

File: Trading with Enemy Act

SA

American Federation of Jews from Central Europe, Inc.

1674 BROADWAY • Room 809 • NEW YORK 19, N. Y. • Phone: JUdson 6-2090 • Cable Address: Amfedera, New York

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MAY 7 1954

RUDOLF CALMANN
Chairman of the Board

Mr. Saul Kagan

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Memorandum from AMERICAN JEWISH CONGRESS

927 - 15th STREET, N.W., WASHINGTON 5, D. C. • EXECUTIVE 2674

SANFORD H. BOLZ—*Washington Representative*

TO: Saul Kagan - JRSO
FROM: Sandy Bolz
RE: S. 1748

March 6, 1952

Section 32

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Further to my memorandum of February 27 on the above I am enclosing herewith copies of the two letters which you requested, that of September 12 to Crosser, and the one to McCarran on S. 1416 containing the ninety million dollar estimate on its cost,

I think it might be a good idea if you had copies of these two letters made for the use of all of us who are interested in the matter, so that our files will be complete. I did not have the facilities to make additional copies.

I shall await further word from you on the meeting with Taft and O'Connor, but with the LIFT Bill now out of the way things are likely to move pretty fast toward adjournment and if we are to have any chance at all we must act quickly now.

Best regards.

Sandy

SPH:ndk
Enclosures

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RUDOLF CALLMANN
Chairman of the Board

MAX GRUENEWALD
President

NATHAN STEIN
Honorary President

HERMAN MULLER
Exec. Vice President

Mr. Saul Kagan
Conference on Jewish Claims
270 Madison Ave. - Suite 800
New York 16, N.Y.

May 6, 1954

HM/ea

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Secretary
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Dear Mr. Kagan:

Enclosed please find copy of a Memorandum on S.2231 now pending before the House Committee on Interstate and Foreign Commerce.

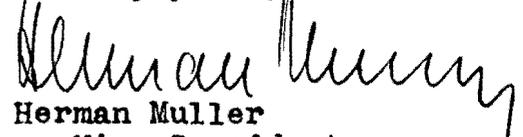
The memorandum has been prepared at our request by the Washington representative of Riegelman, Strasser, Schwarz & Spiegelberg, New York City.

Copies of the memorandum were distributed through Rep. Jacob K. Javits among the members of the aforementioned Committee.

There is a considerable number of claimants in our group who filed claims against German property vested in this country and whose efforts to have their claims paid out of this property would be nullified, if the bill in its present form became law.

I would like to call your attention to the explanations on page 5 of the memo.

Sincerely yours,



Herman Muller
Exec. Vice President

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April 8, 1954

MEMORANDUM ON S.2231

Purpose of this Memorandum

The purpose of this memorandum is to demonstrate the inequitable effect which enactment of S.2231 would have on a group of 3,500 debt claims presently pending before the Office of Alien Property.

History and Present Status of S.2231

S.2231 was introduced by Senator Dirksen on June 27, 1953. It has the support of the Department of Justice.

The bill was objected to by Senator Lehman and, consequently, failed to pass on the Consent Calendar. It was called up on the regular calendar on March 10, 1954 and passed the Senate. It has now been referred to the House Committee on Interstate and Foreign Commerce and is presently pending there.

Debt Claims under Present Law

Under the terms of the Trading with the Enemy Act, title to German and Japanese assets in this country has been vested in the Office of Alien Property (formerly the Alien Property Custodian). Section 34 allows the filing of so-called debt claims against vested assets. Debt claims may be filed against the vested assets of a specific alien enemy by American citizens and resident aliens who, immediately prior to vesting, were creditors of such alien enemy. If a debt claim is allowed, the alien enemy's debt to the American creditor is paid out of the vested assets of that particular alien enemy. If the debt claims against an individual alien enemy exceed the amount vested, the account in question is declared insolvent and the available amount is distributed to the claimants on a pro rata basis.

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Effect of S.2231

S.2231, a bill sponsored by Senator Dirksen of Illinois, would amend Section 34 of the Trading with the Enemy Act by excluding two classes of debt claims: (1) claims against foreign governments (with certain exceptions), (2) claims based on foreign currency obligations.

If S.2231 were enacted, the only debt claims that would be allowed would be claims against private individuals or companies if expressed or payable in American dollars or Philippine pesos.

Senator Dirksen's Justification of S.2231

There are approximately 42,000 debt claims pending before the Office of Alien Property at the present time. Of these, the first exclusionary provision (relating to claims against foreign governments) would eliminate 11,000. The second exclusionary provision (relating to other foreign currency obligations) would eliminate an additional 21,000.

When Senator Dirksen introduced S.2231, on June 27, 1953, he submitted a statement in which he had the following to say about the elimination of claims against foreign governments:

Elimination of the first category is consistent with the purpose for which section 34 was enacted, namely, the protection of American creditors who may have extended their credit in reliance upon the assets of the debtor in the United States. These claimants should be protected in their claims through the assurance that the assets seized by this Government will adequately cover the value of such claims.

Recognizing the great majority of claims eliminated by my proposed legislation consist of bond claims asserted against the Governments of Germany and Japan and inasmuch as it has always been the policy of the United States courts to recognize sovereign immunity from suit, it is clear that when these claimants purchased their bonds they did not rely on assets of these foreign governments located within the United States for security of their investments. Of the 11,000 claims in this category, there are 4,794 debt claims in the face amount of \$159 million filed against the Japanese Government and there is available for their payment before deduction of administrative expenses of the

Office of Alien Property only \$1,563,000, with respect to claims filed against German assets in this category, there are 3,443 claims in the face amount of \$670 million filed against assets of only \$1,500,000. Patently these claimants can hope to be paid at best only an infinitesimal fraction of their claims.

The Government of the United States under these circumstances should not be put to the administrative burden and expense of processing such claims and the War Claims Commission charged with the payment to ex-prisoners of war and other claimants under the jurisdiction of the War Claims Act should not be deprived of the revenues which would otherwise be required to be devoted to the purposes eliminated by this bill.

(99 Cong. Rec. 7635, July 27, 1953, 83d Cong., 1st sess.)

With respect to the elimination of claims based on foreign currency obligations, Senator Dirksen made the following comment:

This category of claims arises principally as the result of yen certificates of deposits (principally American citizens of Japanese ancestry or Japanese residents of the United States), who purchased for United States dollars certificates of deposit from Japanese branch banks in the United States which provide on their face value for payment in yen in Japan. Moreover, it appears that these certificates may be cashed today at their full yen value in Japan and that a number of depositors have so done.

The United States is not under any moral obligation to permit external enemy assets seized by the United States to be utilized for the payment of claims of persons who not only invested their money in a foreign economy but expressly agreed to be paid in a foreign currency in a foreign country. (Ibid., p. 7635)

On the basis of the justification offered by Senator Dirksen, the exclusion of the classes of debt claims described in his narrative account would appear reasonable. However, the problem created by S.2231 is that it goes beyond those classes.

Senator Dirksen's description of the first class of exclusions is fully adequate. As indicated, it would reduce the number of pending debt claims from 42,000 to 31,000.

It is the second exclusionary provision, a provision involving the 21,000 claims based on foreign currency obligations that deserves further scrutiny.

Senator Dirksen's justification of this provision rested almost exclusively on the ground that most of the claims in question are based on yen

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certificates of deposit. These certificates were sold in the United States by Japanese banks, prior to World War II. They were paid for in dollars but provided for repayment in yen in Japan. As Senator Dirksen has pointed out, these certificates should not be repaid out of vested assets for two reasons: (1) they were bought for the express purpose of investing in a foreign economy, (2) payment on many claims will be as low as \$5.00 or \$10.00, the average being below \$25.00 per claim; by contrast, the administrative cost of processing them will frequently be considerably higher.

There are 17,500 claims based on yen certificates presently pending before the Office of Alien Property. The grounds for excluding them cited by Senator Dirksen are hard to quarrel with. But the Senator's bill goes beyond excluding these 17,500 claims. It excludes an additional 3,500 claims which are of an entirely different nature. That is the point of controversy here.

Question raised by S.2231

Senator Dirksen's initial statement on S.2231 does not contain any direct reference to these 3,500 claims. When the bill was on the floor of the Senate he mentioned it merely in passing:

I should like to refer to a certain category of debt claims involving certain German corporations, mainly steamship lines. In many cases, under the practice which prevailed, a citizen of the United States would buy steamship passage on the Hamburg-American Line, the North German Lloyd line, or some other line. Long before the day he was ready to take passage across the Atlantic on one of those stately vessels the war came on suddenly. He was the possessor of a pair of tickets, which he bought in good faith for a very substantial amount, but there was no ship to transport him to Europe or elsewhere.

At long last we did what we have done in every case. If an enemy property was involved we reduced it to cash and used the cash for our veterans, once it was a free balance. So there are citizens today who bought tickets on one of the steamship lines. The question is, How much money is available for the payment of those claims?

(100 Cong. Rec. 2831, March 10, 1954, 83d Cong., 2d sess.)

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The 3,500 claims in question do not only involve claims based on the purchase of steamship tickets. Many of them arose out of various other contractual arrangements between the American creditor and the German debtor. Though they are founded on foreign currency obligations, these claims differ basically from claims founded on German Government bonds or Japanese yen certificates. They do not involve, as do the others, an intentional investment in a foreign economy. They involve, instead, business transactions between two contracting parties. These business transactions were not made with reference to specific assets of the present debtor but frequently with reference to his general business standing.

The late Felix S. Cohen, in a letter to Senator Lehman, dated July 24, 1953, characterized the problem as follows:

Under the present law many debt claims have been filed against the property of German businesses which have been vested in this country. The claimants are, in many cases, people who had been forced out of their homes and livelihood in Germany by the Nazi persecution and who had come to this country before the war to become citizens and residents of the United States. Until the war brought into operation the Trading with the Enemy Act there was no way for these people to recover from Germany the money or property owed to them either by virtue of normal business transactions or as a result of the forced sales imposed by Nazi persecution. After the property of these businesses in this country was vested in the United States Government, these creditors could apply for the payment of debts and damages due them by proceeding under the authority of section 34 and the procedures of the Office of Alien Property.

Now all the claims have been filed and much time and effort and money have been put into the gathering of evidence and the presenting and argument of the cases before the Office of Alien Property. Many of these cases are nearing decision. It is at this point proposed by S.2231 that our Government step in and throw a new barrier in the way of the recovery and restitution owed to these people for 15 years or more. S.2231 would cut off any debt claim based upon an obligation expressed or payable in German currency, although debts for the forced sale of a business are properly claims against the entire assets of the business wherever they may be found.

If this bill is passed and we put our American claimants to the new trouble and expense at this late stage of seeking relief in Germany, we know that the marks which they might recover are not convertible into dollars and can be translated into dollars only by the sale of the marks at substantial loss. (Ibid., p. 2832)

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Possibility of Return of Assets to Former Owners

Consideration of S.2231 cannot be divorced from an examination of the plans for the disposition of vested assets. After World War I, the assets were returned to their original owners. At present, a resolution having the same objective with respect to World War II assets is pending before the Senate, S.J. Res. 92. Senator Dirksen's report on the Trading with the Enemy Act, filed under Sen. Res. 245, 82d Congress, specifically recommends "the return of private property confiscated under the act to individuals not convicted of war crimes." It also recommends "adequate protection of claims pending against the confiscated assets."

But if S.2231 passes, the above-mentioned 3,500 claims will not be entitled to protection in case of the return of assets. Thus the asset would be returned to the foreign debtor while the American creditor, who has for years pursued his remedy in the Office of Alien Property, will have to look for a new forum in which to present his claim.

Proposed Solution

A simple amendment to S.2231 would prevent the above-mentioned inequities. That amendment would strike the words "obligations expressed or" from the last two lines of the bill and insert in their place "investment expressly agreed to be" to have the provision read "if it is based upon an investment expressly agreed to be payable in any currency other than currency of the United States or the Philippine Islands."

Effect of Amendment on Workload of OAP

S.2231 in its present form would reduce the present load of 42,000 debt claims by 32,000. If the proposed amendment is adopted, it would still result in a reduction of 28,500.

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