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

IN THE MATTER OF THE CLAIM OF

SILESIAN-AMERICAN CORPORATION

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

Claim No. PO-4174

Decision No. PO-8336

Counsel for Claimant: Cahill, Gordon, Reindel & Ohl

PROPOSED DECISION

This claim, for $58,387,471, against the Government of Poland is based, in part, upon loss sustained as a result of the nationalization of property of the following corporations:

(1) "Giesche Spolka Akcyjna",

(2) "Giesche Fabryka Chemiczna, Spolka Akcyjna",

(3) "Societe Anonyme Miniere et Industrielle", and

(4) "Giesche Fabrika Porcelany".

Claimant was, on the date of nationalization of its properties and has been continuously since that time, a national of the United States within the meaning of the Annex to the Claims Agreement of July 16, 1960 between the United States and Poland. (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 2 of the Agreement provides as follows:

> 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. (Polish Claims Agreement of 1960, supra, Article 2)

The Commission finds it established that claimant owned interests in the subsidiary corporations on which its claim is based as follows:

1. 100% of the outstanding shares of capital stock of "Giesche Spolka Akcyjna", a Polish corporation;

2. 100% of the outstanding shares of "Giesche Fabryka Chemiczna, Spolka Akcyjna", a Polish corporation;

3. 89.25% of "Societe Anonyme Miniere et Industrielle", a Belgian corporation; and

4. 92.875% of "Giesche Fabrika Porcelany", a Polish corporation wholly owned by "Giesche Spolka Akcyjna" [1. above].

The Commission further finds, on the basis of evidence of record, that the property in Poland of the above-mentioned enterprises was nationalized by the Government of Poland on February 5, 1946 pursuant to Article 2 of the Law of January 3, 1946 relating to the taking of key branches of national economy (Dz. U. 1946, No. 3, it. 17).

Claimant has not submitted postwar balance sheets, or other financial statements evidencing the value of its properties as of the date of their nationalization. It has submitted evidence that its properties suffered no significant war damage and it urges that in valuing its properties, the Commission use prewar data "corrected to reflect known changes in the condition of the properties, in price levels and costs of construction, and in market conditions in those countries where a free market continued to exist." Among the adjustments which claimant urges, are the use of

estimates of replacement cost, in 1946, for its plants, and the use of the "Hoskold" formula[1/] for valuing its mineral reserves. In its calculations, using the Hoskold formula, claimant has estimated, as it must to use the formula, the number of years of life of its mining operations and its estimated annual future earnings before depreciation and depletion, while also postulating that it would have had access to sell its products on certain foreign markets. In addition, claimant has submitted an affidavit by an expert containing his opinion as to the value of its mineral reserves.

With respect to current assets and liabilities, claimant argues that it is reasonable to assume that there was an excess of current assets over current liabilities similar to that which existed in 1939, and submits that the Commission indulge in this assumption.

Having considered all of the foregoing, the Commission concludes that there is no substantial evidence of record upon which it might base findings that there existed any excess of current assets over current liabilities in Poland of claimant's subsidiaries at the time of their nationalization. Similarly, it concludes that the degree of speculation involved in the use of the methods of valuation urged by claimant, such as use of estimates of replacement costs, the Hoskold formula, and capitalization of projected earnings, which in turn are based on postwar selling prices on exchanges to which claimant's Polish products might not have had access after the war, is too great to warrant use of such methods.

Accordingly, the Commission is of the opinion that, in the absence of evidence that claimant's subsidiary corporations possessed an excess of current assets over current liabilities when they were nationalized on February 5, 1946, and in the absence of convincing evidence that the fixed assets of the corporations in question were of a value greater than those values appear on the latest available prewar books of the corporations,

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1/ Lewis, Elements of Mining (2nd Ed.), p. 530, et seq.

the award herein for nationalization of claimant's properties should be in an amount reflecting the prewar book values of the fixed assets of claimant's subsidiaries, less depreciation and depletion in the total amount of 5% per annum from 1939 to 1946, the date of Poland's nationalization of the properties.

In light of the above, the Commission finds that the fair and reasonable value of the properties lost by claimant's subsidiaries was, at the time of their nationalization, as follows:

"Giesche Spolka Akcyjna"

	Zlotys
Fixed assets	330,975,711
Less land	27,813,375
	303,162,336
Less depreciation & depletion	120,071,300
	183,091,036
Less depreciation 1939-1946 at 5% per annum	64,081,863
Balance	119,009,173
Plus land	27,813,375
	146,822,548

"Giesche Fabryka Chemiczna"

	Zlotys
Fixed assets	3,135,308
Less land	103,200
	3,032,108
Less depreciation	2,086,533
	945,575
Less depreciation 1939-1946 at 5% per annum	330,951
Balance	614,624
Plus land	103,200
	717,824

89.25% of "S.A. Miniere et Industrielle"

		Zlotys
Fixed assets		7,014,965
Less land		80,184
		6,934,781
	89.25% =	6,189,292
Less 89.25% depreciation		2,010,717
		4,178,575
Less depreciation 1939-1946 at 5% per annum		1,462,501
	Balance	2,716,074
Plus 89.25% land		71,564
		2,787,638

92.875% of "Giesche Fabrika Porcelany"

		Zlotys
Fixed assets		3,205,748
	92.875% =	2,977,338
Less 92.875% depreciation		614,994
		2,362,344
Less depreciation 1939-1946 at 5% per annum		826,820
		1,535,524

The sum of the foregoing totals is 151,863,534 zlotys. Converted into dollars at the prevailing prewar rate of 5.3 zlotys to $1.00, the claimant's loss in dollars thus amounts to $28,653,497.

Claim is also made for compensation under Article 2(c) of the Agreement for loss sustained as the result of nationalization of property owned by "Bergwerksgesellschaft Georg von Giesche's Erben", a West-German corporation which mortgaged certain of its real properties in the area over which Poland is now sovereign, to claimant. The Commission finds that the properties securing claimant's mortgages were nationalized by Poland on February 5, 1946, at which time the debt secured by the said mortgages amounted to $3,981,291.66. Accordingly, the Commission finds that pursuant to Article 2(c) of the Agreement, the above amount should

be included in the amount of loss found to have been sustained by claimant.

The Commission further finds that because claimant is an American corporation which was reorganized through judicial proceedings after its property was nationalized by Poland, its award is subject to the limitation laid down by paragraph B of the Annex to the Agreement, which provides as follows:

> B. Juridical persons organized under the laws of the United States or of a constituent State or other political entity thereof which have been reorganized through judicial proceedings after their property or rights and interests in and with respect to property were nationalized or taken by Poland shall participate in the sum to be paid by the Government of Poland only to the extent that the outstanding capital stock or proprietary interest in such juridical persons was owned, at the time of such nationalization or other taking, by natural persons who were nationals of the United States, directly, or indirectly through interests in one or more juridical persons organized under the laws of the United States or of a constituent State or other political entity thereof.

The Commission finds that the interest in claimant owned by natural persons who were nationals of the United States at the time of the nationalization of claimant's properties, amounted to 50.32% thereof. Accordingly, claimant may participate in the sum to be paid by the Government of Poland only to the extent of 50.32% of its losses which, when totalled, amount to $32,634,788.66. 50.32% thereof being $16,421,825.65, the Commission finds that claimant is entitled, under the Polish Claims Agreement, to an award in the latter amount. In arriving at the percentage of claimant owned by natural persons who were nationals of the United States at the time of the nationalization of claimant's properties, the Commission has considered only common and preferred stock interests therein, it being the Commission's finding that paragraph B of the Annex to the Agreement by the use of the word "or" between "capital stock" and "proprietary interest" has made the two types of interests mutually exclusive of each other, and that the specific inclusion of "capital stock" directs its exclusive use for calculation purposes where a juridical person has capital stock outstanding.

The Commission has decided that in granting awards on claims under the Polish Claims Agreement of 1960, interest shall be allowed at the rate of 6% per annum from the date of loss to July 16, 1960, the effective date of the Agreement. (See the Claim of John Hedio Proach, Claim No. PO-3197.) Accordingly, the amount of the award will be increased to that extent.

A W A R D

An award is hereby made to SILESIAN-AMERICAN CORPORATION in the principal amount of Sixteen Million Four Hundred Twenty-one Thousand Eight Hundred Twenty-five Dollars and Sixty-five Cents ($16,421,825.65), with interest thereon at the rate of 6% per annum from February 5, 1946, the date of loss, to July 16, 1960, the date of the Polish Claims Agreement, in the sum of Fourteen Million Two Hundred Thirty-four Thousand Nine Hundred Thirty-one Dollars and Thirteen Cents ($14,234,931.13).

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

JUL 28 1965

Edward D. Re, Chairman

Theodore Jaffe, Commissioner

LaVern R. Dilweg, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections to this Proposed Decision are filed within 20 days of service thereof, the decision will, upon the expiration of 30 days after such service or receipt of notice, be entered as the Final Decision of the Commission unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. § 531.5(e) and (g) (1964))