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

IN THE MATTER OF THE CLAIM OF

INTERNATIONAL TELEPHONE AND
TELEGRAPH CORPORATION

Claim No. G-2401

Decision No. G-3164

Under the International Claims Settlement
Act of 1949, as amended

Counsel for Claimant: Covington and Burling
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Oral Hearing held on April 21, 1981.

FINAL DECISION

This claim in the amount of $37,605,495.00, minus certain payments already received, against the Government of the German Democratic Republic, under Title VI of the International Claims Settlement Act of 1949, as amended by Public Law 94-542 (90 Stat. 2509), is based upon the loss of assets of a number of subsidiary companies owned directly or indirectly, to various extents, by claimant.

By Proposed Decision issued February 18, 1981, the Commission made an award to claimant in the principal sum of $4,621,284.75. Claimant objected thereto and requested an oral hearing. A written brief and numerous submissions of additional evidence have been provided to the Commission. Oral argument was presented on April 21, 1981 and thereafter, at the request of the Commission, further discussions have ensued between the staff of the Commission and counsel for claimant.

The major issue involves the compensability of property taken under control by the Soviet military and removed to the Soviet Union, whether designated as "war trophies" or reparations. 1/

As reflected in its Proposed Decision, the Commission became sufficiently persuaded by certain of claimant's arguments that it found the German Democratic Republic to be responsible for the loss of property taken by the Soviet military after the Potsdam Agreement came into effect in August 1945. The Commission believed that the ratification of the Potsdam Agreement by the GDR affixed such liability for takings after August 2, 1945. Claimant submits, by way of objection, that the Commission, having found the GDR responsible for such takings after August 2, 1945, is compelled to extend its holding and hold the GDR responsible for all such losses, regardless of whether they occurred before or after August 2, 1945. Claimant's objection has caused the Commission to make an extensive reexamination of the issue under international law. The Commission is now convinced that rather than not going far enough in establishing the responsibility of the GDR, it went too far in the previous decision in finding liability on the part of the GDR for any removals by the Soviet military. The Commission has reexamined the issue, starting

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1/ Claimant's subsidiaries were involved throughout World War II in the production of war material, some of a lethal variety such as Focke-Wulf's production of military aircraft, but most of a non-lethal category, including a wide range of electronic equipment. A question is presented concerning why the Commission should make awards for the loss of any machines or inventory engaged in the furtherance of the Nazi war effort. With certain exceptions, such as the investment in Focke-Wulf, the companies in which claimant invested were engaged in the peacetime industry producing electronic equipment and claimant's investments substantially predated the commencement of hostilities. During the war most of the companies were subject to the German Decree for the Control of Enemy Property of January 15, 1940 and were, in fact, operated by a holding company created by the German Government to obtain full control of ITT's subsidiaries. Presumably for these reasons Congress made no distinction in passing Public Law 94-542 based upon the activities during the war of any United States owned companies.

from the principle that under international law the responsibility of a state to provide compensation arises from unlawful conduct.

Claimant has presented an extensive argument that the German Democratic Republic is presently a recognized de jure state, and that upon acquiring recognition as such, its existence was established retroactively to the date it came into being as a de facto state. As a general proposition of law, the Commission does not dispute this contention. Claimant further argues that, despite statements to the contrary, it was the intention of the Union of the Soviet Socialist Republic to create a separate communist state in part, if not all, of the territory which had constituted prewar Germany. Claimant, therefore, argues that a new state came into being with the initial occupation by the Red Army of any territory west of the Oder/Neisse line, which now constitutes the boundary between the German Democratic Republic and Poland. Therefore, claimant contends, as early as April 1945 a new state came into being with its territory defined at any given time by the territory occupied by the Red Army. Claimant contends that any acts which occurred within this territory at any time become acts for which the present German Democratic Republic is responsible.

To agree with claimant's contention that a new state came into being at the moment that territory west of the Oder/Neisser line was controlled by the Red Army, does not, in the Commission's view, lead to the conclusion that any acts occurring within that territory are the responsibility under international law of the German Democratic Republic.

The Commission agrees, as stated by Hyde, that "an independent state is normally not permitted to deny responsibility for the consequences of internationally illegal conduct within its own territory." (2 HYDE, International Law, at 923 [1951]) However,

the Commission also accepts the caveat set forth by Hyde that "It may, however, do so when that territory is occupied by the armed forces of another, or when by any other process actual control thereof is lodged in another." (HYDE, supra at 293)

Eagleton, in his work on The Responsibility of States in International Law, dwells at some length upon the relationship of the responsibility of the state to its control of its territory.

> "It has been seen that the responsibility of the state depends upon its control; the states are presumed to have control internally. But it is necessary to consider the possibility of the interjection of an outside power, limiting in some respects the internal freedom of action which a state may possess. The investigation involves, upon the one hand, the control which a state as a member of the international community, is expected to maintain within its territory; and on the other hand the degree to which external restraints may have been established over that state, thereby hampering its freedom of action in the control which it may be able to exercise. There are thus two questions to be answered, in any case: to what extent does the state have a control unembarrassed by outside interference, and therefore to what degree can it be held responsible?" (EAGLETON, The Responsibility of States, at 27, (1929)

It would appear to be beyond argument that prior to and for some period following the surrender of the armed forces of Germany no form of the German State exercised control over the territory occupied by the Red Army. In this regard, the legal status of Germany at that time has been described as follows:

> The legal status of Germany subsequent to her defeat and unconditional surrender at the end of the Second World War illustrates the distinction between conquest and subjugation. After the unconditional surrender of the German forces and the abolition of what purported to be the German Government, Great Britain, the United States, Russia, and France, in a joint declaration issued on June 5, 1945, assumed supreme authority with respect to Germany, including all the powers possessed by the German Government and 'any state, municipal, or local government or authority.' It was expressly stated that the assumption of these powers did not effect the annexation of Germany and that her future boundaries and status would be determined by the four States issuing the Declaration. But for that disclaimer of the intention of annexation the assumption of full authority over Germany would have been indistinguishable from subjugation. As to the result of the Declaration, as well as of the various measures taken to implement it, the international personality of Germany must be deemed to be suspended until the setting up of an independent German Government freely

> exercising the right to conclude treaties and to maintain diplomatic relations. Pending the restitution of German sovereignty the exercise of the internal and external prerogatives and rights of the German State is vested, with full effect in International Law, either jointly with the four Powers or with any one of them in respect of the part of German territory placed under its administration." (1. OPPENHEIM, International Law, at 519 [H. LAUTERPACHT, 7th Edition, 1948])

In addition to the Joint Declaration of June 5, 1945, the Report on the Potsdam Conference of August 2, 1945 set forth the following political principles:

> THE POLITICAL AND ECONOMIC PRINCIPLES TO GOVERN THE TREATMENT OF GERMANY IN THE INITIAL CONTROL PERIOD
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> A. Political Principles.
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> 1. In accordance with the Agreement on Control Machinery in Germany, supreme authority in Germany is exercised on instructions from their respective Governments, by the Commanders-in-Chief of the armed forces of the United States of America, the United Kingdom, the Union of Soviet Socialist Republics, and the French Republic, each in his own zone of occupation, and also jointly, in matters affecting Germany as a whole, in their capacity as members of the Control Council. (The Potsdam Agreement Reprinted 3 Treaties and Other International Agreements of the United States at 1227)

The agreement approved by the Allied Control Council in Berlin on September 20, 1945 in addition to a number of requirements placed upon the German people made the following specific direction:

> SECTION VI
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> 19. (a) The German authorities will carry out, for the benefit of the United Nations, such measures of restitution, reinstatement, restoration, reparation, reconstruction, relief and rehabilitation as the Allied Representatives may prescribe. For these purposes the German authorities will effect or procure the surrender or transfer of such property, assets, rights, titles and interests, effect such deliveries and carry out such repair, building and construction work, whether in Germany or elsewhere, and will provide such transport, plant, equipment and materials of all kinds, labour, personnel, and specialist and other services, for use in Germany or elsewhere, as the Allied Representatives may direct.
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> (b) The German authorities will also comply with all such directions as the Allied Representatives may give relating to property, assets, rights, titles and interests located in Germany belonging to any one of the United Nations or its nationals or having so belonged at, or at any time since, the outbreak of war between Germany and that Nation, or since the occupation of any part of its territories by Germany. The German authorities will be responsible for safeguarding, maintaining, and preventing the dissipation of, all

> such property, assets, rights, titles and interests, and for handing them over intact at the demand of the Allied Representatives. For these purposes the German authorities will afford all information and facilities required for tracing any property, assets, rights, titles or interests.
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> (c) All persons in Germany in whose possession such property, assets, rights, titles and interests may be shall be personally responsible for reporting them and safeguarding them until they are handed over in such manner as may be prescribed.

Reprinted III Treaties and Other International Agreements, [supra, at 126].

To the Commission it appears clear that as to matters concerning the removal of assets from the Soviet occupation zone of Germany by Soviet authorities, this was a matter over which the GDR, even as a de facto state preceeding its de jure formation, had no control.

It is a basic premise of international law that the responsibility of a state arises from unlawful conduct. This may consist of an act in violation of a duty of a state or the failure to act to protect the rights of an alien, if the state has the ability and control of its territory which would allow it to act.

> A claim in international law may be defined as a demand for redress made by one state upon another by reason of the alleged wrongful conduct of the other. (Hyde, supra at 886)

> As the preferring of a claim implies wrongfulness of action or conduct on the part of public authority, the state demanding redress must always be prepared to show that the territorial sovereign is responsible for the acts of those whose conduct is a source of grievance. (Hyde, supra at 911)

In the case of property taken by the Soviets, there is no showing that the GDR or any predecessor agencies for which it is responsible as a successor government caused or could have prevented the removal of American owned property by the Soviet Union as reparations.

Claimant contends that the GDR was "unjustly enriched" by the use of American owned assets to pay reparations owing from Germany. Claimant has cited no authority, nor is the Commission aware of any, that imposes an international liability on a state, which itself has carried out no illegal conduct, by the mere fact

that an economic advantage may accrue to it due to the unlawful acts of another state.

In its Proposed Decision, the Commission to some extent embraced the argument made by claimant that some benefit to the GDR was derived from removals of United States owned property in that it was counted towards sating a Soviet appetite for reparations from Germany, and, hence, ultimately American property was used to reduce the eventual quantum of reparations demanded by the Soviet Union. Only thus could any equity be found in charging the GDR for wrongful acts by the Soviet Union. We are now persuaded that even if there were some theoretical validity to such an argument, the facts of the Soviet-GDR reparations history do not allow that theory to be of use in this decision. The Soviet Union ceased its reparations demands completely by 1954. Without reviewing all the facts in detail, there is no reason to believe that the cessation of the reparations demand was anything other than a political decision, and had no relation to whether American property had helped fill up a reparations basket.

Further, the contention that the GDR received an economic benefit by the removal of corporate assets indirectly owned by foreign nationals appears to be an illusion. A factory operating in a host state is part of that state's economic wealth. The factory produces jobs for the citizens of the host state, its assets produce a tax base, its production adds to the GNP and, to the extent that what is produced is sold abroad, its proceeds add to the foreign currency reserves of the host state. Taxes on profits provide revenues to the host state and reinvestment of profits in the host state add to its economic wealth. This addition to the host state's economy exists regardless of the nationality of the equity ownership of the factory. The impact on the economy of the GDR of the removal of a Lorenz installation by the Soviet Union is similar to the economic impact of the removal of an identical facility owned by any other German company whose equity ownership is held by German nationals.

Reparations owed by a country such as Germany, where paid in kind, are paid by the removal of the instruments of economic wealth of the country, not limited to facilities actually owned by the government. The removal of such privately owned assets causes a loss to the economy of the country which is not dependent upon the nationality of the equity owner of the company.

Therefore, the claimant has not established that the GDR received any "unjust enrichment" from the removal of assets of German corporations which were owned by claimant. Claimant further has not established that, if any economic advantage had accrued, that this would create an international liability upon the German Democratic Republic which would not otherwise exist.

The position of the United States at the time of the Potsdam Conference was clear that responsibility for the taking of Allied owned property by way of reparations fell on the Soviet Union. The proposal of the United States delegation circulated on July 25, 1945, although ultimately withdrawn after circulation, set forth the American position as follows:

> Removals From Germany of Properties of United Nations Neutral Nationals
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> Memorandum of United States Delegation
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> It is proposed that:
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> 1) Ownership by United Nations or neutral nationals should not impede a program of removals.
> 2) United Nationals nationals should be invited to submit statements covering the nature and extent of their property in Germany to the ACC. The ACC should have facilities and free access to such properties for the purpose of investigating claims and appraising properties.
> 3) Removals of United Nations properties should be made on condition that the United Nations nationals retain their ownership interests in the moved properties, except that, where retention of ownership is not practicable, Reichsmark accounts should be set up, on the basis of ACC valuations, to cover the value of the properties. Arrangements should then be made, prior to removal, to have the receiving country liquidate these accounts in acceptable foreign exchange in payments amortized over a short period of years.
> 4) Neutral nationals or their governments should be permitted to file with the ACC statements covering the nature and extent of the properties in Germany of neutral nationals. Reichsmarks to the extent of valuations made by the ACC should be deposited to the account of such neutral owners by way of compensation.
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> Reprinted II Foreign Relations of the United States, 1945, The Conference of Berlin, at 870.

The proposal unequivocally put the burden of compensation for United Nations properties on the "receiving country" which in the case of the assets herein involved was the Soviet Union.

In a memorandum for General Clay dated August 1, 1945, it was requested that he urge the control council to adopt an attached proposed principle on Allied and neutral property in Germany which read as follows:

Proposed Principle on Allied and Neutral Property in Germany

Ownership by nationals of United Nations or neutral nations shall not impede the carrying out of Paragraph 11 of the Agreement on the Political and Economic Principles to Govern the Treatment of Germany in the Initial Control Period. Removals from Germany of properties of nationals of United Nations or neutral nations shall be governed by the following:

(a) Properties of nationals of United Nations.

(i) Governments of the United Nations shall be invited to submit statements to the Control Council covering the nature and extent of property in Germany of their respective nationals, and Allied representatives shall have facilities and free access to such properties for the purpose of investigating claims and appraising properties.
(ii) Where practicable and desired by the government of the owner, removals shall be effected without transfer of title.
(iii) In all other cases, compensation shall be provided by the establishment of Reichsmark deposits to the account of the government of the owners, on the basis of valuations by the Control Council. The country receiving such removed property shall make arrangements, prior to the removals to liquidate such deposit accounts in acceptable foreign exchange in payments spread over a short period of years.

(b) Properties of nationals of neutral nations.

(i) Governments of neutral nations shall be permitted to file with the Control Council statements covering the nature and extent of property in Germany of their respective nationals. Reichsmarks in the amount of the valuations made by the Control Council shall be deposited to the account of such governments by way of compensation.

Reprinted II Foreign Relations of U.S., supra, at 935.

Although the United States was unsuccessful in gaining adoption of the language of this proposal, it did obtain agreement in principal to an Annex No. II which read, in relevant part, as follows:

Annex II

[United States Proposal]

Use of Allied Property for Satellite Reparations or "War Trophies"

1. The burden of reparation and "war trophies" should not fall on Allied nationals.

2. Capital Equipment--We object to the removal of such Allied property as reparations, "war trophies", or under any other guise. Loss would accrue to Allied nationals as a result of destruction of plants and the consequent loss of markets and trading connections. Seizure of Allied property makes impossible the fulfillment by the satellite of its obligation under the armistice to restore intact the rights and interests of the Allied Nations and their nationals.

The United States looks to the other occupying powers for the return of any equipment already removed and the cessation of removals. Where such equipment will not or cannot be returned, the U.S. will demand of the satellite adequate, effective and prompt compensation to American nationals, and that such compensation have priority equal to that of the reparations payment.

These principles apply to all property wholly or substantially owned by Allied nationals. In the event of removals of property in which the American as well as the entire Allied interest is less that substantial, the U.S. expects adequate, effective, and prompt compensation.

Reprinted III Treaties and Other International Agreements of the United States at 223)

Claimant suggests that the reference in Annex II to the effect that ". . . the U.S. will demand of the satellite adequate, effective and prompt compensation to American nationals, . . . " is a reference to Germany and that the subsequent acceptance of the Potsdam Agreement by the GDR constitutes an acceptance of an obligation to pay compensation for such reparations.

It is clear that the reference to satellite countries in Annex II does not refer to Germany. The document itself refers to "the fulfillment by the satellite of its obligation under the armistice." Armistice agreements had been signed with the former Axis satellites of Finland, Rumania, Hungary, and Bulgaria, which imposed certain obligations upon them for the protection of property. This was appropriate as those countries were sovereign states, having control over their territories. There was no such armistice agreement with Germany.

Annex II evolved from a policy document forwarded by the U.S. Secretary of State to the Ambassador in the Soviet Union (Harriman) on July 6, 1945. (I Foreign Relations of the United States, Diplomatic Papers, 1945, The Conference of Berlin at 427) The policy document contains, with slight modification, the actual text of Annex II. The text of the entire proposal shows beyond any doubt that the problem addressed was that of removal of reparations from the four satellite countries. In its initial sentence defining the problem, the policy statement says "the Armistice agreement signed by the four former Axis satellite states (Finland, Rumania, Hungary, and Bulgaria, but not Germany) oblige those states to pay reparations for war damage."

Even as to removals from these satellites, the text of Annex II again incorporates the basic United States position that primary responsibility for the return of any such equipment already removed and cessation of further removals falls upon the "occupying powers" which in the case at point refers to the Soviet Union.

The Commission finds no basis to hold that the acceptance of the Potsdam Agreement by the GDR constituted an agreement by that Government to indemnify for any wrongful acts of the Soviet Union.

Nor does the adoption of the Decree on the Administration and Protection of Foreign Owned Property in the German Democratic Republic dated September 6, 1951 constitute any agreement to pay for property removed by the Soviet Union. The Decree, by its terms, refers to "the administration and protection of foreign assets, which were under the control of the Soviet military government until the transfer of administration to the German authorities, has been transferred upon the Government of the German Democratic Republic." This definition would include property located at that time in the German Democratic Republic which had been under the administration of the Soviet military

government. The Decree makes no reference to property which had been removed by the Soviets and which at that time was in the Soviet Union under control of that Government.

Nor does the Commission find any credence to the argument that there was a private claim against the Soviet Union in existence in the GDR which claim constituted foreign owned property which was taken by the GDR. Any claim for such removals was an international claim of the United States of America against the Soviet Union and cannot be brought within the definition of a foreign asset under the control of the Soviet military government until its transfer to the GDR.

The Commission, therefore, finds no basis to conclude that as to assets owned indirectly by claimant which were removed by Soviet authorities to the Soviet Union there is any showing of wrongful conduct on the part of the GDR; a failure to act at a time when it had the control over its territory to prevent removals; nor any separate agreement to indemnify U.S. citizens for acts of the Soviet Union.

II. Inventories

Claimant objects to the Commission's findings with regard to the asserted losses of inventories of various subsidiaries at various locations. In some instances the objection runs to the Commission's denial of a particular loss and in other instances the objection runs to the amount of inventory loss which the Commission found compensable. The Commission will address each of these findings separately hereinafter. There are some general comments, however, which are appropriate to most of the claims for lost inventories.

In most instances claimant does not know what inventory was located where, nor does claimant know what happened to it.

The claim for inventory loss of Lorenz is calculated by claimant by taking the asserted book value of inventory as shown in the books of Lorenz in Berlin at the end of World War II and subtracting the asserted book value of inventory accounted for in West Germany after the war. The difference in these two figures, minus estimates submitted by claimant as to inventory which existed outside of the GDR, in Poland and Czechoslovakia, and estimates made of inventory destroyed during the war, is asserted to be the book value of total inventory lost in the GDR and inventory in West Berlin taken by Soviet forces.

Claimant then argues that this book value should be increased by 19.574 percent. This is arrived at by the assertion that all inventory should be increased by 17.0576 percent and that 20 percent of the inventory should be increased an additional 11 percent.

The claim for the increase in book value by 17.0576 percent rests upon the submission that in 1944 the book value of inventory included actual cost of material, wages, and production in addition to material overhead and production overhead.2/ To these figures, however, claimant asserts that an unexplained item denoted as "special cost as a result of war (30 percent of production wages)"; patent costs and "other" development overhead; administrative overhead; licenses, and "other sales overhead and special sales costs" should be added to book value. Claimant asserts that in the production year of 1944 these additional items would cause an increase of 17.0576 percent and, therefore, this should be applied to inventories produced and in existence in 1945. The Commission believes that some of these cost items, arguably might properly be added to the basic book value; some

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2/ The Commission notes that these overhead items already contained in book values were not unsubstantial. Book value of finished and semi-finished products which were destroyed in 1944 included overhead figures of 45 percent of actual cost.

items such as "special sales costs and other sales overhead" are of dubious validity in valuing inventory, much of it unfinished and none of it, in fact, sold; and that some items such as 30 percent of production wages as a special cost as a result of war are unexplained and the Commission is in no position to determine their validity. The Commission further believes that to the extent that any of these additions are valid, they are offset, as is the asserted 11 percent increase for finished products, by reductions to book value which should be made by the Commission in determining the actual value of an inventory at any given site. These reductions are warranted because of damage which may have occurred to inventories due to minor war damage, pilferage, and what the Lorenz Company's auditors have described as ". . . losses from armaments in the process of manufacture and from those stocks that could find only limited or no use whatever in peacetime production." The Commission therefore finds that any increase, as asserted by claimant, which properly should be added to the basic book value of inventories, is offset by such reductions which properly should be made, and the Commission will therefore base its awards on the assumption that the inventory at a given site had a value equal to the cost of the material, the cost of labor, and the material and production overhead.

Claimant has little idea as to where this inventory was located among its various production and storage sites. Claimant requests the Commission to presume that the value of this inventory was distributed among different production sites in accord with the ratio of employees at these sites to the total Lorenz employees and that inventory at storage sites was distributed among these sites based upon the square meters of storage area, multiplied by the value per square meter asserted to apply at the storage space at Lemnitzhof. As set forth hereinafter, the value of the inventory at Lemnitzhof is itself a matter of some conjecture.

The location of various inventories is highly relevant to the claim because, as will be hereinafter discussed, the compensability of inventory losses at various sites varies substantially due to varied factual situations relating to each site. Claimant's presumptions have little statistical and even less evidentiary basis.

Based upon this state of the record, the Commission has had to consider whether there is sufficient evidence to sustain the granting of any award for asserted losses of inventory. In this regard, the claimant has the burden of establishing its claim and the Commission may not substitute speculation in place of evidence and logical inferences which arise from such evidence. The Commission is aware, however, that claimant suffered the loss of relevant records due to hostilities. Furthermore, since the end of World War II, the authorities in East Germany have not been cooperative in supplying information which perhaps could have allowed claimant to submit a stronger evidentiary base for its claim. The Commission believes that claimant did suffer losses of inventory and that, based upon the evidence which has been submitted, there is sufficient basis under these circumstances to make enough reasonable inferences to allow the Commission to determine reasonable awards.

In addition to the absence of any definitive evidence as to what inventory existed where, there is little precise evidence as to what happened to inventories at particular sites. What evidence there is, including the clear historical pattern of action by Soviet forces in areas coming initially under their control, establishes that in such territories most of the inventory was removed by Soviet forces and as set forth previously in this decision, would not be compensable for that reason. In some instances there is specific evidence which allows the Commission to presume that most inventory which existed at the close of World War II, in fact, remained within the GDR and the GDR is responsible for the loss. The Commission has therefore looked at

the evidence and circumstances surrounding the loss of inventory at each particular site and has made its best judgment as to the amount of compensable loss which has been suffered. The Commission will therefore address each site and briefly set forth the amount it finds as a compensable loss suffered by a particular company and its calculation and reasons therefor, rounding off dollar amounts to convenient even figures.

Mulhausen

The Commission finds that inventory of the value of $1,200,000.00 was located at Mulhausen. The evidence indicates that some of this was salvaged and removed to the west. The evidence indicates that much of it was carried off by the Soviets. The Commission believes that 15 percent of the total inventory constitutes a compensable loss which amounts to $180,000.00.

Mittweida

The Commission finds that inventory of a value of $1,700,000.00 was located at this site. The evidence indicates there was considerable seizure by the Soviets of this inventory. However, the evidence also indicates that 4,000 crates were returned. The Commission has no way of ascertaining the number of crates which were removed, the value in the particular 4,000 crates and has no idea even of what size container is referred to by the term "crate." The Commission therefore finds that 25 percent of the inventory loss constitutes a compensable claim, thus determining the loss in the amount of $425,000.00.

Falkenstein

The Commission finds that inventories of a value of $575,000.00 were located at this site. The evidence indicates that Falkenstein first came under United States control and, although some of the inventory may have been saved by removal to the West, the Commission finds that in excess of 90 percent would have remained and the loss of which would have constituted a compensable claim in the amount of $520,000.00.

Auerbach

The Commission finds that inventories of a value of $200,000.00 were located at this site. The circumstances of loss appear similar to that at Falkenstein and the Commission finds that 90 percent of the inventory loss constitutes a compensable loss in the amount of $180,000.00.

Additional Inventory Shifted to Mittweida and Mulhausen

The Commission notes that a claim based upon the values asserted by claimant of RM 3 million of inventory was shifted to Mittweida and Mulhausen. By its nature, the figure of RM 3 million appears to be an estimate. No information is provided as to what percent went to Mulhausen and what percent went to Mittweida. The Commission has therefore assumed that the inventory was divided equally between the two sites and the amount of the loss which is compensable constitutes the average between the two sites or 20 percent and therefore finds that the total loss which is compensable for this inventory is in the amount of $125,000.00.

Guben

The Commission finds that there was in excess of $2,200,000.00 worth of inventory located at Guben. The Commission believes that most of this inventory was stored on the west bank of the river and therefore in a territory which presently constitutes the German Democratic Republic. However, the site was abandoned by Lorenz employees in March of 1945 and the plant would have been occupied in early April 1945 by Soviet forces crossing the Neisse River. The evidence submitted by claimant includes a report from Carl Schmid which states, in relevant part, "Guben, with its machines, single parts, factory supplies, etc. was completely plundered by the Russians." Based upon this statement, the Commission is unable to conclude that any inventory survived the Russian plunder to constitute a compensable loss.

Wassmannsdorf

The Commission finds that inventory in the amount of $3,000.00 was located at Wassmannsdorf. As this was a minimal amount and Wassmannsdorf constituted a testing lab, the Commission is willing to presume that little of this inventory was taken by the Soviets. Therefore, the Commission finds that in excess of 85 percent of the inventory remained and constitutes a compensable claim in the amount of $2,500.00.

Berlin - Treptow

The Commission finds that Lorenz had inventories of a value of $435,000.00 located at their Berlin plant at Treptow. Little evidence is available as to what may have happened to the inventory located at that site. The practices of the Red Army, when such facilities were overrun, would indicate that inventory undoubtedly was removed rapidly and forwarded to the Soviet Union. Claimant states that the evidence indicates that there was substantial dismantling of the Treptow facility. The Commission believes it is warranted in assuming that approximately ten percent of the inventory remained and the loss of which constitutes a compensable loss in the amount of $45,000.00.

Leipzig

The Commission finds there was $26,000.00 worth of inventory located in Leipzig and that the entire amount constitutes a compensable loss.

Dabendorf: Field Two

The Commission finds that $550,000.00 worth of inventory was located at Dabendorf, Field Two. According to claimant, Dabendorf was occupied by the Russian military in April or May of 1945, that inventory was carried off, and that the Red Army removed most of the equipment and materials in May 1945. Equipment removed included two "Freya" radar sets. The Commission therefore finds that it is reasonable to assume that ten percent of the inventory remained and was taken by the GDR and a compensable loss occurred in the amount of $55,000.00.

Lemnitzhof

In regard to the inventory at Lemnitzhof, claimant has submitted what purports to be a typed inventory dated October 24, 1945. The typed inventory itself appears to be, in large part, an estimate, many of the totals being prefaced with the word "about." A number of the items listed are noted to be defective or damaged. An estimate has been given of RM 325,000 as the value of these items.

The typed inventory had an addition written in by someone which reads "seizure and claim of 3,500 radio sets Zwerg-Super value RM 875,000." No indication was given as to who had made this addition or the basis for such an estimate. After calling this to counsel's attention, an affidavit was submitted from a Wilhelm Gleich, an individual who before his retirement in 1972 had been an employee of Lorenz. The affidavit states that from his position as director of cost accounting, apparently in Berlin, he recalls that in the last phase of the war 3,500 radio sets were removed from Berlin and sent to Lemnitzhof. He states that "I know and can confirm that these radio sets arrived at Lemnitzhof and were still located there at the end of the war." The basis of this knowledge apparently arises from his recollection that the items were listed in a 1944 annual balance sheet which was destroyed. At any rate, it appears from the notation added to the balance sheet that these radio sets were seized by the Soviets, which appears consistent with the statement made by claimant in its original submission that "the materials stored at Lemnitzhof were confiscated and removed." Based upon the fact that the typed inventory presented apparently was made in October 1945 and indicates that certain material was still at Lemnitzhof, and the fact that part of the inventory was defective and damaged so that its removal may not have been considered worthwhile by the Soviets, the Commission concludes that there was inventory of a value of $80,000.00 which remained at Lemnitzhof and the loss of which is compensable.

Rangsdorf

The Commission finds that Lorenz had $75,000.00 worth of inventory located at Rangsdorf. Rangsdorf was occupied in April 1945 by the Soviet Army. According to claimant, "Most of the machinery and fixtures were carried off by Soviet troops and the remainder was transferred by Lorenz to Dabendorf." This being true, it appears to the Commission that 90 percent of the inventory would also have been removed by Soviet troops and the Commisson therefore finds that inventory of a value of $7,500.00 remained, the loss of which the Commission finds compensable.

With Subcontractors

Through extrapolation from a report filed by Major Schmid, claimant asserts a loss of RM 2,040,000 for inventories "with subcontractors." The location and disposition of these inventories is not established by the evidence. Based upon the general pattern of removals by Soviet military, the Commission is in no position to assume that more than ten percent of this inventory survived and the loss of which could constitute a compensable claim. The Commission therefore finds that claimant had inventories of the value of $425,000.00 with subcontractors and that the loss of ten percent or $42,500.00 constitutes a compensable loss.

Jagdhaus Radar Plant

The Jadghaus Radar was an extensive and advanced radar unit which had been developed by Lorenz by the end of the war. The facility was occupied by Soviet forces who continued Soviet military control of this installation. Evidence indicates that Lorenz employees were retained to train Soviets on the use of this radar. The evidence indicates that subsequently the entire unit was disassembled and transported for reassembly in the Soviet Union. Claimant has suggested that the evidence is not conclusive that the radar unit was transported to the Soviet Union. All indications are, however, that it was so transported which is consistent with the Soviet program of training the Soviet military in its operation.

Claimant has concluded that the radar was transported and reassembled outside of Germany and, in fact, cites this as evidence of the radar's value in their original summary submitted to the Commission. The Commission therefore finds that the loss of the Jagdhaus Radar Plant is not the responsibility of the GDR.

Dabendorf/Lindenhof/Glienick Depot

Claimant asserts that RM 1,500,000 worth of tools were located at the Dabendorf Depot and that RM 1 million in tools were located at the Glienick Depot. These figures are obtained from a document prepared in 1967 entitled a "rough estimate" and an affidavit which states that the values are based on surveys made in 1967 wherein a number of gentlemen from Lorenz AG were asked as to their estimates of the distribution of diagrams, measuring instruments, machines and material. This reconstruction of estimates made from the recollection of individuals some 22 years after the event, in the Commission's view, is of limited probative value. Furthermore, the evidence does not establish the disposition of these tools. An affidavit submitted by claimant states that all of this equipment "fell into the hands of the Russian occupying power at the end of the war. At my last visit in July 1945 they were still under the control of the occupying power, but for the most part had not been transported elsewhere." Claimant asserts the tools were of great value. They are believed by claimant to be small hand tools and as such would have been not only valuable to the Soviets but susceptible of easy transportation to the Soviet Union.

Based upon this record containing only a reconstructed rough estimate of what may have been present, and devoid of evidence as to what happened to the tools, the Commission finds no basis to increase its original determination of loss in the amount of $100,000.00.

Dabendorf: Field Three

Claimant claimed for the loss of two radar units, one of which it valued at RM 50,000 and the other at RM 40,000, located at Dabendorf, Field Three. According to evidence submitted by claimant, Dabendorf, Field Three was occupied by the Russian Army and all technical equipment was removed by them. Therefore, the Commission finds that this loss was not the responsibility of the GDR.

Other Eastern Depots and Rented Land

As set forth hereinabove, claimant bases its total loss of inventory on the difference between the total Lorenz inventory at the close of the war and the inventory found to exist in West Germany after the war, minus certain war losses and inventory located outside of Germany. After subtraction of the amount of inventories claimed at the various sites above discussed, claimant asserts that the balance of inventories were located in West Berlin and at certain rented storage sites in and around Berlin. To determine the amount of inventory at the eastern storage sites as distinguished from that in Berlin, claimant applies a formula of Reichsmark value per square meter to the square meter areas of the storage sites. Claimant then subtracts this total from the total remaining inventory to determine the amount of inventory located in West Berlin. This calculation appears to have little, if any, statistical validity. As the inventory constituted a wide variety of goods, there is nothing to suggest that the value of one type inventory to another type inventory would have any relationship to the square meter area used to store it. The formula used to relate reichsmark value to square meters is based upon the estimate of value of inventory at Lemnitzhof which, as previously discussed, was presented on weak evidentiary grounds. The storage areas varied in size, the smallest being but 30 feet square. The importance of the division of inventory between storage sites and West Berlin is apparent from the Commission's

previous discussion and holding that the GDR is not legally responsible for property taken by the Soviets. As all property located in West Berlin was by definition removed by the Soviet forces, no award will be made for any such loss.

No evidence is provided as to the disposition of the inventories at the storage sites. They were located in areas near Berlin overrun by the Soviet military forces in the closing days of the war. To accommodate quantities of inventory in the relatively small storage areas, it would have to be assumed that such inventory was packaged and in a form which could readily be removed by the Red Army. Based upon the general practice of the Red Army upon overrunning such positions, it would appear that most, if not all, of this inventory would have been immediately removed by Soviet forces. Based upon this state of the record, the Commission finds no basis to increase its previous determination of a loss in the amount of $55,000.00 from eastern depots on rented land.

The Commission therefore withdraws its previous findings and finds that Lorenz AG suffered a loss of inventories in the amount of $1,843,500.00 for which claimant is entitled to an award in the amount of $1,822,484.00.

Focke-Wulf

The claim for work in progress at Cottbus is discussed hereinafter in Section V of this decision.

Stabilovolt

In the Proposed Decision the Commission found that certain inventories of Stabilovolt located at Altenberg in Thuringia had been taken and the company had suffered a compensable loss. Among the assets taken were about 50,000 stabilizers for which claimant asserted a value of RM 600,000. The Commission held that without further evidence it would allow a value of RM 248,455 for these stabilizers. Claimant has now submitted a price list for various stabilizers. Although the prices vary greatly and the type of stabilizers which were lost are not designated, the

Commission believes that the new evidence submitted does support the estimate of a value of RM 600,000 for these stabilizers. The Commission, therefore, withdraws its previous finding and finds that Stabilovolt suffered a loss in the amount of $155,697.00 and that claimant is entitled to an award in the amount of $51,302.00.

Schuchhardt

Loss of inventory of Schuchhardt is discussed in Section VII of this decision.

Huft Hannover Werdau

Claimant objects to the denial of its claim for the loss of raw materials and semi-finished products at Werdau. Claimant has stated that the plant was dismantled by Soviet authorities and has clearly indicated its conclusion that the inventories would have been removed to the Soviet Union. There being no evidence to contradict such a conclusion, the Commission finds there was no loss of inventory which has been established as the responsibility of the GDR.

Mix and Genest: Berlin-Schonenberg

In its Proposed Decision the Commission denied a claim for loss of inventory taken by Soviet military forces from the facilities of Mix and Genest in West Berlin. For the reasons set forth previously in this decision, the Commission affirms that denial.

III. Bank Accounts

In its Proposed Decision, the Commission made various awards to claimant based upon the loss of bank accounts which had accumulated before May 8, 1945 from the wartime operations of claimant's subsidiaries. In determining the dollar value of these reichsmark accounts, the Commission reduced the reichsmark valuation by a factor of ten to determine the value the account would have had in ostmarks pursuant to the 1948 currency conversion and then converted at the ostmark to dollar rate of 4.2 ostmarks to the dollar.

Claimant objects to this calculation of determining the dollar value of the pre May 8, 1945 accounts. In addition, claimant objects to the denial of additional bank accounts which appeared to be located in branches of banks outside what is presently the German Democratic Republic. Claimant objects to the treatment of accounts of Schuchhardt which objection is considered elsewhere in Section VII of this opinion. Finally, claimant objects to the lack of any determination for a postal checking account owned by Mix and Genest.

Claimant has submitted evidence that Lorenz's account in Commerzbank, Guben, was relocated before the end of World War II to Brandenberg within what is now the German Democratic Republic. This evidence, contained in a letter dated April 20, 1978, indicates that an account in the amount of RM 938,352.33 existed. The Commission, therefore, finds the loss of this account is now compensable.

Likewise, claimant has submitted evidence which establishes that three accounts owned by Focke-Wulf located originally in branches in Sorau and Summerfeld of the Niederlausitzer Bank and an account in Ostbank, Posen, were moved to locations in the German Democratic Republic and the Commission finds the loss of those accounts totaling RM 1,855,859 is compensable.

As to those accounts which were located in the Dresdner, Deutsche and Commerzbank branches in territory outside the GDR, claimant renews its argument that under German law a bank is liable for the obligations of its branches, regardless of the location of the branches. Under normal circumstances, this is undoubtedly true. In the case of German banks, however, the Dresdner, Deutsche and Commerz banks had branches throughout the territory of what presently constitutes the Federal Republic, the German Democratic Republic, and Poland. The three banks in which claimant's subsidiaries had accounts are today the three largest banks operating in the Federal Republic of Germany and have taken

the position that they were entitled to the assets and responsible for the liabilities of those branches located in the Federal Republic but are in no way responsible for accounts of branches outside the Federal Republic. The position is logical. The banks having acquired the assets in the form of physical assets, mortgages, and loans, of the various branches in the Federal Republic are likewise responsible for the offsetting liabilities in the form of accounts at such branches, but not having acquired the assets of branches outside the Federal Republic, are not liable for the liabilities of those branches.

The Government of Poland by a series of decrees effective November 12, 1948 ordered the liquidation of banking enterprises and Article 28 of Decree No. 412 provided for the transfer of assets and liabilities of the liquidated banks to other designated government owned banking institutions. The Commission notes that, in apparent agreement with the Commission's position, claimant made claim for bank accounts of Mix and Genest AG and C. Lorenz AG in the asserted amount of $471,218.00 in the Polish Claims Program. The Commission there held that these accounts were expressed in prewar reichsmarks, which even if compensable, would have an insignificant value expressed in United States currency, because after the war the value of the reichsmark bank accounts was converted in zlotys at the ratio of two reichsmarks for one zloty, and the value of the zloty during the postwar period depreciated to such an extent that an award in the United States dollars, if granted, would be purely nominal.

The Commission holds that the German Democratic Republic is not responsible for the loss of bank accounts in branches outside the GDR.

Claimant contends that the reichsmark bank accounts should not be reduced by a factor of ten based upon the East German currency conversion of 1948 because that conversion was itself a taking in that it was not a legitimate currency reform to stabilize the currency. Rather, claimant argues, it was a device to shift

property from the private sector to the state. The Commission, in the past, has had occasion to examine, in depth, the currency reform in the GDR in comparison to a very similar currency reform carried out in the Federal Republic of Germany. The Commission has held that the currency reform in the GDR was a proper exercise of sovereign power. There is no question that the reichsmark, both in the east and west, had lost value as a medium of exchange due principally to the affects of the devastation of the defeat of the Third Reich. A currency reform was required. The conversions were to a great extent similar. That carried out in the east was more favorable to mortgage holders, whereas that in the west provided a windfall to property owners to the extent that the government imposed a tax to alleviate the windfall. The conversion in the Soviet Sector may well have had an effect in benefiting government owned institutions, but the Commission does not find that invalidates the conversion as a necessary currency reform.

The actual question to be determined by the Commission, is the valuation in dollars of a reichsmark bank account established before May 8, 1945. East German reichsmarks in the immediate postwar period had no established dollar value. They sold for as low as 80 marks to the dollar on the black market which was the only actual currency exchange during the period. As set forth above, in the Polish Claims Program the Commission found that reichsmark accounts, in effect, lost all dollar value. In an attempt to find the basis for a dollar valuation of these reichsmark accounts, the Commission has used its method of valuation to attempt to convert the reichsmark totals into a currency with some semblance of a dollar valuation so that an award valued in dollars can be made for the taking of the bank account. The Commission affirms its approach to this valuation.

The Commission, therefore, finds that claimant is entitled to an increase in its award in the amount of $22,085.00 for its proportionate share of the loss of an additional bank account lost by Lorenz and is entitled to an increase in its award in the amount of $12,593.00 for its proportionate loss of three additional bank accounts of Focke-Wulf and an additional award in the amount of $1,699.00 for its proportionate share of the loss of an account by Mix and Genest.

IV. Receivables

Claimant objects to the denial of certain accounts receivable and advance payments assertedly owed to certain subsidiaries of claimant. The Commission previously held compensable such accounts where they were owed by a company which was nationalized by the German Democratic Republic. As set forth in the Proposed Decision in its discussion of the reasons for denial of an account receivable owed by Telefunken, the Commission does not consider that the GDR becomes responsible for such a debt owed by a company situated in West Germany merely by expropriating some asset of that company in the GDR. The Commission, however, recognizes that, even though a company may be based in West Germany and thus technically not nationalized by the GDR, if its principal assets are located in the GDR and are expropriated and its business continued as a state owned operation, the GDR, in the Commission's view, would assume certain liabilities for accounts owed. In reviewing the particular accounts referred to in claimant's objection, the distinction above cited is often a difficult one to determine factually. The Commission is willing to give the benefit of the doubt in most instances to the claimant and find these losses compensable. The claim for accounts receivable by Schuchart are dealt with elsewhere in this decision. The Commission finds that the account receivable owed to Lorenz from Philips Valvo Werks G.m.b.H. is not compensable as it has not been established that Philips was itself nationalized and indeed it

continues as a major West German company, nor is it established that a major portion of its assets were in the GDR and were nationalized and continued in operation to the extent that a liability falls upon the GDR. With this exception, the Commission finds that Lorenz suffered an additional compensable loss in the amount of $90,381.00 and that claimant is entitled to an increase in its award in the amount of $89,350.00 for its proportionate interest in Lorenz.

Claimant is entitled to an increase in its award in the amount of $82,706.00 for an additional loss of accounts receivable by SAF.

The claimant is entitled to an increase in its award in the amount of $3,506.00 for its proportionate share in a loss of accounts receivable suffered by Focke-Wulf.

The Commission finds that claimant is entitled to an increase in its award in the amount of $11,782.00 for its proportionate share in an additional loss suffered by Mix and Genest.

V. Lorenz: Berlin - Machinery

In its Proposed Decision the Commission denied a claim for RM 6,650,000 for machinery assertedly taken from the Lorenz plant on the ground that ". . . it was taken by the Soviet military commencing prior to the end of World War II in West Berlin and claimant has not established that this property remained in the German Democratic Republic and was taken by that Government or a predecessor thereto." By way of objection, claimant has submitted nothing by way of evidence or legal argument to change the Commission's view as set forth in its Proposed Decision.

Lorenz: Glienick

In its Proposed Decision the Commission found that claimant suffered a loss in the amount of $52,300 for its indirect ownership interest in assets which were taken and that it had received compensation in the amount of $32,598. Claimant has objected to

this latter deduction and upon a review of the previous decisions in the General War Claims Program the Commission finds that it erroneously deducted the amount. Therefore, claimant is entitled to an award for the entire loss in the amount of $52,300.

Rathenow

Claimant asserts a loss to Lorenz in the amount of RM 9,718,081 for inventory assertedly delivered to the German Navy and which it is claimed was in existence at the Naval Arsenal at Rathenow.

The claim of ownership of this inventory rests upon the otherwise unsupported legal conclusion of one Gerhart Heitman that from his activity in the accounting office of Lorenz AG he knows that deliveries were made under a "reservation of title," that "the goods remained the property of the deliverer until the fulfillment of all outstanding claims against the purchaser." No evidentiary details have been provided to allow the Commission to interpret who the "purchaser" was (Third Reich, German Navy, Rathenow Arsenal?); the agreed attribution of payments as against particular inventories received; the rights of the purchaser for onward shipment and use; or any other documented details of the arrangement to allow the Commission to come to a conclusion under German law as to whether or not claimant's contention that it retain title to certain assets is valid.

The evidence presented by claimant to establish what products shipped by Lorenz were located at the Rathenow Arsenal when it was taken over by Soviet forces is not only indirect evidence but requires the acceptance of presumption built upon presumption, some of which to the Commission appear contradictory3/ Any conclusion concerning the nature and value of Lorenz produced

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3/ An affidavit submitted with claimant's objection attempts to negate the possibility of any loss of inventory through hostilities by asserting that Rathenow "was occupied by American troops without resistence." The assertion of occupation by American troops appears to be historically incorrect as Rathenow is located to the east of the Elbe River where U.S. forces stopped their advance.

material in existence at Rathenow at the end of hostilities would be, from the Commission's review of the evidence, a conclusion based upon pure speculation.

Finally, the claimant has not established that any loss of inventory at the Rathenow Arsenal is the responsibility of the GDR. In this regard, claimant has submitted an affidavit of Paul Woihsyk, who asserts that, from the middle of 1946 until the beginning of 1948, he was employed by Breuninger Firm and that certain raw material and semi-finished products (none of which are established to have been products manufactured by Lorenz) were delivered from Rathenow to Breuninger. The origin of these materials, the purpose of the shipments, which could well have been for final assembly and shipment to the Soviet Union by way of reparations, is not established. Mr. Woihsyk does state that as late as 1948 the Rathenow Arsenal ". . . was still occupied by Russian troops and was strictly guarded. Brisk traffic on the part of motor trucks was visible." The Commission finds no basis to conclude that the GDR is responsible for the loss of any goods or materials shipped by Lorenz to the Rathenow Arsenal.

The Commission, therefore, affirms its original denial of this part of the claim on each of three independent grounds: (1) claimant has not established to the Commission's satisfaction that it retained ownership of goods shipped to the German Navy at Rathenow; (2) claimant has not established to the Commission's satisfaction what, if any, goods shipped from Lorenz were, in fact, present at the Rathenow Arsenal when it was taken over by the Soviet military; and (3) claimant has not established to the Commission's satisfaction that the loss of any inventories that were remaining at Rathenow are the legal responsibility of the German Democratic Republic.

Lorenz - Guben

In its Proposed Decision the Commission denied a claim on behalf of Lorenz for loss of movable and immovable property located in Guben, on the ground that evidence submitted in the General War Claims Program and the present claim indicated the Lorenz facility in Guben was located in what is presently Poland. By way of objection, claimant has pointed to evidence indicating that a 24,000 square meter production and storage area was listed at an address on Uferstrasse, which is on the west bank of the river on what is presently the German side of Guben. The evidence indicates that 30,000 square meters of barracks area was located in the "sports field", which from the 1930 map submitted by claimant appears to be located across the river on the Polish side. Claimant asserts a value for buildings constructed and permanent fixtures installed by Lorenz in the amount of RM 1,031,650 for value added in 1943 and in the amount of 2,193,325 as value added in 1944. Supporting documents submitted in the General War Claims Program by claimant indicate that 70 to 80 percent of the value added in 1943 was for delivering and erecting barracks. No evidence has been submitted to establish a breakdown for the value added in 1944 which, in fact, equals one half the total value added at Guben and Mittweida in that year.

The Commission concludes that any loss of the barracks is not compensable for the reasons that it is not established that the Soviet military did not dismantle and remove the barracks nor that the barracks were located on the west side of the river and thus in the GDR. On the contrary, the inference appears strong that the barracks were located on the east side of the river. It is further not established what happened to the plant structures which had been erected and improved by Lorenz on leased premises at Guben. The only evidence is a report concerning the Berlin-Gubener Hutfabrik Company from which Lorenz leased premises on Uferstrasse. The report states "The company's works suffered only slight damage in the war and were partially dismantled in

1945." An April 13, 1946 report from Lorenz states that it has not been possible to obtain any information as to the present status of the Guben facilities. A 1949 report by Carl Schmidt states "Guben, with its machines, single parts, factory supplies, etc., was completely plundered by the Russians."

From this evidence, the Commission can only conclude that the machinery and equipment was removed by Soviet authorities and that the partial dismantling of factory facilities in 1945 would also have been part of the activities of the Soviet military. The Commission is therefore left to speculate as to what part of the value added by Lorenz to this site in 1944 was attributable to plant facilities rather than the building of barracks and as to that part attributable to plant facilities, to speculate as to what part remained after Soviet dismantling. The Commission recognizes the difficulty faced by claimant in establishing this claim for facilities which were abandoned by Lorenz employees as of March 1945. The Commission has therefore attempted to find whether there is some degree of loss which the Commission can conclude was suffered by claimant for the loss of immovable assets from Guben which can be attributed to the GDR. The Commission has therefore taken claimant's figure for value added for permanent fixtures in 1943 and 1944 and has attributed 25 percent to the construction and additions to manufacturing plant. The Commission is willing to find, based upon the evidence of only partial dismantling, that 50 percent of this total remained and constitutes a loss for which the GDR bears responsibility. The Commission, therefore, finds that claimant is entitled to an award in the amount of $100,000.00 for a compensable loss of assets at Guben.

Lorenz: Mittweida

In its Proposed Decision, the Commission found a compensable loss for certain permanent facilities in the amount of $625,000.00. The Commission had accepted claimant's asserted amount as the value which had been added to these to sites in 1943 and 1944, even though the value added in 1944 was admittedly an arbitrary apportionment of a figure submitted by claimant. From this total, the Commission deducted ten percent for depreciation until 1946. Claimant objects to the ten percent depreciation figure, arguing that the value added in 1943 should be depreciated at two percent per year until 1946 and the value assertedly added in 1944 should be depreciated at two percent per year for two years. Recognizing that the only evidence submitted by claimant as to the value of the structures in Mittweida consisted of what purported to be a bookkeeping entry of value added and that the value asserted to have been added in 1944 in an amount of over RM 2 million was a totally arbitrary estimate from records asserting the cost of value added at Mittweida and Guben, the objection appears to be trivial at best. However, in support of claimant's further objection to the denial of loss of machinery at Mittweida, the claimant has now submitted evidence consisting of a Lorenz report which states that the factory fell "under occupation by the Russian military authority for the purposes of dismantling" (emphasis added). This report now casts doubt upon the Commission's conclusion that the permanent fixtures remained in the GDR and were not dismantled and taken by Soviet authorities. The Commission has therefore had to consider whether it should not withdraw its previous award and deny the claim for the loss of the factory building and barracks at Mittweida. The Commission has considered evidence previously submitted, however, that some facilities apparently remained and manufacturing was recommenced at these facilities. The Commission concludes that its previous decision denying claimant's claim for machinery but awarding claimant for

a loss based upon 90 percent of its asserted value for the addition of facilities, has already given claimant all possible benefit of the doubt and any further award is not sustainable by the record.

Rangsdorf: Movables

Claimant objects to the denial of the claim for loss of movable property at Rangsdorf, asserted to have been valued in the amount of RM 116,988 for which claimant has received an award in the General War Claims Program. Claimant admits that "most of the machinery and fixtures were carried off by Soviet troops." The Commission has held that such losses at the hands of Soviet troops are not compensable and therefore it confirms its original denial of this part of the claim.

Focke-Wulf: Cottbus

In its Proposed Decision, the Commission denied a claim for RM 12,580,000 for Focke-Wulf "work in process" inventory. This part of the claim was denied based upon the May 12, 1948 letter from Focke-Wulf to the Senator for Finances in Bremen which stated, in relevant part, "Furthermore, work in progress - i.e. aeroplane piece parts - have not been assessed, since they lost their value at the end of the war . . ."

In a last minute submission claimant has provided a brief and supporting documents in an attempt to establish a scrap metal value for these partially constructed air frames for FW-190 fighters. Claimant calculates the work in progress constituted the equivalent of 150 air frames. Claimant submitted a report that the FW-190 weighed about 7,000 pounds when empty, which without evidence as to the weight of the engine leaves the weight of the air frame rather speculative, but might support a finding that 340,000 kg of partially constructed air frames were present. Claimant submits evidence that sheet duralumin scrap sold for various prices ranging from RM .60 to RM 1.50 per kg. It would appear that the figure of RM 31-32 per 100 kg for "unseparated air craft scrap" submitted by claimant would be a much more appropriate valuation. The entire value of the scrap would only approximate $25,000.00.

If the Commission assumes that as much as ten percent of this was not taken by the Soviet military, the compensable loss to Focke-Wulf would amount to $2,500.00, and claimant's proportionate loss would amount to $712.00 of which it has previously been compensated in the amount of $444.00, entitling claimant to an award of $268.00.

Additionally, claimant requests the Commission to speculate that used air raid protection equipment had a scrap value of ten percent. The Commission has no basis to indulge in such speculation.

Finally, the claimant points to an apparent error made by the Commission on page 35 of the Proposed Decision, wherein the Commission made determinations of the reichsmark value of assets, not including structures, which remained at Cottbus after the evacuation of equipment to the west. Claimant correctly points out that the total of the column of figures, as typed, should read $1,217,382 rather than $1,117,382. The Commission has reviewed the notes upon which its computations were based and finds that an error did occur, however, not an error in addition. Rather, a typographical error occurred in the reichsmark total for plant equipment, which should have read RM 134,457 rather than RM 234,457, as erroneously stated in the decision. The Commission notes that claimant only asserted that an amount of RM 137,147 remained at Cottbus. With this correction, the total for the column of figures is correct and, therefore, the Commission affirms its previous determination as to this part of the claim.

Focke-Wulf: Altrosengarth

In its Proposed Decision, the Commission made an award to claimant in the amount of $258.00 for the loss of a building at Altrosengarth. Claimant now withdraws its claim for this loss, informing the Commission that Altrosengarth is not located in the territory presently occupied by the GDR. The Commission, therefore, withdraws its award for this part of the claim.

Focke-Wulf: Blocked East-West Transfer

Claimant objects to the denial of the claim of a check to the order of Focke-Wulf drawn on the German Aviation Bank by Aviation Supply, Inc., wholly owned by the Third Reich. The check was in part payment of large sums of money owed by the Third Reich to Focke-Wulf Company for the supply of military aircraft to defend the Third Reich from Allied air attacks. A letter dated April 19, 1945 from the German Aviation Bank states that the bank had charged the amount to the account of the issuer. According to a September 30, 1945 audit of Focke-Wulf, the check was not honored by the German Aviation Bank. Claimant maintains that the German Aviation Bank was unjustly enriched and sets forth a legal opinion that Focke-Wulf has a valid claim against the bank in that amount. Claimant has submitted evidence that the assets of banks, insurance companies and real estate companies in Berlin were confiscated as of 1949 and such companies were denied the right to operate.

In reviewing the entire facts surrounding this claim, it appears clear that the Third Reich owed Focke-Wulf for aircraft. An agency of the Third Reich then attempted payment through the German Aviation Bank, which appears to have been another agency of the Third Reich. If, in fact, Focke-Wulf has not been paid, it may have had a claim against the Third Reich for non-payment or some form of contingent claim against the German Aviation Bank which could have been asserted by legal action subject to any defenses the German Aviation Bank may have had. The Commission, therefore, sees this as nothing more than an outstanding wartime claim against the Third Reich for which the GDR is not responsible.

Focke-Wulf: Guben Plant

The Commission denied a claimed loss to the Focke-Wulf facility in Guben on the ground that it appeared the installation was presently in Poland. Claimant concedes that this is undoubtedly true.

Schuchhardt: Buildings at Berlin

This section of the objection is covered subsequently in Section VII of this decision.

Stabilovolt

In making an award for a loss suffered by Stabilovolt, the Commission erroneously deducted the sum of $13,926.00. The award made in Section II of this decision, therefore, has not been reduced by any offset.

Mix and Genest: Forst

Claimant objects to the denial of its claim for loss of tangible property owned by Mix and Genest located at Forst. The Commission found the evidence insufficient to establish a compensable loss, in part relying upon a finding in the decision in the General War Claims Program which stated that the record showed that the losses for the destruction of a building in Breslau and a factory in Forst, and losses due to the seizure of property by Soviet troops in Forst and Breslau amounted to RM 1,395,390. Claimant asserts, and has referred the Commission to evidence establishing that the inventory loss occurred at Forst and that, in fact, the plant in Forst had not been destroyed. Claimant refers the Commission to a 1947 balance sheet for the factory of Mix and Genest prepared by the Chief Administration of the People's Enterprises, Brandenberg, and referring to the factory as being in trusteeship with the People's Enterprises of Brandenberg. The balance sheet shows RM 363,818 in tangible property as of January 1, 1948. The balance sheets also record RM 54,995 in intangible assets which, however, are offset by an almost identical amount of liabilities. The Commission finds that assets in the amount of RM 363,818 remained in Forst and the loss of this amount of assets is the responsibility of the GDR. Absent other evidence, the Commission finds that these were taken as of January 1, 1947, the date of the balance sheet prepared by the trustee for People's Enterprises. The Commission finds that claimant suffered a loss based on its proportionate ownership in Mix and Genest in the

amount of $85,734.00 for which it has previously received compensation in the amount of $53,438.00 and is therefore entitled to an award in the amount of $32,296.00.

The rest of the claim for loss at Forst is denied as constituting losses at the hands of Soviet authorities and not the responsibility of the German Democratic Republic.

Mix and Genest: Berlin/Schoneberg

Claimant made claim for inventory, machinery, tools, drawings and other items removed by Soviet troops from their plant in West Berlin. For the reasons heretofor set forth, the Commission finds that this loss is not the responsbility of the German Democratic Republic and that this part of the claim is not compensable.

VI. Added Deduction of War Claim Payments and Computation of Interest

Certain of claimant's losses were subject to an award in the General War Claims Program as resulting from special measures. Awards made there were for the entire value of the property, regardless of whether the property was destroyed by hostilities, taken by the Soviet military or remained in the GDR. Claimant has received substantial payment on the awards it received in the General War Claims Program. It has already been better treated than many claimants who have received awards in other programs under the International Claims Settlement Act of 1949, as amended. It appears that in Public Law 94-542, Congress decided that, despite the favorable treatment already received, claimants such as ITT would be allowed to participate with other claimants in the present program to the extent of the unpaid balances on their awards. Congress, however, stated that amounts received previously for the loss under the special measures provisions of the General War Claims Program were to be deducted from any award.

Claimant asserts it has been unfairly treated by the Commission's decision that, interest on the award, after reduction by the amount previously received, should be calculated from the date of loss.

In its interpretation of the offset provision, the Commission has already treated the claimant in a favorable fashion. For example, where an award was made in the General War Claims Program under special measures for an entire loss of property, the Commission has deducted only a proportionate amount of the payment received attributable to that part of the property, the loss of which would be compensable under Public Law 94-542. The statute is susceptible to an interpretation the claimant should receive no award under Public Law 94-542 until all sums received for special measures awards issued in the General War Claims Program have been deducted.

Despite this favorable treatment by the Commission, the claimant maintains it has been unfairly treated and is entitled to interest on the full amount of the loss determined under Public Law 94-542 until the date of the first payment received and subsequently interest on the balance until the next payment, etc.

Such treatment is nowhere commanded by the statute.

The funds which claimant has received were funds derived from the liquidation of assets of German citizens and the German Government which had been in the custody of the United States since the outbreak of World War II and to which title was vested in the United States in 1947 in lieu of further reparations. The use of this economic wealth of the German people and the German Government including citizens of and the Government of the German Democratic Republic, were lost to the original owners from the outbreak of World War II. The Commission finds no compelling reason to affix a further liability upon the GDR for interest on the amount of the loss which has been paid to claimant from such assets.

VII. Schuchhardt

Awards were made in the Proposed Decision for certain losses of assets of Ferdinand Schuchhardt Fernsprech-und Telegraphenwerk AF, including $100,000.00 for loss of land, $9,000.00 for loss of machinery and inventory remaining after removals by Soviet military authorities, $2,750.00 for loss of remaining machinery and inventory not taken by the Soviet military at temporary manufacturing sites on rented premises located at Brunau and Bendorf, and $9,737.14 for the loss of a pre May 8, 1945 bank account. The Commission denied claims for loss of cash on the ground that the evidence was not sufficient to establish the amount or disposition of cash and, in addition, denied a claim in the amount of RM 1,175,000 as "frozen accounts receivable - customers" and in the amount of RM 268,000 as "other current assets" on the ground that the evidence was not sufficient to establish these claims as compensable losses. In different sections of their objection, claimant objects to the denial of certain additional inventory losses, the valuation of the bank account, the denial of other current assets, the valuation placed upon real property in Berlin, and the denial of the claim for accounts receivable.

Upon reexamination of the original claim and the objections made, it appears expedient to the Commission to treat the claim and the objections thereto all in one section. The events concerning Schuchhardt after World War II differ from the events surrounding claimant's other subsidiaries. Schuchhardt was engaged in the manufacture and sale of telephone, telegraph and electronic equipment. Its main facilities were located at Köpenickerstrasse 54/55 which was in East Berlin. During the war as part of the program of dispersal of German manufacturing operations to the east, Schuchhardt established three additional temporary manufacturing plants in rented premises. One of these was located in Czechoslovakia and is not involved in this claim. The other two were located at Bendorf and Brunau. Bendorf was

occupied by U.S. troops initially and was turned over to the Soviets in accordance with the zonal agreements. Brunau was occupied by the Soviet Army towards the end of the war. As to the loss of inventory at Bendorf and Brunau, the Commission affirms its previous holding that all but machinery of a value of $2,750.00 was removed by Soviet military. This is based upon the fact that the only indication of what happened to these inventories was the assumption of claimant that they were 100 percent taken by the Soviets. No additional evidence has been submitted to alter this assumption.

The Schuchhardt plant in Berlin was occupied by Soviet troops and the Commission affirms its previous finding that all but $9,000.00 worth of machinery and inventory present at the site at the time of Soviet occupation was removed by the Soviet military and is not compensable.

According to the claimant, after the entry of U.S. troops into the U.S. sector of Berlin in July 1945, Mr. Walter Kaufmann and Mr. Arthur Mehlis were appointed custodians of Schuchhardt by the United States military government in Berlin. They opened an office of the company at 5 Genest Strasse in West Berlin in a building owned by Mix and Genest, however, it appears that neither of these gentlemen were able to exercise actual control over the Schuchhardt facilities in East Berlin.

Claimant has set forth the following course of events which occurred concerning Schuchhardt and which appear to be supported by evidence submitted by claimant.

By letter of August 10, 1945, the local district administration of Berlin - Mitte appointed a provisional administrator of Schuchhardt and ordered that the right of the former management committee and Board of Directors to manage and to act was terminated. A notice of sequestration dated January 30, 1946 was issued by the City Council of Berlin pursuant to SMAD Order 124. Schuchhardt and SEG attempted to have the sequestration annulled based upon the American ownership of the properties but without success.

Between September 1948 and August 1949 Schuchhardt was merged with another company and became "RFT Krone and Company VEB Werk II" located in Leipzig. Official notice of confiscation was issued on December 2, 1949 effectively confiscating the company.

Therefore, in this instance, differing from the circumstances surrounding claimant's other subsidiaries, the subsidiary itself continued in business and was later nationalized. This appears to have been finally effected on December 2, 1949.

Claimant, therefore, should be entitled to an award based upon its proportionate share of the value of Schuchhardt on the date of its nationalization. Determining this value is not, however, without difficulty. Claimant has submitted a document termed "extracts from report dated June 10, 1947, submitted by ITT." Difficulties are presented in interpreting this document and its two attachments, a purported list of assets and liabilities as of December 31, 1946 and an appendix to schedule 1. The first of the three documents indicates no value for land, building, machinery and equipment under the column of pre-capitalization assets and liabilities before May 8, 1945. However, they show an increase of RM 2,446,000 as of the balance sheet for December 31, 1946 at a time when admittedly the company was being stripped of machinery and equipment, and when the building had been totally or almost totally destroyed. Additionally, the December 31, 1946 asserted balance sheet appears to bear no relationship to the balance sheet of that date, apparently compiled by Messrs. Kaufmann and Mehlis, which lists total assets in the amount of RM 773,152. An additional document entitled "Summary of Value of Property at December 31, 1946 Sequestered by the Soviet Military Administration" asserts a total of RM 904,217.

The October 31, 1946 balance sheet prepared by Kaufmann and Mehlis indicates inventories purchased for resale which presumably have been purchased by use of other current assets available to the company. The actual value of accounts receivable is difficult to determine. Under normal circumstances, some reduction or

reserve for uncollectible accounts is normally warranted. The collectibility of these accounts at the end of the war is subject to even greater question. The wartime destruction of the assets of companies which owed such accounts receivable may have made accounts that otherwise would have been payable of little value.

As in all matters, the claimant has the burden of establishing the value of its loss. The evidence before the Commission has been difficult to interpret and reconcile. The Commission has, therefore, studied all the evidence and has determined that Schuchhardt had a value, including land and remaining structures in Berlin, of RM 490,000, (thus increasing its original value for remaining structure). The Commission has included the value of machinery left after Soviet removals as found in the Proposed Decision and has added to this a figure of RM 1 million as a fair valuation of net working capital as the excess of current assets including cash, bank accounts, accounts receivable and inventory over current liabilities and finds that claimant is entitled to an award for its proportionate interest in the amount of $382,598.00 of which claimant has received $83,318.00 and, therefore, is entitled to an award in the amount of $299,280.00 in lieu of any previous awards made for assets of Schuchhardt.

The Proposed Decision is affirmed in all other respects.

The Commission, therefore, withdraws its previous award and mades the following award in its place.

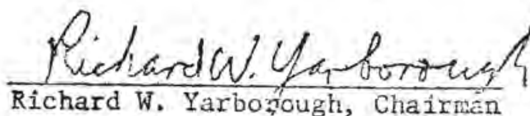
A W A R D

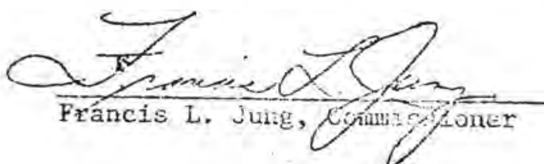
Claimant, INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION, is therefore entitled to an award in the total amount of Five Million Three Hundred Thirteen Thousand Three Hundred Eleven Dollars and Seventy-five Cents ($5,313,311.75) plus interest at the rate of 6% simple interest per annum on: $3,610,934.00 from January 1, 1946; $212,396.13 from August 11, 1945; $56,255.00

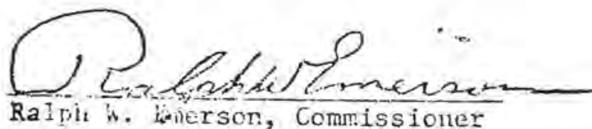
from November 20, 1945; $7,587.80 from October 23, 1952; $17,754.00 from August 16, 1946; $51,675.00 from October 30, 1945; $1,024.00 from July 12, 1950; $78,205.00 from September 9, 1945; $7,061.00 from April 25, 1949; $85,494.00 from April 17, 1951; $26,068.00 from June 9, 1951; $617,875.00 from January 21, 1946; $127,198.00 from January 20, 1946; $8,379.00 from September 1, 1945; $73,829.82 from February 9, 1949; $32,296.00 from January 1, 1947; and $299,280.00 from December 2, 1949, until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic.

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

MAY 15 1981


Richard W. Yarborough, Chairman


Francis L. Jung, Commissioner


Ralph W. Emerson, Commissioner

his is a true and correct copy of the decision
the Commission which was entered as the final
cision on MAY 15 1981

Executive Director

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

IN THE MATTER OF THE CLAIM OF

INTERNATIONAL TELEPHONE AND
TELEGRAPH CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. G-2401

Decision No. G-3164

Counsel for claimant: Covington and Burling

PROPOSED DECISION

This claim in the amount of $37,605,495.00, minus certain payments already received, against the Government of the German Democratic Republic, under Title VI of the International Claims Settlement Act of 1949, as amended by Public Law 94-542 (90 Stat. 2509), is based upon the loss of assets of a number of subsidiary companies owned directly or indirectly, to various extents, by claimant.

INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION, a Delaware corporation, qualifies as a national of the United States under section 601(1)(b), in that, at all pertinent times, more than 50 percent of the outstanding capital stock of the corporation was owned by nationals of the United States.

Under section 602, Title VI of the Act the Commission is given jurisdiction as follows:

> "The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of claims by nationals of the United States against the German Democratic Republic for losses arising as a result of the nationalization, expropriation, or other taking of (or special measures directed against) property, including any rights or interests therein, owned wholly or partially, directly or indirectly, at the time by nationals of the United States whether such losses occurred in the German Democratic Republic or in East Berlin. . ."

Losses are asserted in connection with eleven German companies in which claimant had a direct or indirect ownership interest. The Commission hereinafter sets forth its findings concerning the losses of each of these companies. Initially, the Commission sets forth briefly certain issues which are involved in the determination of these individual losses.

Claimant takes the position that it is entitled to compensation for the loss of any tangible or intangible property which it can presumptively establish to have been in existence in any territory which presently constitutes the German Democratic Republic or Berlin, and which was at any time under control of military forces of the Soviet Union. Claimant asserts that any such loss of property is compensable regardless of the circumstances surrounding the loss or the agency causing the loss, unless the property was actually destroyed as a direct result of the hostilities or confiscated by the Western Allies. Claimant argues that under international law the German Democratic Republic is legally responsible, among other losses, for the loss of any property as a result of removal or looting by the military forces of the Soviet Union or members thereof, prior to or immediately following the end of hostilities, as well as losses caused indirectly by the division of Germany and restructuring of east-west commerce.

The Commission has had not only the advantage of extensive written briefs concerning the legal issues involved, but has had the further advantage of an oral presentation of the issues by way of an amicus argument in the objection filed by General Motors Corporation in claim number G-1270. The Commission has considered at length the various arguments presented by claimant and wishes to compliment counsel for the cogently articulated attempt to construct a rational legal course through the legally uncharted waters surrounding the unique political situation of postwar Germany.

The Commission is in agreement with claimant that compensability under Public Law 94-542 is dependent upon a determination that the GDR is legally responsible under international law for any particular loss and, further, is in agreement that the post World War II political evolution in central Europe presents a unique situation.

The Commission is of the view, however, that Public Law 94-542 does not command nor allow such a broad area of compensability as asserted by claimant.

The issue, common to the claims for a number of the subsidiaries, concerns the compensability of losses of substantial quantities of property such as machinery, inventory, and fixtures, which were immediately commandeered by the Red Army personnel upon occupying various facilities prior to the cessation of hostilities. The record vividly portrays a universal practice of Soviet military forces, upon capturing a factory site, of immediately dismantling, crating, and shipping to the Soviet Union anything which it was conceived would be of value to that country. Photographs display the locust-like effect of Soviet military stripping of factories. The record demonstrates the total lack of any attempt at orderly accounting or even recording the affects of the frenzied dismantling which commenced before May 8, 1945 and was completed during the weeks immediately thereafter.

Claimant asserts that the GDR is legally responsible for this action of the Red Army based upon a theory that, with the Soviet occupation of any area west of the Oder River, a new state came into being, its territory defined at any given moment by the area controlled by the Red Army. Claimant argues that the present German Democratic Republic is the <u>de jure</u> successor of all governing authority which preceeded its creation in October 1949, including that of the Red Army as it occupied territory in the Third Reich in achieving its military defeat of the armed forces of Germany.

The Commission finds this theory to be an unacceptable extension of the responsibility of the German Democratic Republic. To hold that Government responsible for military activities of the Red Army acting for the sole benefit of the Soviet Union would appear to require a conclusion that the Union of the Soviet Socialist Republics was itself a predecessor government of the GDR. Such a conclusion will not bear serious scrutiny.

Following the cessation of hostilities of World War II, Germany was, in principle, governed by four power control, but in practice, the area presently constituting the GDR was administered by the Soviet Military Administration in conjunction with the German Economic Commission formed in 1947; the Socialist Unity Party; and the States and Municipalities of the former German Reich. The Commission has held that the GDR is responsible for actions constituting a nationalization or expropriation of property taken by any part of this combined authority. (See Claim of KURT W. FLEISCHER, Claim No. G-0047, Decision No. G-0690.) The Commission, however, finds no legal support nor logical requirement to extend this legal responsibility to acts of the Red Army taken for the benefit of the Soviet Union during World War II and immediately following the cessation of hostilities.

Following the cessation of hostilities, the Heads of Government of the Soviet Union, the United Kingdom, and the United States entered negotiations at the Potsdam Conference. The Conference ended on August 2, 1945 with the issuance of a protocol and a formal report. The Conference considered the question of reparations from Germany and the parties agreed that reparation claims of the Soviet Union should be met by removals from the Zone of Germany occupied by the Soviet Union and from certain reparations the Soviet Union should receive from the Western Zones. The

parties agreed that the determination of the amount and character of the industrial capital equipment unnecessary for the German peace economy and, therefore, available for reparation would be made by the Control Council under policy fixed by the Allied Commission on Reparations, with the participation of France. At the Conference, the United States proposed Annex II, entitled "Use of Allied Property for Satellite Reparations or 'War Trophies'." Sections one and two, relevant herein, stated as follows:

> "1. The burden of reparation and 'war trophies' should not fall on Allied nationals.
>
> 2. Capital Equipment -- We object to the removal of such Allied property as reparations, 'war trophies', or under any other guise. Loss would accrue to Allied nationals as a result of destruction of plants and the consequent loss of markets and trading connections. Seizure of Allied property makes impossible the fulfillment by the satellite of its obligation under the armistice to restore intact the rights and interests of the Allied Nations and their nationals.
>
> The United States looks to the other occupying powers for the return of any equipment already removed and the cessation of removals. Where such equipment will not or cannot be returned, the U.S. will demand of the satellite adequate, effective and prompt compensation to American nationals, and that such compensation have priority equal to that of the reparations payment.
>
> These principles apply to all property wholly or substantially owned by Allied nationals. In the event of removals of property in which the American as well as the entire Allied interest is less than substantial, the U.S. expects adequate, effective, and prompt compensation."

This proposal (Annex II) was accepted in principle by the Conference but the drafting of an agreement on the matter was left to be worked out through diplomatic channels. This apparently was never done.

On September 20, 1945 a further agreement was entered between the Soviet Union, the United Kingdom, the Provisional Government of the French Republic and the United States. Paragraph nine of this agreement stated:

"9. The German authorities and people will take all appropriate steps to ensure the safety, maintenance and welfare of persons not of German nationality and of their property and the property of foreign States."

Paragraph 19(b) stated as follows:

"19(b) The German authorities will also comply with all such directions as the Allied Representatives may give relating to property, assets, rights, titles and interests located in Germany belonging to any one of the United Nations or its nationals or having so belonged at, or at any time since, the outbreak of war between Germany and that Nation, or since the occupation of any part of its territories by Germany. The German authorities will be responsible for safeguarding, maintaining, and preventing the dissipation of, all such property, assets, rights, titles and interests, and for handing them over intact at the demand of the Allied Representatives. For these purposes the German authorities will afford all information and facilities required for tracing any property, assets, rights, titles or interests."

On October 12, 1949, Otto Grotewohl, Minister-President of the GDR, issued a policy declaration of the new Government, stating in relevant part:

"[The Government] will carry out [the task that the People's Assembly has entrusted to it] in full and com plete accord with the Resolutions of the Potsdam Conference and the other Joint Declarations of the Allies. . . [T]he Government can and will base itself on the agreements reached at the Potsdam Conference."

This committment appears to have been required by the Soviet Union before it would allow the new constitution to take effect. General Chuikov, Supreme Commander of the Soviet Military Authority, in a statement on the entry into force of the Constitution of the GDR, dated October 8, 1949, declared:

"[T]he Soviet Government takes note of the fact fact that the Provisional Government [of the GDR] will abide by the decisions of the Potsdam Conference and will fulfil the obligations arising out of decisions jointly adopted by the four Powers.

In connection with the above-mentioned decisions of the German People's Council, the Soviet Government has decided to transfer to the [GDR] the functions of administration which hitherto belonged to the [SMA]."

In his statement on the creation of the Soviet Control Council, November 11, 1949, General Chuikov stated:

> "The Provisional Government of the German Democratic Republic has declared that it will conduct its policy on the basis of the decisions of the Potsdam Conference and will fulfill the obligations arising from the joint decisions of the four Powers. The Soviet Government has taken note of this declaration."

The Council of Ministers of the Soviet Union, on August 6, 1954, declared that, in rescinding all political, economic, and cultural orders of the Soviet Military Authority and the Soviet Control Commission issued between 1945 and 1953, "The Soviet Government takes note of a statement made by the Government of the DDR that the German Democratic Republic will abide by the obligations arising for it from the Four Power Agreement on the peaceful development of Germany."

The Commission, therefore, agrees with the contention put forward by claimant that the GDR has committed itself to fulfilling its obligations under the Potsdam Agreement and the Declaration of September 20, 1945. However, the Commission disagrees with claimant as to the nature and extent of the obligations undertaken by the GDR in committing itself to be bound by those agreements. Claimant contends that the GDR has accepted responsibility for any action by the Soviet Union illegally taking property from the territory which now constitutes the German Democratic Republc or Berlin at any time before or after the Potsdam Agreements. It would appear fundamental that the consent of one government to be bound by an agreement does not impose upon that government a liability for the violation of that agreement by a different State who was also a signatory. References to the protection of property owned by nationals of the United Nations, in fact, reflected concern by

the United States and its Western Allies for the taking of such property by the Soviet Union. Certainly, by signing the Potsdam Agreement, the United States did not agreed to be liable for violations of the Agreement by the Soviet Union. Nor in the Commission's view, did the GDR assume such a liability merely by agreeing to be bound by the Agreement.

The Potsdam Agreement, however, although agreeing in principle that the burden should not fall upon Allied property, did authorize the removal by the Soviet Union of property by way of reparations from the Eastern Zone of Germany. In 1947, negotiations between the Socialst Unity Party (the communist dominated party functioning in what is now the GDR) and the Soviet Military Administration resulted in reductions in the reparations obligations. Intense negotiations were carried out in 1953 between the GDR and the Soviet Union regarding the GDR's outstanding obligations to pay for occupation costs and to make further reparations payments. These eventually resulted in the elimination of those obligations after January 1, 1954.

Although neither the details nor the motivations of the parties in these negotiations are completely clear, it appears to the Commission that the Soviet actions in removing property after the Potsdam Agreement, in violation of that Agreement, inured to the benefit of the German Democratic Republic in the satisfaction of the reparations obligations created by the Potsdam Agreement. To that extent, the German Democratic Republic ratified and became legally responsible for such Soviet actions violating the Potsdam principle that Allied property would not bear the burden of reparations.

Therefore, the Commission holds that the GDR is responsible for any action expropriating property which remained in the territory which presently constitutes the German Democratic Republic, and is further legally responsible for the loss of any property which was taken, either by German agencies or agencies

of the Soviet Union, occurring on and after August 2, 1945, whether such property remained on situs or was shipped to the Soviet Union.

Conversely, the Commission holds that the GDR is not responsible for the loss of property removed before that date by the Soviet military.

Certain of the losses which the Commission finds compensable under Public Law 94-542 were also the subject of awards issued by the Commission under the General War Claims Program. As partial payment of those awards has been made, the Commission is required, pursuant to section 605 of the Act, to deduct all amounts the claimant has received in determining the amount of its award. By Final Decision issued in the General War Claims Program, the Commission determined that claimant had suffered losses of $28,837,041.00. Payments have been received by claimant in the amount of $17,976,350.36. Therefore, as to any loss compensable under both the General War Claims Program and Public Law 94-542, claimant has received payment in the amount of 62.33 percent which has been deducted by the Commission in establishing the compensable loss.

The Commission has awarded interest at the rate of 6 percent simple interest from the date of loss, until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic. In some instances, the evidence establishes that certain property, in fact, has been nationalized, confiscated or otherwise taken, but the exact date is impossible to ascertain. In such instances, the Commission has used a date which it believes approximates the actual date of loss.

The Commission hereafter sets forth its findings and conclusions concerning each of the asserted losses for each of claimant's subsidiary companies.

C. Lorenz A.G.

Claimant owned 98.84 percent of C. Lorenz A.G. (Lorenz). The company was a large radio manufacturing company. Total efforts during the war were devoted to the production of military equipment.

The company had a major factory located in West Berlin. During the battle for Berlin, the factory suffered major damage and, according to estimates, 80 percent of inventory stored in Berlin was destroyed by artillery fire.

On or about May 1, 1945, Soviet units entered the Lorenz permises and proceeded to strip the plant of its machinery which was loaded on railroad cars and shipped east. It is estimated that 95 percent of the machinery was taken by the Soviet military. Claimant asserts that machinery taken by the Soviet forces had a value of RM 6,650,000, based upon an estimate that 95 percent of all machinery was taken and after the war RM 350,000 worth of machinery remained. This estimate apparently is made on the assumption that the machinery did not receive significant damage during the battle of Berlin, which appears to be a questionable assumption in light of the evidence submitted that 80 percent of the inventory located on the same premises was destroyed by artillery fire.

Whatever the actual value of the machinery may have been, it was taken by the Soviet military commencing prior to the end of World War II in West Berlin and claimant has not established that this property remained in the German Democratic Republic and was taken by that Government or a predecessor thereto. Therefore, this part of the claim must be and hereby is denied.

The company also owned real property in Treptow district of Berlin consisting of land on Wildenbruch Strasse, a dwelling house and industrial hall on Kiefholz Strasse, and part of a factory and two dwelling houses at Graetz Strasse. This property was taken by Order number 124 and Law number 126 of the Soviet

Military Authority and the Commission finds this taking was effective on October 30, 1945. The Commission finds that this real property had a value on the date of loss of $138,760.00 in which claimant's interest was $137,178.00, of which claimant has received compensation in the amount of $85,503.00 and is, therefore, entitled to an award for the loss this real property at Treptow in the amount of $51,675.00.

At Buchow in Brandenberg, the company had a children's convalescent home, owned by C. Lorenz Unterstützung G.m.b.H., a wholly owned subsidiary of Lorenz. The property consisted of 7,939 square meters of land. Based upon the record, there is no evidence to establish that anything except the land survived the hostilities of World War II. The Commission finds that this land was taken on July 12, 1950, at which time it had a value of $2,750.00. Claimant's interest in this loss totaled $2,718.00 for which it has been compensated in the amount of $1,694.00 and claimant is, therefore, entitled to an award in the amount of $1,024.00 for the loss of this real property at Buchow.

The company leased premises and built a building at Dabendorf consisting of a plant for the production and assembly of electro-technical equipment. The Soviet military forces occupied the premises in April or May of 1945 and dismantled and removed part of the machinery and fixtures. The record indicates that as of June 1946 the buildings and machinery and shop furniture which remained had a value of $210,000.00. In the spring of 1946 production continued at a small scale at this site and the Commission finds that the property was expropriated on September 9, 1946. Claimant's interest in this loss was in the amount of $207,606.00 of which it has received compensation in the amount of $129,400.00 and is, therefore, entitled to an award in the amount of $78,205.00.

The company had also established plants at Falkenstein and Auerbach in rented premises. These locations were occupied first by the American army on May 5, 1945 but were then turned over to the Soviet administration. During the period American troops were in occupation, some of the plant machines were removed to the west. After the plants came under the control of the Soviet military, a series of events occurred in which the plants were operated under various forms of sequestration and as expropriated enterprises, including a short period when an individual was appointed as trustee ostensibly on behalf of Lorenz. No control over these plants was allowed to be exercised by the company, however, and the Commission finds the company's assets were taken as of January 1, 1946. Claimant asserts that there existed at these plants property, including buildings, machinery and shop furniture, of a value of RM 1,824,197. The value of part of the machinery and shop furniture, which under Soviet order, was removed to Rataburg, appears to be verified by an actual inventory made at the time. A large part of the total is made up of a category described as "other machinery and shop furniture taken" in the amount of over RM 1,000,000. The evidence to which the Commission is referred in support of this valuation, in addition to being untranslated and practically illegible, appears to consist of fairly gross estimates, the basis of which are not supplied, from which is subtracted an estimated amount for the value of machinery removed to the west. No further evidence concerning the condition of machinery at these plants has been supplied. Based on a consideration of the entire record, however, the Commission finds that property of a value of $400,000.00 was taken and that claimant suffered a loss for its proportionate share in the amount of $395,440.00 and is entitled to an award in that amount.

The company maintained a testing facility, laboratory and storage depot at Glienick which was established on leased premises but included capital improvements and machinery installed by the

company. The Soviet military occupied the facilities at Glienick in late April of 1945 and the company never regained control of these facilities. The Commission finds that the permanent fixtures at this site were effectively taken as of January 1, 1946 and that claimant suffered a loss in the amount of $52,300.00 for its indirect ownership interest in the assets taken for which it has received compensation in the amount of $32,598.00 and is, therefore, entitled to an award in the amount of $19,701.00.

Claimant, by way of original submission and supplemental submission, seeks compensation for certain receivables for goods and services and certain advance payments to suppliers. Claimant has submitted extracts from book entries listing the names of the companys from whom it asserts receivables were owing or to whom advance payments had been made. Claimant contends that as these were listed as "East Zone" debts, claimant is entitled to be compensated.

The Commission holds that for the loss of a debt to be compensable, it must be established, either that the debt itself was taken and collected by the German Democratic Republic, or that the company owing the debt has been nationalized, so that the government becomes liable for the liabilities of the company as a going concern, as well as receiving the assets of the concern. The mere fact that a business enterprise has some asset expropriated in the GDR does not, in the Commission's view, make the GDR responsible for all outstanding debts of that enterprise. No contention is made that Lorenz itself was nationalized or that any debts owing to it were specifically taken and collected by the GDR. Claimant has submitted specific evidence concerning some of the debtors. The Commission has carefully reviewed this evidence and finds that certain of the debtor companies were principally located in the territory which is now the German Democratic Republic and that the companies were nationalized and

in some form were continued in business by the East German authorities. The Commission finds that accounts receivable from the following companies in the amount of $132,499.00 fell into this category:

Graetz AG Werk
Stassfurter Rundfunkgesellschaft
Carl Zeiss
Kock & Sterzel AG
Graetz AG
Elbtalwerk EAG
Elektrop Elektro-Optik GmbH
GEMA
AEG
Leipziger Leichtmetall Werk
Rackwitz B. Berghaus & Co. KG.

Advance payments in the following companies in the amount of $62,393.00 fell into this category:

Mueller-Novo
MAKO Maschinen Compagnie-Werke
Peniger Maschinenfabrik Unzuh & Liebig AG
Polte Patronenfabrik
Otto Scheidt Eisenlager
AEG Abt. fuer Wiederverkauf
AEG Techn.-physik.-Werkst.
H. & W. Gessner
Ariadne Draht- u. Kabelwerke AG
Sperrsignalbau GmbH Winger & Co.

Therefore, claimant is entitled to an award in the amount of $192,436.00 for its interest in this loss.

The particular debtor companies were nationalized at various dates in the period between 1946 and 1951 and in many instances the exact date of nationalization is not submitted. The Commission, therefore, finds that it is both equitable and convenient to take an approximate date and hold that this loss in its entirety occurred as of January 1, 1946.

The Commission finds that Lorenz owned two mortgages in the total amount of RM 30,000 and the Commission finds they were taken as of April 25, 1949, at which time they had a value in the amount of $7,143.00 and claimant is entitled to an award in the amount of $7,061.00 for this loss.

Claimant has presented evidence concerning certain bank accounts located in the territory which presently constitutes the German Democratic Republic. The Commission finds that these accounts were taken, if not before, on August 11, 1952 pursuant

to the Decree of September 6, 1951 and that Lorenz suffered a loss therefrom in the amount of $73,202.00 and that claimant is entitled to an award in the amount of $72,368.00 for the loss of these accounts.

Lorenz, additionally, had a postal checking account in East Berlin which, after revaluation, was in the amount of DM 363,217, which account was taken on April 17, 1951, causing a loss to Lorenz in the amount of $86,480.00, so that claimant is entitled to an award in the amount of $85,494.00.

Claimant further asserts claim for certain amounts deposited in banks in Poland and Czechoslovakia. This part of the claim is denied as no basis is provided to convince the Commission that these accounts were lost due to action by the German Democratic Republic.

Claimant makes claim for various engineering and technical drawings, diagrams, models and prototypes. Claimant has submitted various affidavits making estimates of the number and location of various technical drawings. Claimant has further provided certain estimates as to the percentage of these drawings which constituted duplicates and the loss of which would not constitute a loss to Lorenz. After careful review of the documentary evidence submitted, the Commission believes that claimant's estimates of the number of original drawings located at various sites is reasonable. These estimates show a total of 185,000 drawings located at Rangsdorf, Dabendorf fields one, two and three, and Dahlewitz; 102,000 drawings were located at Falkenstein, Mittweida, Auerbach, and Mühlhausen; 20,000 drawings are asserted to have been located at a plant located in Poland and are not relevant herein; 60,000 drawings are estimated to have been located at the facilities in West Berlin.

The affidavit upon which claimant relies to establish the approximate number of drawings located at these sites asserts that the average value for each drawing was RM 20. Claimant asserts, however, that, although the affidavit is truthful and

should be accepted by the Commission as to the number and location of drawings, the estimate of the cost should be rejected on the ground that it is contradicted by other affidavits submitted to the Commission. One of the affidavits which claimant asserts as contradictory does not appear so to be, in that it states that a value of RM 20 is "at the lower threshhold of reasonable."

A further affidavit submitted provides estimates of the average draftsman's hours required to reproduce such drawings in the period of 1946 through 1951, which estimates indicate postwar labor costs ranging from RM 21 per drawing to RM 28 per drawing, the higher figure due to rising labor costs in the postwar period. Claimant suggests that in addition to the cost of labor the value of each drawing should be increased two-thirds, based upon the overall ratio of labor costs to overhead costs throughout Lorenz. There appears to be little statistical validity to apply such overall overhead costs to the reproduction of such drawings. By way of supplemental submission, claimant submits evidence that as of 1956, the value of technical drawings ranged between DM 30 and DM 70, with DM 50 being the average value. This evidence adjusted for inflation as indicated by the increased building cost index to reflect wartime value would suggest a value of DM 25 per drawing.

Although the Commission recognizes that the loss of these drawings did require the development of new drawings after the war, thus resulting in a loss to Lorenz, it appears reasonable to the Commission that such drawings reproduced in the immediate postwar period would be able to incorporate some technological advance and would have somewhat more value than such drawings prepared in the prewar period. Taking all this into consideration, the Commission considers the estimate submitted of an average cost of RM 20 per drawing is reasonable as a valuation figure for the lost drawings.

Claimant submits that it is reasonable to presume that as to the original drawings located at Falkenstein, Mittweida, Auerbach, and Mühlhausen, it is highly probable that a large percentage of these drawings remained at those locations because similar government operated businesses were conducted at those locations by the GDR. The Commission considers this a reasonable presumption and finds that Lorenz suffered a loss of $500,000.00 for loss of drawings at those four sites. As to the drawings located at the other sites, based upon the evidence of the conduct of the Soviet military upon occupying these sites, it is much more probable that but a small percentage of those drawings remained in the German Democratic Republic. The Commission finds that Lorenz drawings of a value of $250,000.00 remained and were taken at those sites. The Commission, therefore, finds that claimant is entitled to an award in the amount of $741,450.00 for its proportionate share in this loss and finds for the purpose of this decision that this loss occurred on January 1, 1946.

By way of supplemental submission, claimant claims for the loss of communications equipment which it asserts was delivered to a German Navy arsenal at Rathenow. Claimant submits an affidavit from a Lorenz employee, Mr. Gerhart Heitmann, who, after the war, was appointed as the director of the Settlement Division on "Old Claims." It is not stated what his position or location was during 1944 and 1945. The affidavit states that all deliveries of Lorenz A.G. were made under a reservation of title which states that the goods remain the property of the deliverer until the fulfillment of all outstanding claims against the purchaser. The affidavit asserts that in the last 12 months before the end of the war and particularly in the last three months, large quantities of signaling equipment were delivered to the Rathenow Naval Arsenal. The affidavit further asserts that, as of some months before the end of the war, the distribution from Rathenow to the individual navy units was no longer functioning since the supply lines had been broken, and states that, to his knowledge,

the greatest part of the equipment from deliveries made by Lorenz A.G. during the last 12 months of the war and almost all the equipment from deliveries made during the last three months of the war were still at the Rathenow arsenal when the war ended. The affidavit states that Rathenow was occupied by Soviet troops in April 1945.

The affidavit attaches certain accounting records which indicate that a balance of over RM 3 million is listed for deliveries posted as of May 7, 1945. This presumably was not possible as the arsenal was in Soviet hands by this time, an apparent contradiction which Mr. Heitmann explains by what he describes as the chaotic conditions in Berlin during the months of March, April and May of 1945, which meant that entries were not posted until the latter part of 1945 and 1946. These postings supposedly are verified from individual invoices indicating the goods had actually been "delivered" because of a hole punched by the shipping department, but whether such an indication on a shipping document verifies that goods which were shipped actually were received at the arsenal during the last days of the battle for Berlin, would appear to the Commission to be more a matter of conjecture. Claimant suggests that it be assumed that 75 percent of all deliveries estimated to have been made during the last months of the war and 55 percent of all deliveries estimated to have been made during the nine preceeding months must be assumed to have still remained in the Rathenow Arsenal when it was overrun by Soviet forces. Except for the statement in the affidavit of Mr. Heitmann that "already some months before the end of the war, however, the distribution from Rathenow to the individual navy units was no longer functioning, since the supply lines had been broken.", claimant's assumptions do not appear based on any evidence. It would appear somewhat unlikely to the Commission that, if the German Navy had the substantial inventory build-up from deliveries between May 1944 and March 1945, as suggested by claimant, and if they were unable to ship these goods to naval

units, that they would have continued to have made the very substantial orders for further equipment to be delivered during the last three months of the war.

Claimant asserts that the accounts receivable balance for goods shipped to Rathenow as of the end of the war stood at RM 9,632,881 and, therefore, to that extent title remained in the inventories in Lorenz.

No direct evidence has been supplied concerning what goods actually remained at Rathenow. Claimant apparently assumes that Rathenow was not bombed and suffered no war damage to such inventories, an assumption that does not necessarily appear warranted. Finally, claimant submits no direct evidence as to what happened to these goods other than the assertion that the arsenal was overrun by the Soviet military in April 1945. Based upon the general conduct of the Soviet military in such instances, it would appear highly probable that any remaining inventory was shipped immediately to the Soviet Union.

The Commission, therefore, finds that claimant's evidence does not support the basis for a compensable claim for goods delivered to the German Navy at the Rathenow Arsenal.

The company established a manufacturing operation in Guben on leased property where substantial additions and improvements were made and machinery installed.

Claimant asserts a claim for certain tangible and intangible property located at a Lorenz manufacturing operation established in Guben. A list of the locations of foreign installations submitted in the General War Claims Program establishes that the Guben plant was located in what is now Poland. Losses occurring in Poland are not compensable under Public Law 94-542.

The record indicates the company owned certain property consisting of dwelling houses, farmland, pastures and forests in Lemnitzhof. This property was in an area which was first occupied by American troops and was later turned over to Soviet authorities. It appears the property was initially sequestered pursuant to SMA

orders numbers 124 and 126, however, the sequestration was later lifted and the company was allowed to appoint its own administrator. By letter dated June 9, 1951, however, the Ministry of Finances for the German Democratic Republic informed the company that it had taken over the protection and administration of foreign assets in the German Democratic Republic and the Commission finds that the assets there located were taken effective that date. The Commission finds the value of the property on the date of loss was in the amount of $70,000.00 and that claimant's proportionate share of the loss was in the amount of $69,200.00 of which claimant has received payment in the amount of $43,134.00 and is, therefore, entitled to an award in the amount of $26,068.00.

The company, additionally, had an installation at Mittweida upon leased premises, having placed buildings and other improvements and machinery upon the property.

According to the claimant, following a brief occupation by United States forces, Soviet troops occupied Mittweida towards the end of the war, whereupon virtually all the machinery was seized by Soviet troops and crated for shipment to the Soviet Union. Although apparently some 4,000 crates of raw materials and semi-finished goods were returned to the plant, there is no indication that any machinery was returned. On January 21, 1946, the properties were sequestered by order of the local district administration under SMA order 124 and a trustee was appointed. In July of 1946, the property was expropriated by action of the Saxony region administration. Although this expropriation was temporarily replaced by a renewed sequestration in August 1947, it was reimposed by the Government of Saxony in 1948. For all practical purposes, total control of the property was lost as of January 21, 1946 and the Commission holds that the property was taken as of that date.

Based upon figures contained in the company's corporate records concerning costs of construction of the permanent facilities reduced by approximately 10 percent to account for depreciation and depletion, the Commission finds that the permanent structures and installations on the date of loss had a value of $625,000.00 of which claimant's interest was in the amount of $617,875.00 and claimant is entitled to an award in this amount.

The company additionally asserts a claim for property removed by Soviet military which is estimated in the amount of RM 2,206,000. The Commission finds that this does not form the basis, however, of a compensable loss.

Lorenz had owned, before the war, two factories together with additional buildings and land located in Mühlhausen. This area was initially occupied by the American army, during which time most of the machinery was evacuated to the west. Upon the United States military withdrawal, the property came under the control of Soviet military and on January 10, 1946 the office of the Mayor of Mühlhausen informed Lorenz that its Mühlhausen property was sequestered pursuant to SMA orders 124 and 126. The Commission holds that these factories were effectively taken on that date. It appears that thereafter Soviet troops dismantled the plants. Any such dismantling, however, occurred after the date that the Commission has determined these factories were taken and, therefore, claimant is entitled to an award for its proportionate share of the value of the assets of these factories as of January 10, 1946. The Commission finds that the value of the land, factories and remaining machines was in the amount of RM 1,366,230 and that the value of claimant's proportionate share of this loss was in the amount of $337,664.00 of which claimant has received the amount of $210,466.00 and is, therefore, entitled to an award in the amount of $127,198.00.

The company owned a building used as an experimental workshop in Rangsdorf. The Soviet army occupied Rangsdorf in April 1945 and reports indicate that by September 1, 1945, the building was being used by local authorities as a public hospital. It appears probable that the facilities were expropriated on September 9, 1945 by the provincial administration of Brandenburg and, although the expropriation was lifted in 1947 and the property placed in sequestered status, it is clear that Lorenz never regained use of the property. The Commission, therefore, holds that the property was effectively taken as of September 1, 1945. The land and buildings located at the site had a value of $22,500.00 of which claimant's proportionate interest was in the amount of $22,243.00 of which claimant has received $13,864.00 and is, therefore, entitled to an award in the amount of $8,379.00.

Claim is also made for machinery and movable fixtures in the amount of RM 116,988. This estimate is arrived at by applying the ratio of employees at Rangsdorf (100) to the company's total employees (23,000) to the total value of all Lorenz machinery, tools, transport equipment, laboratory furniture and fixtures. As the operation carried on at Rangsdorf is described as an experimental workshop, there would appear to be little statistical validity to the basis of this estimate. However, it appears that most of the machinery and fixtures were carried off by Soviet troops and the remainder were transported by the company to Dabendorf. The evidence, therefore, is insufficient to establish the basis for a compensable claim for this loss of machinery and movable fixtures.

The company owned a testing facility at Telz. The facility was occupied by the Soviet army in April and May of 1945 and the company never regained control over its Telz property. The Commission, therefore, finds that the assets located at this site were taken on January 1, 1946. The building and permanent

fixtures at the site had a value of $6,590.00 of which claimant's interest was in the amount of $6,515.00 and claimant is entitled to an award in that amount.

The company also had a testing facility located at Wassmannsdorf. This facility was also occupied by the Soviet military in April or May of 1945 and the Commission holds that, at the time of loss, the building and permanent.fixtures had a value of $4,679.00 in which claimant's interest was in the amount of $4,625.00 of which claimant has previously been compensated to the extent of $2,882.00 and, therefore, is entitled to an award in the amount of $1,743.00.

Claimant next makes claim for loss of inventory in the amount of RM 52,752,736, not including a supplemental claim for inventory at the Rathenow Arsenal previously discussed.

The evidence submitted concerning value, location, and loss of inventory is conflicting and subject to varying interpretations. Claimant asserts that the book value of inventory just prior to the German collapse was in the amount of RM 72,906,000 and that the value of all remaining inventory after the war was in the amount of RM 8,025,000, from which it is concluded that the book value of inventory lost was RM 64,881,000. Claimant then asserts that certain adjustment should be made to increase book value to reflect what are stated to be certain legitimate cost items and as to 20 percent of the inventory to reflect its wholesale value. These adjustments increase the total amount of inventory which it is asserted was destroyed or confiscated to the amount of RM 76,145,276 Part of this inventory was located at locations in Czechoslovakia and Poland. Claimant asserts that inventory of a value of RM 8,160,000 was lost in the fighting in Berlin. After these adjustments are made, claimant arrives at the figure of RM 52,752,736 as the basis of the their claim for loss of inventory, an other estimate submitted in the General War Claims Program estimates the loss of inventory due to fighting in Berlin at RM 12,000,000. An estimate of inventory losses made by a Major Schmidt arrived

at a higher value, part of which appears to be due to the use of wholesale prices by Major Schmidt to value the semifinished goods. A chart submitted by claimant in the General War Claims Program makes proportionate adjustments to bring Major Schmidt's figures in line with the total loss estimate now used by claimant. If this adjustment list is referred to, the maximum loss of inventory which even arguably could be considered as the basis for a compensable claim drops to RM 34,000,000, in part, because a major item of loss asserted by Major Schmidt involves losses "occasioned by depreciation on account of reduced saleability." Claimant suggests that this loss does not actually result from loss of saleability as stated by Major Schmidt, but merely was a figure to adjust for inventory for which he could not account.

It must be noted, however, that in the claim made by claimant for loss of inventories of Foch-Wulf Company, that where further details were provided concerning the nature of the inventories, statements issued by Foch-Wulf admit a tremendous loss in value of inventories due to the cessation of hostilities. While claimant suggests that the nature of the war production by Lorenz was more adaptable to peacetime use compared with the war production of certain other subsidiaries of claimant, very little evidence is provided to the Commission as to the exact nature of the inventories to allow the Commission to determine whether or not this is true. Not only does claimant suggest there was no reduction in value to any of Lorenz's inventories but, on the contrary, they assert that the Commission should accept values substantially increased over book value to reflect a true value for the inventories.

The Commission makes these comments not to be critical of counsel who has presented the strongest possible reconstruction from available records, but rather, to demonstrate that, in fact, the value, nature and distribution of the inventories of Lorenz following the hectic conclusion of World War II is, of necessity, based largely on conjecture and gross assumptions.

Apart from the question of the sufficiency of the evidence to establish the nature, value and distribution of the company's inventory, the Commission is also faced with the difficulty of attempting to determine the disposition of these inventories. Among losses which may be due, directly or indirectly, to hostilities; inventories seized by the Soviet military and transported to the Soviet Union for the use of the military; inventories immediately seized and shipped to the Soviet Union, both before and immediately after the cessation of hostilities; and inventories which may have remained and been used in the territory of the GDR by nationalized companies.

The Commission has, therefore, considered the assertions made by claimant concerning the location and losses of inventories, the evidence which has been submitted in support of these assertions and the information which has been provided concerning the course of events at each of the installations after they came under control of the Soviet military. Based upon this review, the Commission is of the view that the evidence is sufficient to support the following inventory losses as forming the basis for compensable claims.

Mühlhausen	$200,000.00
Mittweida	$450,000.00
Falkenstein	$550,000.00
Auerbach	$190,000.00
Additional inventory shifted to Mittweida & Mülhausen	$120,000.00
Wasmendorf	$ 2,500.00
Leipzig	$ 30,000.00
Dabendorf field 2	$ 55,000.00
Lemnitzhof	$ 25,000.00
Rangsdorf	$ 8,000.00
With subcontractors	$ 45,000.00
Dabendorf - Leimdenhof depot Gleinick depot	$100,000.00
Other Eastern depots	$ 55,000.00
	$1,830,500.00

Based on its indirect ownership of Lorenz, claimant is entitled to an award in the amount of $1,809,632.00 for this loss of inventory.

Claimant next claims for losses of cash. The evidence cited by claimant to establish the amount and location of cash is contradictory. Claimant cites an auditor's report of the annual statements of accounts which gives a total of RM 1,038,000 as "cash gone astray." This figure is broken down as RM 538,000 in Berlin, RM 14,000 in Czechoslovakia and RM 486,000 in branch offices and dispersal plants in the East offices and dispersal plants in the East Zone. Claimant then refers the Commission to a document entitled "Damage as a Result of War at May 8, 1945" listing a total loss of cash in the amount of RM 1,037,699.61, only RM 795,409 of which was charged to cashiers in Berlin and locations in what is presently the GDR. The report lists the cash at Mittweida as RM 8,970.88 and as charged to the cashier at Falkenstein in the amount of RM 212,045.17. Claimant then contradicts this evidence by referring the Commission to a copy of an undescribed document prepared at an unknown date by an unknown author which states concerning Mittweida "cash balance about RM 400,000",which claimant asserts should be accepted for the amount of cash at that location. Claimant then cites the Commission to a document stating that prior to the occupation of Guben there were cash balances on hand of RM 879,456. Although claimant includes this sum in a total of over RM 2 million which it claims as total cash losses, the document itself indicates that the cash was held in Guben which is now part of Poland.

An amount of RM 503,840 is claimed to have existed in Berlin. Based upon this conflicting group of documents, it is clear that it is a matter of speculation what cash may have been at what sites.

A matter of far greater speculation concerns what may have happened to such cash. Claimant theorizes, for example, that all cash in Berlin, most of which it assumes was at the Templehof factory, survived the battle for the factory unscathed, although evidence indicates that 80 percent of inventory was destroyed by artillery fire. Claimant apparently asserts that, although facilities such as those at Mittweida and Falkenstein and Mühlhauser were originally occupied by United States troops and admittedly machinery and equipment were evacuated therefrom, for some unexplained reason, all cash was conveniently left behind to be subsequently expropriated by the German Democratic Republic. The large amount of cash claimed to have been located in Guben was, of course, not even within the territory which presently constitutes the German Democratic Republic.

Based upon the above discussion, the Commission denies claimant's claim for loss of cash as being unsupported by the evidence and totally speculative.

Standard Elektrizitäts Gesellschaft A.G. (SEG)

This company was a wholly owned subsidiary of ITT and functioned as a holding company for various ITT interests in Germany and in other European countries. The record establishes that at the end of World War II SEG had a bank account in the amount of RM 93,907.36 with the Thüringische Staatsbank in Rudolstadt, Thuringia. This account was blocked and subsequently would have come under the purview of the Decree of September 6, 1951, which placed foreign owned assets under the administration of the German Democratic Republic. The Commission has held that such action constitutes a taking as that term is used in Public Law 94-542 and in the absence of more specific evidence will be assumed to have occurred on August 11, 1952, the date of the first implementing regulations of the decree. Had the German Democratic Republic not taken such action concerning this bank account in violation of international law, the account would have been converted pursuant to the 1948 currency conversion into an account in the amount of 9,390.74 ostmarks which would have had a value of $2,235.89 and, therefore, claimant is entitled to an award in such amount.

Telefon-Fabrik A.G. (TEFAG)

The record shows that claimant owned, through Standard Elektrizitäts Gesellschaft A.G., a wholly owned German subsidiary, 99.1 percent of the entire capital stock of TEFAG. Claim is asserted for the loss of cash in the amount of RM 13,997. In the General War Claims Program, the Commission made an award to claimant for the loss of this cash, which the Commission found was lost as a result of military actions during the battle for Berlin. Losses as a direct result of hostilities occurring during World War II are not compensable under Public Law 94-542. Claimant neither submits nor cites any evidence to contradict the finding that this cash was lost as a direct result of hostilities. Claimant speculates that this cash remained and was taken by the Russian military or other East Zone authorities and ultimately by

the German Democratic Republic, however, no evidence is submitted in support of this speculation. On the contrary, the evidence established in the General War Claims Program indicated that TEFAG owned a factory in Berlin and had office equipment in the building of Mix and Tenext A.G., all of which were damaged or destroyed during air raids. Based upon this record, there is no basis for the Commission to find that some or all of this cash survived World War II and was taken by the German Democratic Republic. Therefore, this part of the claim must be and hereby is denied.

G. Schaub Apparatebaugesellschaft m.b.H. (SCHAUB)

Claimant was the owner, through a subsidiary, of 98.86 percent of the capital stock of SCHAUB, a company engaged in the manufacture of radios and radio equipment with its principal offices in West Germany.

Claimant asserts claim for accounts receivable owing to SCHAUB at the end of World War II.

The record establishes that SCHAUB had an account receivable in the amount of RM 313,661 owed by a company known as Gema (Gesellschaft für Elektrische und Mechanische Apparate G.m.b.H.) located in East Berlin. The record demonstrates that Gema was confiscated by the Magistrate of Greater Berlin on February 9, 1949. Section 601(3) of the Act defines the term "property" as including ". . . debts owed by enterprises which have been nationalized, expropriated or taken by the German Democratic Republic . . . " Therefore, the Commission finds that claimant is entitled to an award in the amount of $73,829.82 for its indirect loss of this debt.

Claimant further claims for the loss of an account receivable in the amount of RM 273,656 owed by Telefunken G.m.b.H., Berlin. The Telefunken Company was not nationalized by the German Democratic Republic and continues today as a major manufacturer in the Federal Republic of Germany. The record contains a statement

from the Telefunken Company issued in July 1947 to its creditors stating its inability to pay pre May 8, 1945 debts due to the substantial loss of assets as a result of combat, dismantling and confiscation, in addition to the seizure of foreign assets, and the blocking of bank and postal accounts. The report from the Telefunken Company further sets forth that the company was placed in trusteeship as of February 1946 under Law number 52, Article 1F, and that the trustees appointed by the occupying authorities have, on the basis of the authorization granted to them by the American military administration, enjoined Telefunken from the payment of liabilities which arose before May 8, 1945.

In support of its claim for the loss of the accounts receivable due from Telefunken, claimant submits evidence that Telefunken had certain facilities located in what is presently the German Democratic Republic. Claimant relies on an affidavit of a Mr. Kurt Lemke, which states that a different subsidiary of claimant located at Nuremburg had shipped goods to Telefunken facilities in what is now the German Democratic Republic and that he has been informed by a Mr. Jung, that Mr. Jung had in turn been informed by a Mr. Weidt that "according to the generally acceptable bookkeeping practice, it can thereby be assumed that a claim which is registered against an 'East block client' will also be owed and paid by this East block client."

The Commission finds no basis in this triple hearsay document, relating to bookkeeping practices, for holding that accounts receivable from the Telefunken Company, Berlin, which were not paid by that company due to the order of American military authorities, constitute a compensable claim under international law against the German Democratic Republic and, therefore, this part of the claim must be and hereby is denied.

Suddeutsche Apparate-Fabrik G.m.b.H. (SAF)

Claimant, through a subsidiary, owned 100 percent of SAF. Claim is asserted for accounts receivable in the amount of RM 905,200 owed by the Telefunken Company. For the reasons set

forth in the Commission's denial of the claim for the loss of accounts receivable owed by the Telefunken Company to claimant's subsidiary, SCHAUB, set forth hereinabove, this part of the claim must be and hereby is denied.

Focke-Wulf Flugzeugbau G.m.b.H. (FW)

Through its subsidiary, C. Lorenz A.G., claimant had a 28.5 percent indirect ownership interest in FW. Claimant asserts a number of separate losses for which claim is made. These include the loss of tangible property at five different locations and losses of various intangible property. These losses will be considered separately by the Commission.

-- Cottbus

As part of a dispersal program during the war, FW established manufacturing facilities in Cottbus, either on leased premises or on real estate owned by the Government. In February 1945, due to the Soviet advance approaching Cottbus, much of the equipment in the Cottbus plant was moved west. Claimant makes claim for the loss of assets which remained at Cottbus , as well as for certain machinery, equipment, tools, supplies and inventory which were lost in transit. Based upon evidence submitted in the General War Claims Program, claimant has prepared and submitted a table setting forth some 19 categories of property which it asserts remained in Cottbus with an asserted value of RM 14,507,281.

The Commission has reviewed this table in light of evidence originally submitted in the General War Claims Program and additional evidence submitted in the present claim.

It is clear from the evidence that due to the loss of relevant stock records, claimant has no specific knowledge of what property originally existed at Cottbus nor of what property was removed to sites in the west at Blumenthal, Grohn and Breman. In 1948, certain estimates were made concerning these matters by FW based upon company balance sheets. Claimant theorizes that property was distributed among the various FW plants in the same ratio

that the number of employees working at these plants had to the total number of FW employees. A letter from FW dated May 5, 1948, confirmed by a subsequent letter of May 12, 1948, stated that 14.954 percent of FW employees were employed at Cottbus. The letter, therefore, assumed that 15 percent of movable assets of FW were located at Cottbus. These estimates were then reviewed by four former top managers of FW who made adjustments to these estimates based upon certain general information concerning the Cottbus plant. These final estimates were submitted to the Commission in the General War Claims Program.

Claimant has now submitted a letter dated June 9, 1948, which contains different estimates of the number of employees of FW and the number of employees employed at Cottbus. The new estimates contained in the June 9, 1948 letter, assertedly based upon newly discovered files of "the local health insurance office", a sworn statement from a Mr. Heinrich Täte, and what is described as "a Hollerith list of September 1944", vary significantly from the corporation's reports of a few weeks earlier. The total number of FW employees was asserted to be 20 percent higher than previously reported and the number of employees at Cottbus assertedly 38 percent higher. From the newly submitted figures, claimant argues that actually 17.1 percent of FW employees were employed at Cottbus and, therefore, it should be assumed that this percent of the movable assets were located there, rather than the 15 percent previously asserted.

As a starting point for its determination, the Commission relies upon a letter dated May 12, 1948, from FW to the Senator for Finances in Breman, submitted in the General War Claims Program, and finds no basis to disregard these estimates despite the evidence now submitted providing different estimates of the number of FW employees. The Commission reaches this conclusion for three reasons. The entire concept of allocating physical assets in an identical proportion to the distribution of the gross number of employees without detailed information concerning

the nature of work at each installation of FW and without detailed breakdowns of the types and jobs of the employees is of very limited statistical validity. The report of May 12, 1948, referred to above, makes further adjustments in percentage estimates due to other factors related to the Cottbus installation which appear to be independent of the distribution of employees of FW. The new estimate of the number and distribution of employees provided in the June 9, 1948 letter submitted with the present claim appears to be based upon a number of sources, including lists referring to the status as of September 1944, files of a further undefined "local health insurance office" as of January 1, 1945, and a sworn statement by an individual asserted to be the Director of the Central Pay Office in Possen, without verification as to the basis of the estimate or the date to which it referred. An estimate of the number of employees at any given time during the last year of the war when FW plants were subject to air raids causing loss of life as well as destruction of personnel records, of necessity, can be only approximate and, therefore, the Commission finds that the letter of June 9, 1948 does not serve to invalidate the June 12, 1948 report previously submitted in the General War Claims Program.

In reviewing the tables submitted by claimant in support of the loss of assets at Cottbus, the Commission finds that other adjustments must also be made. Due to the end of hostilities, a large portion of FW's assets became valueless. Claimants include an item of RM 12,580,000 for work in process. It appears that this work in process was partially constructed fuselages of F-190 Fighters. At the end of the war their sole value would have been as scrap material and would appear to have had no substantial value, as is confirmed by a May 12, 1948 report by FW.

According to the same May 12, 1948 report, the value given for stock and materials should be reduced by 55 percent to account for large items of special purpose parts which also lost their value at the end of the war. Additionally, items of air raid protection equipment would also appear to the Commission to have lost their value by the end of the war.

The table submitted by claimant provides estimates of the value of the property originally at Cottbus from which is deducted an estimate of the contents of some 56 of 471 railway cars loaded with materials which were lost in transit in shipment from Cottbus to Blumenthal and Grohn, part of which loss makes up a separate claim which will hereinafter be considered. Also deducted is the value of equipment which it is estimated arrived in Blumenthal and Grohn. What is not considered is the contents of an additional 30 railway cars which, according to a letter dated May 5, 1948 from FW, were shipped from Cottbus to Breman.

Claimant's table also includes a figure of RM 375,000 as an appreciated value of a power press which remained at Cottbus. The only evidence submitted in support of this loss is contained in the May 12, 1948 report which states in relevant part,

> "The total value of our machinery will be reduced by RM 1.5 million (representing the value of some especially large power presses) to RM 14,328,229; these presses were located in Breman, Possen and Cottbus. The Cottbus press, however, was not evacuated."

While this statement supports a claim for the loss of one power press in Cottbus, it does not establish the total number of power presses owned by FW, nor does it support claimant's assumption that there were three presses, only one located at each of the three locations. The assumption does not appear to be warranted in light of the fact that Breman was the original main factory of FW, and Possen, based upon the number of employees, may have been substantially larger than the Cottbus factories. No description or other evidence to assist the Commission in affixing a value to the presses has been submitted. The Commission will therefore determine its award based upon the assumption that a power press with a depreciated value of at least RM 200,000 remained at Cottbus.

The evidence submitted in the General War Claims Program does not support a finding of a loss of tools for skilled labor, as asserted in claimant's table.

The Commission, therefore, makes the following determinations of reichsmark value of assets, not including structures, which remained at Cottbus after the evacuation of equipment to the west:

power press	200,000
machinery, accessories	1,040
tool shop equipment	19,256
plant equipment	234,457
workshop equipment	56,303
office equipment	25,979
living quarters equipment	134,527
canteen equipment	34,251
other equipment	64,611
security equipment	4,743
firefighting equipment	95,757
tools for unskilled labor	38,308
office supplies	9,000
clothing and medical supplies	31,500
stock of materials	267,650
Total	1,117,382

Based upon percentage estimates submitted by claimant, RM 474,359 worth of assets were removed by Soviet military forces prior to August 1, 1945, leaving a total of RM 643,025 which remained in Cottbus. The Commission finds that assets of this value were taken as of January 1, 1946. Therefore, the Commission finds that claimant suffered a loss in the amount of $45,735.00 for its proportionate indirect ownership of these assets for which it has previously received payments in the amount of $19,640.00. Therefore, claimant is entitled to an award in the amount of $26,095.00 for the loss these assets at Cottbus.

In the process of evacuation from Cottbus, it appears that 500 or 501 railway cars containing FW property were dispatched, 30 to Breman and the rest to Blumenthal and Grohn. It appears that 56 of them did not arrive at their destinations. Six of the 56 were confiscated by British occupation forces. Claimant makes claim for the contents of the remaining 50 railway cars which contents, it estimates, had a value of RM 523,370. Apparently claim was asserted by claimant for the same loss in the General

War Claims Program as a loss attributable to bombing and artillery fire and an award was made for such loss. Claimant theorizes that these railway cars in some manner survived the last months of the war and were expropriated. Claimant asserts that "It is not particularly likely that the cars were destroyed in combat. Nor is it likely that allied air raids were directed at this moving convoy." The Commission finds that claimant's assertions are not supported by the evidence. There is no evidence that the contents of these cars survived and were taken so as to impose a liability in the GDR. Therefore, this part of the claim must be and hereby is denied.

The Commission finds that at the time of the loss of the other assets at Cottbus, certain barracks and fixtures of a total value of $4,000.00 were also taken and claimant is entitled an award in the amount of $1,138.00 as its proportionate share of such loss.

Finally, claimant asserts claim for the loss of RM 53,784.97 of inventories with subsuppliers in Cottbus. The only evidence in support of this is a reference in an appendix to an audit report of FW, which states that this estimate is not subject to accurate evaluation. Other than a statement in claimant's brief that "This property was not concentrated at a single location," no evidence has been supplied to determine the nature of this property, its location, or what may have happened to it during the closing days of the war. The Commission, therefore, finds that the evidence is insufficient to support an award to claimant as to this aspect of its claim and it must be and hereby is denied.

-- Altrosengarth

The record indicates that FW owned an apartment building in Altrosengarth with a value of RM 8,700 which was taken on January 1, 1946. Claimant suffered a loss for its indirect ownership of this apartment house in the amount of $619.00, of

which it has already received compensation in the amount of $361.00. Therefore, claimant is entitled to an award in the amount of $258.00 for this loss.

-- Triebes and Langenwetzendorf

It appears that in early 1945 the Ministry for Armament and War Production ordered FW to take over production plants from the Gerhardt Fieseler Werke in the towns of Triebes and Langenwetzendorf. Claimant asserts that FW brought in its own equipment and other materials in addition to taking over the Fieseler inventory and equipment handed over to it under government orders. Claimant assets that RM 5 million in machinery, equipment, inventory and other facilities were lost at this location. Little evidence of probative value is submitted in support of this claim. Claimant cites a document submitted in the General War Claims Program which lists, as losses due to war damage up until April 30, 1945, a "guess" of RM 10 million in property lost at Triebes and Altrolau, the latter being in Czechoslovakia. Claimant asserts, without evidentiary support, that RM 5 million of this inventory should be assumed to have been at Triebes and to have been taken. Claimant cites correspondence between FW and Gerhardt Fieseler in 1949 in regard to claims and counterclaims between FW and Fieseler. While it is clear from this correspondence that substantial disputes existed between the two firms as to what equipment and property belonged to which firm, there is little in the correspondence of probative value to establish the value of FW equipment or what may have happened to it. Claimant asserts that along with items of relatively negligible value, the correspondence establishes the existence of RM 1,337,000 in parts and semi-finished products, including fuselages, tail units and wings. As has peviously been noted, such items, in fact, had little, if any, value due to the end of hostilities. Although correspondence to which the Commission has referred makes reference to the fact

that plant assets were transferred to the Russian occupation forces, the further caveat is contained "if they had not been lost during the final days of the war." While it is possible to speculate that some property owned by FW may have been taken at these two sites, such speculation cannot take the place of evidence to establish the existence and amount of loss compensable under Public Law 94-542. Therefore, the Commission holds that claimant has failed to carry the burden of proof of a compensable loss of property at Triebes and Langenwetzendorf and for that reason this part of the claim must be and hereby is denied.

-- Ströbitz and Eichow Depots

Claimant asserts that FW had major storage depots in Ströbitz and Eichow in the vicinity of Cottbus. Claimant asserts that property in excess of RM 2 million was located at these two sites. Claimant relies upon what it terms a "summary of accounting files" which was prepared by the managing director of FW on September 17, 1946. This document appears to be a fairly perfunctory memorandum which states that the author had examined certain documents of public accountant, Dr. Elmar Leopold Schneider, and that the date listed was contained therein. Thereafter, a number of locations were listed, most of which are indicated as having no date pertaining thereto, but in reference to Ströbitz, the memorandum contains the statement "over 1 million" and in reference to Eichow, contains the statement "1 million." No further evidence is supplied to allow the Commission to determine the nature or value of such property nor to see whether the value of such property located in and around Cottbus may in whole or in part have been included within the estimates of losses at Cottbus. Furthermore, the evidence concerning the disposition of such property is meager and conflicting. Claimant cites exchanges of letters between FW and the District Revenue Office of Cottbus, the Town Administration of Ströbitz and the District Counsel of the District of Cottbus, which variously assert that the depot at

Ströbitz had been taken over by the town of Ströbitz; that the depot was subjected to the seizure as captured material of the Red Army which disposed of the materials; or that as of May 7, 1945, the depot was registered with the occupation force as military armament assets. Copies of correspondence from an individual in Cottbus indicates that he had secured three and a half barrels of anti-freeze apparently from the depot of a value of RM 675 and states that the then deceased town Chairman had removed a lathe from the Eichow depot.

The Commission finds this evidence of insufficient probative value upon which to base a finding that any particular value of property owned by FW located at Ströbitz and Eichow was taken by the German Democratic Republic.

-- Guben

Claimant asserts that FW operated a plant in Guben, employing 200 employees and further asserts that the plant was evacuated without the opportunity to remove any assets or documents located therein. The FW plant in Guben appears on the list with three other plants, all located in Poland, which are listed as plants which were evacuated without specific instructions from FW. Presumably, this was caused by the Soviet winter offensive which swept through what is now Poland to the Oder River where it paused to regroup before crossing the Oder and starting the final assault on Germany. Plants west of the Oder are listed as locations which had opportunity for a more orderly withdrawal pursuant to instructions from FW. This evidence appears highly indicative of the fact that the FW plant in Guben was located in Guben, east of the Oder River, in what is presently Poland and for this reason alone the loss of any property therein would not be compensable.

Additionally, the evidence submitted to support this loss is, at most, highly speculative as to what property existed and what may have happened to this property.

Therefore, this part of the claim must be and hereby is denied.

Claimant asserts a claim for accounts receivable against certain particular enterprises, additional accounts receivable against unknown debtors, and undescribed "claims other than receivables" against certain disclosed and undisclosed debtors.

The Commission is authorized to find compensable claims for debts against enterprises which have been nationalized or expropriated. Claimant has submitted certain evidence as to the nationalization of certain of the debtor enterprises. The Commission has reviewed this evidence against the list of asserted claims and finds that FW suffered a loss in the amount of $294,277.00 against the following enterprises which it has established were nationalized in the German Democratic Republic.

Ago Flugseugwerke, Oschersleben
Arado Flugzeugwerke, Potsdam
Arado Flugzeugwerke, Warnemünde
Deutsche Arbeitsfront, Cottbus
Felix Oswald, Chemnitz
Palast-Theater, Cottbus
Seyfert & Donner, Chemnitz
Schäffer & Bidenberg, Magdeburg

Claimant is, therefore, entitled to an award in the amount of $83,722.00. As various enterprises were expropriated on different dates between 1945 and 1951 and as the precise date is unknown in many instances, the Commission determines that this loss will be deemed to have occurred on January 1, 1946.

Claimant has submitted evidence establishing the value of certain bank account deposits at branches of banks located in what is presently the German Democratic Republic or East Berlin. The Commission finds that these accounts were taken effective August 11, 1952, and had they not been taken, they would have had a value to FW of $257,725.00 and that claimant is entitled to an award in the amount of $73,323.00 for this loss.

Claimant also makes claim for bank accounts deposited in locations outside the territory that is presently the German Democratic Republic or East Berlin. These claims are hereby denied on the basis that claimant has not established that they are compensable under Public Law 94-542.

Finally, claimant asserts claim for a loss of RM 41,909,858 worth of checks. It appears that in the closing days of the war the Third Reich or agencies thereof issued various checks and/or drafts to FW, presumably to pay for previous delivery of military aircraft. These instruments never cleared to the issuing banks, having been "lost" during attempted interbank transfers and the amounts were never credited to FW's account.

What, in fact, happened to the checks is unknown. Whether during the hectic closing days of the war the instruments were destroyed, mislaid, stolen or seized is neither established nor known. The Commission finds no basis to find compensable any loss arising from the failure of these checks to clear.

Ferdinand Schuchhardt Fernsprech-und Telegraphenwerk A.F. (Schuchhardt)

Claimant, through a totally owned subsidiary, SEG, owned 99.57 percent of Schuchhardt. Schuchhardt owned in excess of 2.21 acres of land in East Berlin located at Köpenickerstrasse 54/55, upon which were located a factory and an apartment house. The structures and most of the machinery and inventory located on this property were destroyed by bombing during World War II. The Commission finds that the remaining land had a value of $100,000.00 and any remaining structures had no economic value.

Based upon records submitted by claimant and considering determinations made by the Commission in the General War Claims Program, the Commission further determines that machinery of a value of $90,000.00 also survived the hostilities of World War II, as did $200,000.00 worth of inventory. Claimant estimates that of this remaining machinery and inventory, all but $9,000.00 worth was taken by Soviet military authorities.

The evidence indicates that Schuchhardt's property in Berlin was taken on January 30, 1946, at which time it had a value of $109,000.00 and claimant suffered a compensable loss for its indirect ownership in the amount of $108,532.00 for which claimant has previously been compensated in the amount of $67,648.00, so that claimant is entitled to an award for the loss of Schuchhardt's property in Berlin in the amount of $40,884.00.

During World War II, Schuchhardt established two additional temporary manufacturing plants on rented premises, one in Bruntal and one at Bendorf. Based upon the record presently before the Commission, the Commission finds that machinery and inventory of a total value of $50,000.00 survived destruction by hostilities during World War II, all of which except $2,750.00 worth of machinery, was taken by the Soviet military forces and that the remaining machinery was taken on January 30, 1946, the date the Berlin facilities were expropriated. Therefore, claimant suffered a loss in the amount of $2,738.00, of which claimant has been compensated to the extent of $1,714.00 and is entitled to an award in the amount of $1,036.00.

Claimant additionally makes claim for the loss of cash in the amount of RM 65,000. The evidence to which the Commission is referred by claimant, however, appears to indicate that the loss was in the amount of RM 5,000. The claimant has not submitted evidence to establish that the loss of any such cash was under circumstances which would make the loss compensable. Therefore, this part of the claim is denied.

Claimant has submitted evidence that bank accounts existed in the amount of RM 409,000. It appears that as of 1950 the German Democratic Republic refused revaluation of these accounts and that they were taken by the German Democratic Republic. Absent evidence of a specific date that these accounts were taken, the Commission finds they were taken pursuant to the Decree of September 6, 1951 as of August 11, 1952, the date of the first implementing regulation. The Commission finds that, had these accounts not been taken, they would have been revalued at the ratio of ten reichsmarks to one ostmark and that the ostmark had a value of 4.2 ostmarks to the dollar, so that bank accounts in the amount of $9,737.14 were taken and claimant suffered a loss in the amount of $9,695.00.

Claimant asserts additional claims in the amount of RM 1,175,000 as "frozen accounts receivable -- customers" and in the amount of RM 268,000 as "other current assets." By way of evidence, claimant cites what the Commission can characterize only as cryptic references to what purports to be an extract from a report dated June 10, 1947 and what is termed an "appendix to schedule 1." The Commission finds this evidence totally uninformative as to the nature of the claim and completely insufficient to establish the necessary elements for a compensable claim.

Stabilovolt G.m.b.H.

Claimant indirectly, through a subsidiary, owned 32.95 percent of Stabilvolt G.m.b.H. Stabilvolt maintained a storage depot in Altenberg, Thuringia. This property was first occupied by United States troops and then turned over to Soviet administration in July 1945. The record indicates that physical assets at this storage depot were not removed by the Soviet military but remained at their location. Absent specific evidence as to the date this property was taken, the Commission holds that it would have come under the purview of the decree implementing SMAD orders 124 and 126 and the Commission holds that this property was taken on November 20, 1945. Claimant asserts a claim in the amount of RM 628,789 for tangible assets. This total includes an amount of RM 6,000 for what is described only as "perishable goods." The Commission finds the evidence is not sufficient to warrant a finding that these goods survived World War II and were taken. The total further includes a claim for RM 600,000 for inventory. This inventory was carried on the books of the company in the amount of RM 248,455. Claimant asserts that the RM 600,000 figure represents the "sales value." In support of this contention, claimant cites the Commission to an unsigned, unidentified memorandum purportedly dated February 20, 1946, which makes the statement that there are "about 50,000 stabilizers with a prime

cost value of RM 400,000 --, a book value of RM 200,00-- and a sales value up to now of RM 600,000--." No indication is provided as to the basis of this estimate nor does the unknown author provide a definition for, nor the elements considered in such terms as "prime cost" or "sales value." Absent more definitive evidence, the Commission will accept the book value of such inventory. The Commission, therefore, finds that claimant suffered a loss in the amount of $22,343.00 for which it has previously received compensation in the amount of $13,926.00 and, therefore, is entitled to an award in the amount of $8,417.00.

Claimant further asserts a claim for intangibles in the amount of RM 1,272,998. In support of this claim, claimant submits a document entitled "Provisionsl Property Statement, January 1, 1946." The total includes an amount of RM 139,309 "securities." As these securities are no further defined, the Commission is in no position to determine whether they constituted ownership interests or debt obligations, whether they related to individual enterprises or government, whether any enterprises to which they might have related were nationalized or taken by the German Democratic Republic or the value of such securities. Therefore, the Commission does not have a basis to make an award for such loss.

An amount of RM 500,000 is included for receivables from merchandise, although the report indiates that it was an estimate only since no bookkeeping data is available. No information is provided to the Commission concerning obligees of such receivables or their nature and, therefore, no basis has been given the Commission to allow it to find such a claim compensable. A small item of RM 2,353 is listed as "bonds (securities)" but no basis is provided to allow the Commission to determine whether the loss of such securities constitutes a compensable claim and, if so, the value of said claim.

The account finally lists postal checking and bank accounts in the amount of RM 631,336. The Commission finds that this entry is sufficient to establish that Stabilovolt had bank accounts in this amount. Absent more specific evidence, the Commission will find that these accounts were taken also on November 20, 1945 and had they not been taken, would have had a value of $15,031.80 and that claimant is entitled to an award in the amount of $4,953.00 as its proportionate share of the loss of these bank accounts.

Finally, claimant claims for a share of Huth Versorgungs-Einrichtungs G.m.b.H. with a "nominal value of RM 2,000." No further evidence is submitted to establish whether or not Huth Versorgungs-Einrichthungs was nationalized or expropriated by the German Democratic Republic or the value of the company or percentage of ownership, so the Commission has no basis to find this to be a compensable loss.

Ferdinand Schurchhardt Unterstüzungs-Gesellschaft G.m.b.H.

Claimant through two subsidiaries owned a 99.59 percent indirect interest in Ferdinand Schurchhardt Unterstüzungs-Gesellschaft. The record indicates that this company had two bank accounts totaling RM 320,000 in the Dresdner Bank, East Berlin, as of the end of World War II. The amount of these accounts is verified by a letter dated June 30, 1978 from the Dresdner Bank. The Commission finds that these accounts were taken and, absent specific evidence as to the date, concludes they came under the purview of the Decree of December 18, 1951 for East Berlin and finds they were taken on Ocotober 23, 1952, the date of the first implementing regulations of this decree. The Commission finds that the accounts had a value of $7,619.04 on the date of loss and claimant suffered a compensable loss in the amount of $7,587.80 for its interest in these accounts and is entitled to an award in that amount.

Huth Apparatefabrik Hanover G.m.b.H.

Claimant, through a subsidiary, had an indirect ownership interest in the amount of 33.17 percent of Huth Apparatefabrik Hanover G.m.b.H. (Huth). In 1944, Huth established a plant in Werdau. According to claimant the plant was seized and dismantled by Soviet authorities.

Claimant claims a loss of tangible property in the amount of RM 955,000 for the plant and RM 7,800,932 for inventory. In support of its claim for machinery, tools and other movable property, claimant refers the Commission to a document submitted in the General War Claims Program labeled "Prospective Statement of Assets and Liabilities as of 5/1/45." According to the statement by Huth, this appears to be some form of estimate, as it appears that asset values for the Eastern Zone of occupation were not accessible to the company. No further evidence of the nature, type, value or disposition of these assets is provided, other that claimant's statement that the plant was dismantled by Soviet military authorities. The extent to which this machinery may have been damaged or depreciated in value by the conduct of hostilities or what, if any, of this property remained after dismantling by Soviet authorities is not known. The Commission is of the view, based upon the documents submitted, that undoubtedly there was machinery, tools and other movable property which may have approximated in value the book value estimated by claimant's documents, however, the Commission holds there is not sufficient evidence to establish the fact of or value of a compensable loss related to this property.

Claimant claims for the loss of inventory in the amount of RM 7,800,932. This figure is arrived at by an estimate of the value of raw materials and semifinished products as of May 1, 1945, an estimate made without advantage of any inventory lists from the Werdau plant, nor any itemized inventory to verify inventory remaining in the warehouses in the Hanover area.

Claimant submits a balance sheet for December 31, 1945 which asserts the value of inventory as of that date. The difference between these two figures, minus certain deductions for inventory requisitioned by British troops and for inventory lost in transit, is asserted to constitute the loss of raw materials and semi-finished products at Werdau. No evidence has been submitted of the nature or type of the raw materials and semifinished products to allow the Commission to make any further evaluation as to the actual value of such property at the end of hostilities. The evidence does not establish what, in fact, may have happened to these inventories, other than the assertion that the plant was dismantled by Soviet troops. In light of the basic practice of the Soviet military in removing all movable property from such plants, there is a strong presumption that this inventory did not remain in the territory which presently constitutes the German Democratic Republic but was shipped to the Soviet Union. The Commission, therefore, finds that claimant has failed to establish the existence of or amount of any compensable claim for the loss of this inventory at Werdau.

Claimant claims the loss of intangible assets which it lists as follows:

Debit balances of creditors	RM 45,800
Securities	RM 5,500
Down payments	RM 321,600 of which it attributes RM 79,828 to the "Eastern Zone"

This assertion is made upon the basis of an estimate of assets as of May 1, 1945 which provides no further basis for the Commission to determine the nature of such claims, the debtors involved or the basis for compensability, and this part of the claim is, therefore, denied.

Claimant has submitted evidence that Huft had a bank account in the bank at Werdau in the amount of RM 350,000 which the Commission holds would have been taken as of August 11, 1952 pursuant to the Decree of September 3, 1951 when it would have had a value of $8,333.33 of which claimant would be entitled to an award in the amount of $2,764.17.

Claimant finally makes a claim in the amount of RM 26,600 for "other bank and postal checking account balances and cash located in the Eastern Zone." The evidence to which the Commission is referred does not provide a basis for establishing this loss. However, the evidence submitted in the General War Claims Program does list this amount, although not breaking it down between cash and bank accounts. The Commission will accept that there were additional RM in bank deposits which as set forth above would have been taken and would have had a value of $633.33 for which claimant is entitled to an additional award in the amount of $210.07.

Mix and Genest

Claimant held, through one of its subsidiaries, an indirect ownership interest in Mix and Genesthe (M&G) of 94.26 percent.

The company operated an iron foundry, parts factory, and rectifier plant in Forst, which is located in what is presently the German Democratic Republic at the Polish border. The plant was occupied by Soviet troops on or about April 19, 1945. Claimant asserts that at that time there was plant machinery and inventory of a value of RM 1,376,400. This figure was found by the Commission in the General War Claims Program as the loss suffered from both the destruction of a factory in Forst and losses due to the seizure of property by Soviet troops in Forst and Breslau, Poland. Despite this reference in the General War Claims decision, claimant theorizes that the installations in Forst "apparently did not suffer any air raid damage" and further estimates that all but RM 350,000 worth of property or a total of RM 681,400 was removed by

the Soviet military. This last estimate is based upon an August 1, 1946 document submitted in the General War Claims file which estimated that at that time the value of the property remaining in Forst was "about RM 350,000." No mention is made of 14 railroad cars of machinery and materials shipped from Forst to the company's Berlin plant. The Commission finds this evidence far from definitive in establishing the actual value of assets at Forst and the disposition of these assets. This part of claimant's claim is, therefore, denied.

In addition, claimant seeks recovery for certain intangible property based upon the aforementioned "list of damage occasioned by the war and consequences of the war to the firm of Mix and Genest A.G., Stuttgart." Lumped together in this list are cash, bank balance, and postal checking account in the total amount of RM 44,000, RM 12,000 being attributed to the foundry, RM 12,000 being attributed to the rectifier works, and RM 20,000 being attributed to the parts factory. No other verification or breakdown of these amounts is provided. The fact that all figures are in even amounts would indicate that the list constitutes some type of an estimate rather than a documented report on actual bank and postal savings accounts. It would seem probable that bank accounts did exist which, if not prior taken, would have been taken pursuant to the Decree of September 6, 1951, as of the date of the first implementing regulation on August 11, 1952. The Commission, therefore, determines that claimant did suffer a loss in the amount of at least $1,000.00 for which it is entitled to an award for the loss of these bank accounts.

The aforementioned list of damage includes an amount of RM 25,000 for "invoices" and an amount of RM 52,000 for "advance payments." No other documentation or evidence is submitted to identify these entries or to provide the Commission with any basis to determine what, if any, compensable loss occurred relating to these entries and, therefore, that part of the claim must be and hereby is denied.

The next part of the claim relates to the loss of assets which assertedly were located in a factory of Mix and Genest located in Berlin Schöneberg, West Berlin. According to the evidence this factory manufactured ammunition for the Third Reich. The factory was occupied by Soviet forces in April 1945. Starting on May 3, 1945, it is asserted that the Soviet military forces dismantled everything movable and transported it out of West Berlin to the east. Claimant asserts the loss of RM 13,672,542 in inventory, machinery, tools, drawings, engineering plans, films and miscellaneous plant items. No breakdown of these amounts is provided to the Commission. Claimant bases its claim on certain book entries, although increasing some of these by 11 percent to reflect the wholesale price markup on finished goods. Claimant does not, however, submit evidence in support of the theory that the value of completed ammunition for German weapons increased by this amount and, in fact, the value of such ammunition for German guns at the end of World War II appears speculative at best. Separate and apart from the question of the valuation which claimant places upon its assets in West Germany, the Commission holds that claimant has not established that this loss to the Soviet military is a compensable claim under Public Law 94-542 and, therefore, this part of the claim must be and hereby is denied.

Claimant claims for the loss of RM 385,000 in telephone, clock and other electronic equipment leased to customers which assertedly was located in rental offices in cities which are now in the German Democratic Republic. In support of this assertion, claimant again relies upon the aforementioned "list of damage." They further refer the Commission to a 1948 audit report which indicated these losses were due to "dismantling and clearing operations after the war." Although claimant indicates that such operations were conducted by Soviet troops upon their occupation

of the new territory, they assert that it is not clear that such equipment was, in fact, removed to the Soviet Union. While the Commission recognizes that speculation should not take the place of evidence and further that claimant concedes that part of this property may have been destroyed in air raids, the Commission is of the view that the company suffered a loss in the amount of $30,000.00 and assumes that it occurred on August 11, 1952 pursuant to the Decree of September 6, 1951. Claimant's proportional share of this loss totals $28,278.00 of which claimant has been compensated to the extent of $17,626.00 and, therefore, is entitled to an award in the amount of $10,652.00.

Next, claim is made for the loss of property leased under rental contracts in the territory which now constitutes the German Democratic Republic. According to an attachment submitted with the brief in support of claimant's objection submitted in the General War Claims Program, the value of this property was in the amount of RM 276,842. Claimant, however, in contradiction to its evidence submitted with its objection, asserts that evidence submitted in the General War Claims Program in the Claim of C. Lorenz, indicates the loss of RM 1,200,000 of such property, some of which admittedly was destroyed as a result of air raids. The document to which the Commission is referred which was apparently previously submitted and rejected by the Commission in the General War Claims Program, appears to be some type of an estimate of the "total value of equipment rented in the Soviet Zone" which is asserted to be "about" RM 1,200,000. This appears to be part of a report submitted by ITT to Russian military authorities in connection with the census of allied property located in the Russian Zone and the Russian Sector of Berlin. No documentation nor explanation of the basis of these estimates is provided. On the other hand, the document establishing a loss in the amount of RM 276,842 is from an affidavit of a Mr. Roy W. Workman, who asserts that he is a consultant to ITT on nationalization and war

damage claims and that he is fairly familiar with the reports and records of Mix and Genest A.G. This affidavit appears to be more reliable. Claimant concedes that part of this loss occurred from air raids which would not be compensable under Public Law 94-542 and by comparing certain damage claims by customers in various areas, estimates that 23.1 percent was so destroyed. Based upon the entire record, the Commission determines that the company suffered a loss in the amount of $50,000.00 for equipment which was leased in the territory which is presently the German Democratic Republic and determines that this loss occurred on or about August 16, 1946. Of this loss ITT's proportionate share amounts to $47,130.00 of which it has previously received compensation in the amount of $29,376.00 and is, therefore, entitled to an award in the amount of $17,754.00.

Claimant asserts a claim for various intangible assets. This includes initially a claim for RM 350,000 "prepayments to suppliers." No evidence is submitted to determine the nature of such prepayments or the names of such suppliers. Claimant concedes that the figure includes prepayments to Czechoslovakian suppliers and other areas outside the German Democratic Republic. Although claimant suggests speculative figures to attempt to determine an amount owed by suppliers located in the GDR, such speculation does not take the place of evidence nor is there evidence that such prepayments constituted debts of companies which were nationalized by the German Democratic Republic.

Claimant claims the sum of RM 3,800,000 in blocked bank accounts and refers the Commission to a 1948 RM closing audit report which lists an amount of RM 3,233,787.23. The evidence to which the Commission is referred, however, quite clearly indicates that a number of the accounts were not located in East Berlin or the GDR. The Commission does find that a bank account in the amount of RM 600,000 existed in the Dresdner Bank, Erfurt, which the Commission will presume was taken pursuant to the Decree of

September 6, 1951 and, absent specific evidence, will assume it was taken on August 11, 1952, the date of the first implementing regulations. This constituted a loss to the company in the amount of $14,285.71 and claimant is entitled to an award in the amount of $13,466.00 as its proportionate share of this loss.

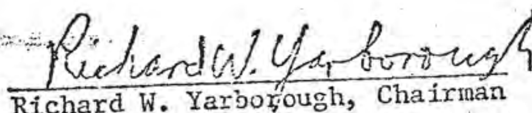
Finally, claimant claims an amount of RM 4,800,000 for "frozen accounts receivable - customers" and "frozen accounts receivable - other." Admittedly, these are from book entries and include accounts receivable in East Germany, West Germany and other countries. Claimant cites an additional audit report estimating that RM 3,557,000 for goods and services were "rendered doubtful in view of the outcome of the war" because they were owed by "domestic customers, located in eastern regions presently under foreign jurisdiction, etc." It is not clear what, if any, percent of these customers were in what is presently the German Democratic Republic. Claimant cites an additional document entitled "Estimated Comparative Balance Sheets After Collapse" which it asserts sheds further light on the composition of M&G receivables. The document, it is asserted, shows a writeoff of RM 1,900,00 of claims against the armed forces and other public customers as far as they exceed the payments on account. Claimant concedes it has no claim for any losses from the army and the post office but asserts that "it is not clear, that the written off receivables against "other customers" in the amount of RM 220,000 were not assets the loss of which is compensable." The Commission finds the basis of this claim to be speculative and as providing no evidence of probative value upon which the Commission can determine that a compensable claim exists for such receivables. Therefore, the part of the claim must be and hereby is denied.

AWARD

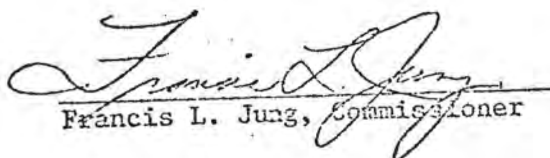
Claimant, INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION, is therefore entitled to an award in the total amount of Four Million Six Hundred Twenty-one Thousand Two Hundred Eighty-four Dollars and Seventy-five Cents ($4,621,284.75) plus interest at the rate of 6% simple interest per annum with interest on: $3,278,130.00 from January 1, 1946; $185,714.13 from August 11, 1945; $41,920.00 from January 30, 1946; $13,370.00 from November 20, 1945; $7,587.80 from OCtober 23, 1952; $17,754.00 from August 16, 1946; $51,675.00 from October 30, 1945; $1,024 from July 12, 1950; $78,205 from September 9, 1946; $7,061.00 from April 25, 1949; $85,494.00 from April 17, 1951; $26,068.00 from June 9, 1951; $617,875.00 from January 21, 1946; $127,198.00 from January 20, 1946; $8,379.00 from September 1, 1945; and $73,829.82 from February 9, 1949, until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic.

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

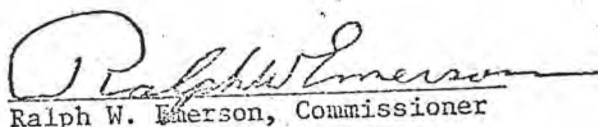
FEB 18 1981



Richard W. Yarborough, Chairman



Francis L. Jung, Commissioner



Ralph W. Emerson, 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.)