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

IN THE MATTER OF THE CLAIM OF

EMMA M. HEYBOER

Claim No. PO-9464

Decision No. PO-4994

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

PROPOSED DECISION

This claim is based on loss resulting from ownership of a bond obligation of the "Uberlandzentrale Pommern Aktiengesellschaft" (Pomerania Electric Company) due May 1, 1953, in the face amount of $2,000.00.

The "Pomerania Electric Company", hereinafter referred to as "The Company", was a foreign corporation organized under the laws of pre-World War II Germany. On or about May 1, 1928, "The Company" issued a series of bonds in the aggregate principal amount of Fifteen Million Dollars ($15,000,000) and secured same by mortgaging to a Trustee certain of its real properties located within the boundaries of Germany. As a result of boundary changes after the conclusion of World War II, a portion of the mortgaged properties are presently within the boundaries of Poland.

Under Section 4(a) of the International Claims Settlement Act of 1949, as amended, (64 Stat. 13 (1950), 22 U.S.C. § 1623(a) (1958)), the Commission is given jurisdiction over claims of nationals of the United States included within the terms of the Polish Claims Agreement of 1960 (Agreement with the Government of the Polish People's Republic Regarding Claims of Nationals of the United States, July 16, 1960, 11 U.S.T. & O.I.A. 1953, T.I.A.S. No. 4545 (1960)). That Agreement provides as follows:

Claims to which reference is made in Article 1 and which are settled and discharged by this Agreement are claims of nationals of the United States for

(a) the nationalization or other taking by Poland of property and of rights and interests in and with respect to property;

(b) the appropriation or the loss of use or enjoyment of property under Polish laws, decrees or other measures limiting or restricting rights and interests in and with respect to property . . .; and

(c) debts owed by enterprises which have been nationalized or taken by Poland and debts which were a charge upon property which has been nationalized, appropriated or otherwise taken by Poland. (Polish Claims Agreement of 1960, supra, Article 2)

This being a claim based on a debt, it is clear that its compensability depends solely on whether or not it comes within the purview of Article 2(c) of the Agreement which embraces claims based on creditor interests. Equally clear is the fact that before an award may be granted by the Commission under the Polish-American Claims Agreement of 1960, there must be a finding that claimant suffered financial loss as a result of an act by Poland.

No evidence has been submitted or is of record with the Commission to establish that "The Company" was nationalized by the Government of Poland. Similarly, the record does not contain evidence that property of "The Company" securing the aforementioned bond obligations survived World War II and was appropriated or otherwise taken by the Government of Poland. Moreover, if any such property did survive the war and was so taken, the value thereof when taken has not been shown.

Information available to the Commission discloses that a substantial portion of the property securing the bonds on which this claim is based is located in an area over which Poland does not hold sovereignty, with the result that Poland was not in a position to have nationalized, appropriated or otherwise taken such property. Additionally, there has been no showing that the bonds do not remain secured by properties of the obligor situated outside of Poland.

It further appears that the bonds in question are presently the subject of validation proceedings by "The Validation Board for German Dollar Bonds" with a view toward payment thereof out of the proceeds of the debtor in the Federal Republic of Germany. While it is not possible at this time to ascertain whether or not validated bonds will be fully paid, the anticipated payment leaves claimant in the position of being unable to sustain his burden of establishing that he has suffered loss as the result of Polish nationalization or other taking of the property securing his debt.

In view of the foregoing, it appears that, at best, it would be pure conjecture to find that claimant suffered loss as a result of action by Poland which is covered by the Polish-American Claims Agreement of 1960. Accordingly, this claim must be and hereby is denied.

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

SEP 23 1964

Edward D. Re, Chairman

Theodore Jaffe, Commissioner

LaVern R. Dilweg, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections to this Proposed Decision are filed within 20 days of service thereof, the decision will, upon the expiration of 60 days after such service or receipt of notice, be entered as the Final Decision of the Commission unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. § 531.5(e) and (g) (1961))