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

IN THE MATTER OF THE CLAIM OF

JOHN HEDIO PROACH

Claim No. PO-3197

Decision No. PO-652

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

PROPOSED DECISION

This claim, in the amount of $1,100, is based upon the asserted ownership and loss of seven hectares of farmland in Stefkowa, Poland. Claimant, JOHN HEDIO PROACH, has been a national of the United States since his naturalization on March 18, 1931.

Under the Polish Claims Agreement of 1960, claims by 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. . . " are settled and discharged. (Agreement with the Government of the Polish People's Republic Regarding Claims of Nationals of the United States, July 16, 1960, 11 U.S.T. & O.I.A. 1953, T.I.A.S. No. 4545 [1960], Article II.)

The Agreement further defines "claims of nationals of the United States" as including

> "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 [July 16, 1960], have been continuously owned. . .: (a) directly by natural persons who were nationals of the United States. . . " (Polish Claims Agreement of 1960, supra, at Annex, Paragraph A. See also 14 FCSC Semiann. Rep. 186 [Jan.-June 1961].)

The Commission finds, on the basis of official Polish documentation, that claimant was the owner of seven hectares of farmland in Stefkowa, Poland, and that his property was taken

by the Government of Poland pursuant to the Decree of July 27, 1949. (Decree of July 27, 1949 on the taking into the ownership of the State of real properties, not in actual management of their owners, and situated in certain counties of the Bialystok, Lublin, Rzeszow, and Krakow voivodeships (Dz. U. 1949, No. 46, it. 339).

Under the terms of that decree, however, property is taken on the effective date of a subsequent decision of the Presidium of the County National Council affecting that property. From the evidence presented to the Commission, it appears that the decision of the Presidium affecting claimant's property was effective March 19, 1956. The Commission finds, therefore, that claimant's land was taken on that date.

Claimant states, in his official application form, that his land was of good fertility and was cultivated in its entirety, producing rye, wheat, oats, potatoes, carrots, and clover. He has submitted no evidence to corroborate his claim as to its value.

The Commission has conducted an independent investigation into methods of evaluating agricultural property in Poland. In the absence of other evidence as to the value of particular property, the Commission has considered the average values published in 1956 by the Praesident des Bundesausgleichsamtes, Bad Homburg (Verzeichnis der Gemeinde-Hektarsatze mit alphabetischem Kreisverzeichnis der Vertreibungsgebiete, 1956, (Supp.)). These values were used in administering the German Equalization of Burdens Law.

In conjunction with these German sources, the Commission has made an upward adjustment in value according to a formula evolved by the Kommission fur Nationalisierungsentschadigungen, the Swiss national claims commission, for use in determining claims of Swiss nationals against the Government of Poland.

These methods indicate an average value of $233.25 per hectare for farmland in the vicinty of Stefkowa, Poland. Accordingly, the Commission finds that the value of claimant's property at the time of its taking was $1,632.75, and concludes that he is entitled, under the Agreement, to an award in that amount.

An important question presented to the Commission in this case is whether interest should be added to awards made under the Polish Claims Agreement of 1960 for the nationalization, appropriation or other taking of property. The Agreement is silent as to this matter, and the International Claims Settlement Act of 1949, as amended, 64 Stat. 12 (1950), 22 U.S.C. §§ 1621-42 (1958), contains only general terms with reference to interest. Section 7(a) of that Act authorizes and directs the Secretary of the Treasury to pay, as prescribed by Section 8, "an amount not exceeding the principal of each award, plus accrued interest on such awards as bear interest. . ." (64 Stat. 16 (1950), 22 U.S.C. § 1626(a)(1958)(Emphasis added)). And Section 8 of the Act, after providing for certain initial and additional payments on the principal of each award, directs the Secretary of the Treasury, "after payment has been made of the principal amounts of all such awards, to make pro rata payments on account of accrued interest on such awards as bear interest." (64 Stat. 17 (1950), 22 U.S.C. § 1627(c)(1958)(Emphasis added).) Nowhere does the Act specify which awards should bear interest.

In a case of this nature, the Commission is expressly directed by Congress to apply "the applicable principles of international law, justice, and equity" (International Claims Settlement Act of 1949, as amended, 64 Stat. 12 (1950), 22 U.S.C. § 1623(a)(1958)).

Although some commissions have refused to allow interest in claims of this type on the ground that interest is a matter of contract which should be specifically provided for in the protocol, (see Borchard, Diplomatic Protection of Citizens Abroad 428 (1928) and authorities cited therein), this Commission regards it as a settled principle of international law that "interest, according to the usage of nations, is a necessary part of a just national indemnification." (6 Moore, A Digest of International Law 1029 (1906), citing Davis, Notes, Treaty Vol. (1776-1887); Wirt, At. Gen., 1 Op. 28, Crittenden, At. Gen., 5 Op. 350; Geneva Award, 4 Papers Relating to the Treaty of Washington, 53.)

"The award of interest is usually considered to be merely a part of the duty to make full reparation. . . .arbitral tribunals have felt that it was not outside of their jurisdiction to award interest, even though the Convention by which they were set up made no mention of interest." (Eagleton, The Responsibility of States in International Law 203-4 (1928)(Emphasis added).)

The theories upon which interest is founded are varied. Some tribunals have expressed the idea that interest is given as compensation for the loss of the use of the principal during the period within which the payment thereof continues to be withheld, (see Opinions of Commissioners, United States-Mexican General Claims Commission 189 (1927)(Illinois Central R.R. Co. v. United Mexican States)). Interest has been included by one author as a natural part of the compensation for the "improper withholding of satisfaction", (see Borchard, op. cit. supra, at 428).

Again, it has been said that the awarding of interest is in the nature of damages from the date of the loss. (Opinions of Mixed Claims Commission, United States and Germany 1925-1926, 62 (Consol. Ed. 1927)(Ad. Dec. No. 3).)

On whatever theory the awarding of interest is based, we are constrained to adhere to the international law principle, to which we deem it proper to give effect, that interest must be regarded as a proper element of compensation. The Commission therefore concludes that the award of interest in the instant case is not only in conformity with the principles of international law and the Polish Claims Agreement of 1960, but is required by equity and justice, and should therefore be allowed.

The Commission is next faced with the problem of the rate of interest to be allowed. This rate has generally varied from three to six per cent, although higher amounts have been granted on occasion, (see authorities cited in Borchard, op. cit. supra at 429). The Mixed Claims Commission of the United States and Germany, supra, granted 5%; the Spanish-American Commission of 1871 allowed 8%. (For a list of commissions in which interest has been allowed on awards, together with the various rates of interest, see Ralston, International Arbitral Law and Procedure 82-87 (1910).)

Although there is no settled rule as to the rate of interest, it is an appropriate exercise of the jurisdiction of the Commission to determine this rate in accordance with all the circumstances before it, including the applicable principles of international law, justice, and equity. Its object in so doing is to arrive at a just and equitable compensation for the wrong. The Commission may also consider its own decisions concerning the applicable rate of interest in its prior international claims programs. In these programs, the Commission has adopted the figure of 6% as a traditional and customary interest rate for claims of this nature.

In light of this international law precedent, custom, and tradition, the Commission therefore concludes that an award of interest in the present case at the rate of 6% is an appropriate, equitable, and just measure of compensation under all the circumstances.

Similarly, there is no settled rule in universal effect as to the period during which the interest shall run. Various terminal dates have been applied by different commissions, including the date of the original injury, the date of the notice of the claim, or the date of payment, (see authorities cited in Eagleton, op. cit. supra at 204-05; Borchard, op. cit. supra, at 428-29). The Commission notes, however, that the prevailing opinion in international law is that such interest should run from the date the claim arose until the "date of payment" (ibid.) The Commission notes further that the date the claim arose in this case is the date of loss, (cf. Polish Claims Agreement of 1960, supra, at Article II; Annex, Paragraph A.) The Commission concludes that, for the purpose of this decision, the "date of payment" in the above context is the date of the Polish Claims Agreement of 1960, under the terms of which all claims of this type were fully settled and discharged. (Polish Claims Agreement of 1960, supra, at Article I.)

Accordingly, the amount of the award in this claim shall be increased by interest thereon at the rate of 6% per annum from March 19, 1956, the efective date of loss of the property and the date on which the claim arose, to July 16, 1960, the effective date of the Polish Claims Agreement and the date on which the claim was settled.

It has been noted, in addition, that the amount of this award is greater than the amount for which claim was made. The amount claimed, however, was claimant's estimate of the value

of his property in 1912, rather than in 1956, the date of taking. The amount of an award by the Commission is determined by its finding based upon all the available evidence as to the value of the property at the time of loss. In determining this amount, the Commission is not bound by any lesser or greater amounts which may have been advanced by the claimant as his estimate of the value of the property.

A W A R D

An award is hereby made to JOHN HEDIO PROACH in the principal amount of One Thousand Six Hundred Thirty-two Dollars and Seventy-five Cents ($1,632.75), with interest thereon at 6% per annum from March 19, 1956, to July 16, 1960, the date of the Polish Claims Agreement, in the sum of Four Hundred Twenty-three Dollars and Seventy Cents ($423.70).

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

[illegible]

Edward D. Re, Chairman

Theodore Jaffe, Commissioner

LaVern R. Dilweg, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed upon the expiration of 60 days after service or receipt of notice of this Proposed Decision, and unless the Commission otherwise orders, this Proposed Decision will be entered as the Final Decision of the Commission. (FCSC Reg., 45 C.F.R. § 531.5(g)(1961)).