

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

In the Matter of the Claim of

BERNARD E. SINGER, Executor
for the Estate of
OTTO ANNINGER, Deceased,
50 Broadway,
New York 4, New York.

Docket No. Y-390

Decision No. 1474

Under the Yugoslav Claims Agreement
of 1948 and the International Claims
Settlement Act of 1949

Counsel for Claimant:

MILTON POLLACK, Esquire,
111 Broadway,
New York 6, New York.

and

BERNARD E. SINGER, Esquire,
50 Broadway,
New York 4, New York.

*affirmed
12-22-54*

FINAL DECISION

Thirty days have elapsed since the issuance of the Commission's Proposed Decision in the above claim and the claimant herein has filed objections and a brief in support thereof, while the Government of Yugoslavia has filed a brief as amicus curiae.

In support of claimant's objections there has been filed: copies of bills and invoices, price quotations and other certified evidence from suppliers as to the price and value of machinery allegedly purchased by the "Dugaresa" textile corporation during the period 1929-1941; production reports for the years 1937, 1938 and 1939; affidavits as to the condition of the textile plant prior to its taking in 1945; an affidavit as to an alleged Yugoslav tax assessment against "Dugaresa" for unreported extra earnings; and additional appraisals

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of the plant assets by a Yugoslav engineer based upon a translation of the appraisal report filed by the Government of Yugoslavia. At a hearing duly held the claimant herein presented testimony by two textile experts as to the value and condition of "Dugaresa" prior to its taking by the Government of Yugoslavia.

Claimant's objections to the Commission's Proposed Decision are directed more specifically to the evaluation of the "Dugaresa" machinery by the Commission's experts, and to the alleged omission of certain assets which the Yugoslav Government noted in its appraisal but were not included in its valuation total. In support of those objections, there has been filed a "Summary of Valuation Proof" which tabulates some \$4,459,520 in "net machinery difference" and "omitted assets" which total, it is contended, should be added to the \$2,311,000 "asset value per share (p. 14)." This additional amount approximates \$198 per share of "Dugaresa" stock.

Claimant's reference, in brief and argument, to the figures \$2,311,000 "asset value per share", "\$102 per share" and "omitted assets", would indicate that the Commission's Proposed Decision adopted a per share value grounded upon a precise mathematical addition of items. Such is not the case. The Proposed Decision did set forth an appraisal figure of \$2,021,860 by the Commission's evaluators for Land, Buildings, Machinery and Equipment (p. 12). Further, it was stated that "some weight" would be given to the Yugoslav appraisal for inventories (p. 13). It was also noted that the fixed asset appraisal of the Commission's experts plus the Yugoslav inventory appraisal totalled \$2,311,167, the equivalent of approximately \$102 per share of stock (p. 14). The Commission was aware of the "omitted assets" tabulated in the Yugoslav appraisal, and gave consideration to a number of intangible factors as well as the dinar and dollar figures provided by the claimant, the Government of Yugoslavia, and

of the plant assets by a Yugoslav engineer based upon a translation of the appraisal report filed by the Government of Yugoslavia. At a hearing duly held the claimant herein presented testimony by two textile experts as to the value and condition of "Dugaresa" prior to its taking by the Government of Yugoslavia.

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its own experts who visited "Dugaresa", in adopting a fair and reasonable value at the time of taking of, not \$102, but \$95 per share in the Proposed Decision (p. 15).

Claimant's objections make reference also to the earnings basis of evaluation, it being contended that the true earnings of "Dugaresa" were far in excess of those reported in published financial statements. In respect to this evaluation basis, it may be noted that the pre-war financial statements indicate a high of approximately \$82.50 as the book value per share of stock. The Commission, in the Proposed Decision, explored this basis and, after some recognition of "hidden profits", concluded that a value of approximately \$90 per share might be indicated by the meagre information available. The claimant asserts that the true hidden profits would reflect a far higher per share value but offers no concrete evidence in support of this position.

There are no market quotations for the stock of "Dugaresa" since it was a closely held corporation. In 1934 the Anninger's acquired the only block of stock not held by members of the family by purchase from an Austrian bank at a price of approximately \$101 per share. It is contended that this was a forced sale by an insolvent bank and not indicative of the true market value of the stock. Certain inter-family transfers of the stock took place during the 1930's at prices reported as ranging from approximately \$60 to \$100 per share, but these too, it is asserted, were not true market prices.

The Commission has considered all the foregoing; the evidence filed and the arguments presented by the claimant, as well as the information supplied by the Government of Yugoslavia, and its own experts and investigators, in seeking a fair and reasonable value for "Dugaresa" as it was, not in 1938 or 1940, nor in 1954, but in 1945 at the time it was taken by the Government of Yugoslavia. The

voluminous documentation by bills and invoices (since the Proposed Decision) as to the original cost of a large portion of the machinery provides a far more precise check upon the valuations placed by the Government of Yugoslavia and the Commission's experts on the machinery and equipment of "Dugaresa" based upon an examination of the 1945 company records and a 1954 inspection of the plant.

The brief filed by the Government of Yugoslavia asserts that a valuation of \$95 per share is excessive. The reasons cited are basically the same as those stated in the appraisal report submitted by that Government and which were considered previously by this Commission in the preparation of its Proposed Decision.

In consideration of the entire record before it, the Commission hereby adopts its Proposed Decision as its Final Decision, with the following exception:

The fair and reasonable value of "Dugaresa" at the time of taking was \$105 per share of stock rather than \$95 per share.

Accordingly, in full and final disposition of this claim, an award is hereby made to Bernard E. Singer, Executor for the Estate of Otto Anninger, deceased, claimant, in the amount of \$136,500 with interest in the amount of \$21,868.53, rather than the lesser amounts set forth in the Proposed Decision.

Dated at Washington, D. C.

DEC 3 0 1954

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11-9-54

PROPOSED DECISION OF THE COMMISSION

This is a claim for \$763,360.28 on behalf of the late Otto Anninger, a citizen of the United States from his naturalization on June 5, 1944, until his death on July 5, 1954, and is for the taking by the Government of Yugoslavia of the National Cotton Spinning and Manufacturing Co., Ltd. in which the late Otto Anninger owned an interest represented by 1300 shares of stock out of a total of 22,500 shares outstanding.

Claimant herein seeks compensation for his stock interest, allegedly valued at \$695,500 at the time of taking, plus \$42,458 representing declared but unpaid dividends for the years 1939 - 1943. In addition, it is alleged that the late Otto Anninger was

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a guarantor of certain debts of the corporation and had made deposits under such guaranty, so that there is due, as a result thereof, including interest to December 31, 1950, the sum of \$25,402.28.

As evidence of ownership of shares of the stock by the late Otto Anninger, there has been filed a Declaration dated December 20, 1946, of the Swiss Bank Corporation, New York Agency, that, pursuant to the Decree Law of June 17, 1946 relating to the Regulation for the Depositing of Yugoslavian shares for Registration, Edwin A. Binder was declared to be holder of 1300 shares of National Cotton Spinning and Manufacturing Company stock as trustee for Otto Anninger, owner. The Declaration bears a receipting statement, dated December 21, 1946, signed by the Attache'-in-Charge, Yugoslav Consulate General, New York City, which notes receipt of "this declaration and the securities pertaining thereto". The Government of Yugoslavia has also admitted that 1300 shares of the stock were registered in the name of Otto Anninger and were deposited with the Consulate in New York. Upon the basis of this evidence we find that Otto Anninger was the owner of the stock claimed.

The National Cotton Spinning and Manufacturing Co., Ltd. (D.D. Domace Tvornice Predenja I. Tkanja Pamuka, Dugaresa), hereafter called "Dugaresa", was organized in 1884 as a partnership by Wilhelm Anninger, the father of the late Otto Anninger, and Siegmund Mendel and a third associate. In 1896 the enterprise was incorporated under Hungarian Law. In 1918 it became a Yugoslav Corporation. Since 1933 and 1934, all of the stock of Dugaresa has been owned directly and indirectly by descendants of Siegmund Mendel and Wilhelm Anninger.

In the 1930-36 period a considerable expansion program was undertaken, new buildings erected, and many new automatic machines,

purchased in Switzerland, were installed at Dugaresa. It has been reported that the members of the family controlling Dugaresa, save one, who apparently perished during the occupation, left Europe in 1938-39, and since 1941 have had no direct contact with the enterprise. Shortly after the fall of Yugoslavia in 1941, it is asserted that Dugaresa was placed under control of a board of "Kommissars" over whom the owners had no control and with whom they had no community of interest.

It has been established upon investigation and inquiry by the Commission's staff, as well as by admissions of the Yugoslav Government, that Dugaresa was confiscated by that Government by Decision of the District Court in Karlovac, No. K.Z. 479/45, of November 20, 1945, pursuant to the Confiscation Act of June 9, 1945 (Official Gazette No. 40 of June 12, 1945). The confiscation was affirmed by the Superior Court of Croatia on December 20, 1945 (Decision No. K 728/45). On the basis thereof the Commission finds that the property was taken on the latter date.

At the time of taking by the Government of Yugoslavia, the textile plant at Dugaresa consisted of a large cotton spinning mill with some 44,200 spindles, a waste spinning plant, a weaving mill with dyeing, bleaching and mercerizing equipment, a dam and an electric power plant. Additionally, the corporation owned apartment houses, one and two family houses, a mill, bakery and other service buildings.

Appraisal of Dugaresa

In setting a valuation of \$695,000 for his 1300 shares of Dugaresa stock at the time of taking, claimant relied upon a translation of a court appraisal decree issued February 21, 1946 by the Court of Karlovac. The original or a certified copy was not filed

and the Commission has been unable to obtain a certified copy thereof from the Yugoslav Government. According to the claimant, the court appraisal reflects a book value of \$381 per share of stock. It is alleged, however, that by reason of the excess "true" value of Dugaresa's machinery over the appraisal figures, the undervaluation of certain "claims in foreign exchange", the omission of good will, etc., the total value of Dugaresa in 1945 was at least \$12,038,553.44 or approximately \$535 a share.

Additionally, claimant filed a lengthy appraisal report prepared in the spring of 1954 by Emil Schoch, a retired Swiss textile engineer, who valued the fixed assets as of December 5, 1946 at 33,660,325 Swiss francs; equivalent to \$9,508,500 at the free exchange rate, or \$7,800,700 at the official rate. It is claimed that certain major equipment acquisitions after 1936 were omitted by Mr. Schoch, and that the corrected total asset value should be \$10,768,500 (free rate) or \$9,060,700 (official rate). These "omissions" are alleged by claimant, although Mr. Schoch stated that he made his appraisal on the basis of repeated visits "from 1930 to 1940/42", inventories and valuations for fire insurance contracts in 1930 and 1936, documents of former suppliers, production tables, machinery schedules, correspondence still existing from the years 1930 to 1940/42, and information from former employees. All the documents held by the former central administration of the family textile interest in Vienna are said to have been destroyed during the war.

A second appraisal report, sworn to on October 4, 1954 by Svetozar Mandukitch, a Yugoslav textile engineer, has been filed. Mr. Mandukitch valued the assets of Dugaresa, on the basis of 1938 values, at 267,000,000 dinars or \$6,068.181 (44 dinars to \$1). The

appraiser stated that he was a frequent visitor at Dugaresa from 1935 to early 1941, and that his appraisal was based upon Mr. Schoch's physical description of the assets, upon a list of assets prepared by the Commission's evaluator following a thorough inspection of the Dugaresa plant in 1954, upon production statistics for 1937 and 1938, and on his own personal experience, knowledge and recollection.

There has been filed, also, a statement dated December 3, 1948 and signed by Karl Goldberg, Engineer, reportedly summarizing asset investments at Dugaresa for the years 1935 and 1936. The detailed tables referred to in the Goldberg report are dated 1936 and represent a valuation for insurance purposes of 96,293,351 dinars for buildings and machinery.

Certain schedules purporting to be production and sales figures for 1935, 1936 and 1937 have been filed with the Commission, as well as unidentified memoranda presenting cost analyses of a sort. It is asserted that these documents reveal and explain the existence of hidden profits, primarily due to excess depreciation charges, so that the 1936 and 1937 profits were not in fact 7,012,000 dinars (The correct figure is 6,483,000.) and 6,532,000 dinars, respectively, as reported for tax purposes and in published statements, but at least 24,977,000 dinars and 35,156,000 dinars and possibly as much as 86,133,000 dinars and 70,133,000 dinars, respectively.

In view of the mass of material filed to establish value at the time of taking, it may not be amiss to point out how the estimates of the Anninger family have increased as the years have gone by. As examples, the Commission has of record the following:

1. In an inquiry to the State Department in 1945, on behalf of the Anninger family, it was stated that "the value of the total investment is over \$1,000,000."

2. An affidavit signed May 31, 1946 by three members of the family stated that the book value of Dugaresa at December 31, 1939, ---

"...\$1,843,111.80 ... was far below true value of the corporation ... it is safe to say that the plants were conservatively worth at least four times their carrying value of \$641,802. Accordingly ... the true value ... would approximate \$3,740,000 ... the actual value in dollars of Dugaresa Corporation must be assumed to have increased to around \$4,340,000 for the entire capital stock, or about \$193 per share at the end of 1943."

3. The late Otto Anninger's sworn statement of February 26, 1946 indicated that, in his opinion, the capital stock of Dugaresa had a fair value of \$7,357,000 in and about November 28, 1945.

4. On November 28, 1947 members of the Anninger family, including the late Otto Anninger, asked that their private claim, filed with the State Department, be amended to reflect a total value of \$9,377,487 for the capital stock of Dugaresa. This valuation, based upon the Yugoslav court appraisal of February 21, 1946 and adjustments thereto, is stated to be the equivalent of \$416.78 per share.

5. The present claim is based upon a total valuation of \$12,038,553.44 for Dugaresa, or \$535 per share of stock as noted, supra.

The Commission does not find the allegations of various members of the Anninger family or their theories regarding values very persuasive. The calculations based upon the court appraisal of February 21, 1946 cannot be accepted because they were obviously prepared for

the purpose of asserting a war damage claim against Germany. Moreover, the figures are largely in kunas which depreciated rapidly, and, moreover, the claimant's calculations omit depreciation and other reserves which the court appraisal reports at a figure in excess of the reported total assets.

The guiding principle of the Schoch appraisal is stated as

"...the movement of manufacturing costs in the Swiss machine industry during the Second World War. These costs rose till the end of 1946 to 185% of the cost basis for Summer 1939. The selling prices for abroad rose, however, during the war period by an additional 10 to 15% ...".

No evidence of the original cost of the Dugaresa assets has been provided. The appraisal valuations are largely based upon a hypothetical replacement cost new, less deductions for age, obsolescence, lack of air conditioning, etc.

The Mandukitch appraisal also provides no documentation as to the actual costs at Dugaresa; it is admittedly based, at least in part, on the Schoch appraisal, and did not spring from a first hand examination of either assets or records of the assets. It represents at best a theoretical and "hearsay" appraisal.

The documents prepared by Goldberg showing an estimated 1936 replacement value admittedly represent an appraisal for insurance purposes, and include insufficient data and explanation upon which to form a sound opinion as to the value at the time of the taking of the Dugaresa property.

The adjustments made by the claimants to the various appraisals and book values appearing in published financial statements in order to reflect "true value" of the assets, are based in part on a theory of "hidden profits", and in part on a theory of market value in 1945-46 when there was a world shortage of textile machinery. In all cases decided by this Commission, appreciation has been recognized. However, going value does not in our view, properly

include a recognition of windfalls resulting from short term enhancement. To do so here would require the same treatment in all claims and ^{would} not change the proportionate allocation of the fund provided by the Yugoslav Government in settlement of all claims. The Commission, therefore, rejects any concept of a temporary scarcity or short supply market value.

Claimant's contention with respect to "hidden" profits may merit some recognition provided, of course, that they have been used to increase the value of the business. The Commission is well aware of financial practices which existed in pre-war Yugoslavia with respect to inflated depreciation charges, director's bonuses, and other devices to reduce the tax burden. The Dugaresa claimants have provided the Commission with copies of financial statements published by Dugaresa for the years 1935 through 1943 which have been examined in this connection. These statements are in accord with those found published in "Compass" and provide the following information:

DUGARESA

(In Dinars for 1935-1940, Kunas for 1941-1943; 000 omitted)

<u>Year</u>	<u>Land and Buildings</u>	<u>Machinery</u>	<u>Total</u>	<u>Res. for Depr.</u>	<u>Net Property</u>	<u>Total Book Value</u>	<u>Reported Earnings</u>
1935	37,813	49,510	87,323	52,699	34,624	73,950	4,647
1936	45,393	71,939	117,332	64,848	42,484	76,012	6,483
1937	47,314	80,678	127,992	80,883	47,109	76,136	6,532
1938	47,581	88,840	136,421	96,408	40,013	77,093	7,365
1939	48,969	91,420	140,389	112,484	27,905	80,134	10,125
1940	49,526	93,154	142,680	124,441	18,239	81,840	10,475
1941	49,486	96,037	145,523	129,508	16,015	76,613	3,545
1942	49,510	117,544	167,054	132,593	34,461	77,150	5,830
1943	49,813	131,594	181,407	137,091	43,316	78,609	7,029

It should be noted that the 1941, 1942 and 1943 financial statements are in kunas, the occupation currency which in 1941 was exchangeable, 1 kuna

for 1 dinar, but which subsequently depreciated more rapidly than the dinar and was ultimately (June 1945) converted into dinars at a rate of 1000 kunas for 7 dinars.

An affidavit signed on February 26, 1947 by the late Otto Anninger reported net profits before depreciation reserves but after all maintenance and taxes, in dollar amounts which, when converted for comparison with the reported earnings above tabulated, ranged from approximately 13,700,000 dinars in 1935 to 27,900,000 dinars in 1939. When the additions to the depreciation reserves and dividends for these years are added together, the totals apparently agree with the figures reported in the affidavit. It thus appears that the "hidden" profits, if any, are to be found in the form of excessive depreciation charges.

The aforementioned financial statements contain a notation for the year 1935 that the depreciation rates were 10% for old factory buildings, 5% for new factory buildings, 10% for dwellings, 15% for machinery and 20% for equipment. There is no evidence that these rates were in effect during all of the period represented by the financial statements; in fact, it was reported to Commission evaluators, that they were not. From examination of the financial statements it does appear possible that excessive depreciation was taken in the mid-30's and thus, that the published statements understated true earnings for some years. It is clear, however, that the depreciation charges after 1941 were sharply reduced. The addition of approximately 4,500,000 kunas to depreciation reserves in 1943 on a land, building and equipment valuation of 181,407,000 kunas does not seem to be representative of an excessive depreciation policy; in fact, the depreciation taken appears inadequate. It may reasonably be concluded that in the pre-war years there is

evidence of excessive depreciation charges, and correspondingly, an understatement of earnings.

The financial statements for the period 1935 through 1943 reflect the following book values per share:

1935: 3287 dinars	1940: 3637 dinars
1936: 3379 "	1941: 3406 kunas
1937: 3384 "	1942: 3430 "
1938: 3426 "	1943: 3505 "
1939: 3562 "	

If it be considered that as much as one-half the depreciation charges were above reasonable amounts, in the period 1935 through 1941, then from 6 to 8 million dinars could properly be added to the total book value. The result would be to raise the book value per share, as above listed, by 266 to 356 dinars. In other words, the highest pre-war book values when adjusted to compensate for such hypothetical excessive depreciation would range from 3800 to 4000 dinars per share, or approximately \$90 in round figures. Still another rule of thumb measure of value, based upon the financial statements, is capitalization of earnings. The two highest earning figures were for the years 1939 and 1940 when earnings in excess of 10,000,000 dinars were reported. These are also the last years in which the financial reports are in dinars. In the period of high taxes, inflation, and unsettled economic and political conditions, a 6 times earnings figure appears ample and logical for capitalization purposes. Even if the reported earnings be adjusted by as much as 50% for hidden profits, such a capitalization base yields a total worth of approximately 90,000,000 dinars or 4000 dinars per share.

It thus appears that an analysis made upon the basis of the financial statements, adjusted liberally for the possibility of

hidden profits, results in a valuation of approximately \$2,025,000 or \$90, per share, for Dugaresa.

The Commission need not, however, rely upon the above evaluation alone, as numerous inspections of the Dugaresa properties have been made by the Commission's experts. On-the-spot examination of the properties by an industrial engineer and examination of company records, interviews with present and former employees, public officials, etc., by financial experts has established many facts.

The properties of Dugaresa suffered some war damage. Although there was no direct bomb damage and no looting (except for removal by the Germans of the automatic stokers and other automatic equipment for the boilers), there was some damage from shell fire and weather exposure through roof holes. Additionally, the plant machinery was reported to have been damaged by the use of hemp and non-cotton fibres, and improper lubrication and maintenance during the occupation. It has been estimated by the Commission evaluators that the total of such damage amounted to approximately 15,000,000 dinars.

War damage

The Agreement of July 19, 1948 between the Governments of the United States and Yugoslavia settled claims for "the nationalization and other taking by Yugoslavia of property" (Article I). It is our view that destruction of property by military action or by occupation forces is not a "nationalization" or "taking" of property by the Government of Yugoslavia. We, therefore, hold that claims for losses of that kind were not settled by the Agreement of July 19, 1948 and are not within the jurisdiction of this Commission. Consequently, the valuation of Dugaresa must be adjusted for the war damage above noted.

The mill is now 70 years old and much of the present machinery dating back to the early years was not new when acquired by Dugaresa.

The present management reported the average age of the weaving and spinning machinery in 1945 to be 48 years; the remaining machinery and equipment 42 years. Inspection has confirmed this. Alleged subsidiary corporations for making blankets and stockings apparently were fictional subdivisions of work done in the one plant. There were no separate payrolls or accounts on the company records for the subsidiaries.

The Government of Yugoslavia has filed an appraisal of the assets and liabilities of Dugaresa at the time of taking, the evaluation being made on the basis of 1938 values. The total appraisal of 72,696,427 dinars, converted into dollars at the rate of 44 to 1 (except for net current assets, as will be explained subsequently), represents the valuations listed below:

Land and Buildings	\$ 506,647.64
Furniture	5,078.68
Machines and Equipment	381,325.34
Inventories	289,307.14
Net Current Assets	<u>413,452.80</u>
Total Net Assets	\$1,595,811.60

The Commission's evaluators made the following on-the-spot appraisal of the fixed assets of Dugaresa, on the basis of 1938 values:

Land and Buildings (Factory)	\$ 853,950
Machinery and Equipment	980,480
Dwelling Units and Furniture	<u>187,430</u>
Total Fixed Assets	\$2,021,860

Claimants have provided no evidence upon which an appraisal of the current assets and liabilities can be made, nor has the Commission been able to obtain any. In affidavits of the Dugaresa claimants it

is alleged and has been verified by the Commission's investigators, that during the "Occupation" the labor force of the plant shrank to about 1/20th of normal and that there were only small amounts of raw material on hand at the time of liberation. Therefore, in the absence of contraverting evidence, some weight will be given the Yugoslav appraisal for inventories, amounting to \$289,307.14.

Similarly, the only source of information as to the remaining assets and liabilities at the time of taking is the Yugoslav appraisal, which converted at 50 to 1 amounts to \$413,452.80 net for these items. However, this figure has been calculated in a manner which causes serious doubt of its reliability. The conversion of certain claims and obligations, in the appraisal, in accordance with the Yugoslav laws regarding conversion of pre-war obligations, internal debt, etc., might be considered proper since the Commission understands that these laws became effective prior to the taking of Dugaresa. (It is for this reason that an exchange rate of 50 to 1, the official 1945 rate, has been used in converting the net current asset item.) On the other hand, the complete omission of some assets and liabilities on the ground that they are uncollectible or were incurred by the occupation management involves conclusions as to the valuation of accounts receivable and payable, etc., which the Commission cannot review on the basis of the available evidence.

Even if the Yugoslav figure of \$413,452.80 could be accepted for the net asset accounts in question, it would be subject to further adjustment or offset because of "claims in foreign exchange" which have been settled through direct negotiation by the Dugaresa stockholders. A portion of these claims arose as a result of full or partial payment by Dugaresa prior to the war upon orders for machinery which could not be delivered due to the intervention of hostilities. On these claims

settlements of 1,175,000 Swiss francs and \$10,824 have been received by the stockholders. With respect to a Turkish cotton account the stockholders report an additional recovery of 394,000 Swiss francs. The Yugoslav Government disputes this figure, reporting that Dugaresa had a 16.2% interest in the total account which has been settled for 4,002,578 Swiss francs. This report, which charges the stockholders with a collection of approximately 648,417 Swiss francs, is confirmed, in a measure, by two Dugaresa stockholders who on August 27, 1946 filed an affidavit stating that Dugaresa's interest in the account was in excess of 600,000 Swiss francs. These direct collections by the Dugaresa stockholders appear to more than offset the Yugoslav appraisal figure for net assets.

The Commission concludes, with respect to all items other than the physical assets of land, buildings and inventory, that the offsets resulting from direct collection of accounts by the stockholders, plus the necessary deduction for war damage, more than compensate for the value of such assets.

The fixed asset appraisal of the Commission's experts plus the inventory appraisal totals \$2,311,167, the equivalent of approximately \$102 per share of Dugaresa stock. As noted above, some further deduction from this figure for war damage appears necessary to reach a reasonable valuation based upon the physical appraisal of the assets of Dugaresa.

In summary, a valuation based upon financial statements and reports, with suitable allowance for excessive depreciation, has resulted in a figure of approximately \$90 per share for the Dugaresa stock; while a physical appraisal by Commission evaluators, plus the adoption of the Yugoslav inventory appraisal, has resulted in a value of approximately \$100 per share. The Commission concludes that a

fair and reasonable value for the stock of Dugaresa at the time of taking was \$95 per share.

There remains for consideration the claims for \$42,458 in declared but unpaid dividends for the years 1939-1943 and for \$25,402.28 allegedly paid by the claimant as a guarantor of certain debts of Dugaresa. The latter item reportedly arose as a contractual matter entered into by the majority stockholders of Dugaresa with an English firm. Guarantee deposits made by the stockholders as individuals were drawn upon when the war prevented the English firm from making collections on its account with Dugaresa. The guaranty deposit was not a loan to Dugaresa and the entire transaction was separate from the accounts of Dugaresa. It is not considered that the guaranty payments here involved are covered by or subject to the Agreement of 1948. Accordingly, the claim for them must be denied.

As for the dividends declared but alleged to have been unpaid, it appears that such non-payment was due to foreign exchange restrictions. The dividends remained on the books of Dugaresa as a valid debt or liability; it is to be noted, however, that the Yugoslav appraisal did not treat them as a liability and thereby gave the stockholders a credit for this item. The Commission has consistently held that debt obligations are not compensable under the Agreement of July 19, 1948 with the Government of Yugoslavia. The negotiating history of the Agreement and the legislative history of the International Claims Settlement Act of 1949 fully confirms this holding. For example, the Senate report on the bill contains the following statement with respect to debt claims:

" . . . the claims settled do not include creditor interests. They are confined to ownership interests in property, either legal or beneficial, direct or indirect. This is consistent with traditional United States policy in connection with espousals."

We hold, therefore, that claimant's debt claim for declared but unpaid dividends is not compensable, and it must therefore be denied.

AWARD

On the above evidence and grounds, this claim is allowed and an award is hereby made to Bernard E. Singer, Executor for the Estate of Otto Anninger, Deceased, claimant, in the amount of \$123,500 with interest thereon at 6% per annum from December 20, 1945, the date of taking, to August 21, 1948, the date of payment by the Government of Yugoslavia, in the amount of \$19,773.54.*

Dated at Washington, D. C.

11-9-54

* For the Commission's reasons for use of 1938 valuations, use of exchange rate of 44 to 1, and the allowance of interest, see attached copy of its decision in the claim of Joseph Senser.