

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

IN THE MATTER OF THE CLAIM OF
TRUST FOR THE BENEFIT OF
MAX L. HEINE
TRUST FOR THE BENEFIT OF
ILSE IRENE BAUM
TRUST FOR THE BENEFIT OF
GEORGE MAYER
EWALD MAYER
HILDE MAYER
Under the International Claims Settlement
Act of 1949, as amended

Claim No. G-3063

Decision No. G-3268

Counsel for claimant:

Richard Schifter, Esquire
Fried, Frank, Harris, Shriver
& Kampelman
By: Ellen K. Meisels

Hearing on the Record held on

MAY 06 1981

FINAL DECISION

This claim in the amount of \$10,717,389.00 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 the Berlin-Suhler Waffen- und Fahrzeugwerke Simson & Co. in Suhl (hereinafter Simson Works), Simson & Co. Verwaltungsgesellschaft in Suhl (hereinafter The Holding Company), improved real property in Suhl at Ruessenstrasse 2, a villa in Suhl at Dombergsweg 7, forest and meadow land with improvements in Alt- und Neusorgefeld, meadow and farmland in Wehrehain, mortgages and bank accounts.

By Proposed Decision dated February 25, 1981 the Commission granted two consolidated awards in the amounts of \$934,500.00 and \$935,000.00, respectively, to be shared equally by the TRUST FOR THE BENEFIT OF GEORGE MAYER, EWALD MAYER and HILDE MAYER. The entire claims by the TRUST OF THE BENEFIT OF MAX L. HEINE and the TRUST FOR THE BENEFIT OF ILSE IRENE BAUM were denied on the ground that the evidence was insufficient to show that those claimants had an interest in the claim which had been continuously owned by United States citizens, and various claims for losses of property shared by all five claimants were denied in the Proposed Decision.

Claimant objected to the Proposed Decision and requested an Oral Hearing. After discussion between the Commission's staff and counsel for claimants the objection was heard by the Commission as a hearing on the record.

Claimants first object to the value on the date of loss as found by the Commission for the Simson Works and the Holding Company. Claimants assert that the land owned by the Simson Work had a higher value than that found by the Commission and that the Commission found an insufficient value for fixed assets such as machines, tools and equipment. Claimants object to the failure of the Commission to make awards for the loss of movable property and the earnings value and good will of the Simpson Works and the Holding Company.

The Commission has considered claimants arguments and has reviewed all of the evidence of record. The Commission agrees with the claimants that they are entitled to an increased award for the loss of land, fixed assets, tools and machines. The Commission also agrees that claimants are entitled to an award for the continued use by the German Democratic Republic of the Simson name. The Commission does not find, however, that the evidence is sufficient to establish a compensable claim for movable property which was in existence before World War II inasmuch as there is no basis on which the Commission could find what movable assets were in existence and their value on the date of taking. The Commission, therefore, affirms its denial of that portion of the Proposed Decision but increases its award for the Simson Work to \$4,722,000.00 and increases its award for the Holding Company to \$138,000.00.

Claimants also object to the denial of their claim for improved real property in Alt- und Neusorgefeld. Claimants rely on evidence submitted in support of the Proposed Decision.

Upon reexamining the evidence, the Commission still finds that there is insufficient evidence on which to base a finding of ownership, value and taking of property in Neusorgefeld. However, the Commission notes that claimants have alleged specific information

concerning a hunting lodge in Altsorgefeld and have been able to submit photographs of that property. Based upon that information, the Commission now finds that Julius Simson was the owner of a hunting lodge in Altsorgefeld before World War II, that the property was lost due to persecutory measures of the Nazis and was never restored to Julius Simson, and that his retained beneficial interest in the property was taken by the German Democratic Republic on September 6, 1951. Based upon the photographs and claimants' description of the property, the Commission finds that the hunting lodge had a value on the date of taking of \$8,000.00. Claimants are entitled to share in a consolidated award in that amount.

The Commission reaffirms its findings concerning improved real property in Suhl at Ruessenstrasse 2, a villa in Suhl at Dombergsweg 7, meadow and farmland in Wehrhain, and mortgages and bank accounts.

Claimants have submitted additional documentation which clarifies the succession in interest after Julius and Arthur Simson. The Commission now finds that the TRUST FOR THE BENEFIT OF MAX L. HEINE and the TRUST FOR THE BENEFIT OF ILSE IRENE BAUM are each entitled to share in consolidated awards to the extent of 1/6 of the interests of Arthur and Julius Simson on the dates of taking, and that the TRUST FOR THE BENEFIT OF GEORGE MAYER, EWALD MAYER and HILDE MAYER are each entitled to share in consolidated awards to the extent of 2/9 of the interest of Arthur and Julius Simson on the date of taking.

The Commission withdraws its awards as stated in the Proposed Decision and issues the following awards as its final determination in this claim.

A W A R D S

Claimants are entitled to a consolidated award in the amount of Two Million Four Hundred Sixty-One Thousand Five Hundred Dollars (\$2,461,500.00) plus 6% simple interest per annum on \$2,430,000.00 from July 1, 1946, 6% simple interest per annum on \$22,500.00 from January 19, 1949 and 6% simple interest per

on \$9,000.00 from September 6, 1951 until the date of an agreement for payment of such claims by the German Democratic Republic, as follows:

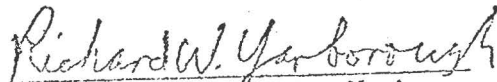
TRUST FOR THE BENEFIT OF MAX L. HEINE	(1/6)	\$410,250.00
TRUST FOR THE BENEFIT OF ILSE IRENE BAUM	(1/6)	\$410,250.00
TRUST FOR THE BENEFIT OF GEORGE MEYER	(2/9)	\$547,000.00
EWALD MEYER	(2/9)	\$547,000.00
HILDE MEYER	(2/9)	\$547,000.00

Claimants are entitled to a consolidated award in the amount of Two Million Four Hundred Fifty-Two Thousand Five Hundred Dollars (\$2,452,500.00) plus 6% simple interest per annum on \$2,430,000.00 from July 1, 1946, 6% simple interest per annum on \$22,500.00 from January 19, 1949 until the date of an agreement for payment of such claims by the German Democratic Republic, as follows:

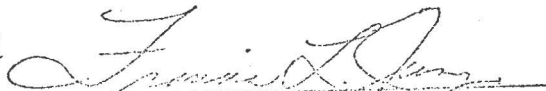
TRUST FOR THE BENEFIT OF MAX L. HEINE	(1/6)	\$408,750.00
TRUST FOR THE BENEFIT OF ILSE IRENE BAUM	(1/6)	\$408,750.00
TRUST FOR THE BENEFIT OF GEORGE MEYER	(2/9)	\$547,000.00
EWALD MEYER	(2/9)	\$547,000.00
HILDE MEYER	(2/9)	\$547,000.00

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


MAY 6 1981


Richard W. Yarborough, Chairman

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on MAY 6 1981


Francis L. Jung, Commissioner


Francis T. Martin
Executive Director


Ralph W. Emerson, Commissioner

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TRUST FOR THE BENEFIT OF
MAX L. HEINE
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GEORGE MAYER
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Under the International Claims Settlement
Act of 1949, as amended

Claim No. G-3063

Decision No. G-3268

Counsel for Claimants:

Richard Schifter, Esquire
Fried, Frank, Harris, Shriver &
Kampelman

PROPOSED DECISION

This claim in the amount of \$10,717,389.00 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 the Berlin-Suhler Waffen- und Fahrzeugwerke Simson & Co. in Suhl (hereinafter Simson Works), Simson & Co. Verwaltungsgesellschaft in Suhl (hereinafter The Holding Company), improved real property in Suhl at Ruessenstrasse 2, a villa in Suhl at Dombergsweg 7, forest and meadow land with improvements in Alt- und Neusorgefeld, meadow and farmland in Wehrhain, mortgages and bank accounts.

The record indicates that the beneficiaries under the trusts, who are the claimants herein, Max L. Heine, Ilse Irene Baum and George Mayer, have been citizens of the United States since their naturalization on April 1, 1940, February 21, 1944, and January 25, 1944, respectively. EWALD MAYER and HILDE MAYER have been citizens of the United States since their naturalization on May 14, 1943 and April 25, 1944, respectively.

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. . ."

Section 603 of Title VI of the Act limits the Commission's jurisdiction as follows:

"A claim shall not be favorably considered under section 602 of this title unless the property right on which it is based was owned, wholly or partially, directly or indirectly, by a national of the United States on the date of loss, and if favorably considered, the claim shall be considered only if it has been held by one or more nationals of the United States continuously from the date that the loss occurred until the date of filing with the Commission."

A. The Simson Works and The Holding Company. The evidence indicates that these two companies were owned before World War II by the Simson family as part of a single, family owned business. The division into two companies occurred as part of a plan to expropriate the property motivated by racial and religious persecution of the Nazi regime. The expropriation by the Nazi government was accomplished during the years 1935-1936. The Commission has held in the Claim of MARTHA TACHAU, Claim No. G-0177, Decision No. G-1071 that such persecutory losses will not be considered by the Commission to have cut off all rights of the original owners or their heirs, and that the persecuted owners retained a beneficial interest in the property.

The record indicates that Julius Simson, a United States citizen since his naturalization on May 4, 1944, and Arthur Simson, a United States citizen since his naturalization on May 17, 1944, were the sole owners in equal shares of the retained beneficial interests in the Simson Works and The Holding Company at the end of World War II.

The evidence of record establishes that the Simson Works and The Holding Company were taken in 1946 and that at no time thereafter did Julius and Arthur Simson regain control of their property. Therefore, the Commission concludes that the Simson Works and The Holding Company were taken as of July 1, 1946.

The Commission has considered all of the evidence, such as descriptions, photographs and a postwar appraisal which attempted to establish the value of the Simson Works in 1935 in order to reach its conclusions concerning the value of the two enterprises. Based on the evidence, the Commission finds that the land and improvements, machines, tools, and inventory of the Simson Works had a value on the date of taking of \$3,559,000.00. The Commission finds that the evidence of record is insufficient to allow the Commission to find that vehicles, moveable inventory, patents, securities, accounts receivable, cash and foreign currency were in existence after World War II to be the subject of a nationalization, expropriation or other taking by the German Democratic Republic as required for compensation under section 602 of the Act. That portion of the claim, therefore, must be and hereby is denied.

The Commission has considered the forced sales price of The Holding Company as well as accurate information concerning the total area of the real property and estimates of the value of the improvements thereon and concludes that the identifiable postwar assets of The Holding Company had a value on the date of taking of \$134,000.00. The Commission finds that there is insufficient evidence that other assets, such as cash, securities, and mortgages were in existence after World War II to be the subject of a nationalization, expropriation or other taking by the German Democratic Republic. That portion of the claim, therefore must be and hereby is denied.

B. Improved real property in Suhl at Ruessenstrasse 2.

The property in Suhl at Ruessenstrasse 2 was also lost before World War II as a result of racial and religious persecution by the Nazi regime. The record establishes, however, that Julius and Arthur Simson were restored in the land records as owners of the property after World War II pursuant to the restitution law of September 14, 1945 in effect in Thuringia. Julius and Arthur

Simson remained the registered owners of the property, with net receipts being deposited in a bank account in their names, until the property was condemned and taken by the City of Suhl in 1971. The City of Suhl paid 22,100 marks in installments into the account of the Simson brothers as compensation for the taking.

Claimants assert that the account into which the funds were paid is totally blocked and that claimants have no right of access to the funds, whatsoever. The Commission, however, based upon its knowledge of laws and decrees in the German Democratic Republic and the demonstrated practice of the German Democratic Republic toward postwar bank accounts such as the one involved herein, must assume that this account is in the nature of a "blocked account." Severe limitations are put upon the free use of such "blocked accounts," but certain rights of access are allowed the holders of such accounts. The evidence of record is insufficient to overcome the assumption that the account which was created in connection with the real property at Ruessenstrasse 2 was other than a "blocked account."

The Commission has held that it is a well established principle of international law that such blocking of a bank account is an exercise of sovereign authority which does not give rise to a compensable claim (Claim of MARTIN BENDRICK, Claim No. G-3285, Decision No. G-0220).

Therefore, the Commission concludes that claimants do not have a compensable claim for the loss of a bank account. That portion of the claim, therefore, must be and hereby is denied.

The Commission has examined the record in an attempt to determine whether the compensation in the amount of 22,100 marks which was paid by the City of Suhl for the real property at Ruessenstrasse 2 was adequate consideration. The Commission holds that there is no evidence which would indicate that the amounts paid by the City of Suhl were inadequate. Therefore, any claim based upon the failure of the City of Suhl to pay adequate consideration must be and hereby is denied.

C. Villa in Suhl at Dombergsweg 7. The record indicates that the Simson family owned the villa in Suhl at Dombergsweg 7 before World War II, that the villa was expropriated by the Nazi regime, and that Arthur and Julius Simson were the equal co-owners of the retained beneficial interest in the villa at the end of World War II.

The evidence indicates that the villa was declared "people's property" and taken by the German Democratic Republic on January 19, 1949. The Commission has considered all the evidence, including a description of the villa and land and photographs of the property and concludes that the villa in Suhl on Dombergsweg 7 had a value on the date of taking of \$45,000.00.

D. Forest and meadow with improvements in Alt- und Neusorgefeld. Although claimants assert that this property, on which a hunting lodge was located, was owned before World War II by Julius Simson and that it was lost due to persecutory measures of the Nazi regime, there is insufficient independent evidence on which the Commission could base a finding of ownership by Julius Simson and subsequent taking by the German Democratic Republic. Therefore, the claim for forest and meadow land with improvements in Alt- und Neusorgefeld must be and hereby is denied.

E. Meadow and farmland in Wehrhain. Claimants have submitted a copy of a land record extract which establishes that Julius Simson was the owner of meadow and farmland in Wehrhain before World War II. This property was also the subject of a persecutory loss at the hands of the Nazis.

The Commission has also held in the Claim of MARK PRICEMAN, Claim No. G-2116, Decision No. G-1073, that decrees of September 6, 1951, effective in the German Democratic Republic, and December 18, 1951, effective in Berlin, which provided for taking over the administration of foreign owned property constituted a governmental program which terminated all rights of restitution of former persecutees or their heirs. The Commission found such a termination of rights to be a taking of the property interests of such persons; and, where the property interests were owned by United States nationals at the time of loss, the termination of rights would form the basis of a compensable claim.

Therefore, the Commission concludes that the meadow and farmland in Wehrhain was taken by the German Democratic Republic on September 6, 1951. The Commission has considered all the evidence including information concerning the size of the parcel as well as general information concerning comparative land values in the German Democratic Republic and concludes that the meadow and farmland had a value on the date of taking of \$1,000.00.

F. Mortgages and bank accounts. Neither claimants nor the Commission's field office has been able to obtain evidence that claimants or their predecessors owned mortgages or additional bank accounts which were the subject of a nationalization, expropriation or other taking by the German Democratic Republic. That portion of the claim, therefore, must be and hereby is denied.

In summary, the Commission finds that the value of the property lost by Arthur Simson on the various dates of taking as outlined above was \$1,869,000.00 and the value of the property lost by Julius Simson was \$1,870,000.00.

The record indicates that Julius Simson died on January 25, 1953, and that his sole heir was Arthur Simson.

Claimants have submitted a copy of an agreement prepared by the executors of the estate of Arthur Simson, who died on October 9, 1969, which indicates that the distributees of Arthur Simson's right to claim for the loss of the property were the Trust for the Benefit of Helene Mangelsdorf, Trust for the Benefit of Minna Heine, each at 1/4 interest, and the TRUST FOR THE BENEFIT OF GEORGE MAYER, EWALD MAYER and HILDE MAYER, each at 1/6 interest. Because neither the Trust for the Benefit of Helene Mangelsdorf nor the Trust for the Benefit of Minna Heine appeared as claimants herein nor did the evidence indicate how the TRUST FOR THE BENEFIT OF MAX L. HEINE and the TRUST FOR THE BENEFIT OF ILSE IRENE BAUM acquired their interests in the right to claim for the loss of the property, claimants were requested by letter dated December 18, 1978 to clarify the succession in interest under the will of Arthur Simson. No such clarification has been received from the

claimants. Because the evidence does not established an ownership interest in the TRUST FOR THE BENEFIT OF MAX L. HEINE or the TRUST FOR THE BENEFIT OF ILSE IRENE BAUM nor does the evidence establish that any interest they may have has been continuously owned by a United States citizen since the date of taking as required for compensation under section 603 of the Act, the claims of those to claimants must be and hereby are denied.

The evidence establishes that the TRUST FOR THE BENEFIT OF GEORGE MAYER, EWALD MAYER and HILDE MAYER are each entitled to an award in the amount of 1/6 of the value of the interest of Arthur and Julius Simson on the date of taking.

Section 606 of the Act provides:

"With respect to any claim under section 602 of this title which, at the time of the award, is vested in persons other than the person by whom the original loss was sustained, the Commission shall issue a consolidated award in favor of all claimants then entitled thereto, which award shall indicate the respective interests of such claimants therein, and all such claimants shall participate, in proportion to their indicated interests, in any payments that may be made under this title in all respects as if the award had been in favor of a single person."

The Commission has concluded that in granting awards on claims under section 602 of Title VI of the Act, for the nationalization or other taking of property or interests therein, interest shall be allowed at the rate of 6% per annum from the date of loss to the date of settlement. (Claim of GEORGE L. ROSENBLATT, Claim No. G-0030, Decision No. G-0100 (1978)).

A W A R D S

Claimants are entitled to a consolidated award in the amount of Nine Hundred Thirty-Four Thousand Five Hundred Dollars (\$934,500.00), plus interest on \$923,250.00 from July 1, 1946 and interest on \$11,250.00 from January 19, 1949 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic, as follows:

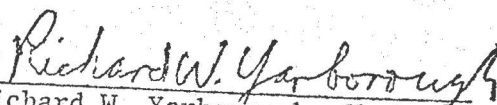
TRUST FOR THE BENEFIT OF GEORGE MAYER	(1/3)	\$311,500.00
EWALD MAYER	(1/3)	\$311,500.00
HILDE MAYER	(1/3)	\$311,500.00

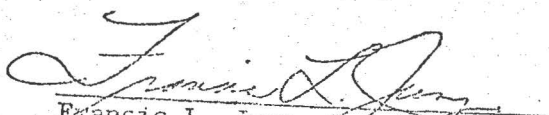
Claimants are entitled to a consolidated award in the amount of Nine Hundred Thirty-Five Thousand Dollars (\$935,000.00) plus interest on \$923,250.00 from July 1, 1946 and interest on \$500.00 from September 6, 1951 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic as follows:

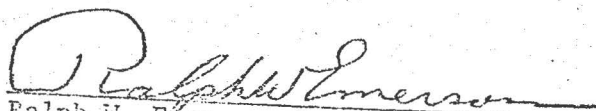
TRUST FOR THE BENEFIT OF GEORGE MAYER	(1/3)	\$311,666.67
EWALD MAYER	(1/3)	\$311,666.67
HILDE MAYER	(1/3)	\$311,666.66

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

FEB 25 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.)

At any time after a Final Decision has been issued on a claim, or a Proposed Decision has become the Final Decision on a claim, but not later than 60 days before the completion date of the Commission's affairs in connection with this program, a petition to reopen on the ground of newly discovered evidence may be filed. (FCSC Reg., 45 C.F.R. 531.5 (1), as amended).