. 28, 1939, ser. A/B, no. 76, pp. 4, 16-17.

arose 3/, or that the claim possess the nationality of the espousing nation in point of origin 4/ or inception 5/.

It seems clear in the instant case that the claimant's loss or injury accrued or was suffered when the telephone exchange was taken by Polish authorities, and that subsequent events all had to do with efforts to obtain compensation for the loss suffered in the past. Still, the Commission is no stranger to the argument that although a loss was suffered on a particular date, no claim for compensation arose, in international law, until some later date. However, the argument can be of no avail in claims filed under the Polish Claims Agreement of 1960. International law is, of course, of consequence in the determination of such claims; but its place in the Commission's deliberations

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3/ VI Moore, International Law Digest, 637 (1906), citing Mr. Bayard, Sec. of State, to Mr. Golding, Apr. 30, 1886, 160 MS. Dom. Let. 75.

VI Moore, International Law Digest, 639 (1906), citing Mr. Hay, Sec. of State, to Mr. Powell, min. to Hayti, No. 291, Dec. 23, 1898, MS. Inst. Hayti, IV. 103.

V Hackworth, Digest of International Law, 804 (1943), citing Department of State, "Application for the Support of Claims Against Foreign Governments" (Oct.1, 1924), par. 6.

V Hackworth, Digest of International Law, 805 (1943), citing MS. Department of State, file 465. 11d56/-.

V Hackworth, Digest of International Law, 807 (1943), citing The Solicitor for the Department of State (Hyde) to Aram Yagubian, June 30, 1925, MS. Department of State, file 467.11Y11/1.

Borchard, Diplomatic Protection of Citizens Abroad, sec. 306 (1928)

4/ V Hackworth, Digest of International Law, 807 (1943), citing Administrative Decision V (United States v. Germany), opinion of Umpire Parker, Decisions and Opinions (1925-26) 145, 176-177.

Borchard, Diplomatic Protection of Citizens Abroad, secs. 200 and 306 (1928).

5/ V Hackworth, Digest of International Law, 812-13 (1943), citing MS. Department of State, file 443.11 Reilly, Harriet J. /8,/10.

is clearly marked by Section 4(a), Title I, of the International Claims Settlement Act of 1949, as amended, which provides:

> In the decision of claims under this title, the Commission shall 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. (underlining added)

Looking first to the Agreement, as required by law, it is found in paragraph A of the Annex (which is made an integral part of the Agreement by Article 7 thereof) that:

> A. For the purpose of distribution by the Government of the United States of the sum to be paid by the Government of Poland, "Claims of nationals of the United States" are rights and interests in and with respect to property nationalized, appropriated or otherwise taken by Poland which, from the date of such nationalization, appropriation or other taking to the date of entry into force of this Agreement, have been continuously owned, subject to the provisions of paragraphs B and C of this Annex,
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> (a) directly by natural persons who were nationals of the United States..../Ensuing subparagraphs concern direct ownership by juridical persons and indirect ownership by natural or juridical persons, and are not pertinent here./ (underlining added)

Thus, the date of loss, of injury, or of origin of the claim, if indeed they be other than the date of taking of the property, are of no moment. Whether or not it be considered that the claimant's loss or injury was suffered when the telephone exchange was taken, and whether the claim arose at that time or later, the claim is not one of a national of the United States because the property was not owned by a United States national on the date of its nationalization, appropriation, or other taking. Under Articles 1 and 2 of the Agreement, it is only "claims of nationals of the United States" which are settled and discharged by the Agreement.

Assuming, arguendo, that the Government of Poland later agreed to pay compensation in a specific amount, and failed to fulfill its agreement, the result is the same even if the earlier taking of the telephone

exchange and the background of the agreement be ignored, and the res of the claim be regarded simply as the failure of the Polish Government to make the promised payment. In such case, the claim would be one based upon a debt owed by the Polish Government, and not compensable under the Agreement. Article 2 of the Agreement specifies the types of chaims which are settled and discharged as those 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.

In paragraph (c), specific provision is made for claims based upon two types of debt---those owed by nationalized enterprises, and those secured by nationalized property. A debt owed by the Government of Poland under an agreement such as that alleged by the claimant would be neither of these. Under the familiar maxim of inclusio unius est exclusio alterius, the enumeration in the Agreement of the two types of debt claims coming within its scope, is interpreted as excluding from the Agreement any debt claim not of a type mentioned. Accordingly, it must be held that a claim based upon a debt owed by the Government of Poland is not compensable under the Agreement unless the debt is secured by property which was nationalized, or unless the debt happens also to be a debt of a nationalized enterprise.

In view of the above, the Proposed Decision of February 14, 1962 is affirmed, and the claim is denied.

Dated at Washington, D. C.

SEP - 5 1962

Edward D. Re

Theodore Jaffe

LaVern R. Dilweg

COMMISSIONERS

PO-1907

OF THE UNITED STATES
WASHINGTON 25, D. C.

In the Matter of the Claim of

VLAD METCHIK
659 Hillcrest Avenue
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Claim No. PO-1907

Decision No. PO. 314

Under the Polish Claims Agreement of 1960 and the International Claims Settlement Act of 1949, as amended

Counsel for Claimant:

William A. Archer, Esquire
744 Broad Street, Suite 723
Newark 2, New Jersey

PROPOSED DECISION OF THE COMMISSION

This claim is based upon the asserted ownership and loss by the claimant, VLAD METCHIK, of a telephone exchange in Rovno (Rowne), which is situated in the so-called Polish Eastern Territories, now a part of the U.S.S.R. The claimant states that he became a national of the United States on August 3, 1927.

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
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> (a) the nationalization or other taking by Poland of property and of rights and interests in and with respect to property;
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> (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.

Before and during World War I, Rovno was under Russian sovereignty until taken by force by the Poles in the post-Versailles conflict terminated by the Treaty of Riga on March 18, 1921. Rovno was a part of Poland when, on September 17, 1939, the Polish Government fled to Rumania because of the German and Russian invasions beginning World War II. The Polish Eastern Territories were occupied by Russian forces; and provincial governments were established by Soviet authorities which quickly enacted measures to nationalize and confiscate various types of property in the area. Subject to the ebb and flow of the battlefront, the Eastern Territories remained under Russian or German control throughout World War II. The present frontier, placing the Eastern Territories, including Rovno, within the borders of the U.S.S.R., was recognized by the Western Powers at the Yalta Conference on February 11, 1945, and formalized by the Russo-Polish frontier treaty of August 16, 1945.

In these circumstances, the Commission has held that a loss of property in the Eastern Territories occurring since September 17, 1939 would not have occurred as a result of any Polish law, decree, or other measure, inasmuch as the area was beyond Polish control after September 17, 1939, and without Polish sovereignty after August 16, 1945. Such a loss would not give rise to a valid claim under Article 2 of the Agreement. 1/

1/ In the Matter of the Claim of Lena Silberg and Musia Mogilanski, Claim No. PO-1758, Decision No. PO-62

In this claim, however, a loss appears to have occurred prior to September 17, 1939. Documents obtained from the files of the Department of State are indicative of the following: that in 1909 two of the claimant's brothers (not nationals of the United States) received a concession from the Russian Government to establish and exploit a telephone system in Rovno and environs; that the term of the concession was from June 9, 1909 to June 9, 1927; that the claimant became a 40% partner in the firm on April 30, 1912, and subsequently succeeded to the interests of his brothers; that on August 13, 1919 and subsequent dates, the Polish army confiscated the property of the partnership; that the Polish Ministry of Posts and Telegraph took it over on July 6, 1921; and that attempts to reach agreement with Polish authorities on the amount of compensation payable for the property failed, and no compensation has been paid.

It thus appears that had the property been owned by a national of the United States at the time of its nationalization or other taking by Polish Authorities, such loss may have given rise to a compensable claim under the Agreement notwithstanding the fact that the property is now in the U.S.S.R. However, it does not appear that any national of the United States had an ownership interest in the property at the time of loss, which occurred on July 6, 1921 or earlier.

Under Section 4(a), Title I, of the International Claims Settlement Act of 1949, as amended, the Commission has jurisdiction over claims of nationals of the United States within the terms of the Agreement; and under Articles 1 and 2 of the Agreement, it is "claims of nationals of the United States" which are settled and discharged thereby. The term "claims of nationals of the United States" is defined in Annex A to the Agreement as including only claims which have been owned continuously, from the date of nationalization, appropriation,

or other taking of property to July 16, 1960, by juridical persons (such as corporations) which meet certain requirements, or by natural persons who were nationals of the United States. 2/

Inasmuch as the asserted loss is one which occurred before the claimant became a national of the United States on August 3, 1927, and the additional interests in the claim to which he later succeeded were not owned by United States nationals when the claim arose, the claim was not owned continuously from the date of loss of the property to July 16, 1960 by nationals of the United States, and the claim is not one of a national of the United States as defined in the Agreement. A loss arising from the action of German or Russian authorities after the claimant became a national of the United States, is not within the scope of the Agreement.

Accordingly, the claim is denied.

Dated at Washington, D. C.

FEB 14 1962

BY DIRECTION OF THE COMMISSION

Francis T. Masterson

Francis T. Masterson
Clerk

2/ In the Matter of the Claim of Jacob Meisler, Claim No. PO-[illegible]36, Decision No. PO-[illegible]