

CLAIMS AGAINST THE SOVIET GOVERNMENT

SOVIET CLAIMS PROGRAM STATISTICS

Statutory authority: Title III of the International Claims Settlement Act of 1949, 69 Stat. 570 (1955), 22 U.S.C. §§ 1641-1641q (1964), as amended, 72 Stat. 531 (1958), 22 U.S.C. 1641j (1964).

Number of claims: 4,130.

Amount asserted: \$530,233,446.

Number of awards: 1,925.

Amount of awards: Principal, \$70,466,019.

Interest, \$58,592,874.

Amount of fund: \$8,658,722.43.

Program completed: August 9, 1959.

**ESTATE OF M. SERGEY FRIEDE,
DECEASED****Against the Soviet Government**

Claims under Section 305(a)(1), Title III of the 1949 Act based on liens obtained before November 16, 1933 by virtue of judgments or warrants of attachment in favor of nationals of the United States on property covered by Litvinov Assignment allowed only to extent they originally accrued in favor of nationals of the United States. Lien in favor of executors of estate of deceased whose successors as well as deceased were nationals of the United States recognized as "lien obtained by a national of the United States" within meaning of Section 305(a)(1).

Awards under Section 305 increased by interest at rate of 6% per annum from date of loss to November 16, 1933, date of Litvinov Assignment. For the purpose of payment under Section 310(a)(1), the "principal amount" of an award pursuant to Section 305(a)(1) based on a judgment means the aggregate of: (1) value of claim at time it arose; (2) interest at rate of 6% per annum from date claim arose to November 16, 1933; and (3) costs and disbursements included in the judgment.

Award under Section 305(a)(1) may not exceed the proceeds of the property encumbered by the lien.

PROPOSED DECISION

This is a claim by Donald S. Friede, as Administrator, C.T.A., of the Estate of M. Sergey Friede, deceased, for the following:

(a) Judgment dated July 19, 1935 -----	\$1,585,941.27
(Composed of (1) value of claim at time it arose on July 10, 1919 of \$800,000, (2) interest of \$769,199.97 computed at 6% from time claim arose on July 10, 1919 to date of judgment of July 19, 1935, and (3) costs and disbursements of \$16,741.30)	
(b) Interest at 6% on judgment of \$1,585,941.27 from date thereof (July 19, 1935) to November 30, 1955 -----	1,937,755.62
Total -----	\$3,523,696.89
Less payments received by claimant on account with interest at 6% to November 30, 1955----	124,193.27
Net to November 30, 1955 -----	<u>\$3,399,503.62</u>

(Claimant asks that interest at 6% from November 30, 1955 to date of payment be added to the above figure of \$3,399,503.62.)

A certified copy of Letters of Administration which were issued to Donald S. Friede on July 17, 1951 by the Surrogate's Court

of the County of New York, State of New York, has been furnished to the Commission. It is alleged that the claim accrued solely in favor of the decedent, M. Sergey Friede, a citizen of the United States since September 30, 1890, the date of his naturalization by the Court of Common Pleas for the City and County of New York.

It is alleged that the decedent, M. Sergey Friede, and a partnership known as "Mavrikij Nelken" composed of Mavrikij (Maurice) Stifter and Jacques (Jacob) M. Berlin, entered into a joint venture to sell goods and supplies to the Imperial Russian Government during World War I; that the profits of the venture were to be divided equally and that the account of the joint venture was to be kept in the Azof Don Bank in Russia in a dollar account in the name of Mavrikij Nelken; that the venture was successful and substantial profits were realized and deposited in the account so provided; that after the Soviet Revolution it was decided to dissolve the joint venture and divide the profits; that Mavrikij Nelken immediately withdrew its half, leaving a balance of "Seven hundred twenty-three odd thousand dollars" in the Azof Don Bank which, together with interest, left a balance of "approximately Eight hundred thousand dollars;" that of this amount the partnership of Mavrikij Nelken claimed \$21,273.58 by reason of adjustment of interest and commissions; that pursuant to the insistence of M. Sergey Friede, his nephew and representative in Russia Solon O. Friede, Mavrikij (Maurice) Stifter and Jacques (Jacob) M. Berlin, went to the Azof Don Bank and requested Mr. Czamanski, in charge of the Foreign Department of the Bank, to make the necessary arrangements to transfer the account to New York; that Mr. Czamanski informed them that the Azof Don Bank did not have the necessary dollars in New York to make the transfer direct but "would arrange it through the Russo-Asiatic Bank;" thereafter, a conference was had with the Russo-Asiatic Bank at which time Solon O. Friede, Mavrikij Stifter, Jacques M. Berlin and Mr. Czamanski instructed the Russo-Asiatic Bank to transmit the sum of \$800,000 to M. Sergey Friede in New York; that the Russo-Asiatic Bank accepted "the business" and agreed to make the transmittal to its American correspondent, the Guaranty Trust Company; that the transfer was never made and that M. Sergey Friede was never paid.

The evidence of record shows that shortly thereafter, but prior to September 3, 1920, M. Sergey Friede died testate; that his will was admitted to probate on September 3, 1920 in the Surrogate's Court of the County and State of New York; that his widow, Julia L. Friede, a citizen of the United States since her birth on September 17, 1866 at New York, New York, and his son, Sydney

Allan Friede, a citizen of the United States since his birth on May 19, 1890, were each given one-half of the residue of the estate which included this claim; that pursuant to an application by these two individuals as executors of the Estate of M. Sergey Friede, deceased, a warrant of attachment was issued on September 25, 1933 by the Supreme Court of the State of New York on the property of the Russo-Asiatic Bank; that on September 25, 1933 such warrant of attachment was served on the Guaranty Trust Company of New York and the National City Bank, and a levy and attachment was made on all debts, moneys and property belonging to the defendant, Russo-Asiatic Bank, in the possession of such Banks; that on July 19, 1935 a default judgment was rendered by the Supreme Court in Richmond County, State of New York, in favor of Julia L. Friede, as executrix, and Sydney Allan Friede, as executor, of the Estate of M. Sergey Friede, deceased, against the defendant, Russo-Asiatic Bank, for the sum of "Eight hundred thousand (800,000) dollars, with interest thereon from the 10th day of July 1919 to the date hereof [July 19, 1935], amounting to the sum of Seven hundred sixty-nine thousand one hundred ninety-nine and 97/100 (769,199.97) dollars, together with \$16,741.30 costs and disbursements as taxed, amount in all to the sum of \$1,585,941.27. . . ."

On February 18, 1934, which was prior to the issuance of the above judgment, Sydney A. Friede died testate. A certified copy of the decedent's will, admitted to probate on March 19, 1954 by the Surrogate's Court in and for the County and State of New York, shows that by the residuary clause a trust was created with Donald S. Friede, a citizen of the United States since his birth on May 12, 1901 in New York, New York, being the life tenant and the remainder to his children. The evidence of record shows that the life tenant has two children—Anne Friede born on August 15, 1943 in Pasadena, California and Mary Friede born on March 12, 1946 in Pasadena, California. On February 8, 1950, Julia L. Friede died testate and her will was admitted to probate on February 14, 1950. Her son, Donald S. Friede, was the sole residuary legatee.

In the circumstances, this claim presents five questions which will be discussed in series hereafter.

I. *Whether this claim originally accrued solely in favor of the decedent, M. Sergey Friede, as alleged.*

Section 305 (a) (1) of Public Law 285, 84th Congress, confers jurisdiction upon this Commission over "claims of nationals of the United States against a Russian national *originally accruing in favor of a national of the United States* with respect to which a judgment was entered in, or a warrant of attachment issued

from, any court of the United States or of a State of the United States in favor of a national of the United States, with which judgment or warrant of attachment a lien was obtained by a national of the United States prior to November 16, 1933, upon any property in the United States which has been taken, collected, recovered, or liquidated by the Government of the United States pursuant to the Litvinov Assignment. . . ." (Emphasis supplied.)

The fiduciary must sustain the burden of proving, *inter alia*, that the claim originally accrued in favor of M. Sergey Friede. With regard thereto he made those allegations stated above and as evidence in support thereof, filed the following:

- (1) Deposition of Solon O. Friede, dated July 19, 1935, taken before a Justice of the Supreme Court of the State of New York, County of Kings, wherein he swears that he was the nephew of M. Sergey Friede and was manager of M. Sergey Friede's office in St. Petersburg, subsequently named Petrograd, now called Leningrad, Russia from 1915 to the time the office closed in 1918; that all moneys received in the business were deposited in the name of Mavrikij Nelken in the Azof Don Bank; that in December of 1917 there was over \$700,000, excluding interest, in the dollar account in that bank; that "Mr. M. Sergey Friede told me that due to the unsettled conditions then prevailing . . . he was anxious to have the balance then standing in the Azof Don Bank transmitted to New York, and that he had instructed Mavrikij Nelken to get the dollar balance over to New York. . . . I stated to Mr. Berlin and Mr. Stifter that Mr. Friede wanted this money transmitted to New York because of conditions then prevailing in Russia. They stated that the money should be so transmitted to him in New York and that they were just as anxious as Mr. Friede to have it done;" that thereafter Mr. Czamanski of the Azof Don Bank went with the affiant and Messrs. Berlin and Stifter to the Russo-Asiatic Bank to make the necessary arrangements to transfer the account to New York; that "Mr. Czamanski of the Azof Don Bank said that Mr. M. Sergey Friede and Messrs. Berlin and Stifter carried a large dollar account with the Azof Don Bank and that they desired to transmit that dollar account to Mr. M. Sergey Friede in New York City. He said the amount would be \$800,000 to cover principal and interest;" that the necessary arrangements were made and that the affiant saw the confirmation "which

Azof Don Bank had received from the Russo-Asiatic Bank, which confirmation advised that the Guaranty Trust Company of New York had been instructed by the Russo-Asiatic Bank to forward to the National City Bank of New York the sum of \$800,000."

- (2) Affidavit of George Stifter, of April 19, 1956, sworn to before the Vice-Consul of the United States at Paris, France, who swears that he is the son of Mavrikij V. Stifter who died in 1953 and who was the surviving partner of the firm of Mavrikij Nelken, the other partner being Jacques M. Berlin who died many years before; that Mavrikij Nelken withdrew from the Azof Don Bank its share of the profits except certain bank interest and commissions allegedly due them; that Mr. Friede requested that the balance remaining be sent to him in New York; that "all of this money was to be paid to M. Sergey Friede and belonged to him, and Mavrikij Nelken had no claim on any of it, having theretofore . . . obtained its share of the profits of the venture . . . ;" and that "my father always said that the firm of Mavrikij Nelken had no interest in the aforesaid eight hundred thousand dollars other than the controversy aforesaid. . . ."
- (3) The affidavit of Constantin Stifter, dated April 19, 1955 and sworn to before the Vice-Consul of the United States in Paris, France, who swears that he was the attorney and legal advisor to his father in liquidating the affairs of Mavrikij Nelken and was familiar "with the affairs of that concern;" that he has read the affidavit of George Stifter, *supra*; and that "the allegations of the aforesaid affidavit and deposition are true and correct."
- (4) The affidavit of April 24, 1956 by Samson Selig, Esquire, who swears that he is now and has been "since its inception . . . the attorney of record in the action brought in 1933 by Julia L. Friede and Sydney Allan Friede, as Executrix and Executor of M. Sergey Friede against the Russo-Asiatic Bank, and the members of the firm of Mavrikij Nelken . . . ;" that throughout that time he had many conferences with Julia L. Friede and Sydney A. Friede, and had numerous conferences in Paris with Mavrikij V. Stifter, the surviving partner of Mavrikij Nelken. The affidavit further recites statements made to Mr. Selig by Sydney A. Friede which statements, in effect, corroborate the statements made in the affidavits named above.

A certified copy of the complaint filed in the action by the Estate of M. Sergey Friede against the "Russo-Asiatic Bank, also known as Banque Russo Asiatique, and Maurice Stifter and Jacob Moisyvitch Berlin, co-partners doing business under the firm name of Mavrikij Nelken," which resulted in the judgment in favor of the plaintiff, *supra*, contains the following allegations which are also pertinent to the question as to whether the original claim arose solely in favor of M. Sergey Friede:

FOURTH: That at all the times hereinafter mentioned *the . . . Azoff Don Bank . . . was indebted to the plaintiff's decedent and the firm of Mavrikij Nelken . . . in the sum of Seven hundred twenty-seven thousand, nine hundred twenty-three and 99/100 (727,923.99) dollars and accrued interest, which amount plaintiff's decedent and the firm of Mavrikij Nelken had demanded of the Azoff Don Bank to be made available to them in New York.* In order to comply with the said demand, and on the instructions of the plaintiff's decedent and Mavrikij Nelken, the said Azoff Don Bank entered into an agreement with the defendant . . . wherein and whereby said Russo-Asiatic Bank undertook and agreed to pay to the said Azoff Don Bank, in the City of New York, the sum of Eight hundred thousand (800,000) dollars. . . .

FIFTH: *That in making the said agreement, the said Azoff Don Bank acted as the agent for plaintiff's decedent, M. Sergey Friede, and the said firm of Mavrikij Nelken.*

NINTH: *That the said sum of Eight hundred thousand (800,000) dollars was to be paid to the said Azoff Don Bank in the City of New York for the benefit and account of the said plaintiff's decedent, M. Sergey Friede, and the said firm of Mavrikij Nelken.*

TENTH: That the defendants, Maurice Stifter and Jacob Moisyvitch Berlin, co-partners doing business under the firm name of Mavrikij Nelken, are joined as defendants in this action *because these plaintiffs have been unable to join them herein as co-plaintiffs. . . .* (Emphasis supplied.)

It is the contention of the claimant that the original cause of action arose when the above contract was breached by the Russo-Asiatic Bank. It is alleged that M. Sergey Friede was a donee or creditor beneficiary under the terms of the contract. In support of this contention it is implied that the court which rendered the judgment in favor of the Estate of M. Sergey Friede answered this question in the affirmative and thereby bound the Commission to accept it in accordance with the provisions of Section 305 (b) of Public Law 285, 84th Congress. The Commission rejects this argument. Furthermore, the affidavit of July 11, 1932 by Maurice Stifter, also known as Mavrikij Valentinovitch Stifter,

contains statements to the effect that the money to be transferred to New York by the Russo-Asiatic Bank was for the benefit of M. Sergey Friede and the firm of Mavrikij Nelken.

If the claim did originally accrue in favor of M. Sergey Friede, the Commission is at a loss to understand why the firm of Mavrikij Nelken was joined as a party defendant in the complaint filed which resulted in the judgment against the Russo-Asiatic Bank if that firm had no interest in the original claim. The Tenth item of the complaint states:

That the defendants, Maurice Stifter and Jacob Moisyvitch Berlin, co-partners doing business under the firm name of Mavrikij Nelken, are joined as defendants in this action because these plaintiffs have been unable to join them herein as co-plaintiffs.

The attorney for the claimant states in his affidavit that:

... The reasons for making the members of the firm of Mavrikij Nelken defendants were entirely procedural. The Estate of M. Sergey Friede did not wish to conduct a long and arduous litigation against the Russo Asiatic Bank, emerge successful therefrom and then have to face and defend a suit brought by Mavrikij Nelken to recover the \$21,273.58, which would involve not only great additional expense, but several years additional delay.

Another reason for adding them as defendants was to forestall any possible motion on the part of the Russo Asiatic Bank to dismiss the complaint for lack of necessary parties. I had had conferences with the General Counsel for the Russo Asiatic Bank in Paris, from which, as well as from conferences with counsel for the Russo Asiatic Bank in New York, I realized that though the Russo Asiatic Bank could not defend upon the merits, they would take advantage of every delaying tactic and every motion that could be addressed to the pleadings, and though I was confident that such a motion would be unsuccessful, I wished to avoid the delay and burden that such a motion to dismiss would entail.

If M. Sergey Friede was a third party beneficiary under the contract, *supra*, as alleged, for the full amount of the money involved (\$800,000), it would not be necessary to join Mavrikij Nelken as party plaintiffs or defendants because they would have no interest in the matter. It is concluded that Mr. Friede was not a third party beneficiary for the amount involved and that he had a partial interest therein in conjunction with the firm of Mavrikij Nelken.

In the circumstances, the Commission must determine whether the above-entitled claim arose solely in favor of M. Sergey Friede, or in favor of M. Sergey Friede and Mavrikij Nelken. Such de-

termination must, of course, be based upon the record. In accordance with the Commission's regulation (531.6(d)) the claimant must sustain the burden of proving that the claim arose solely in favor of M. Sergey Friede, as alleged.

In view of the foregoing evidence and facts, the Commission finds that the claimant has not sustained the burden of proving that the claim originally accrued solely in favor of M. Sergey Friede.

However, the evidence of record establishes that the decedent had a one-half interest in the claim at the time of accrual. This conclusion is based upon the above evidence and the testimony and evidence filed in the suit brought by M. Sergey Friede against the Azousko Donskoi Kemmercheski Bank, otherwise known as Banque de Commerce de L'Azoff Don and Jacob Moisyvitch Berlin and Mavrikij J. Stifter in the New York Supreme Court, New York County, New York (New York County Clerk's No. 26585-1919) and the printed record on appeal in the suit by Julia L. Friede, as Executrix and Sydney A. Friede, as Executor under the Last Will and Testament of M. Sergey Friede, Deceased, Plaintiffs-Respondents and Appellants, against the Russo-Asiatic Bank, Defendant-Appellant and Respondent, and Maurice Stifter and Jacob Moisyvitch Berlin, co-partners doing business under the firm name of Mavrikij Nelken, Defendants. Our conclusion is also based upon an Order entered on February 9, 1923 assessing a transfer tax in the Estate of Marcus Sergey Friede, and the record in the transfer tax proceedings. In those proceedings Julia L. Friede, Executrix and Sydney Allan Friede, Executor of the above Estate, filed schedules with the Transfer Tax Department of the State of New York on October 17, 1921. Their affidavit, sworn to on September 23, 1921 and attached to the schedules, states (Schedule A 3, Item 10) :

Actions: At the time of the death of the decedent, said decedent was the plaintiff in two certain actions in which the decedent had a one-half interest, one action against the White Company. . . .

The other action against the Azoff Don Bank of Petrograd, Russia pending in the New York Supreme Court, New York County, to recover the sum of \$723,000.00 which action is still undetermined.

It is apparent from the record that the actions against the Azof Don Bank in 1919 and the Russo-Asiatic Bank in 1933 are based upon the same transactions for which this claim is filed.

In the circumstances, it is concluded that the decedent, Marcus Sergey Friede, had a one-half interest in the claim at the time of accrual and not the sole interest as claimed.

II. *Whether a lien was obtained by a national of the United States prior to November 16, 1933 upon any property in the United States which has been taken, collected, recovered or liquidated by the Government of the United States pursuant to the Litvinov Assignment.*

The record of this claim shows that on September 25, 1933, the Supreme Court of Richmond County, New York, issued a warrant of attachment in favor of the claimants against the assets of the Russo-Asiatic Bank; that on September 25, 1933 the Sheriff levied upon the property of the Russo-Asiatic Bank in the possession of the National City Bank in New York and the Guaranty Trust Company in New York; that on September 27, 1933, Julia L. Friede, as Executrix, and Sydney Allan Friede, as Executor, under the Last Will and Testament of M. Sergey Friede, filed a complaint and summons, by their attorney Samson Selig, against the Russo-Asiatic Bank and Mavrikiy Nelken in the Supreme Court of Richmond County, State of New York; and that service of summons on the defendant was begun by publication on October 24, 1933.

In view of the foregoing, the Commission finds that a lien was obtained by claimant on the assets of the Russo-Asiatic Bank in the possession of the National City Bank and the Guaranty Trust Company prior to November 16, 1933, the date of the Litvinov Assignment.

Since the original owner of the claim, M. Sergey Friede, was a national of the United States at the time the claim arose, and since all successors in interest thereto were nationals of the United States, the Commission also finds that claimant has sustained the burden of proving the necessary nationality requirements under Section 305(a) (1) of the law conferring jurisdiction upon this Commission.

The records of the Departments of Justice and Treasury and of this Commission show that at least \$3,401,414.18 of the assets of the Russo-Asiatic Bank were taken, collected, recovered or liquidated by the Government of the United States pursuant to the Litvinov Assignment.

In the circumstances, it is concluded that claimant has met all necessary requirements under Section 305(a) (1) of Public Law 285, 84th Congress, and accordingly, is entitled to an award.

III. *What constitutes the principal amount of an award made pursuant to Section 305(a) (1) of Public Law 285, 84th Congress?*

Section 310(a) (1) provides that where the Commission has certified an award made pursuant to Section 305(a) (1) the Secretary of the Treasury shall make payment in full of the principal amount of such award. Section 310(a) (5) provides that after

payment has been made in full of the principal amounts of all awards from any one fund, pro rata payments shall be made from the remainder of such fund then available for distribution on account of accrued interest on such awards as bear interest.

As the Soviet Claims Fund created by Section 302 contains only \$9,114,444.66, which, obviously, will not be ample to pay the principal amounts of all awards made pursuant to Section 305 (a) (1) and (2), it is of the utmost importance that the Commission clearly define the phrase "principal amount of the award."

There is no difficulty in construing the phrase "principal amount of the award" as it applies to awards made pursuant to Section 305 (a) (2) which includes "(a) claims, arising prior to November 16, 1933, of nationals of the United States against the Soviet Government." For example, the "principal amount of the award" would be the value of the property at the time of its nationalization or confiscation by the foreign government. The award in such a case would be composed of two distinct and separate items, as follows:

(1) The principal amount of the award

plus

(2) Interest from the date of such nationalization or confiscation of the property to the date of payment by the foreign government. (The question of interest will be discussed later in this Decision.)

Construction of the phrase "principal amount of the award" as applied to awards made pursuant to Section 305 (a) (1)—so-called "lien claims"—is most difficult and most important to all claimants. The Commission has not found a definition of the phrase in the legislative history of the law or even a direct discussion thereof.

There are two distinct principles or methods which we may follow in ascertaining the "principal amount of the award" of a "lien claim." These are based upon conflicting theories and are certainly susceptible to sound pros and cons, as hereinafter discussed.

It may be argued that the phrase refers to the value of the claim at its inception. It may be said that Congress intended that the greatest possible equity be accorded to all claimants within the purview of Section 305. Since the domestic law of the United States, as well as international law, require the payment of "just compensation," it may be assumed that the Congress intended that the Commission award "just compensation" to all claimants. What, then, does "just compensation" mean? It is well settled by the decisions of the Supreme Court that "just compensation"

is the value of the property at the time of its taking. The fact must not be overlooked that even under this theory, priority will be given to the processing of "lien claims" by Section 305 (c) and to payment of the "principal amount of the award" by Section 310 (a) (1).

The other theory as to the meaning of the phrase is that it includes the following items:

- (1) The value of the claim when it arose.
- (2) Interest from the time the claim arose to the date of the Litvinov Assignment.
- (3) Costs and disbursements.

The latter theory may be supported by the argument that the "principal amount of the award" in a "lien claim" necessarily means the total amount of the judgment which includes the above three items. As to this specific argument, consideration must necessarily be given to Section 305 (b), which provides:

Any judgment entered in any court of the United States or of a State of the United States shall be binding upon the Commission in its determination, under paragraph (1) of subsection (a) of this section, of any issue which was determined by the court in which the judgment was entered.

In support of this argument, an analogy may be drawn to a bankruptcy proceeding in the United States where a judgment creditor receives payment in full (principal plus interest) before a general creditor participates in the fund. In the opinion of this Commission, the most compelling argument which can be made in support of the latter theory is that in the absence of the Litvinov Assignment the various individuals who had liens and judgments against Russian nationals would have recovered the entire amount of the judgment (principal, interest and costs) against such national before any general creditor would have participated. That Congress realized this and intended to place these lien creditors in the status they enjoyed immediately prior to the Litvinov Assignment is confirmed by the following quotation from page 6 of the Report of the Committee on Foreign Relations of the Senate on H. R. 6382:

This preferential treatment is justified by the following considerations: A number of nationals of the United States, having pursued their claims against Russian nationals in United States courts, or in State courts, obtained liens against specific assets, and to that extent acquired a property interest therein. These assets then became the subject of the Litvinov Assignment and were transferred to the Federal Government. Lien claimants, it was felt, were entitled to a priority in the payment of

their claims over other claims against the Soviet Government which had not attained a comparable legal status. . . .

In view of the foregoing, the Commission is of the opinion that the phrase "principal amount of the award" as applied to an award under Section 305 (a) (1) should be construed to mean the total of the following items:

- (1) The value of the claim when it arose.
- (2) Interest from the time the claim arose to the date of the Litvinov Assignment.
- (3) Costs and disbursements.

IV. *Since interest is included in the principal amount of the award, what date should be used as a termination date in the calculation thereof?*

As was stated prior hereto, the Commission is of the opinion that interest should be included in the principal amount of an award made pursuant to Section 305 (a) (1).

The amount claimed includes interest from the time the claim arose in 1919 to the date of actual payment.

The Commission does not agree that interest should be allowed subsequent to the issuance of the judgment against the Russo-Asiatic Bank, nor that interest should be allowed for the period stated in the judgment (from July 10, 1919 to July 19, 1935). Although there is uniformity as to the date from which interest is to be computed, there is no settled rule under international law as to the date of termination. However, this Commission, in the *Claim of Joseph Senser*, Decision No. 663, under the Yugoslav Claims Agreement of 1948, allowed interest on awards from the date the claim arose to the date of payment by the Yugoslav Government, the theory being that since claimant did not receive prompt and adequate payment on the date the claim arose he was entitled to compensation for the loss of the use of such money in terms of interest to the date of payment.

Under domestic law, interest is also allowed on the ground that the debtor is in default and has used the creditors' money. Such interest is computed to the time the debt is paid. There is no question that interest, in the instant claim began running from July 10, 1919, as specified in the judgment. The date of termination of such interest is determined to be November 16, 1933, the date the Soviet Government assigned to the United States the assets which now constitute the fund from which claimant will be paid. Although such assignment did not involve actual cash, it did comprise assets of the Soviet Government in the United States which the United States Government eventually reduced to cash. Such assignment of assets constituted a payment from

which the claimant's full award is realized and an estoppel to further interest. The fact that the judgment specifically provides for interest from July 10, 1919 to July 19, 1935 does not bind the Commission to allow interest for such period. Section 305 (b) of the Act is specifically limited to those *issues* which were determined by the court. The period for which the interest was to run was not an *issue* determined by the court. The allowance of interest to the damages flowing from a breach of contract is mandatory under Section 480 of the New York Civil Practice Act. *Hart v. United Artists Corp.*, 252 App. Div. 133, 298 N.Y.S. 1 (1937).

Accordingly, interest is allowed for the period July 10, 1919 to November 16, 1933.

V. *Must the Commission's awards on claims within the purview of Section 305 (a) (1) of Public Law 285, 84th Congress, be made with due regard to the amount of the proceeds of the property against which the lien was obtained and the number of liens against such property?*

Section 305 (a) (1) provides, in part, as follows:

Awards under this paragraph shall not exceed the proceeds of such property as may have been subject to the lien of the judgment or attachment; nor, in the event that such proceeds are less than the aggregate amount of all valid claims so related to the same property, exceed an amount equal to the proportion which each such claim bears to the total amount of such proceeds.

Section 308 of the aforesaid law provides:

The Commission shall as soon as possible, and in the order of making of such awards, certify to the Secretary of the Treasury, in terms of United States currency, each award made pursuant to this title.

Section 310 of the aforesaid law provides:

(a) The Secretary of the Treasury shall make payments on account of awards certified by the Commission pursuant to this title as follows:

(1) Payment in full of the principal amount of each award made pursuant to . . .
* * *

(c) For the purposes of making any such payments, an "award" shall be deemed to mean the aggregate of all awards certified in favor of the same claimant and payable from the same fund.

(d) With respect to any claim which, at the time of the award, is vested in persons other than the person to whom the claim originally accrued, the Commission may issue a consolidated award in favor of all claimants then entitled thereto, which award shall indicate the respective interests of such claimants therein. . . .

In view of the foregoing, it is clear that this Commission cannot make an award under Section 305(a)(1) on any "lien claim" which is in excess of the proceeds of the property as may have been subject to the lien of the judgment or attachment nor can the award exceed an amount equal to the proportion which such claim bears to the total amount of such proceeds where the proceeds are less than the aggregate amount of all valid claims so related to the same property.

Since it is proposed to allow this claim for one-half of the principal amount specified in the judgment, *supra*, or \$400,000 ($\frac{1}{2} \times 800,000$) plus costs and disbursements in the amount of \$16,741.30 and interest on the principal amount at the rate of 6% per annum from July 10, 1919, the date the claim arose, to November 16, 1933, the date of the Litvinov Assignment, in the amount of \$344,745.20, and since the total of the remaining claims against the so-called Soviet Claims Fund will not exceed such fund available for payment to claimants under Section 305(a)(1), the Commission concludes that the amount awarded herein shall be certified to the Secretary of the Treasury for full payment.

AWARD

On the above evidence and grounds, this claim is allowed to the extent indicated above and an award is hereby made to the Estate of Marcus Sergey Friede, deceased, in the amount of \$761,486.50.

Dated at Washington, D.C.

July 20, 1956.

Lien claims accruing in favor of United States nationals.— Claims against the Soviet Union under Section 305 of the 1949 Act included two general classes: Section 305(a)(1) claims which accrued originally in favor of United States nationals against Russian nationals and with respect to which United States nationals had obtained judgments or warrants of attachment, prior to November 16, 1933, on property in the United States taken over by the United States Government under the Litvinov Assignment of November 16, 1933 (Department of State Publication 528; European and British Commonwealth Series 2 (new series); Eastern European Series, No. 1 (old series)); and Section 305(a)(2) claims of nationals of the United States against the Soviet Government arising prior to November 16, 1933.

The *Friede* decision provides an example of a claim under Section 305(a)(1). The Commission found that one-half of the claim had accrued originally to a national of the United States,

since deceased, and that his successors, also nationals of the United States, had obtained a lien before November 16, 1933 on property of the debtor in the United States, taken over by the United States Government under the Litvinov Assignment. Accordingly, claimant was entitled to an award based upon one-half of the original claim. The other one-half, which had accrued originally to persons who were not nationals of the United States, was denied.

In another claim, where claimant was a United States national and had secured a warrant of attachment against property in the United States belonging to a Russian bank, the claim was denied because claimant was the assignee of the original creditor of the bank, and had failed to establish that the assignor was a United States national, so that the Commission was unable to find that the claim originally accrued in favor of a national of the United States as required in Section 305(a) (1). (*Claim of James A. Tillman, Deceased*, Claim No. SOV-40783, Dec. No. SOV-5.)

Where a claimant was a United States national to whom the claim originally had accrued, but assigned the claim to a British national who secured a judgment against the Russian debtor and then reassigned his interest to claimant, the claim was denied on the ground that the judgment or warrant of attachment was not issued in favor of a national of the United States, as required by Section 305(a) (1). Claimant contended that at all times it held the full beneficial, equitable title to the claim and the judgment, and that the assignment, though unconditional in form, was for collection only, the interest of the British national being only that of a trustee. The Commission affirmed its denial of the claim, however, finding the terms of the statute to be unambiguous, and not fulfilled by a claimant who, though a United States national, was not a party to the attachment, the judgment or the lien. (*Claim of the First National City Bank of New York*, Claim No. SOV-41261, Dec. No. SOV-8, 10 FCSC Semiann. Rep. 178 (Jan.-June 1959).)

In a somewhat different situation, a Russian bank collected the amounts due on certain drafts but refused to pay the proceeds to the transferees, who then invoked their rights against a partnership under its endorsement of the drafts. The partnership, comprising the American claimant and a national of Guatemala, fulfilled its obligation by paying the transferees, who thereupon assigned their claims to the Guatemalan partner, rather than to the partnership. He filed suit and obtained a warrant of attachment against property of the bank in the United States, and on December 17, 1917 executed an assignment to claimant of one-half of the proceeds. The partnership was dissolved in 1919, and the matter was never prosecuted to judgment. The Commission denied the claim under Section 305(a) (1) of the Act, finding that the warrant of attachment was not issued in favor of a national of the United States and that any lien which resulted was not obtained by a national of the United States. Subsequently, the same claim was allowed under Section 305(a) (2) of the Act, as a claim of a United States national against the Soviet Government arising prior to November 16, 1933. On December 27, 1917, after the assignment to claimant, the Soviet Government

nationalized all Russian banks, and on March 4, 1919 issued a decree annulling all obligations of nationalized enterprises which arose prior to nationalization. Thus creditors of the banks were barred from enforcing their legal rights, and the Commission found that these actions of the Soviet Government constituted a confiscation of property giving rise to claims against that Government by the creditors. (*Claim of John D. Williams*, Claim No. SOV-40092, Dec. No. SOV-4, 10 FCSC Semiann. Rep. 203 (Jan.-June 1959).) The result, however, was less favorable to claimant than would have been an award under Section 305 (a) (1), carrying with it a preference as to payment, as discussed below.

Interest.—A particular problem was posed with respect to interest in connection with awards under Section 305 of the Act in view of priorities for payment established by Section 310. Under this section, the Secretary of the Treasury was directed to make payment in full of the principal amount of each award pursuant to Section 305 (a) (1), whereas awards under Section 305 (a) (2) were to have the principal amount paid in full only where they were for \$1,000.00 or less. Recipients of higher awards under Section 305 (a) (2) were to receive initial payments of \$1,000.00 on account of the principal amount, with later payments to be prorated among awardees to the limit of available funds. Similar pro rata payments on account of interest could be made only after the principal amounts of all awards had been paid in full.

In the *Friede* claim, the Commission recognized that the difference in payment provisions for the two classes of claims under Section 305 made it necessary to define "principal amount of the award." The Commission held that as to awards under Section 305 (a) (2), the term clearly embraced only the value of the property at the time of its loss. Hence, such awards would contain two separate elements: (1) the principal amount of the award, and (2) interest thereon at 6% per annum from the date of loss to November 16, 1933, the date of the assignment to the United States of the assets constituting the fund from which payments were to be made. (For a general discussion of entitlement to interest on awards, see the annotations to *Claim of Joseph Senser*, appearing at page 152.)

With respect to awards under Section 305 (a) (1), on the other hand, the Commission held that the "principal amount of the award," to the full payment of which awardees were entitled under Section 310, included the value of the claim when it arose, plus interest from the time it arose to November 16, 1933, plus costs and disbursements; i.e., the total amount of the underlying judgment which would include those elements. The Commission reasoned that the intention of Congress in providing for preference in payment of awards had been to place lien creditors in the status they had enjoyed immediately prior to the Litvinov Assignment, and had acquired through pursuit of available legal remedies. Accordingly, the award is stated in the *Friede* decision as a single sum, not divided into principal and interest, although it includes interest from the date of loss to November 16, 1933. In its decision the Commission noted that the judgment against the Russian bank had included interest from July 10, 1919 to July 19, 1935, but in its own calculation of the award included

interest only to November 16, 1933 in line with its decision regarding entitlement to interest generally. This was done despite the provision of Section 305(b) to the effect that any judgment of a court of the United States or any State thereof should be binding upon the Commission in determining lien claims under Section 305(a) (1), on "any issue which was determined by the court in which the judgment was entered." Inasmuch as the allowance of interest on damages flowing from breach of contract was mandatory under the New York Civil Practice Act, the Commission considered that the period for which the interest was to run was not an issue determined by the New York court in rendering the judgment forming the basis of the *Friede* claim, and therefore the judgment was not binding upon the Commission in that respect.

Limitation of award under Section 305(a)(1) to the proceeds of the property encumbered by the lien.—Section 305(a) (1) provided further that awards under that paragraph should not exceed the proceeds of such property as may have been subject to the lien of the judgment or attachment; nor, in the event that such proceeds are less than the aggregate amount of all valid claims so related to the same property, exceed an amount equal to the proportion which each such claim bears to the total amount of such proceeds.

An application of this provision is also illustrated in the *Friede* claim. The warrant of attachment was obtained by the claimant on assets owned by the Russo-Asiatic Bank of approximately \$3,401,414.18 deposited with the National City Bank of New York and the Guaranty Trust Company of New York; the proposed award was in the amount of \$761,486.50; the record before the Commission indicated that the total of the remaining claims against the so-called Soviet Claims Fund would not exceed such fund available for the payment to claimants under Section 305(a) (1); consequently, the Commission concluded that the amount awarded was less than the aggregate amount of all valid preferred claims related to the fund and, therefore, the award was certified to the Secretary of the Treasury for full payment.

In the Matter of the Claim of

Claim No. SOV-40740
Decision No. SOV-2510

JULES M. PAVITT

Against the Soviet Government

Nationality prerequisites satisfied under Section 305(a)(2), Title III, of the 1949 Act if claim was owned by a United States national on date of loss and continuously thereafter. Pursuant to Section 311(b), as amended by Public Law 85-604 of August 8, 1958, claim based on stock interest in nationalized Russian corporation recognized without regard to per centum of ownership

vested in United States nationals on date of loss. Claim for additional stock interests acquired after nationalization denied because claimant failed to establish that nationality prerequisites had been satisfied.

Award under Section 305(a)(2) for stock interest in nationalized Russian corporation measured by value of interest on date of nationalization. Value of stock interest determined on basis of all available financial data, including stock market quotations on date of nationalization.

Supplemental award granted under Commission procedures if previous award was certified to and acted upon by the Treasury Department.

PROPOSED DECISION

This claim for \$46,604.85 under Section 305(a)(2) of the International Claims Settlement Act of 1949, as amended, is based upon a loss allegedly sustained when the Soviet Government nationalized several companies in which the claimant owned shares of stock and confiscated a bank account of the claimant.

The burden of proving a claim is on the claimant. Although he has been afforded several opportunities to adduce evidence in support of his ownership of the aforesaid shares of stock, he has not done so. His attorney has informed the Commission that it is impossible for the claimant to obtain evidence to meet the requirement of 25% ownership of the outstanding capital stock of these corporations by individual United States nationals at the time of their nationalization by the Soviet Government as required by Section 311(b) of the aforesaid Act and the Commission has no such evidence which would assist him in meeting this prerequisite. This part of the claim based upon shares of stock must be denied.

As to the bank account, the Commission finds that the claimant, a citizen of the United States since his naturalization on December 24, 1902, had account No. 6774 in the Moscow Branch of the Russo-Asiatic Bank with a balance of 57,515.94 rubles when it was confiscated by the Soviet Government on December 28, 1917; that the exchange rate of the ruble on December 28, 1917 was thirteen cents for one ruble; and that the claimant is entitled to an award based upon 57,515.94 rubles converted to United States dollars at the said exchange rate, and for interest from December 28, 1917 until November 16, 1933, the date of the Litvinov Assignment.

AWARD

On the above evidence and grounds, that part of the claim based upon the bank account is allowed and an award is hereby made to JULES M. PAVITT, claimant herein, in the amount

of seven thousand four hundred seventy-seven dollars and seven cents (\$7,477.07) plus interest thereon at the rate of 6% per annum from December 28, 1917 to November 16, 1933 in the amount of seven thousand one hundred twenty-five dollars and sixty-five cents (\$7,125.65). No determination is made with respect to interest from any period subsequent to November 16, 1933.

Payment of the award herein shall not be construed to have divested claimant herein or the Government of the United States on his behalf, of any rights against the Government of the Soviet Union, for the unpaid balance, if any, of the claim.

Dated at Washington, D.C.

April 2, 1958.

One Commissioner dissents from the proposed award recommended upon the grounds that, under established practices in settlement of international claims, bank accounts are not a proper subject of espousal and as such should not be considered here by the Commission.

FINAL DECISION

The Commission issued its Proposed Decision on this claim on April 2, 1958, a copy of which was duly served upon the claimant. No objections or request for a hearing having been filed within twenty days after such service and general notice of the Proposed Decision having been given by posting for thirty days, it is

ORDERED that such Proposed Decision be and the same is hereby entered as the Final Decision on this claim, and it is further

ORDERED that the award granted pursuant thereto be certified to the Secretary of the Treasury.

Dated at Washington, D.C.

May 21, 1958.

SUPPLEMENTAL PROPOSED DECISION

By its Proposed Decision of April 2, 1958 the Commission made an award on that part of this claim based upon a bank account and denied that part predicated upon shares of stock in several Russian companies which had been nationalized by the Soviet Government. The Final Decision dated May 21, 1958 affirmed the Proposed Decision.

That item of the claim based upon such shares of stock was denied for the claimant was unable to prove that at least 25% of the outstanding capital stock of the issuing companies was owned by individual United States nationals at the time they

were nationalized by the Soviet Government as required by Section 311(b) of the International Claims Settlement Act of 1949, as amended.

By Public Law 85-604 of August 8, 1958, the aforesaid 25% requirement was eliminated in those claims based upon direct stock ownership in Russian corporations which were nationalized. The claimant has requested the Commission to reconsider that part of his claim based upon shares of stock.

Under Section 305 (a) (2) of the Act, and under well-established principles of international law relating to claims espoused by the United States against other governments, eligibility for compensation requires, among other things, that the property which is the subject of the loss must have been owned by a United States national at the time of such loss and that the claim arising therefrom must have been continuously owned thereafter by a United States national.

This item of the claim is based upon an interest of the claimant as a participant in a joint account, or venture, composed solely of shares of stock in four Russian companies, and as the sole owner of shares in another Russian company. The claimant has stated that his interest in such account, or venture, was increased from $\frac{1}{7}$ to $\frac{1}{4}$ in August 1918 but that such transaction was not reduced to writing. It makes no difference whether this transaction can be proved or not for it occurred after the Russian companies were nationalized; therefore, a claim for such interest (increase from $\frac{1}{7}$ to $\frac{1}{4}$) would apparently not have arisen in favor of a United States national or nationals as required to come within the purview of Section 305 (a) (2) of the Act. (See paragraph immediately preceding.)

As to the account or joint venture, the Commission finds that the claimant had a $\frac{1}{7}$ interest in the following-described shares of stock when the issuing companies were nationalized by the Soviet Government:

Name of issuing company	Number of shares owned by venture	Date of nationalization of company	Market value in rubles per share on date of nationalization	Total market value in rubles of shares owned by venture
P. V. Baranovski Mechanical, Cartridge and Pipe Co. -----	300	June 28, 1918	¹ 175	52,500
Taganrog Metallurgical Co. ----	250	June 28, 1918	¹ 230	57,500

¹ Stock market quotation as of Oct. 21, 1917.

Name of issuing company	Number of shares owned by venture	Date of nationalization of company	Market value in rubles per share on date of nationalization	Total market value in rubles of shares owned by venture
Kolchugin				
Sheet & Brass Products Co. -----	100	June 28, 1918	¹ 568	56,800
I. V. Yunker				
Commercial Bank ---	133	Dec. 27, 1917	(²)	98,365
Total -----	783	-----	-----	265,165

¹ Stock market quotation as of Oct. 21, 1917.

² Used purchase price in June 1917 as only market price at end of 1916 is available.

Evidence before the Commission shows that as of June 22, 1917 the account, or venture, was composed of shares of stock which had been purchased for 334,027.82 rubles, but only 102,875 rubles of the venture had actually been invested, with the certificates for such shares being deposited as collateral for a loan of the balance of the purchase price of 231,152.82 rubles. The net value (cost less loans) of these various shares of stock is shown below:

(1) *Net Value of Shares Issued by Three Russian Companies:*

Name of Company	Market value in rubles of shares on June 28, 1918
P. V. Baranovski -----	52,500
Taganrog -----	57,500
Kolchugin -----	56,800
Total -----	166,800
Less: Loans applicable to above shares -----	162,297
Net value to Venture -----	4,503

(2) *Net Value of I. V. Yunker stock:*

Market value on Dec. 27, 1917 -----	98,365
Less: Loans thereon -----	68,855
Net value to Venture -----	29,510
Total net value in rubles to Venture -----	34,013

The Commission also finds that the claimant was the sole owner of 30 shares of stock of Bryansk Coal Mining Company when it was nationalized on June 28, 1918 and that such shares had a value on that date of 10,025 rubles.

On the basis of the foregoing, the following-described addition will be made to the principal amount of the award set out in the Proposed Decision of April 2, 1958:

Date claim arose	Claimant's interest	Value of ruble when claim arose (cents)	Value in U.S. dollars
June 28, 1918 -----	643 ($\frac{1}{2}$ of 4,503)	14	90.02
Dec. 27, 1917 -----	4,216 ($\frac{1}{2}$ of 29,510)	13	548.08
June 28, 1918 -----	10,025	14	1,403.50
	14,884		2,014.60
Total -----	14,884	-----	2,014.60

The Commission finds, therefore, that in addition to the award of \$7,477.07 with interest thereon of \$7,125.65 as set forth in the Proposed Decision of April 2, 1958, the claimant is entitled to a supplemental award in the amount of \$2,041.60, plus interest thereon of \$1,900.93 with such interest computed as follows:

Date claim arose	Amount of award	Amount of interest
June 28, 1918 -----	\$1,493.52	\$1,378.52
Dec. 27, 1917 -----	548.08	522.41
	\$2,041.60	\$1,900.93
Total -----	\$2,041.60	\$1,900.93

SUPPLEMENTAL AWARD

On the above evidence and grounds, a supplemental award is hereby made to JULES M. PAVITT, claimant herein, in the amount of two thousand forty-one dollars and sixty cents (\$2,041.60), plus interest thereon of one thousand nine hundred dollars and ninety-three cents (\$1,900.93). No determination is made with respect to interest for any period subsequent to November 16, 1933.

Payment of the award herein shall not be construed to have divested claimant herein or the Government of the United States on his behalf, of any rights against the Government of the Soviet Union for the unpaid balance, if any, of the claim.

Dated at Washington, D.C.
February 2, 1959.

SUPPLEMENTAL FINAL DECISION

The Commission issued its Supplemental Proposed Decision on this claim on February 2, 1959, a copy of which was duly served upon claimant. No objections or request for a hearing having been filed within twenty days after such service and general notice of the Supplemental Proposed Decision having been given by posting for thirty days, it is

ORDERED that such Supplemental Proposed Decision be and the same is hereby entered as the Supplemental Final Decision on this claim, and it is further

ORDERED that the additional award granted pursuant thereto be certified to the Secretary of the Treasury.

Dated at Washington, D.C.

March 16, 1959.

Nationality requirements under Section 305(a)(2).—Although it was only claims of nationals of the United States that were included in Section 305 (a) (2), the Act was silent as to the period of time during which, in order to be compensable, such claims must have been owned by United States nationals. Since claims under Section 305 were to be determined "in accordance with applicable substantive law, including international law," the Commission applied the international law principle under which a claim will be espoused by the United States Government only if the property upon which it is based was owned by a United States national or nationals at the time of loss, and the claim was owned by a United States national or nationals continuously thereafter. An identical situation existed with respect to claims against Bulgaria, Hungary, and Rumania under Section 303 of the Act, and is discussed in the annotations to *Claim of Margot Factor*, appearing at page 168. As was the case under Section 303, the Commission held that the nationality requirement in claims under Section 305 was satisfied by United States ownership from the date of loss until the date of filing the claim, following the decision in *Claim of Benedict Lustgarten*, Claim No. RUM-30575, Dec. No. RUM-434, 10 FCSC Semiann. Rep. 119 (Jan.-June 1959).

Accordingly, a claim against the Soviet Government, filed by a person who had never been a national of the United States, was denied. (*Claim of Peter Romasew*, Claim No. SOV-40843, Dec. No. SOV-240, 10 FCSC Semiann. Rep. 177 (Jan.-June 1959).) Where a claimant filed a declaration of intention to become a citizen of the United States prior to the loss of his property, but was not naturalized until after the loss, the claim was denied on the ground that the property was not owned by a United States national at the time of loss. The Commission re-

jected claimant's contention that he enjoyed *de facto* citizenship from the time of his declaration of intention until his naturalization, which then was retroactive to the date of the declaration; and held that the declaration of intention did not clothe him with citizenship or confer upon him the right to diplomatic protection of the United States with respect to injuries suffered from foreign governments. (*Claim of Alexander Hinchuk & Company*, Claim No. SOV-41057, Dec. No. SOV-1953.) For a further discussion of the effect of filing a declaration of intention, see the annotations to *Claim of Gerardo Soliven*, particularly the reference to *Claim of Walter Ludwig Koerber*, Claim No. W-3917, Dec. No. W-1322, appearing at page 574. A claim based upon certain securities which were repudiated on February 10, 1918, acquired by claimant after the claim arose but before he became a United States national, was denied for lack of continuous ownership by United States nationals from the date of loss to the date of filing the claim. (*Claim of Henry Frederick Heitmann*, Claim No. SOV-40791, Dec. No. SOV-226, 10 FCSC Semiann. Rep. 176 (Jan.-June 1959).) A portion of a claim by an American corporation was based upon losses suffered by 30 of its employees in Russia who were compelled to flee the country leaving most of their belongings behind. Claimant reimbursed its employees for their losses, and their claims against the Soviet Government were assigned to claimant. Inasmuch as ten of the employees were not nationals of the United States, the portion of the claim embracing their losses was denied. The assignment of their claims to an enterprise which qualified as a United States national did not cure the defect of ownership of the property by nonnationals of the United States at the time of loss. (*Claim of International Harvester Company*, Claim No. SOV-41072, Dec. No. SOV-3127, 10 FCSC Semiann. Rep. 256 (Jan.-June 1959).)

The *Pavitt* claim also provides an example of a denial by Proposed Decision of a portion of a claim under Section 305 of the Act because of failure to meet the requirement of Section 311(b) of ownership by United States nationals of at least 25% of the stock of a corporation which directly suffered the loss. After amendment of Section 311(b) on August 8, 1958, this requirement was removed for claims based upon direct ownership interest in the corporation which sustained the loss, and an award was made in the *Pavitt* claim by Supplemental Proposed Decision. For further discussion of Section 311(b) and its amendment, see the annotations to *Claim of Niagara Share Corporation*, appearing on page 184.

Presumption of ownership by United States nationals.—The Commission received many claims based upon bonds issued by the Russian Government and formally repudiated on February 10, 1918. Even after their repudiation, such bonds were actively traded; and in many instances the claimant, though a United States national, had acquired the bonds after February 10, 1918 and had no means of identifying previous owners or their nationality. In this situation, strict requirements of proof of ownership by United States nationals from the date of loss to the date of filing the claim would have resulted in denial of most of such claims. Russian Government bond issues of June 18, 1916 and November 18, 1916 were expressed in United States dollars

and had been issued specifically for the American market. Both issues were fully subscribed and sold by financial institutions in the United States. Therefore, the Commission adopted a policy of presuming, in claims by United States nationals who acquired such bonds after February 10, 1918, that there had been continuous ownership of the bonds by United States nationals since February 10, 1918, in the absence of any evidence to create a doubt. This presumption was not necessarily limited to bonds expressed in United States dollars. For instance, an award was made on a claim based upon 14 Imperial Russian Government Short Term War Loan Bonds of 1916, expressed in rubles, acquired by claimant on April 27, 1922 from a firm of investment brokers in the United States. Stating that it had ascertained that bonds of this issue were traded on the market in the United States in large quantities prior to February 10, 1918, the Commission concluded, in the absence of any evidence to the contrary, that claimant's bonds had been owned continuously from February 10, 1918 by nationals of the United States. (*Claim of Theodore Francis Green*, Claim No. SOV-41084, Dec. No. SOV-1189, 10 FCSC Semiann. Rep. 205 (Jan.-June 1959).) On the other hand, where the identity and nationality of all previous owners since February 10, 1918 of Second 5% Imperial Russian Government Loan of 1822 bonds was not known, and the Commission's investigation disclosed that such bonds were not traded on the market or generally circulated in the United States prior to February 10, 1918, the Commission declined to make the presumption of ownership by United States nationals and denied the claim. (*Claim of Edward Lawrence Willard*, Claim No. SOV-41778, Dec. No. SOV-1052.) The same result was reached in a claim involving "Liberty Bonds" issued in 1917 by the Provisional Government of Russia. (*Claim of Olney Hampton Bryant*, Claim No. SOV-40031, Dec. No. SOV-1249, 10 FCSC Semiann. Rep. 204 (Jan.-June 1959).) In another instance, involving Imperial Russian Government 4% State Income Bonds of 1894, the identity and nationality of owners between 1918 and 1931 was not known. Inasmuch as claimant's bonds bore a written notation and rubber stamp indicating that they had been located in Russia on May 1, 1920, the claim was denied for failure to meet the nationality requirement. (*Claim of Euphemia Loretta Hoague*, Claim No. SOV-42158, Dec. No. SOV-891, 10 FCSC Semiann. Rep. 222 (Jan.-June 1959).)

Award limited to extent of American interests on date of loss.— Another facet of the *Pavitt* claim is its denial of a portion based upon additional interests in stock holdings in Russian corporations, acquired after the nationalization of the corporations. Claimant's award was limited to the extent of his holdings at the time of nationalization, because it was not established that any additional interest acquired thereafter had been owned by nationals of the United States at the time of loss. This is similar to the denial of a portion of a claim based upon assignments from nonnationals of the United States made after the loss occurred, in *Claim of International Harvester Company, supra*. A claimant's award is not necessarily limited to the interests in property which he owned at the time of loss, but is limited to interests which were owned by United States nationals at the

time of loss, owned by claimant at the time of filing the claim, and owned by United States nationals at all times between. A portion of one claim was based upon ownership of stock in a Russian corporation which had been nationalized. Claimant's 84% interest at the time of filing the claim had been owned at the time of loss by a British corporation of which claimant owned 54.54%. Accordingly, the award was limited to 48.33%, or the proportion owned by claimant, as a United States national, at the time of loss. (*Claim of Westinghouse Air Brake Company*, Claim No. SOV-41804, Dec. No. SOV-3124, 10 FCSC Semiann. Rep. 240 (Jan.-June 1959).)

Value.—Due to the lapse of some forty years between the nationalization of property by the Soviet Government and the consideration of claims for compensation therefor, the valuation of property as of the time of loss presented a particularly difficult problem, and the quantity and quality of evidence available for its solution was meager. All evidence having any bearing upon the question of value was considered. In determining the value of shares of stock at the time of nationalization of Russian corporations, the type of evidence available varied from case to case, and the element deemed most reliable and carrying the greatest weight varied accordingly, from stock market quotations as in the *Pavitt* claim, to purchase price paid (*Claim of General Electric Company*, Claim No. SOV-42234, Dec. No. SOV-3119, 10 FCSC Semiann. Rep. 234 (Jan.-June 1959)), to net worth as determined from financial statements (*Claim of Western Electric Company*, Claim No. SOV-40204, Dec. No. SOV-3117, 10 FCSC Semiann. Rep. 229 (Jan.-June 1959)). For an instance in which the value of a corporation at the time of nationalization was determined from the balance sheet for the closest available period of time, after making certain adjustments in some of the figures as warranted by the evidence of record, see *Claim of the Singer Manufacturing Company*, Claim No. SOV-40920, Dec. No. SOV-3128, appearing at page 367.

Procedure.—The *Pavitt* claim illustrates the procedure followed by the Commission when it was determined that a claimant was entitled to an additional award, after a previous award had been granted him by Final Decision and certified to the Secretary of the Treasury for payment. A Supplemental Proposed Decision was issued making a Supplemental Award, followed by a Supplemental Final Decision, which was certified to the Secretary of the Treasury. In this manner the Treasury Department was alerted to the fact that a previous award had been made to the same person, which was of importance in the calculation of payments to be made on account of awards under Section 310 of the Act, paragraph (c) of which provided that for such purpose an "award" should be deemed to mean the aggregate of all awards certified in favor of the same claimant and payable from the same fund.

Other procedural matters of interest under Section 305 concerned the question of timeliness of filing claims. Under the statute and Commission regulations, the last date for filing claims under Title III of the Act was March 31, 1956; but since this date fell on a Saturday, the time was extended until the end of the next day which was neither a Saturday, Sunday, or holiday.

Consequently, the last day for timely filing was April 2, 1956. The Commission ruled that a communication made to it prior to April 3, 1956, indicating an intent to file a claim, was sufficient to preserve for a reasonable time the right to complete and file a claim on an official claim form. Where a claimant failed to file his claim or communicate with the Commission thereon prior to April 3, 1956, the claim was denied as not timely filed. (*Claim of Fred Cornell*, Claim No. SOV-42917, Dec. No. SOV-227, 10 FCSC Semiann. Rep. 176 (Jan.-June 1959).) In another instance, while a claim was pending before the Commission, claimant assigned his rights therein to another. The Commission held that an assignee, not having been a claimant when the claim was filed or on the terminal date for filing claims, could not be made a party to a valid claim except under circumstances where an assignment comes into being by operation of law. A claim by the assignee would be a new claim, never asserted before, for which the filing period had expired. Consequently, the Commission did not recognize the assignment, but made an award to the original claimant whose claim was found to be valid. (*Claim of Batavian National Bank*, Claim No. SOV-40987, Dec. No. SOV-2003, 10 FCSC Semiann. Rep. 199 (Jan.-June 1959).)

In the Matter of the Claim of

Claim No. SOV-41261
Decision No. SOV-3126

**THE FIRST NATIONAL CITY BANK
OF NEW YORK**

Against the Soviet Government

Annulment by the Soviet Government of secured or unsecured obligations of nationalized Russian entities, and repudiation by the Soviet Government of bonds and other obligations incurred or guaranteed by predecessor Russian governments, gave rise to valid claims under Section 305(a)(2), Title III of the 1949 Act. Barring creditors from enforcing their rights constituted a denial of justice under international law. Severe restrictions imposed on bank accounts by the Soviet Government in implementing its decree nationalizing banks in Russia constituted a confiscation of bank deposits under Section 305(a)(2).

Award on claim under Section 305(a)(2), acquired after it arose, limited pursuant to Section 307 to "actual consideration last paid therefor." Award for repudiated ruble bonds and obligations measured by exchange rate of ruble in effect on date of repudiation. Award under Section 305(a)(2) offset by amounts owed or received by claimant on account of same loss.

PROPOSED DECISION

This is a claim for \$39,160,765.96 plus interest by The First National City Bank of New York (hereinafter referred to as

"Claimant") against the Soviet Government under Section 305 of the International Claims Settlement Act of 1949, as amended.

The record establishes that Claimant and its predecessors, The Farmers Loan and Trust Co., The City Company of New York, Inc. (formerly called The National City Company), The Bank of America, National Association, and The Nassau National Bank of Brooklyn in New York, qualify as nationals of the United States as defined by Section 301(2) (B) of the Act; and that Claimant succeeded to the interests of the said predecessors in and to part of this claim by merger, consolidation and otherwise.

The claim is subdivided into fourteen (14) separate categories (Schedules A through N annexed to the Statement of Claim) as follows:

	<i>Amount claimed</i>
Schedule A—Balance due on account of a judgment in favor of Herbert J. Grant against the Russo-Asiatic Bank-----	\$799,133.59
Schedule B—Dollar Treasury Notes of the Provisional Government of Russia and other Dollar bonds and obligations of the Imperial Russian Government purchased by Claimant's New York Head Office -----	2,201,833.75
Schedule C—Loans and Advances made in Dollars by Claimant in New York which Claimant has been unable to collect because the debtors' assets were seized, and/or their businesses nationalized by the Soviet Government, or because the relative collateral security was seized or otherwise taken without compensation by the Soviet Government or its agents and not returned -----	344,390.76
Schedule D—Loans made in Dollars by Claimant in New York against ruble deposits held by Claimant's former Petrograd Branch as collateral, which loans Claimant has been unable to collect because the assets of the debtors were seized and/or their businesses nationalized by the Soviet Government-----	1,236,461.90
Schedule E—Funds on deposit to the credit of Claimant's New York Office with various banks in Russia that were nationalized and merged with the State Bank of Russia by the Soviet Government, which funds have not been repaid to Claimant -----	69,063.09
Schedule F—Legal expenses which Claimant was required to incur as a direct result of the seizure by the Soviet Government of Claimant's former Branches in Russia and by other acts and decrees of the Soviet Government -----	1,222,000.00
Schedule G—Drafts and other documents received by Claimant from its customers for collection in Russia and remitted during 1917 to banks in Russia which were nationalized and/or seized by the Soviet Government, and which have not since accounted for the proceeds or returned said drafts and documents -----	105,052.99
Schedule H—Funds of Claimant's former Petrograd and Moscow Branches on deposit in rubles with the State Bank of Russia, a Department or Agency of the Russian Government, and with private Russian Banks which were nationalized by the Soviet Government and merged with said State Bank,	

	<i>Amount claimed</i>
and which funds have not been repaid to Claimant -----	28,075,053.74
Schedule I—Imperial Russian Government ruble bonds deposited by Claimant with the State Bank of Russia in guarantee of liabilities as required by the charter granted to Claimant by the Imperial Russian Government to operate Branches in Russia, and which bonds were repudiated by decree of the Soviet Government -----	647,873.62
Schedule J—Bills discounted by Claimant's Petrograd Branch which Claimant has been unable to collect because the assets of the obligors were seized and/or their businesses nationalized by the Soviet Government -----	388,611.42
Schedule K—Loans made in foreign currencies by Claimant's Petrograd Branch against ruble collateral, which loans Claimant has been unable to collect because the debtors were seized and/or their businesses nationalized by the Soviet Government, and because the ruble collateral was seized or otherwise taken by the Soviet Government or its agents and not returned -----	432,455.18
Schedule L—Advances made by Claimant's Petrograd Branch which Claimant has been unable to collect because the assets of the debtors were seized and/or their businesses nationalized by the Soviet Government and because the collateral securities were seized or otherwise taken by the Soviet Government or its agents and not returned -----	451,467.64
Schedule M—Customers' securities held as collateral or for safekeeping by Claimant's Russian Branches in safe deposit boxes in the Volga-Kama Bank at Petrograd or deposited in safes lodged with the Swedish Consulate General at Moscow prior to departure of Claimant's Branch personnel from Russia -----	3,017,318.28
Schedule N—Property (office furniture and equipment) of Claimant's Petrograd and Moscow Branches seized by the Soviet Government or its agent and/or other losses occasioned by the seizure of said Branches and the expulsion of their American personnel -----	170,000.00

The record discloses that on January 4, 1917, the Russian Government granted Claimant a charter to conduct banking business in Russia, and that Claimant thereafter opened two Branch Offices in Russia, namely, in Moscow and Petrograd. In connection therewith, said Branch Offices maintained ruble deposits with the former Russian State Bank and with other former Russian private banks. By decree dated December 27, 1917, the Soviet Government nationalized all Russian owned banks. Said decree did not apply to branches of foreign owned banks. The latter were directed to be liquidated by Soviet decree dated December 2, 1918. However, due to stringent restrictions placed on all banking business in Russia, immediately following the enactment of the aforementioned nationalization decree, all private banking opera-

tions in Moscow and Petrograd and in other areas then controlled by the Soviet Government came to an end for all intents and purposes, as of December 28, 1917.

The record discloses that beginning December 28, 1917, Claimant's Petrograd Branch was occupied by a squad of Bolshevik soldiers for a period of five days; that at the end of such occupation the soldiers were removed, following Claimant's pledge to do nothing beyond putting its books in order and to faithfully abide by all instructions issued by the Chief Commissar of the State Bank. Payments to Claimant's customers on account of their deposits with Claimant's Russian Branches were then restricted to 500 rubles per day to American depositors and 150 rubles per week to other depositors, upon condition that such depositors procure permission for such withdrawals from the Chief Commissar of Banking. Claimant's Russian Branches soon found themselves unable to make such payments, since they maintained but a small amount of ruble currency in their banking premises and were prohibited by the Soviet authorities from withdrawing funds on account of their credits (deposits) with the Russian banks. Thereafter, all efforts by Claimant's representatives to maintain a semblance of orderly operations were frustrated by the Soviet Government. On March 9, 1918, Claimant's Petrograd Branch, or what was then left of it, was transferred to Vologda. On August 5, 1918, by direction of the Soviet authorities said Branch was again transferred from Vologda to Moscow. The offer of assistance by the Swedish Moscow Consulate General in Moscow to intervene in an effort to alleviate Claimant's plight was fruitless. However, said Consulate permitted Claimant's representatives to install two safes in the Swedish Mission in Moscow in which Claimant deposited certain of its Russian records and valuables. Finally, and on August 8, 1918, Claimant's Moscow and Petrograd Branches were officially closed, and under orders of the American Moscow Consulate General, Claimant's American representatives and employees left for the United States.

By decree published December 30, 1917, the Soviet Government directed the surrender of all safe deposit boxes. Claimant maintained such boxes in the State Bank and in the Russo-Asiatic Bank in Petrograd, but was not permitted to remove the contents which consisted of securities and other valuables held for safekeeping for Claimant's customers and/or as collateral to secure the repayment of loans and advances.

By decree published on February 10, 1918, the Soviet Government annulled all bonds issued or guaranteed by prior Russian governments.

With the foregoing brief historical background, we are giving

consideration to the instant claim under Section 305(a) (2) of the Act.

*CLAIMANT'S SCHEDULE A: "GRANT" JUDGMENT
AGAINST RUSSO-ASIATIC BANK*

This item was heretofore considered by the Commission as a preferred claim under Section 305(a) (1) of the Act, and was denied by Final Decision dated January 30, 1957, without prejudice to its consideration under Section 305(a) (2) of the Act. The assignment by Claimant to Grant under which the latter procured the judgment against the Russo-Asiatic Bank covered (1) Claimant's deposit of 486,989.23 rubles with the Russo-Asiatic Bank which is included in Schedule E and (2) 3,992,309.16 rubles due from the Russian State Bank to Claimant's Russian Branches, which is included in Schedule H. Accordingly, the claim based on this Item (Schedule A) will hereinafter be determined under the heading "Claimant's Schedule E" and "Claimant's Schedule H."

CLAIMANT'S SCHEDULE B: (1) DOLLAR TREASURY NOTES, (2) RUSSIAN BONDS, and (3) PARTICIPATION CERTIFICATES IN RUSSIAN GOVERNMENT (CREDIT) OBLIGATIONS.

- (1) 5% Dollar Treasury Notes issued by the Provisional Russian Government on May 17, 1917, due May 1, 1918, and extended to November 1, 1919.

The record establishes that claimant is the owner of the above-described notes in the principal amount of \$6,960,000, identified by serial number in "Schedule 1" annexed hereunto. The sum of \$435,000, the principal amount of this issue, was owned by Claimant on February 10, 1918, the date of their annulment by the Soviet Government. Interest thereon has been paid to November 1, 1919. The remaining principal amount of \$6,525,000, represents notes of this issue acquired by Claimant and its predecessors in interest, The Farmers Loan Trust Company and the City Company, subsequent to February 10, 1918, at a cost of \$853,156.25.

Accordingly, and applying the limitation prescribed by Section 307 of the Act, the Commission finds that claimant is entitled to an award based on this Item (1) in the principal amount of \$1,288,156.25, with interest on \$435,000 from November 1, 1919 in the amount of \$366,487.50.

- (2) 5½% Five Year Dollar Bonds issued by the Imperial Russian Government dated December 1, 1916, due December 1, 1921.

The record establishes that claimant is the owner of the above-described bonds in the principal amount of \$1,226,000, identified by serial number in "Schedule 2" annexed hereunto. The sum of \$275,000, the principal amount of this issue, was owned by Claimant's predecessors in interest, The Farmers Loan and Trust Company on February 10, 1918, the date of their annulment. Interest thereon has been paid to November 1, 1919. The remaining principal amount of \$951,000 represents bonds of this issue acquired by Claimant and by the Nassau National Bank of Brooklyn, subsequent to February 10, 1918, at a cost of \$90,727.50. The Nassau National Bank of Brooklyn merged after this purchase with the Bank of America, National Association, Claimant's predecessor.

Accordingly, and applying the limitation prescribed by Section 307 of the Act, the Commission finds that Claimant is entitled to an award based on this Item (2) in the principal amount of \$365,727.50, with interest on \$275,000 from November 1, 1919 in the amount of \$231,687.50.

(3) Participation Certificates in 6½% Three-Year Credit obligation of the Imperial Russian Government due June 18, 1919.

The record establishes that claimant is the owner of \$1,133,000 of the above-described Participation Certificates, identified by serial number in "Schedule 3" annexed hereunto. The sum of \$483,000, the principal amount of such certificates, was owned by claimant on February 10, 1918, the date on which the underlying obligation was annulled by the Soviet Government. Interest thereon has been paid to July 10, 1919. The remaining principal amount of \$650,000 represents participation certificates which claimant purchased subsequent to February 10, 1918, at a cost of \$65,000.

Accordingly, and applying the limitation prescribed by Section 307 of the Act, the Commission finds that Claimant is entitled to an award on this Item (3) in the principal amount of \$548,000 with interest on \$483,000 from July 10, 1919 in the amount of \$415,863.00.

RECAPITULATION "SCHEDULE B"

	Principal	Interest
(1)	\$1,288,156.25	\$366,487.50
(2)	365,727.50	231,687.50
(3)	548,000.00	415,863.00
Total -----	\$2,201,883.75	\$1,014,038.00

*CLAIMANT'S SCHEDULE C: DOLLAR LOANS AND
ADVANCES, SECURED AND UNSECURED.*

(1) *C. B. Richards & Co.* (hereinafter referred to as
"Richards")

The record establishes that on September 25, 1917, Claimant's New York Office received for collection from Richards a sight draft for \$112,374.89 drawn on Northern Railway Company, Moscow, with shipping documents attached, covering merchandise consigned to the drawee. Claimant advanced \$56,187.45 to Richards against the draft and forwarded it to its Petrograd Branch for collection. The drawee, or other instrumentalities of the Soviet Government obtained possession of the merchandise without payment of the draft. Subsequently and in 1922, Richards sued Claimant for the latter's failure to collect the draft or return it and the shipping documents covering the merchandise. Richards also sued Claimant for \$194,200 for the value of its ruble deposit with Claimant's Petrograd Branch. In 1931 both actions were settled by claimant for \$242,000. By the terms of settlement, Richards assigned all of its interest in the draft, shipping documents and the merchandise to Claimant.

The Commission finds that the drafts and merchandise were taken by the Soviet Government without compensation on December 28, 1917, and that by reason thereof Claimant is entitled to an award on this Item (1) in the principal amount of \$112,374.89 plus interest thereon from December 28, 1917 in the amount of \$107,093.27.

(2) *Russian Siemens & Halske Electric Company of
Petrograd* (a former Russian Company)

The record establishes that in 1917, Claimant's New York Office advanced dollar funds for the purchase of machinery to the above-named company, an enterprise organized under the Imperial Law of Russia; that said company was nationalized by the Soviet Government in 1918 and as the result thereof, Claimant was deprived of its ability to collect the balance due on the advances which amounted to \$114,587.71.

Accordingly, the Commission finds that Claimant is entitled to an award on this Item (2) in the principal amount of \$114,587.71, with interest thereon from December 28, 1917 in the amount of \$109,202.09.

The debtor, Siemens & Halske Electric Company, had 447,300 rubles on deposit with Claimant's Petrograd Branch as security for the repayment of the advances. Adjustment for said deposit is hereinafter included under heading "Claimant's Schedule H."

(3) *Societe des Mines Bogoslovsky of Petrograd* (a former Russian corporation)

This transaction and the resulting loss is similar in nature to the one described in the preceding Item (2). The amount involved was \$39,082.00. The Commission finds that Claimant is entitled to an award on this Item (3) in the principal amount of \$39,082.00, plus interest thereon from December 28, 1917 in the amount of \$37,245.15.

(4) *Banque de Commerce de Siberie Petrograd* (herein-after referred to as "Commerce Bank")

The record establishes that in 1917, the Commerce Bank had overdrawn its dollar account with the Claimant's New York Office to the extent of \$111,544.89. Thereafter, Claimant as correspondent of Commerce Bank received from George E. Keith Export Company, \$215,570.70 representing the proceeds of a shipment of calfskins from Russia made by Steinberg Bros. Ltd. to said George E. Keith Export Company. This fund when so received by Claimant was credited to the account of Commerce Bank, thus resulting in a credit balance of the latter's in favor of \$104,025.81. However, in June 1921, Steinberg Bros. Ltd., sued Claimant for the full amount of \$215,570.70, claiming it was entitled thereto. The action was settled in February 1924 at a cost to Claimant of \$190,000 which was \$78,246.20 more than the credit balance then standing on Claimant's books in favor of the Commerce Bank. Claimant states that it received instructions from the Commerce Bank that the net amount of the proceeds received by Claimant in connection with this transaction should be credited to Steinberg Bros. Ltd., after liquidating the Commerce Bank's special account. The Commerce Bank was nationalized by the Soviet Government on December 27, 1917.

The Commission finds that by reason of the foregoing, Claimant is entitled to an award on this Item (4) in the principal amount of \$78,246.20 with interest thereon from December 28, 1917 in the amount of \$74,568.63.

RECAPITULATION "SCHEDULE C"

	Principal	Interest
(1) C. B. Richards & Co. -----	\$112,374.89	\$107,093.27
(2) Russian Siemens & Halske Electric Co. of Petrograd -----	114,587.71	109,202.09
(3) Societe des Mines Bogoslovsky -----	39,082.00	37,245.15
(4) Banque de Commerce de Siberie -----	78,246.20	74,568.63
Total -----	\$344,290.80	\$328,109.14

*CLAIMANT'S SCHEDULE D: DOLLAR LOANS
SECURED BY RUBLE DEPOSITS*

The record establishes that Claimant's New York Office made dollar loans to finance imports by five Russian companies and three Russian individuals. The loans were approved by the then Russian government as necessary for Russia's World War I efforts. The aggregate unpaid balance of these loans amounts to \$1,236,461.91 which includes the unpaid balance of a loan in the amount of \$226,000 made to one Michael Terestchenko, whose liability thereon was released by Claimant for a nominal sum.

The loans were secured by rubles deposited as collateral with Claimant's Petrograd Branch, in the aggregate amount of 17,681,444 rubles.

The five Russian debtor companies were nationalized by the Soviet Government. The assets of the individual debtors were likewise seized by the Soviet Government.

Claimant was unable to recoup any of its losses arising out of the transactions described above. The collateral security deposited with the State Bank of Russia forms part of the total ruble deposits which is claimed under Claimant's "Schedule H."

The Commission finds that by reason of the foregoing, Claimant is entitled to an award for this item in the principal amount of \$1,010,461.91 with interest thereon from December 28, 1917 in the amount of \$962,970.20.

Adjustment for the ruble collateral security is hereinafter included under heading "Claimant's Schedule H."

*CLAIMANT'S SCHEDULE E: FUNDS ON DEPOSIT
WITH RUSSIAN PRIVATE BANKS*

The record establishes that Claimant's New York Office had on deposit with nine former Russian private owned banks a balance in the aggregate amount of 575,525.76 rubles; that said banks were nationalized by the Soviet Government by decree dated December 27, 1917 and that as the result thereof, said deposits were taken by the Soviet Government, without compensation, on December 28, 1917.

Statistics available to the Commission establish that the value of the ruble on the New York market as of December 28, 1917, was 13 cents per ruble. Accordingly, the Commission finds that Claimant is entitled to an award for this item in the principal amount of \$74,818.35 plus interest thereon from December 28, 1917 in the amount of \$71,301.89.

The aforesaid deposits included 486,989.23 rubles deposited with the Russo-Asiatic Bank which was assigned by Claimant to

Herbert J. Grant (see Claimant's "Schedule A") on account of which Claimant collected \$232,623.66 from Grant. This payment is reflected in the item hereinafter designated as "Offset."

CLAIMANT'S SCHEDULE F: LEGAL EXPENSES

This item is for legal expenses assertedly incurred by Claimant as the result of the seizure by the Soviet Government of Claimant's former Branches in Russia and other acts and decrees of that government, including legal expenses incurred by Claimant in defending suits brought against it in New York by depositors of its Russian Branches, and in defending other legal actions against it arising directly from actions of the Soviet Government, its agents or instrumentalities.

The Commission holds that such legal expenses are not compensable under the Act, and this item is, therefore, disallowed.

CLAIMANT'S SCHEDULE G: DRAFTS AND OTHER DOCUMENTS BELONGING TO CLAIMANT'S CUSTOMERS

This item is based on drafts and other documents belonging to Claimant's customers which were received by Claimant's New York office for forwarding to Russian banks for collection and which were never paid nor returned by said Russian banks.

Since Claimant was acting solely in the capacity as agent for collection for its customers in these transactions and has or had no beneficial interest therein, the claim based thereon is also disallowed.

CLAIMANT'S SCHEDULE H: RUBLE DEPOSITS WITH STATE BANK OF RUSSIA

In the operations of its Russian Branches, Claimant kept the maximum amount of 300,000 rubles in cash in its banking premises until September 1917, when due to the then unsettled conditions and cash stringency caused by rapidly rising prices, the cash reserves were increased to 1,500,000 rubles. The remainder of its Russian funds (including customers' ruble deposits in Claimant's Russian Branches) were deposited by Claimant with the State Bank of Russia.

The record establishes that Claimant's Russian Branches had a balance of 225,878,411.13 rubles on deposit with the State Bank of Russia which the Commission finds was taken by the Soviet Government as of December 28, 1917.

Included in the aforesaid balance was 21,343,554 rubles belonging to Claimant's customers which were deposited as collateral

security for repayment of loans and advances. (Claimant's Schedules C, D, & K.) The net remaining balance of Claimant's deposits in the State Bank was, therefore, 204,534,857.13 rubles.

As against such deposits, Claimant's liabilities to its Russian Branch depositors amounted to 239,719,914 rubles, thus resulting in an over-all debit of 35,185,056.87 rubles (amounting to \$4,574,057.39 at the conversion rate of 13 cents per ruble) attributable to Claimant's Russian deposit transactions with the Russian State Bank.

The Commission has held that the ruble deposits standing to the credit of Claimant's depositors in Claimant's Russian Branches were the property of such depositors, and that when the Soviet Government nationalized Russian Banks by decree of December 27, 1917, it took the property of the Claimant's depositors. Accordingly, the Commission has made awards to such customers based on such deposits, if the nationality requirements had been met. (*In the Matter of the Claim of The Tanglefoot Company*, Claim No. SOV-41795.)

The evidence establishes that subsequent to December 28, 1917, and prior to the recognition of the Soviet Union by the United States, Claimant paid out to depositors of the Russian Branches the aggregate amount of \$3,630,805.02 plus 23,592,310 rubles in currency. The currency rubles were paid during the years 1922 through 1926 as follows:

1922:	<i>Rubles</i>
January to March -----	13,005,635
April to June -----	6,111,310
July to December -----	1,493,705
1923 -----	1,309,600
1924 -----	105,960
1925 -----	30,000
1926 -----	1,536,100

According to statistics available to the Commission, the quotations for ruble currency in the United States for the above respective months and years are as follows:

1922:	<i>Average (cents per ruble)</i>
January to March -----	0.177
April to June -----	0.153
July to December -----	0.092
1923 -----	0.066
1924 -----	0.108
1925 -----	0.098
1926 -----	No value

Based on the foregoing, the Commission finds that the 23,592,310 currency rubles which Claimant paid out as aforesaid was of the value of \$34,694.66 which together with the dollar payment (\$3,630,805.02) totals \$3,665,499.68. Since the debit of \$4,574,057.39 found above, exceeded the aggregate amount paid by claimant to the depositors of its Russian Branches, the Commission finds that Claimant did not sustain a compensable loss under the Act, arising out of its ruble deposits with the State Bank of Russia. Accordingly, the claim based on this item must be and hereby is denied.

CLAIMANT'S SCHEDULE I: IMPERIAL RUSSIAN GOVERNMENT 5½% WAR LOAN BONDS OF 1916

The record establishes that Claimant, as a prerequisite to doing business in Russia, deposited with the State Bank of Russia, 5½% Imperial Russian Government War Loan Bonds in the face amount of 5,000,000 rubles; that said bonds were annulled by the Soviet Government by decree of February 10, 1918 and subsequently taken by that Government. The principal amount claimed for this item includes interest assertedly due and payable as of February 10, 1918. The bonds of this issue had interest coupons attached. No satisfactory proof or explanation has been adduced to establish that all due and payable interest coupons were not clipped and converted into cash by Claimant or, on its behalf, by the depository, State Bank of Russia. The Commission finds that Claimant has failed to establish its claim with respect to unpaid interest coupons on these bonds. Accordingly, the Commission finds that Claimant is entitled to an award on this item in the principal amount of \$650,000, being the dollar equivalent of 5,000,000 rubles at the rate of 13 cents per ruble as of February 10, 1918, together with interest thereon from said date in the amount of \$614,900.

CLAIMANT'S SCHEDULE J: BILLS DISCOUNTED BY CLAIMANT'S PETROGRAD BRANCH

The record establishes that Claimant's Petrograd Branch, in the regular course of its business, discounted bills and notes for Russian companies and/or individuals, in the aggregate ruble amount of 3,238,428.52 rubles and that none of such bills and notes could be collected by Claimant because the obligors and/or their businesses were nationalized by the Soviet Government. The Commission finds that by reason of the foregoing, Claimant is entitled to an award on this item in the principal amount of \$420,995.71, being the equivalent of 3,238,428.52 rubles, at the

rate of 13 cents per ruble. The due dates on the several bills and notes involved vary. The aggregate amount of interest on all of such bills and notes from their respective due dates to November 16, 1933, is \$388,846.40. Accordingly, the Commission finds that Claimant is entitled to an award of \$388,846.40 for interest on this item.

CLAIMANT'S SCHEDULE K: LOANS IN FOREIGN CURRENCY SECURED BY RUBLE COLLATERAL

The record establishes that Claimant's Petrograd Branch made loans to six of its customers in foreign currency (Swedish Kronen, British Pounds Sterling, Chinese Yen), and in United States dollars (\$206,000). The dollar equivalent of said loans in foreign currency amounted to \$226,455.18 which, together with the \$206,000 loan, totals \$432,455.18. As collateral security for the repayment of said loans, the borrowers deposited with Claimant's Petrograd Branch, rubles in the aggregate amount of 3,214,810. The debtors' businesses and enterprises in Russia were seized by the Soviet Government and by reason thereof and the nationalization of Russian Banks, Claimant was deprived of its ability to collect the loans. Accordingly, the Commission finds that Claimant is entitled to an award on this item in the principal amount of \$432,455.18, with interest thereon from December 28, 1917 in the amount of \$412,129.79.

CLAIMANT'S SCHEDULE L: ADVANCES (LOANS) SECURED BY RUSSIAN STOCKS AND BONDS, BY CHECK AND BY MERCHANDISE IN RUSSIA

The record establishes that Claimant's Petrograd Branch made loans to ten of its customers. The loans were secured by Russian stocks and bonds and other property belonging to the borrowers. The stocks and bonds (collateral securities) were of the market value in excess of 6,000,000 rubles. The unpaid principal amount of the loans totaled 3,728,071.98 rubles.

The Commission finds that the collateral securities were taken by the Soviet Government on December 28, 1918 and that by reason thereof and the nationalization of Russian Banks and the borrowers' business enterprises by the Soviet Government, Claimant was deprived of its ability to collect the loans. Accordingly, the Commission finds that Claimant is entitled to an award on this item in the principal amount of \$484,649.35, being the equivalent of 3,728,071.91 rubles at the rate of 13 cents per ruble, with interest thereon from December 28, 1917 in the amount of \$461,870.83.

CLAIMANT'S SCHEDULE M: CUSTOMERS' SECURITIES HELD AS COLLATERAL AND FOR SAFE-KEEPING

Claimant has withdrawn its claim based on this item. (See Claimant's Memorandum dated May 5, 1959.)

CLAIMANT'S SCHEDULE N: FURNITURE, OFFICE EQUIPMENT, FIXTURES, ETC., AND MISCELLANEOUS EXPENSES

The record establishes that Claimant's above-mentioned personal property located in its Moscow and Petrograd Branches, of the value of \$50,000.00 was taken by the Soviet Government without compensation August 5, 1918. Sums expended for the evacuation of Claimant's American personnel from Russia and for salaries paid to such employees, which Claimant fixes at \$120,000, are not compensable under the Act, and the claim based thereon, is hereby disallowed.

Accordingly, the Commission finds that Claimant is entitled to an award for this item in the principal amount of \$50,000 with interest thereon from August 5, 1918, in the amount of \$45,841.67.

CREDITOR CLAIMS

Claimant's Schedules C, D, J, K and L represent so-called "creditor claims."

Creditor claims, have been considered by the Commission with specific reference to Section 303 of the Act (*In re Claim of European Mortgage Series B Corporation*, Claim No. HUNG-22020, Decision No. HUNG-1605). It was there held, by majority opinion, that in the light of legislative history and background and the language of Section 303 of the Act (which relates to claims against the Governments of Hungary, Rumania and Bulgaria), the only "creditor claims" which come within the purview of Section 303 of the Act are those which fall within the narrow confines of subsection 3 thereof. It was, however, pointed out in that decision that:

It is not intended to find that a creditor claimant could under no circumstances show himself entitled to recover, particularly under a statute with different background, history and language. . . .

The background, history and language of Section 305 differ materially from that of Section 303 which follows an exclusionary pattern listing three specific classes of claims to be compensated. Section 305 on the other hand, contains no similar restrictions

as to the type and scope of claims which may constitute the basis of an award against the Soviet Government.

Section 305 (a) (2) of the Act provides:

The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts . . . claims arising prior to November 16, 1933, of nationals of the United States against the Soviet Government.

The rights and remedies of creditors with respect to state and nationalized enterprises were for all intents and purposes completely extinguished by the Soviet decree dated March 4, 1919 and published on March 7, 1919 which, *inter alia*, provided that:

State enterprises are freed from the payment of all debts to private persons and enterprises including payment on bond loans, with the exception only of wages due to their workers and employees.

No court or other tribunal was made available by the Soviet Government to creditors of the nationalized enterprises, secured or unsecured, for fixing and payment of their damage and loss.

The Commission finds that the conduct of the Soviet Government, recited above, constituted not only a denial of justice, but an outright repudiation of its own obligation, and that by reason thereof claimant has a valid claim under Section 305 (a) (2) of the Act, for the amounts stated in Claimant's Schedules C, D, J, K, and L.

The Commission, therefore, concludes that Claimant is entitled to the compensation of the creditor's claim, as outlined above.

CLAIMANT'S AGREEMENT REGARDING CUSTOMERS' RUBLE DEPOSITS

Claimant contends that it is entitled to an award for rubles deposited by certain of its customers with its Russian Branches by reason of its promise made in agreements entered into between it and such depositors to pay the latter, on their wholly unsettled claims and partially settled claims for their ruble deposits, on the same basis which claimant might settle such claims with the present or future Russian Government. As hereinbefore indicated, (see "Claimant's Schedule H," above) the Commission held that the owners of these deposits and not the Claimant herein have sustained the loss. Moreover, the so-called Litvinov Assignment *did not settle* claims of United States nationals against the Soviet Government. On the contrary, said Assignment was executed and delivered ". . . preparatory to a final settlement of the claims and counterclaims of the Union of Soviet Socialist Republics and the United States of America and the claims of their nationals. . . ."

(Emphasis supplied.) In this connection, Section 313 of the Act provides that:

Payment of any award made pursuant to section 303 or 305 shall not, unless such payment is for the full amount of the claim, as determined by the Commission to be valid, with respect to which the award is made, extinguish such claim, or be construed to have divested any claimant, or the United States on his behalf, of any rights against the appropriate foreign government or national for the unpaid balance of his claim or for restitution of his property. All awards or payments made pursuant to this title shall be without prejudice to the claims of the United States against any foreign government.

Claimant's contention with respect to the agreements regarding customers' ruble deposits must therefore be, and hereby is, rejected.

INTEREST

All the awards for interest have been computed at the rate of 6% per annum from the date the claim arose until November 16, 1933, the date of the Litvinov Assignment (Section 301(6) of the Act). No determination has been made with respect to interest subsequent to November 16, 1933.

OFFSET

Accredited representatives of the former Provisional Russian Government, and certain former Russian banks, corporations, commercial firms etc., maintained dollar accounts with Claimant in New York. Claimant asserts that it paid out all such dollar accounts with the exception of \$1,893,864.54 (originally stated as being \$1,890,048.72), which it retained. In addition thereto, Claimant has collected \$232,623.66 on account of the "Grant Judgment," thus making a total of \$2,126,487.54.

Claimant concedes that the aforesaid \$2,126,487.54 is a proper offset with respect to its claims against the Soviet Government but contends that "for the purpose of the present claim, the \$1,890,048.72 Russian funds set off by City Bank (Claimant) against the Russian Government securities (see Claimant's Schedule B) held by the City Bank, legally must be treated as a set off against the face value or principal amount of \$9,319,000 of such securities held by City Bank, and accrued interest."

The Commission holds that such contention has no merit.

In considering that part of the instant claim based on Russian dollar securities (Claimant's Schedule E) and applying Section 307 of the Act, the Commission found that while the face amount

of such securities totaled \$9,319,000, an award thereon, under the Act, is limited to \$2,201,833.75.

Accordingly, the Commission concludes that \$2,126,487.54 should be offset in reduction of the principal amount of the award made herein, i.e., against the compensable loss under Section 305(a) (2) of the Act. To hold otherwise would, in effect, result in an award for a claim which is not compensable under the Act.

RECAPITULATION OF AWARD

	Principal	Interest
Claimant's schedule B -----	\$2,201,883.75	\$1,014,038.00
Claimant's schedule C -----	344,290.80	328,109.14
Claimant's schedule D -----	1,010,461.91	962,970.20
Claimant's schedule E -----	74,818.35	71,301.89
Claimant's schedule I -----	650,000.00	614,900.00
Claimant's schedule J -----	420,995.71	388,846.40
Claimant's schedule K -----	432,455.18	412,129.79
Claimant's schedule L -----	484,649.35	461,870.83
Claimant's schedule N -----	50,000.00	45,841.67
Total -----	\$5,669,555.05	\$4,300,007.92
Less offset -----	2,126,487.54	2,026,542.63
Total -----	\$3,543,067.51	\$2,273,465.29

AWARD

On the above evidence and grounds and upon the entire record an award is hereby made under Section 305(a) (2) of the Act to THE FIRST NATIONAL CITY BANK OF NEW YORK, Claimant herein, in the principal amount of three million five hundred forty-three thousand sixty-seven dollars and fifty-one cents (\$3,543,067.51) plus interest in the amount of two million two hundred seventy-three thousand four hundred sixty-five dollars and twenty-nine cents (\$2,273,465.29).

Payment of the award shall not be construed to have divested Claimant herein, or the Government of the United States on Claimant's behalf, of any rights against the Government of the Soviet Union for the unpaid balance, if any, of the claim.

Dated at Washington, D.C.
June 9, 1959.

FINAL DECISION

The Commission issued its Proposed Decision on the above captioned claim on June 9, 1959, in which an award was granted

to Claimant under Section 305 (a) (2) of the International Claims Settlement Act of 1949, as amended, in the principal amount of \$3,543,067.51, plus interest thereon in the amount of \$2,273,465.29.

A copy of the Proposed Decision was duly served upon counsel for Claimant who filed objections solely to that portion thereof which denied the claim based on ruble deposits with the former State Bank of Russia (Claimant's Schedule H).

General notice of the Proposed Decision has been given by posting for 30 days.

Due consideration having been given to Claimant's objections, the Commission finds that Claimant sustained a net loss in the principal amount of \$1,866,104.31, in connection with transactions involving rubles deposited by Claimant's customers with Claimant's former Russian Branches and rubles deposited by Claimant with the former State Bank of Russia. It is therefore

ORDERED that the Proposed Decision be and the same is hereby amended by increasing the principal amount of the award by \$1,866,104.31, together with interest thereon at the rate of 6% per annum from December 28, 1917 to November 16, 1933, in the amount of \$1,778,397.40; and it is

FURTHER ORDERED that in all other respects the Proposed Decision be and the same is hereby affirmed, and that the award granted in the Proposed Decision be and the same is hereby restated as follows:

AWARD

On the above evidence and grounds and upon the entire record an award is hereby made under Section 305 (a) (2) of the Act, to THE FIRST NATIONAL CITY BANK OF NEW YORK, Claimant herein, in the principal amount of five million four hundred nine thousand one hundred seventy-one dollars and eighty-two cents (\$5,409,171.82) plus interest in the amount of four million fifty-one thousand eight hundred sixty-two dollars and sixty-nine cents (\$4,051,862.69).

Payment of the award shall not be construed to have divested Claimant herein, or the Government of the United States on Claimant's behalf, of any rights against the Government of the Soviet Union for the unpaid balance, if any, of the claim.

ORDERED that the award granted pursuant hereto be certified to the Secretary of the Treasury.

Dated at Washington, D.C.
July 20, 1959.

Creditor claims under Section 305.—In the instant claim the Commission distinguished the claims of creditors under Section 305 from those of creditors under Section 303 of the Act. As to the latter, Section 303(3) had specified certain types of claims based upon debts which were to be received and determined by the Commission; and in the *Claim of European Mortgage Series B Corporation*, appearing at page 259, the Commission held that debt claims against Bulgaria, Hungary, or Rumania could be considered only under Section 303(3), and not under Sections 303(1) or (2)—that is, the inclusion of certain specified types of debt claim in Section 303(3) operated to exclude any other types of debt claim from consideration under Section 303 of the Act. The general language of Section 305, on the other hand, with no selective or restrictive language as to debt claims, was sufficiently broad to include any such claims found valid under “applicable substantive law, including international law.” While mindful of the general rule of international law that claims based upon a single default in the payment of obligations do not warrant interposition of a state, the Commission nevertheless found the actions of the Soviet Government with respect to debts owed to United States nationals to be such as amounted to repudiation and vitiation of the contract, giving rise to claims under international law.

Bonds.—With respect to bonds and other securities which had been issued by the Imperial Russian Government in United States currency, the repudiation was clear and formal. On February 10, 1918 the Soviet Government annulled all state loans of Russian predecessor governments and all foreign loans without exception. In 1918 and 1919 certain funds were still available in banks in the United States which serviced Russian bonds, and some interest payments were made by these banks to American bondholders after the repudiation of the bonds. Accordingly, in the instant claim, the award included the principal amount of 5% Dollar Treasury Notes, 5½% Five Year Dollar Bonds, and Participation Certificates in 6½% Three Year Credit Obligations held by claimant on February 10, 1918 when all were repudiated, but included interest only from November 1, 1919 on the first two and from July 10, 1919 on the third, inasmuch as interest due on those dates had been paid from the funds available in the United States. In a claim based upon bonds as to which interest had been paid until June 1, 1919, the award included the principal amount of the bonds held by claimant as of February 10, 1918, plus interest from June 1, 1919. (*Claim of Andrew H. Allen*, Claim No. SOV-40226, Dec. No. SOV-1438, 10 FCSC Semiann. Rep. 181 (Jan.-June 1959).) Awards likewise were made in claims based upon Russian Government bonds expressed in rubles rather than dollars, also repudiated on February 10, 1918. (*Claim of Charles D. Siegel*, Claim No. SOV-40017, Dec. No. SOV-230, 10 FCSC Semiann. Rep. 187 (Jan.-June 1959).)

Bonds issued by private enterprises, with payment of principal and interest guaranteed by the Imperial Russian Government, also were found compensable under Section 305 of the Act by reason of the repudiation of February 10, 1918, as in the case of a bond issue of the Wladikawkas Railway Company. (*Claim of Susan Erskine Rogers*, Claim No. SOV-40208, Dec. No. SOV-1437, 10 FCSC Semiann. Rep. 180 (Jan.-June 1959).) In view

of the definition of "Soviet Government" in Section 301 (5) of the Act as "the Union of Soviet Socialist Republics, including any of its present or former constituent republics, other political subdivisions, and any territories thereof, as constituted on or prior to November 16, 1933," bonds issued by municipal authorities under the Imperial Government of Russia were the subject of awards, whether or not guaranteed by the Imperial Government, as in the case of 5% Bonds of the City of Kharkov, Russia, 1903. (*Claim of Sergius Martin Riis*, Claim No. SOV-40695, Dec. No. SOV-960, 10 FCSC Semiann. Rep. 200 (Jan.-June 1959).)

Some claimants presented to the Commission interest coupons which had been detached from bonds, some of them payable prior to February 10, 1918, the date of repudiation, and some payable after that date. The Commission held that such detached coupons may be the subject of compensable claims if due and payable before February 10, 1918; but that coupons payable after repudiation are not compensable inasmuch as the repudiation gave rise to claims against the Soviet Government by bondholders for the face amount of the bonds and for interest on the awards from February 10, 1918, but not for interest coupons due and payable after February 10, 1918 when, in effect, the principal amount became due and payable. (*Claim of Herman Allen*, Claim No. SOV-42079, Dec. No. SOV-3015, 10 FCSC Semiann. Rep. 220 (Jan.-June 1959); and *Claim of Peyton Randolph Harris*, Claim No. SOV-41840, Dec. No. SOV-2975, 10 FCSC Semiann. Rep. 216 (Jan.-June 1959).)

A claimant who had sold his bonds at a loss during the period between the Russian revolution and the filing of the claim, sought compensation for such loss. The Commission held that when claimant sold his bonds he transferred all his rights therein to the purchaser, including any claim for loss in connection with the bonds, and denied the claim. (*Claim of Carl Joseph Baird*, Claim No. SOV-40744, Dec. No. SOV-1939, 10 FCSC Semiann. Rep. 193 (Jan.-June 1959).)

Bank deposits.—Many claims were filed under Section 305 of the 1949 Act based upon losses sustained in connection with money on deposit in Russian banks. The Commission found that on December 27, 1917 the Soviet Government nationalized all Russian banks without compensation and declared the banking business to be a state monopoly; and that on December 28, 1917 such severe restrictions were imposed upon withdrawals from bank accounts as to prevent depositors residing outside of Russia and holders of larger deposits in general from withdrawing funds. This action was deemed to be a taking of the bank accounts on December 28, 1917 and was the basis for awards. (*Claim of Allis-Chalmers Manufacturing Company*, Claim No. SOV-41857, Dec. No. SOV-2476, 10 FCSC Semiann. Rep. 209 (Jan.-June 1959).) One claimant had 156,124 rubles on deposit with the Petrograd branch of the National City Bank of New York. Branches of this bank, being foreign-owned, were not included in the nationalization decree of December 27, 1917, and were not liquidated until a later date. Nevertheless, the restrictions imposed on December 28, 1917 had the same effect on these branches as on nationalized Russian banks. The National City Bank of New York was unable to withdraw its funds on deposit with the

Russian State Bank, and consequently could not have honored requests for withdrawal from any persons having deposits in its Russian branches as may have been able to secure permission for withdrawals under the governmental restrictions. In these circumstances, the Commission found that claimant's ruble deposit had been taken by the Soviet Government on December 28, 1917, and made an award for the dollar value thereof at that time. (*Claim of The Tanglefoot Company*, Claim No. SOV-41795, Dec. No. SOV-2935, 10 FCSC Semiann. Rep. 223 (Jan.-June 1959).) Conversely, a portion of the instant *First National City Bank of New York* claim, based upon deposits made by claimant in Russian banks in the names of some of its own customers, was denied in the Proposed Decision, the Commission finding that the persons in whose names the deposits stood were the proper parties claimant. However, when claimant established that it was responsible to its customers for their losses, so that claimant itself suffered the loss due to the taking of the deposits, an award for this portion of the claim was included in the Final Decision.

Other obligations.—In addition to claims based upon bonds and bank accounts, many claims were filed under Section 305 of the 1949 Act by creditor claimants based upon contractual obligations of Russian nationals or of the Russian Government itself. On July 30, 1919 the Soviet Government issued a decree annulling all claims upon the state "in connection with the Imperialist War of 1914-1918." A claimant who had shipped telephonic equipment to Russia during World War I under a contract with the Russian Government, and who had not received full payment therefor because of certain deductions which the Commission found to have been improperly made by the Russian Government under the terms of the contract, received an award for its loss due to the annulment of its claim. (*Claim of Western Electric Company, Inc.*, Claim No. SOV-40204, Dec. No. SOV-3117, 10 FCSC Semiann. Rep. 229 (Jan.-June 1959).) In another claim based upon a wartime shipment of cargo to Russia, claimant had obtained a judgment on March 20, 1918 for the amount due, against Nicholas Romanof, former Emperor of Russia. By decree of July 13, 1918 the Soviet Government nationalized all property of Nicholas Romanof without compensation. By reason of this decree and the decree of July 30, 1919 annulling claims against the state in connection with the war, claimant was found to have been barred from enforcing his legal rights against Nicholas Romanof individually and/or against the Soviet Government as successor to the Imperial Russian Government and its sovereign, and an award was made under Section 305 of the Act. (*Claim of Frederick J. Henke*, Claim No. SOV-40409, Dec. No. SOV-6A, 10 FCSC Semiann. Rep. 207 (Jan.-June 1959).)

Other claimants received an award based upon the destruction of real property and confiscation of personal property by Russian troops during World War I. On September 26, 1914, Russian troops under the command of their officers entered Lutowiska, then in Austria, and pillaged the town. They entered an inn by force and, although apprised that its owners were United States citizens, ransacked and destroyed the premises. The Commission found that the pillaging and destruction of the property did not result from an incident to the proper conduct of military opera-

tions and that the Russian Government, under the circumstances, was responsible for the action of its troops. The Soviet Government having decreed in July 1919 that "all claims against the state in connection with the Imperialist War of 1914-1918 shall be annulled," the Commission found the claim compensable under Section 305 of the 1949 Act and granted an award. (*Claim of Edward Eis, et al.*, Claim No. SOV-42185, Dec. No. SOV-3007, 10 FCSC Semiann. Rep. 219 (Jan.-June 1959).)

On March 7, 1919 the Soviet Government issued a decree annulling all debt claims against nationalized enterprises, exclusive of wages and bank accounts. This deprivation of the rights of creditors of private enterprises in Russia which had been nationalized, formed the basis for awards on claims based upon unsecured debts arising from many types of contractual obligation. One American bank discounted certain drafts drawn on a Russian corporation by an American supplier for goods shipped to Russia. The drafts were accepted by the Russian debtor but never paid, due to the nationalization of the enterprise and the annulment of its debts under the decree of March 7, 1919. The bank was unable to collect from the American supplier even though a judgment in favor of the bank against the supplier was entered in a court in the United States. The Commission held that the claimant bank's loss was attributable to the actions of the Soviet Government and that the bank was entitled to compensation under Section 305. (*Claim of National Shawmut Bank of Boston*, Claim No. SOV-40787, Dec. No. SOV-2799, 10 FCSC Semiann. Rep. 214 (Jan.-June 1959).)

In another claim, the record disclosed that a Russian bank held domestic bonds for the account of an American customer and that the Russian bank agreed to hold these securities as collateral for a loan granted by a New York bank to the American customer. As a result of the repudiation of the bonds by the Soviet Government, the New York bank lost the collateral and subsequently was unable to collect the loan from the customer. The Commission held that the loss was attributable to actions of the Soviet Government and compensation was granted to the New York bank. (*Claim of Guaranty Trust Company of New York*, Claim No. SOV-41460, Dec. No. SOV-3041, 10 FCSC Semiann. Rep. 224 (Jan.-June 1959).)

Claims based on drafts or bills of exchange drawn on Russian banks and sold by United States banks to their customers, which were never presented to the Russian banks for payment, were denied because such instruments did not operate as an assignment of funds unless and until the Russian banks accepted them for payment. Since the Russian banks did not become liable to the owners of the instruments, no liability for their nonpayment could be attributed to the Soviet Government. (*Claim of Charles B. Mergentime*, Claim No. SOV-41077, Dec. No. SOV-2848, 10 FCSC Semiann. Rep. 215 (Jan.-June 1959).)

A claim asserted for delivery of goods to the Kolchak Siberian Government which, between 1918 and 1920, temporarily controlled territory adjoining the Siberian railway, was denied because the Commission concluded that the counter-revolutionary government of Kolchak could not bind the Soviet Government which it sought to overthrow. (*Claim of Standard-Vacuum Oil*

Company, Claim No. SOV-41789, Dec. No. SOV-2977, 10 FCSC Semiann. Rep. 216 (Jan.-June 1959).)

One Russian company which was nationalized by the Soviet Government in 1918 continued operations on a smaller scale in London and New York. These operations were conducted under the management of executives whose authority had come from the company before its nationalization. There was no evidence that operations in the United States were conducted by authority of the Soviet Government. The company trading in New York under its Russian name incurred debts, and one creditor instituted suit and procured a judgment in a New York court. Not having been paid, he filed a claim under Section 305 of the Act. The Commission held that an obligation incurred subsequent to the nationalization of the enterprise, and without the authority or consent of the Soviet Government, did not form the basis of a compensable claim against the Soviet Government under Section 305 of the Act. (*Claim of John J. Pally*, Claim No. SOV-40181, Dec. No. SOV-2, 10 FCSC Semiann. Rep. 202 (Jan.-June 1959).)

Award on claim acquired after it arose, limited to consideration paid.—Section 307 of the Act provided that the amount of any award based on a claim of a United States national other than the one to whom the claim originally accrued, shall not exceed the amount of the actual consideration paid therefor either prior to January 1, 1953, or between that date and the filing of the claim, whichever is less. This provision of the law was particularly important in claims based on securities which were freely traded at substantial discounts after their repudiation. It was because of this section of the law that the First National City Bank of New York, in the instant claim, was awarded \$435,000.00 plus interest on its 5% Dollar Treasury Notes in that face amount acquired before February 10, 1918, the date of repudiation, but only \$853,156.25, without interest, for similar notes in the face amount of \$6,525,000.00 which it had acquired for the lesser amount from other persons after the date of repudiation. Likewise its later-acquired 5½% Five Year Dollar Bonds in the face amount of \$951,000.00 were compensable only to the extent of \$90,727.50, the consideration paid therefor, and only \$65,000.00 was awarded for Participation Certificates in the total face amount of \$650,000.00. Another owner of such Participation Certificates in the face amount of \$9,000.00, purchased on January 8, 1946 for \$1,008.45, received an award in the latter amount. (*Claim of Bert McCord*, Claim No. SOV-40033, Dec. No. SOV-1493, 10 FCSC Semiann. Rep. 181 (Jan.-June 1959).) A claimant who purchased Participation Certificates in the total face amount of \$16,000.00 in 1938 and 1939 was unable to furnish evidence of the actual consideration paid. The Commission's investigation disclosed that the average cost of a \$1,000.00 Participation Certificate was \$6.25 in 1938 and \$4.06 in 1939, and in view of the lack of better evidence applied those figures in its calculation of the amount to which the award need be limited. (*Claim of Helen Modell*, Claim No. SOV-40836, Dec. No. SOV-2556, 10 FCSC Semiann. Rep. 201 (Jan.-June 1959).)

The First National City Bank claim also provides an example of the Commission's deduction from an award of any amounts owed or received by a claimant having the effect of reducing the

amount of the loss suffered. A total of \$2,126,487.54, representing amounts retained by the claimant from deposits of Russian enterprises and a sum awarded in a related claim before the Commission, was deducted from the principal amount of the award in the instant claim. The decision also discloses that the figure employed for calculation of awards based upon ruble bonds repudiated on February 10, 1918 was \$0.13 per ruble, the then prevailing rate of exchange. The same rate of exchange existed on December 28, 1917, the date of loss with respect to rubles on deposit in Russian banks, and was applied in calculating the awards in such claims. Certain 4% Imperial Russian Government Income Bonds, expressed in rubles, though repudiated on February 10, 1918 when the value of the ruble was \$0.13, bore a guaranteed exchange rate of \$0.5145 per ruble which was used in the calculation of awards based thereon. (*Claim of Harriet H. Grant*, Claim No. SOV-40093, Dec. No. SOV-680, 10 FCSC Semiann. Rep. 199 (Jan.-June 1959).) Russian currency is discussed in more detail in the annotations to *Claim of the Singer Manufacturing Company*, below.

In the Matter of the Claim of

Claim No. SOV-40920
Decision No. SOV-3128

**THE SINGER MANUFACTURING
COMPANY**

Against the Soviet Government

Claim based on taking by Soviet Government of Russian Treasury Bills in the nature of Russian currency, before devaluation thereof, recognized under Section 305.

Value of enterprise on June 29, 1918, date of nationalization, determined from balance sheet dated December 31, 1916, most recent available, with adjustments for depreciation and bad debts.

PROPOSED DECISION

This claim for \$100,096,398.41, under Section 305(a)(2) of the International Claims Settlement Act of 1949, as amended, is based upon the following:

(1) Russian Government Treasury Bills and accounts in several Russian banks.....	\$39,349,620.39
(2) Sole stockholder of Kompaniya Singer (hereinafter referred to as the "Russian Company") when it was nationalized by the Soviet Government	60,746,778.02
Total	<u>\$100,096,398.41</u>

From 1902 to 1913 the claimant (incorporated in New Jersey on February 20, 1873) directly owned 100% of the Russian Company; from 1913 to 1919 it indirectly owned that Company through a 100% ownership of the International Securities Com-

pany (New Jersey) and from 1919 it has directly owned all of the Russian Company. The claimant, The Singer Manufacturing Company, has been a national of the United States as defined in Section 301(2)(B) of the Act at all relevant times.

Because of the substantial values of the properties and the complexities involved in this claim, the various items thereof will be, for convenience and simplification, discussed in series in the following paragraphs of this Decision.

(1) *Russian Government Treasury Bills and accounts in several Russian banks (claimed amount of \$39,349,620.39)*

Claimant has submitted documentary evidence which shows it had Treasury Bills and accounts in various Russian Banks, as follows:

Name of depository	Treasury notes at face value	Bank balances, rubles	Total in rubles
Petrograd Discount Bank	1,550,000.00	589,482.50	2,139,482.50
Azov-Don Commercial Bank, Moscow	10,730,000.00	640,509.95	11,370,509.95
National City Bank of New York, Petrograd Branch	-----	20,823,644.50	20,823,644.50
Russian Bank for Foreign Trade, Moscow	3,000,000.00	689,327.49	3,689,327.49
Volga-Kama Commercial Bank, Moscow	6,775,000.00	663,916.56	7,438,916.56
Moscow Merchants Bank	7,000,000.00	749,751.23	7,749,751.23
Russian and English Bank, Petrograd, Account of Douglas Alexander as Claimant's nominee	-----	152,366.25	152,366.25
Siberian Commercial Bank, Petrograd	-----	1,543,861.21	1,543,861.21
Petrograd International Commercial Bank	-----	26,675.00	26,675.00
Azov-Don Commercial Bank, Moscow, Account of the National Bank of Scotland as Claimant's nominee	6,500,000.00	1,402,250.00	7,902,250.00
Russian Asiatic Bank, Moscow, Account of National Bank of Scotland as Claimant's nominee	5,000,000.00	3,412,602.50	8,412,602.50
Russian and English Bank, Petrograd, Account of National Bank of Scotland as Claimant's nominee	-----	559,464.50	559,464.50
American Consulate General, Moscow	-----	4,665,000.00	4,665,000.00
Rubles	40,555,000.00	35,918,851.69	76,473,851.69

These Treasury Bills were confiscated on December 27, 1917 when the seven (7) Russian Banks were nationalized by the Soviet Government and all of these bank accounts in the thirteen (13) Russian Banks were taken on December 28, 1917 except the last item of 4,665,000 rubles left with the American Consulate in early 1918 for deposit in Russian banks to the credit of the United States Government as a nominee of the claimant. As bank deposits were generally not confiscated by the Soviet Government after December 28, 1917 and as the claimant has not submitted evidence which shows that the account for 4,665,000 rubles was so confiscated, that part of this item based upon such account must be and hereby is denied. The claimant is entitled, therefore, to an award on this item of the claim as follows:

Property	Amount in rubles	Date property taken	Exchange rate on date property taken	U.S. dollars
Treasury bills ----	40,555,000.00	Dec. 27, 1917	13 cents---	5,272,150.00
Bank accounts ---	31,253,851.69	Dec. 28, 1917	13 cents---	4,063,000.76
Total -----	71,808,851.69	-----	-----	9,335,150.76

(2) *Sole stockholder of Kompaniya Singer when it was nationalized by the Soviet Government (claimed amount of \$60,746,778.02)*

Since 1913, the capital of the Russian Company has consisted of 50,000 shares, each with a par value of 1,000 rubles. The claimant states it has stock certificates in its possession for 49,979 shares of the Russian Company which it can produce. To the best of the claimant's knowledge, the certificates for the other 21 shares were in the vault of the Azoff Don Commercial Bank in Russia in 1917 and disappeared during the Russian Revolution. It is determined that the claimant owned 100% of the outstanding shares of stock of the Russian Company when it was nationalized on June 28, 1918.

It appears that the various properties of the Russian Company were taken "piece-meal" by the Soviet Government and it is impossible to assign any specific date to each category of property; therefore, it shall be assumed that it was nationalized in toto on June 28, 1918. Decree No. 168 of the Soviet of People's Commissars Regarding the Nationalization of the Largest . . . Metal Working . . . which became effective on the date of its signature on June 28 (15), 1918, provided that:

I. The industrial and commercial enterprises enumerated below, which are located within the borders of the Soviet Republic, together with all their capital and property

regardless of what the latter may consist, are declared the property of the Russian Socialist Federated Soviet Republic:

Metallurgical and Metal Working Industry:

- 9) All enterprises belonging to corporations and joint stock companies with a fixed capital of one million or more rubles, as well as all large enterprises, the total value of whose property according to the last balance sheet was one million or more rubles, and which are engaged in one or several of the following kinds of production: smelting of cast iron, iron and copper in the crude state; the obtaining therefrom of semi-worked products and the working of these semi-worked products by rolling, drawing, pressing and chemical treatment; the construction of machines of all types (engines, agricultural machines, etc.), aviation apparatus and mechanical vehicles; the construction of vessels, locomotives and cars, bridges and iron constructions; the making of instruments of precision; the making of fire-arms, machine guns, artillery and parts belonging thereto, the production of metal armature; the production of various kinds of metal-ware with the exception of air brakes. . . .

This Russian Company sold machines and parts therefor in every locality in Russia and owned the following properties:

- (1) The building in Petrograd which its home office occupied cost approximately 3 million rubles to build in 1906 when the ruble had an exchange value of 51.62 cents,
- (2) A factory in Podolsk which consisted of about 40 buildings and which produced about 400,000 "family" machines and a large number of special machines for the manufacturing trade each year,
- (3) A tract of timberland consisting of about 120,000 acres and known as Troitsky (Troitskaia) Tract,
- (4) A selling organization which covered all of Russia and consisted of the following:
 - (a) Fifty central agencies or district offices, each with a large warehouse to service the shops and salesmen in its district,
 - (b) 3,000 local shops or retail outlets,
 - (c) Tremendous inventories of merchandise, furniture and tools, and
 - (d) Approximately 27,500 employees in the sales organization in 1914.

The territory in which the Russian Company operated included that part of Poland which was within the Russian Empire as well as Finland and the Baltic areas of Estonia, Latvia and Lithuania. When the German armies advanced into Poland and

the Baltic states some of its property there was evacuated to interior Russia. The merchandise, furnishings, tools, outstanding accounts receivable and other assets which remained there were written off its books and are not a part of the properties for which this claim is made.

Neither the claimant nor the Commission has been able to obtain a Balance Sheet of the Russian Company dated subsequent to 1916; therefore, the Balance Sheet dated December 31, 1916 which was submitted by the claimant must be used to determine its net worth. In view of all the circumstances, it shall be assumed that the Russian Company had, with certain adjustments hereinafter described, substantially the same quantity of properties on hand on June 28, 1918 when it was nationalized by the Soviet Government as it did on December 31, 1916.

Because of the numerous categories of properties on the Balance Sheet of the Russian Company, the substantial amounts involved and the complexities of some of them, each one will be discussed individually in this and the succeeding paragraphs of this Decision.

Assets of the Russian Co.

	<i>Rubles</i>
1. Cash account:	
Cash at main office -----	8,820,659.31
Government securities -----	2,016,400.00
Cash in branches -----	154,634.55
Total shown on balance sheet of Dec. 31, 1916 -----	10,991,693.86
Less: Deduction for cash in branches not taken by Soviet Government -----	14,732.65
Net cash account -----	10,976,961.21
2. Deposits with State institutions: Deposits with State institutions, electrical, gas, and water companies, as shown by balance sheet of Dec. 31, 1916 -----	
	12,092.19
(As these receivables were from State institutions, no deduction has been made therefrom for bad debts.)	
3. Real property at Nevsky Prospect in Petrograd:	
Balance sheet of Dec. 31, 1915 -----	1,064,140.81
Less: Depreciation at 5 percent on 2,100,394.87 for 1916 -----	105,019.74
Net value as shown on balance sheet of Dec. 31, 1916 -----	959,121.07
Less: Depreciation at 5 percent per annum for 1917 and first 6 months of 1918 -----	157,529.61
Net value on June 28, 1918 -----	801,591.44

The claimant contends that the net book value on December 31, 1916 of 959,121.07 rubles did not reflect the true value of the property on that date and offers the following reasons for its statement:

(a) The building was insured in 1917 for 2,100,394.87 rubles which, of course, did not include the value of the land,

(b) In 1913, the Russian Company received a bona fide offer of 3,500,000 rubles for the property but the owner's asking price was 4,000,000; therefore, the realty had a true value at that time of 3,750,000 rubles, and

(c) The Russian Company had consistently used a depreciation rate on the property of 5% per annum which should be adjusted to 2½% from the time of construction of the building in 1906, which adjustment would result in a net value of the property of 2,478,194.93 rubles on December 31, 1916.

The amount of fire insurance on a structure is not, in the absence of corroboration, a conclusive test of its value. There is some doubt that a firm offer of 3,500,000 rubles was ever received by the Russian Company for this particular property. As the Russian Company used a rate of 5% which must be assumed to have been an accepted rate and the Balance Sheet reflects a particular amount, it is determined that the adjusted book value of 801,591.44 rubles must be considered as the fair value of the property on June 28, 1918.

4. Land and buildings of factory at Podolsk:

	<i>Rubles</i>
Balance Sheet of December 31, 1915 -----	5,496,391.35
Additions to land and buildings during 1916 -----	807,378.28
 Total -----	 6,303,769.63
Less: Depreciation at 5 percent on 7,034,973.34 for 1916 -----	351,748.67
 Net value as shown by balance sheet of Dec. 31, 1916 -----	 5,952,020.96
Less: Depreciation at 5 percent per annum for 1917 and first 6 months of 1918 -----	527,623.01
 Net value on June 28, 1918 -----	 5,424,397.95

The claimant alleges that the net book value on December 31, 1916 of 5,952,020.96 rubles did not reflect the true value of the property on that date and cites the following reasons:

(a) The buildings alone were insured against fire in 1917 for the amount of 7,034,973.34 rubles,

(b) The Russian Company had consistently used a depreciation rate of 5% per annum which should be adjusted to 2½% from the time of the construction dates of the various buildings of the factory,

(c) 378,433.81 of a total of 869,176.15 rubles spent for new construction was written off to expense rather than capitalized, and

(d) A substantial increase in the actual market value of the factory land was not reflected in the accounts of the Russian Company.

As was explained in the preceding section, the amount of fire insurance is not conclusive as to the value of the property insured. The sug-

gested adjustment for the rate of depreciation should also be rejected for the reasons specified in the preceding section. With regard to the suggested adjustments because an expenditure was allegedly shown as an expense rather than capitalized and because the accounts did not reflect the prevailing market value of the land, it is concluded that the values shown by the balance sheet provide a proper basis for valuation; accordingly, it is determined that the value of this property was 5,424,-397.95 rubles on June 28, 1918.

5. Inventory and other personalty at Podolsk factory:

	<i>Rubles</i>
(a) Cash -----	480,957.39
(b) Tools and machinery:	
Dec. 31, 1916 (net) -----	2,172,663.35
As 20 percent depreciation taken in 1916, none should be taken for the year 1917 but only for 6 months of 1918 -----	229,341.99
Net value on June 28, 1918 -----	1,943,321.36
(c) Accounts receivable:	
Net receivables on Dec. 31, 1916, after bad debt deduction -----	1,836,422.86
Plus: Bad debt deduction for 1916 -----	118,748.53
Total -----	1,955,171.39
Less: 40 percent -----	782,068.56
Net accounts receivable -----	1,173,102.83
Less: Accounts payable -----	362,217.03
Net -----	810,885.80
(d) Loan account:	
Gross (61,579.05+950.87) -----	62,529.92
Less: 40 percent -----	25,011.97
Net -----	37,517.95
(e) Troitskaia (Troitsky tract):	
(1) Cash -----	25,140.15
(2) Inventory -----	433,162.28
(3) Buildings and equipment:	
Book value on Dec. 31, 1916 -----	230,231.14
Less: Depreciation at 5 percent per annum for 1917 and 6 months of 1918 -----	17,267.00
Depreciation value on June 28, 1918 -----	212,964.14
(f) Inventory -----	19,203,134.38

6. Tract of timberland (Troitsky):

	<i>Rubles</i>
Cost	2,350,000.00
Less: Stumpage	282,250.00
Net	<u>2,067,750.00</u>

7. Furniture and tools in the selling organization:

Balance sheet of Dec. 31, 1915	475,675.08
Acquired in 1916	5,931.29
Subtotal	<u>481,606.37</u>
Loss by fire and theft in 1916	502.44
Subtotal	481,103.93
Less: Depreciation at 10 percent on 830,361.60 for 1916	<u>83,036.16</u>
Net value on Dec. 31, 1916	398,067.77
Less: Depreciation at 10 percent per annum for 1917 and first 6 months of 1918	<u>124,554.24</u>
Net value on June 28, 1918	273,513.53

The claimant has informed the Commission that the amount of 398,067.77 rubles as shown on the Balance Sheet of December 31, 1916 for furniture and tools is after annual deductions for depreciation of 10% and reflects only special or extraordinary expenditures for equipment consisting of special tools, gauges used in the warehouses, motor vans, the furniture and equipment in the office building at No. 28 Nevsky Prospect in Petrograd and the main office at Moscow, and some of the more elaborate furnishings and equipment located in various of the central agency premises. It is alleged that the extreme undervaluation of these assets is shown by the fact that the furniture and tools in the main office in Moscow and in the other offices of the Russian Company were valued for fire insurance purposes in 1917 at 1,233,289.67 rubles.

The claimant has explained that it was the policy of the Russian Company to write off to expense at the time of their purchase the cost of the customary furnishings, fixtures, tools and equipment placed in its shops, offices and warehouses. This policy was allegedly followed by the Russian Company in equipping the more than 3,000 shops, the 50 central agencies and the 50 warehouses which comprised its selling organization. The equipment of the average shop in Russia included a safe, two or more desks, one or more tables, a cabinet for storing sewing machine parts, six or eight chairs, carpets or rugs, work benches, tools and other miscellaneous furnishings, fixtures, tools and equipment which ranged from 1,000 to 2,000 rubles for each of the smaller shops to several thousand rubles for each of the larger shops.

The claimant contends that such furnishings, tools and equipment at the shops, central agencies, warehouses, office building and main office had a depreciated or net value of 6,000,000 rubles when the Soviet Government nationalized the Russian Company.

It is determined that depreciated or net value of these properties of 273,513.53 rubles was the fair value of this property on June 28, 1918.

8. Merchandise in selling organization:

	<i>Rubles</i>
Total merchandise on hand -----	12,057,149.89
Less: Merchandise taken by other than the Soviet Government -----	166,388.00
	<hr/>
Net -----	11,890,761.89
	<hr/> <hr/>

9. Installment and other accounts receivable:

Although the balance sheet of Dec. 31, 1916 for the Russian Co. shows a total of 61,592,096.34 rubles, the claimant has adjusted this item to 50,822,406.74 rubles, as follows:

Installments -----	61,541,083.44
Less: 17½ percent collection expenses -----	10,769,689.60
	<hr/>
Total -----	50,771,393.84
Plus open accounts -----	51,012.90
	<hr/>
Adjusted amount -----	50,822,406.74

No consideration for bad debts was given in the foregoing adjustment; however, accounts receivable are, under normal conditions and general business practices, subject to a proper deduction for bad debts. Conditions that prevailed in Russia at the time the amount in question came into being were not normal but rather "abnormal" due to World War I development and its aftermath. Also, claimant has not submitted persuasive evidence that receivables in the amount claimed were actually in existence on June 28, 1918. It is determined that in view of the foregoing, a deduction of 40% of such accounts should be made. The following calculation is made to reflect a deduction therefor and the adjusted amount of 33,504,569.35 rubles, as shown below, is determined to be the net value of such receivables on June 28, 1918:

	<i>Rubles</i>
Gross receivables on Dec. 31, 1916 -----	67,685,998.69
Less: 40 percent -----	27,074,399.48
	<hr/>
Total -----	40,611,599.21
Less: Collection costs of 17½ percent -----	7,107,029.86
	<hr/>
Net -----	33,504,569.35

10. Land and building in Irkutsk, Siberia:

This property with a value of \$113,201.00 was taken by the Soviet Government when it acquired jurisdiction on February 1, 1920 over that part of Russia.

RECAPITULATION OF ASSETS OF THE RUSSIAN CO.

Property	Value in rubles	Exchange rate used converting rubles to dollars (cents)	Value in U.S. dollars
1. Cash account -----	10,976,961.21	14	1,536,774.54
2. Deposits with State institutions -----	12,092.19	14	1,692.91
3. Real property at Nevsky prospect -----	801,591.44	51.62	413,781.50
4. Land and buildings at factory at Podolsk -----	5,424,397.95	51.62	2,800,074.20
5. Inventory and other property at Podolsk factory:			
Cash -----	480,957.89	14	67,334.03
Tools and machinery ---	1,943,321.36	51.62	1,003,142.51
Accounts receivable ----	810,885.80	14	113,524.01
Loan account -----	37,517.95	14	5,252.51
Troitskaia tract:			
Cash -----	25,140.15	14	3,519.62
Inventory -----	433,162.28	¹ 30	129,948.68
Buildings and equipment -----	212,964.14	51.62	109,932.09
Inventory -----	19,203,134.38	¹ 30	5,760,940.31
6. Troitsky tract (prewar) ----	2,067,750.00	51.62	1,067,372.55
7. Furniture and fixtures (prewar) -----	273,513.53	51.62	141,187.68
8. Merchandise in selling organization -----	11,890,761.89	¹ 30	3,567,228.57
9. Installment and other receivables -----	33,504,569.35	14	4,690,639.71
10. Land and buildings in Irkutsk, Siberia -----			113,201.00
Value of assets -----			<u>21,525,546.42</u>
Less:			
(1) Liability of Employee's Guarantee Fund (4,336.45 ×14¢) -----			607.10
(2) Transfer of assets to Finnish Branch -----			100,110.55
(3) Reduction of assets shown on Balance Sheet of Dec. 31, 1916 to decrease liabilities to claimant (16,765,444.89 rubles×14¢) -----			2,347,162.28
Total deductions -----			<u>2,447,879.93</u>
Value of Russian Co. without deduction of payables due to claimant on June 28, 1918 of \$25,787,207.85 and 9,641,152 rubles----			19,077,666.49

¹ As it is impossible to ascertain the exact exchange rate which should be applied to each of the various inventories of merchandise valued in rubles, it is determined that an overall average of 30 cents per ruble is a fair and reasonable rate.

Because of the unusual nature of the above-noted deduction of 16,765,444.89 rubles, this item will be explained in some detail. The claimant was the sole owner of the Russian Company and on December 31, 1916 that Company was indebted to it in the amount of \$31,967,918.58 for merchandise purchases payable in United States dollars and 9,641,152 rubles for payment of royalties payable in rubles. According to the claimant, the Russian Company's indebtedness to it on June 28, 1918 was in the amount of \$25,787,207.86 and 9,641,152 rubles, or a decrease of \$6,180,710.72 from December 31, 1916 to June 28, 1918. As partial payments by the Russian Company of its indebtedness to the claimant could not be forwarded to the claimant because funds could not be sent out of Russia, such funds were deposited in Russian banks for the account of the claimant or used to purchase Treasury Notes for the claimant. That the Russian Company reduced its indebtedness to the claimant by \$6,180,710.72 is confirmed by an increase in exactly that amount (\$19,945,774.14 on December 31, 1918 and \$13,765,063.42 on December 31, 1916) of the bank accounts and Treasury Notes of the claimant in various Russian banks.

The sum of \$6,180,710.72 has been determined to be the equivalent of 16,765,444.89 rubles in the following manner: Claimant has submitted a photocopy of its letter of February 25, 1921 to the Commissioner of Internal Revenue which contains the following statement—

Prior to the outbreak of the European war, transactions between The Singer Manufacturing Company and Kompania Singer, the Russian corporation, were upon a basis of 51.2 cents per ruble. When deposits were made by the Russian company to the credit of The Singer Manufacturing Company in 1915 and later, credit was given to the Russian company on the account current at 40. This practice obtained until the latter part of 1917 when the Russian company was credited at 30. At the time that the rate was agreed upon, it approximated the then rate of exchange and was considered a fair settlement to The Singer Manufacturing Company because the Russian company was rapidly losing money on account of war conditions, and it was considered an advantage to The Singer Manufacturing Company to get as many deposits in the Russian banks as possible rather than a mere indebtedness against a failing company.

According to the claimant, its bank accounts and Treasury Notes in Russia were \$13,765,063.42, \$19,904,142.07 and \$19,945,774.14 on December 31, 1916, December 31, 1917 and December 31, 1918, respectively; therefore, there was an increase of \$6,139,078.65 during the year 1917 and an increase of \$41,632.07 during 1918. The aforesaid statement is to the effect

that the Russian Company was given credit for such deposits at a rate of 40 cents per ruble until the latter part of 1917 and 30 cents thereafter. On this basis the amount of 16,765,444.89 rubles was computed as follows:

$$\begin{aligned} \$6,139,078.65 \times \frac{3}{4} &= \$4,604,308.99 \div 40\% = 11,510,772.45 \text{ rubles} \\ \$6,139,078.65 \times \frac{1}{4} &= \$1,534,769.66 \div 30\% = 5,115,898.87 \text{ rubles} \\ &\quad \$41,632.07 \div 30\% = 138,773.57 \text{ rubles} \end{aligned}$$

Total ----- 16,765,444.89 rubles

The claimant stated in its letters of December 17, 1958 and May 25, 1959 that this reduction of the Russian Company's liabilities to the claimant during 1917 and 1918 was made for profits, savings gained from reducing its expenses and the recovery of assets not included in its 1916 Balance Sheet; therefore, such payments were made without any diminution of the assets of the Russian Company shown in that financial statement.

This argument is not persuasive in view of the fact that the Russian Company suffered total losses of 17,265,509.77 rubles during the years 1914, 1915 and 1916 and numerous documents submitted by the claimant contain statements that the Russian Company was in serious financial condition subsequent to 1916. Some of the more revealing of these documents are:

- (1) Page 7 of the Minutes of the General Meeting of the Shareholders of the Russian Company held May 27 to June 9, 1917 contains the following statement:
With constantly increasing expenses, the Board fears a new loss for the year 1917 unless the business conditions take a turn for the better before the end of the year. Further losses may result in such complications in the already unfavorable financial position of the Company as to bring forward the question of fundamental changes in its methods of conducting business, as the sales of machines through its own shops owing to the very high expenses may become impossible.
- (2) Memorandum by Board of Directors of The Singer Company, Moscow, dated August 21, 1917 entitled "The Reasons Compelling The Singer Company to Discontinue its Business" contains the following statements:
 - (a) The steady exhaustion of its stocks of goods, the impossibility of replenishing them by the output of the Podolsk Factory or by importation from either America or Great Britain, owing to lack of foreign exchange and shortage of tonnage, all combined to render it imperative to constantly reduce the Company's operations.

- (b) The stockholders after suffering losses of over 17,000,000 rubles during the three years of the war, losses that exceed the profits of the Company during the whole period of its existence and which continue to increase, have given instructions to close the factory and to cease all commercial operations.
- (c) The Board of Directors of The Singer Company inform you that owing to the losses sustained by the Company during the three years of the war amounting to over 17 million rubles, and to the loss of each month of some hundreds of thousands of rubles on the operations of its Podolsk, Moscow Government, Factory it finds itself on the brink of bankruptcy and is compelled to close its Factory, which is working for the National Defense, and also the whole of its commercial business until better conditions prevail.

As the claimant was the sole stockholder of the Russian Company and it was a creditor of that Company in the amount of \$25,787,207.86 and 9,641,152 rubles, its claim was as an owner and creditor. The claimant stated in its letter of May 25, 1959 that it would be appropriate to make an award to it as an owner of the Russian Company rather than as a creditor or a combination thereof. As creditors have a priority over owners in the distribution of assets of a corporation, it is appropriate that any award be made to the claimant first as a creditor with any excess to be paid to it as an owner. The question presented, therefore, is whether such a "creditor claim" is compensable under Section 305 (a) (2) of the Act.

"Creditor claims" were considered by the Commission with specific reference to Section 303 (*Claim of European Mortgage Series B Corporation*, Claim No. HUNG-22020, Dec. No. HUNG-1605). It was there held, by majority opinion, that in the light of legislative history and background and the language of Section 303 (which relates to claims against the Governments of Hungary, Rumania and Bulgaria), the only "creditor claims" which come within the purview of Section 303 are those which fall within the narrow confines of subsection 3 thereof. It was, however, pointed out in that decision that:

It is not intended to find that a creditor claimant could under no circumstances show himself entitled to recover, particularly under a statute with different background, history and language. . . .

The background, history and language of Section 305 differ materially from that of Section 303 which follows an exclusionary pattern listing three specific classes of claims to be compensated.

Section 305, on the other hand, contains no similar restrictions as to the type and scope of claims which may constitute the basis of an award against the Soviet Government.

Section 305(a) (2) of the Act provides:

The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts . . . of claims arising prior to November 16, 1933, of nationals of the United States against the Soviet Government.

When the Russian Company was nationalized (June 28, 1918) it became a Soviet State enterprise. No provision was made by that Government for the payment of compensation for the seized assets.

The rights and remedies of creditors were for all intents and purposes completely extinguished by the Soviet decree dated March 4, 1919 and published on March 7, 1919 which, *inter alia*, provided that:

State enterprises are freed from the payment of all debts to private persons and enterprises including payment on bond loans, with the exception only of wages due to their workers and employees.

No court or other tribunal was made available by the Soviet Government to creditors of the nationalized enterprises, secured or unsecured, for fixing and payment of their damage and loss.

It is determined that the conduct of the Soviet Government, recited above, constituted not only a denial of justice, but an outright repudiation of its own obligation, and that by reason thereof claimant has a valid claim under Section 305(a) (2) of the Act for such debt claim. That part of such debt in the amount of 9,641,152 rubles had a value equivalent to \$1,373,864.16 as the ruble was worth 14.25 cents on March 7, 1919. This amount of \$1,373,864.16 plus \$25,787,207.86 would be a total credit claim of \$27,161,072.02 which would exceed the net value of \$19,077,666.49 of the Russian Company. The claimant is entitled, therefore, to an award of \$19,077,666.49 as a creditor of the Russian Company.

AWARD

On the above evidence and grounds, an award is hereby made to THE SINGER MANUFACTURING COMPANY, claimant herein, in the amount of twenty-eight million four hundred twelve thousand eight hundred seventeen dollars and twenty-five cents (\$28,412,817.25), plus interest at 6% per annum from the dates of confiscation or annulment of each category of property to November 16, 1933 in the amount of twenty-five million seven hundred fourteen thousand two hundred fifty-seven dollars and ninety-nine cents (\$25,714,257.99), as shown below:

Property	Amount of award	Date claim arose	Amount of interest
Treasury bills -----	\$5,272,150.00	Dec. 27, 1917	\$5,025,255.22
Bank accounts -----	4,063,000.76	Dec. 28, 1917	3,872,039.76
Creditor of Russian Co. ----	19,077,666.49	Mar. 7, 1919	16,816,963.01
Total principal -----			\$28,412,817.25
Total interest -----			\$25,714,257.99

No determination is made with respect to interest for any period subsequent to November 16, 1933.

Payment of the award herein shall not be construed to have divested claimant herein, or the Government of the United States on its behalf, of any rights against the Government of the Soviet Union for the unpaid balance, if any, of the claim.

Dated at Washington, D.C.
June 19, 1959.

FINAL DECISION

The Commission, by Proposed Decision dated June 19, 1959, entered an award in the amount of \$28,412,817.25 with interest thereon of \$25,714,257.99. The claimant filed objections to the Proposed Decision and requested an oral hearing before the Commission for the purpose of presenting additional evidence and argument in support of the claim.

A hearing was scheduled for July 10, 1959 and held on that date. Claimant presented additional evidence and oral argument in support of its four objections to the Proposed Decision. Based upon such evidence, the Commission determines that:

- (1) The real property on Nevsky Prospect in Petrograd had a value of \$700,000 when it was taken by the Soviet Government on June 28, 1918 and not \$413,781.50 as shown in the Proposed Decision,
- (2) The value of the land and buildings of the factory at Podolsk was \$3,600,000 on June 28, 1918 instead of \$2,800,074.20 as reflected in the Proposed Decision,
- (3) On June 28, 1918 the furniture, fixtures and tools in the selling organization had a value of \$200,000 rather than that of \$141,187.68 as recorded in the Proposed Decision,
- (4) The evidence submitted and argument made by the claimant, in support of its objection that the deductions of 40% and 17½% from the installment and

other receivables were unreasonable, are not persuasive. There is, however, an adjustment to be made in the amount of the award made on such receivables. Open or unsecured accounts receivable in the gross amount of 51,012.90 rubles were inadvertently omitted in calculating the award of \$4,690,639.71 on this item. This amount of 51,012.90 less the deductions of 40% and 17½% result in a net of 25,251.39 rubles which is equivalent to \$3,535.19. The award on these installment and other receivables will be increased, therefore, from \$4,690,639.71 to \$4,694,174.90, and

- (5) In view of the foregoing adjustments, the net worth of the Russian Company on June 28, 1918 will be increased from \$19,077,666.49, as shown in the Proposed Decision, to \$20,226,153.30.

General notice of the Proposed Decision having been given by posting for thirty days, it is hereby

ORDERED that the Commission's Proposed Decision dated June 19, 1959, with the foregoing additions thereto and amendments thereof, and the increase in the amount of the award as shown below, be affirmed in all other respects and entered as the Commission's Final Decision:

AWARD

On the above evidence and grounds, this claim is allowed and an award is hereby made to THE SINGER MANUFACTURING COMPANY, claimant herein, in the amount of twenty-nine million five hundred sixty-one thousand three hundred nine dollars and six cents (\$29,561,309.06), plus interest thereon at the rate of 6% per annum from the dates of confiscation or annulment of each category of property to November 16, 1933 in the amount of twenty-six million seven hundred twenty-six thousand six hundred fifty-three dollars and fifty-two cents (\$26,726,653.52), as shown below:

Property	Amount of award	Date claim arose	Amount of interest
Treasury bills -----	\$5,272,150.00	Dec. 27, 1917	\$5,025,255.22
Bank accounts -----	4,063,000.76	Dec. 28, 1917	3,872,039.76
Creditor of Russian Co.	20,226,158.30	Mar. 7, 1919	17,829,358.54
 Total principal -----	 \$29,561,309.06		 -----
 Total interest -----			 \$26,726,653.52

No determination is made with respect to interest for any period subsequent to November 16, 1933.

Payment of the award herein shall not be construed to have divested claimant herein, or the Government of the United States on its behalf, of any rights against the Government of the Soviet Union for the unpaid balance, if any, of the claim. It is further

ORDERED that the award granted pursuant to this Final Decision be certified to the Secretary of the Treasury.

Dated at Washington, D.C.

July 20, 1959.

Russian currency.—A large part of the loss sustained by creditors of Russian nationals was caused by depreciation of the Russian currency. The results of the Commission's research concerning the history and value of the ruble was set forth in Panel Opinion No. 44 of January 15, 1957, summarized below.

The pre-World War I rate of exchange for the gold ruble was 51.45½ United States cents for one ruble. Immediately after the outbreak of World War I (July 27, 1914) the Russian Government suspended the obligation of the Russian State Bank to redeem its notes in gold. Thereafter the exchange rate of the ruble showed a declining trend on European and foreign markets. The official monthly average exchange rates of the ruble on Moscow bankers' sight drafts on New York expressed in United States cents were as follows:

	1914	1915	1916	1917	1918	1919
January	51.62	42.94	29.69	29.00	13.00	14.00
February	51.59	44.19	30.81	28.57	13.00	14.00
March	51.62	44.50	31.75	28.07	13.00	----
April	51.53	43.12	31.00	28.52	14.00	----
May	51.40	40.37	30.81	27.35	14.00	----
June	51.47	38.87	30.55	24.35	14.00	----
July	51.28	35.00	30.56	22.35	14.00	----
August	51.06	34.00	32.00	19.35	14.00	----
September	-----	34.87	32.50	14.50	14.00	----
October	48.00	34.25	31.20	14.50	14.00	----
November	45.37	32.87	30.12	13.00	14.00	----
December	42.00	31.25	29.77	13.00	14.00	----

Source: U.S. Department of Commerce Handbook of Foreign Currency and Exchange, 156 (1930).

It should be noted that the quotations for the ruble from November 1917 to February 1919 are purely nominal, because no actual transactions in ruble drafts were performed.

On various occasions the provisional Government of Russia (March 1917 to October 1917) issued State Bank notes which

were commonly known as "Kerenski rubles" or "Duma rubles." The Duma was the Parliament of Russia which authorized the issuance of some of these ruble notes.

Within Russia, the "Kerenski" ruble and "Duma" ruble had officially and practically the same value as the Imperial ruble then also in circulation. Temporarily, during the first period of the revolution in 1917-1919, the Imperial rubles were valued slightly higher by black-market operators in Russia, because they could be better used for certain purposes in the areas not dominated by the Soviets (Baltic States, Poland, Ukraine, Caucasia, Siberia).

The Soviet Government admitted to circulation on par with the former rubles (Imperial and Kerenski), its own ruble currency, commonly known as "Soviet rubles." This currency consisted of bank notes, treasury notes, so-called "Liberty Loan" bonds and coupons of government interest-bearing securities issued by the Soviets. In 1919 the Soviet Government started to issue so-called monetary tokens, accounting tokens and credit rubles in various denominations. In 1922 new monetary tokens were introduced and exchanged at the ratio of one monetary token of 1922 for 10,000 rubles then in circulation. Again in 1923 new monetary tokens were put in circulation and exchanged at the ratio of one monetary token of 1923 for 50,000 rubles in monetary tokens of 1922. Finally on March 7, 1924 a new currency, the "Chervonetz ruble," became the exclusive monetary unit of the Soviet Union, but the new ruble was only remotely connected with the old one.

The gold value of the "Chervonetz ruble" was theoretically the same as that of the pre-World War I gold ruble, namely 51.451½ United States dollars for 100 rubles. This nominal ratio was maintained by the Government of the Soviet Union under pressure, and the real or effective purchasing power of the ruble was much less than it appeared to be from the rigidly maintained official rate of exchange. However, this official rate of exchange is the only one upon which exchange transactions were based and in which a relation between the dollar and ruble for that period of time can be expressed.

The Singer Manufacturing Company claim illustrates the use by the Commission of various ruble-dollar rates of exchange in the evaluation of property as of different dates. Another claim was based entirely upon a holding of 500,000 Imperial Russian rubles issued in 1912, which had become worthless. A Soviet decree of March 7, 1924 fixed the ratio of equivalence between the newly created State Treasury Notes of 1924, also known as Treasury Notes in Rubles in Gold, and the currencies which were legal tender and in circulation in Russia prior to the date of the decree. One ruble in State Treasury Notes of 1924 was legally equivalent to 50,000 rubles of the 1923 issue, 5 million rubles of the 1922 issue, and 50 billion rubles of all pre-1922 issues, including State Credit Notes of the Imperial Russian Government known as Romanoff, Czarist or Imperial rubles, the State Credit Notes issued in 1917 by the Provisional Government in denominations of 1,000 and 250 rubles which became known as Duma rubles, the Kerenski ruble issued in 1917, the Credit Notes of 1918

which the Soviet Government authorized the People's Bank to issue in unlimited quantity, and the many issues of paper notes from 1919 to 1924 some of which were known as monetary tokens and accounting tokens.

In determining the issue of whether losses sustained as a result of devaluation of the Russian ruble give rise to valid claims under international law, the Commission cited authorities in support of the proposition that all matters pertaining to currency are inherently within the jurisdiction of the State.

The Permanent Court of International Justice has stated that "It is indeed a generally accepted principle that a state is entitled to regulate its own currency." (Serbian and Brazilian Loan Cases, Publications of the Court, Series A Nos. 20/21, at 44 (1929).)

This rule has been followed by international commissions. The American-British Claims Commission decided cases on the theory that losses sustained from the depreciation of the dollar "do not constitute the basis of any valid claim." (III Moore, International Arbitrations 3066 (1898).) Where a claim was presented by the holder of a German bank note for payment in gold, the Upper Silesian Arbitral Tribunal rejected it on the same general principle. (Mann, *The Legal Aspect of Money* 421 (1953).)

The American-Mexican Claims Commission has held that, "It is elementary law that states are not responsible for losses caused by currency fluctuations." (American-Mexican Claims Commission, Report of the Department of State, Decision 1B, 147, 149; Decision 38B-47D, 229, 231; Decision 43D, 239-240; Decision 39B-48D, 333, 336.)

The Tripartite Claims Commission (United States, Austria, and Hungary) rejected the suggestion that, absent some act of the Austrian (Hungarian) Government operating upon debts of its nationals to American nationals, it was obligated to pay American creditors for losses sustained by them due to depreciation during and after World War I in the exchange value of Austro-Hungarian currency. The Commission held that such a construction of the treaty, sustainable only on the theory that Austria (Hungary) was liable for all of the direct and indirect, immediate and ultimate, consequences of the war, was not justified. Administrative Decision No. II, *Am. J. Int'l L.* 610, 621 (1927).)

Under domestic law, the Constitution of the United States provides that the Congress shall have the power, "To coin Money, regulate the Value thereof, and of foreign coin . . ." (Article I, § 8, clause 5); and, "To borrow Money on the credit of the United States." (Article I, § 8, clause 2.) In a well-known case (*Juilliard v. Greenman*, 110 U.S. 421, 448 (1884)), the Supreme Court of the United States held that "Under the two powers taken together, Congress is authorized to establish a national currency, either in coin or in paper, and to make that currency lawful money for all purposes, as regards the national government or private individuals, . . . the power . . . being one of the powers belonging to sovereignty in other civilized nations. . . ."

The Commission further stated that international law recognizes two exceptions to this general rule. The first exception is

founded on the theory of denial of justice. Thus, where a state pursues a deliberate course of injuring or discriminating against foreigners, a violation of international law results. (Mann, *op. cit. supra* at 423.) The second exception may be found in a provision in a treaty or other international agreement. (*Id.* at 425-34.) Accordingly, while losses resulting from devaluation of currency would normally not constitute the basis for a claim under international law, a state may consent to compensate for such losses by making provision therefor in a treaty or executive agreement.

The Commission found that there was no denial of justice within the legal meaning of the term concerning the devaluation of the Russian ruble, and that no provision had been made for such claims in any treaty or agreement with any government of Russia, and denied the claim. (*Claim of Walter J. Zuk*, Claim No. SOV-40492, Dec. No. SOV-9, 10 FCSC Semiann. Rep. 172 (Jan.-June 1959).)

The conclusions reached on this issue followed the suggestions made in Panel Opinion No. 7 of April 11, 1956, in which the Commission stated that the principle of non-discrimination has frequently been emphasized in connection with exchange control, and on numerous occasions the Department of State, expressly or by implication, has treated discrimination in the operation of exchange control as an international wrong. (I Hyde, *International Law* § 210a (1951); II Hackworth, *Digest of International Law* § 121 (1941).) In this Panel Opinion the Commission also found the attitude of the United States Government in the enactment and administration of prior legislation of interest. The Economic Cooperation Act of 1948, which provides for a system of insurance to protect American investments abroad against certain losses, restricts the guarantee to losses from currency restrictions and from nationalization measures, but does not protect the investor against devaluation of foreign currencies. (62 Stat. 137, 144-5 (repealed); Investment Guaranty Manual, Mutual Security Agency (1952).) In like manner, the Mutual Security Act of 1954 provides only convertibility insurance to protect the foreign investor against the risk of inability to convert foreign investment receipts into dollars and expropriation insurance. It does not provide insurance to protect the foreign investor with respect to the devaluation of foreign currencies. (68 Stat. 832, 848 (repealed); Investment Insurance Manual, Foreign Operations Administration (1954).)

In another claim, a treasury bill issued on August 1, 1917 in the amount of 1,000 rubles and due on August 1, 1918, was deemed by the Commission to be in the nature of currency. The Commission held that the Decree Concerning the Annulment of State Loans, published in No. 20 of the Gazette of the Workers' and Peasants' Government, dated January 28, 1918 (February 10, 1918, according to the Gregorian calendar), provided that short term obligations and notes of the State Treasury would remain in force, that interest would not be paid, but the certificates themselves would circulate on a par with credit notes (bank notes). Accordingly, the claim was denied for the same reason as the claim of *Walter J. Zuk, supra.* (*Claim of Esther Schiff Bondareff*, Claim No. SOV-42290, Dec. No. SOV-1411

(Amended), 10 FCSC Semiann. Rep. 200 (Jan.-June 1959).) However, when the evidence indicated that treasury bills were in a Russian bank and were confiscated in the course of the nationalization of the bank, the claimant was entitled to an award, as in *The Singer Manufacturing Company* claim.

Valuation.—Just as in other claims programs, the Commission adhered to the rule that the amount of an award should be based upon the value of property on the date of its loss. (*Claim of Division of World Missions of the Board of Missions of the Methodist Church*, Claim No. SOV-41778, Dec. No. SOV-2298, 10 FCSC Semiann. Rep. 203 (Jan.-June 1959).) The Commission was faced with a more involved problem with respect to the valuation of property in the Soviet Union than in any other area. Although the major losses occurred during the years of 1917 and 1919, many occurred on various dates between 1917 and 1933. Monetary inflation during the revolution and the civil war distorted all prices within the Soviet Union and made comparison with prices outside of that country very difficult. Whenever better evidence was not available, the Commission considered 1913 valuations of property in Russia, inasmuch as 1913 was the last normal economic year prior to World War I in Russia.

As stated in the annotations to *Claim of Jules M. Pavitt*, appearing at page 323, all available evidence was utilized in determining the value of nationalized enterprises and shares of stock therein, including stock market quotations, purchase price paid, and net worth as determined from financial statements. *The Singer Manufacturing Company* decision demonstrates a method of determining value at time of loss by working from a balance sheet for the closest period available, and making adjustments therein as deemed warranted from the evidence of record, particularly in the area of depreciation and reserves for bad debts. The Commission rejected an argument for evaluating real property at sums greater than those shown in the balance sheet because it was insured for larger amounts. It is also noteworthy that claimant occupied a status as creditor of the nationalized enterprise as well as owner of 100% of its stock. The total value of the nationalized enterprise was found to be less than the amount of the debt which it owed to claimant. Accordingly, claimant's award as a creditor was limited to the value of the enterprise at the time of its taking; and no award was made to claimant as owner, inasmuch as no value would have remained in the enterprise after payment of the debt.

**UNITED SHOE MACHINERY
CORPORATION****Against the Soviet Government**

Confiscation by the Soviet Government of personal property while in custody of lessee pursuant to contract gave rise to claim in favor of lessor under Section 305(a)(2).

Claim based on indirect losses, such as loss of good will, denied under Section 305(a)(2), Title III of the 1949 Act because such losses, being speculative, uncertain and not susceptible of accurate determination, are not recognized under international law.

Claim based on losses resulting from labor riots, unjustified increases in wages, taxes and contributions, denied under Section 305(a)(2) because claimant failed to establish that such losses were attributable to actions of the Soviet Government that violated international law.

PROPOSED DECISION

This claim for \$8,012,893.77 against the Soviet Government under the provisions of Section 305(a)(2) of the International Claims Settlement Act of 1949, as amended, by United Shoe Machinery Corporation, a national of the United States within the purview of Section 301(2)(B) of the aforesaid Act, is based upon the losses sustained by branch offices of claimant's subsidiary company in Petrograd and Moscow, whose property was confiscated by the Soviet Government.

The record discloses that on January 19, 1909, the Aktieselskabet United Shoe Machinery Company of Copenhagen, Denmark, was organized as a wholly-owned subsidiary of the United Shoe Machinery Corporation of Boston, Massachusetts, the claimant herein. At the end of 1911, the aforesaid Danish subsidiary took over claimant's business in Russia, which prior to that time was conducted by claimant's wholly-owned German subsidiary. The business consisted of the sale and lease of American-made shoe manufacturing machines to Russian shoe manufacturers. As of June 11, 1913, the Imperial Russian Government granted a license to claimant's aforesaid Danish subsidiary to carry on branch offices in Petrograd and Moscow under the name of "United Shoe Machinery Company, Limited," but the branch offices were not incorporated. The assets of the branches and the machines on lease were directly owned by Aktieselskabet United Shoe Machinery Company, Copenhagen, claimant's subsidiary, and through the subsidiary company by the claimant herein.

The record further discloses that the branch offices of claimant's subsidiary in Petrograd and Moscow, consisting of two (2)

offices for the sale and lease of machinery, of two (2) warehouses and of one (1) workshop, were nationalized by a Soviet decree of June 28, 1918; and that claimant's machinery, rented to various Russian shoe manufacturing and repair shops was confiscated by the Soviet Government at the same time, or shortly thereafter, when the major shoe manufacturing plants in Russia were nationalized. It should be noted, however, that representatives of claimant's subsidiary conducted some limited business on the premises of the branch offices, under the supervision of Soviet officials, until the beginning of 1920.

Claimant asserts that the property of the branch offices, at the time of nationalization, included the following items:

I. *Bank accounts deposited with the following banks:*

	<i>Rubles</i>
National City Bank of New York, Petrograd Branch	1,003,879.16
Petrograd Discount Bank, Petrograd	626,137.20
Azoff-Don Commercial Bank, Petrograd	74,019.41
Russo-Asiatic Bank, Petrograd	47,371.51
Moscow Bank of Commerce, Petrograd	65,774.65
Do	53,423.65
Volga-Thams Commercial Bank, Petrograd.....	30,889.70
Russian Bank for Foreign Trade, Petrograd...	245,873.81
Siberian Bank of Commerce, Petrograd.....	59,974.24
Moscow Industrial Bank, Petrograd	218,167.13
People's Bank, Petrograd	500.00
Total	2,426,010.46

II. *Treasury Bills:*

5% Imperial Russian Government Short Term Treasury Bills in the amount of 50,000 rubles, deposited with the Danish Red Cross Office in Petrograd.

III. *Currency:*

260,000 rubles in claimant's possession; 670,000 rubles confiscated in 1920 or thereafter in the Petrograd Branch Office; 700,000 rubles on deposit with the Danish Red Cross in Petrograd; 450,000 rubles on deposit with Dr. Folmer Hansen, an official of the Danish Red Cross in Petrograd.

IV. *Insurance Claim:*

A liquidated damage claim for 40,000 rubles against the Insurance Company "Rossija" of Petrograd arising out of a collision of the S/S Kursk with a mine, on a voyage from England to Russia in 1916, whereby claimant's goods were lost or damaged.

V. *Machines for Lease in Stock at Petrograd Warehouse:*

Valued by claimant at \$141,614.00.

VI. *Machinery Other Than Machines for Lease in Stock at Petrograd Warehouse:*

Valued by claimant at \$13,735.18.

- VII. *Sundry Merchandise in Stock:*
Valued by claimant at \$23,695.38.
- VIII. *Machine Parts in Stock:*
Valued by claimant at \$7,675.00.
- IX. *Machines out on Loan in 62 Factories Located in Russia:*
Valued by claimant at 5,102,076 rubles.
- X. *Personal Property (Furniture, Furnishings, etc.):*
Valued by claimant in the amount of \$22,217.02.
- XI. *Accounts Receivable from Russian Government Agencies:*
In the aggregate claimed amount of 80,175.88 rubles.
- XII. *Claim Arising from Labor Riots:*
In the claimed amount of \$4,120.00.
- XIII. *Claim for Illegal Taxes and Contributions:*
In the claimed amount of 3,331.27 rubles.
- XIV. *Claim for Good Will:*
In the sum of \$2,933,308.24.

Ruble Currency and Treasury Bills

For the reasons set forth in the attached Proposed Decision No. 9, *Claim of Walter J. Zuk* (Claim No. SOV-40492) that part of the claim based upon an amount of 260,000 rubles in currency, presently in claimant's possession, must be and is hereby denied.

No evidence has been submitted that claimant's representatives had, in 1920, subsequent to the nationalization, in the branch office in Petrograd, cash in the amount of 670,000 rubles; nor has any evidence been filed showing that an amount of 700,000 rubles on deposit in 1920 with the Danish Red Cross in Petrograd and an amount of 450,000 rubles on deposit in 1920 with Dr. Folmer Hansen, an official of the Danish Red Cross in Petrograd, were actually confiscated. Even if evidence had been submitted that these funds had, in fact, been confiscated, that part of the claim would nevertheless have to be denied since, subsequent to the year 1920, and at the time of any such confiscation, the ruble currency in Russia was to all intents and purposes worthless. The cash and the deposits were expressed in a practically destroyed currency. While the currency destruction was an economic loss to the claimant, it was not a confiscation of property by the Soviet Government. It was rather the result of tremendous damage inflicted to the Russian economy caused by World War I, the Revolution and the Civil War, and not by any action of the Soviet Government giving rise to a compensable claim under the Act.

The record also shows that a representative of claimant's subsidiary in Petrograd in 1920, deposited with the Danish Red Cross in Petrograd, 5% Imperial Russian Government Short Term Treasury Bills in the amount of 50,000 rubles. On January 28, 1918 (old style) the Soviet Government decreed that such Treasury Bills shall remain in force, but that the certificates shall circulate on a par with currency. In view of the foregoing, the Commission finds that the aforesaid Treasury Bills in 1920, were legally in circulation as cash notes, and that they should be treated as ruble currency. Accordingly, that part of the claim for currency in the aggregate amount of 1,870,000 rubles is also denied.

Labor Riots, Illegal Taxes and Contributions, Good Will

No evidence has been further submitted, that the losses asserted by claimant based on labor riots, unjustified increases in wages, etc., taxes, and contributions in the amount of \$4,120.00 and 3,331.27 rubles, respectively, are attributable to illegal actions of the Soviet Government. Absent such evidence the Commission finds that this part of the claim is also not compensable under the Act.

With regard to the claim for lost good will in the amount of \$2,933,308.24, the Commission is of the opinion that claims for the compensation of indirect damages, such as the loss of good will are compensable, only, if such losses are reasonably certain or susceptible of accurate determination. (See Borchard, *The Diplomatic Protection of Citizens Abroad* §§ 172, 173 (1928), and cases cited therein.) The claim for good will is based upon the earning power of claimant's subsidiary branches in Russia during the pre-World War I period and during World War I. However, the nature of the entire economy in Russia as a result of World War I altered to such an extent, that conditions of the pre-World War I period cannot be compared with the conditions prevailing thereafter. Accordingly, no determination can be made of losses allegedly sustained by claimant with respect to future earnings, upon which the claim of good will is predicated.

Furniture and Furnishings of Company's Executives

The evidence discloses that part of the furniture and furnishings in the offices in Petrograd and Moscow were owned by company's executives. The Commission finds that this part of the equipment in the company's office is not compensable, not being owned by claimant or by its subsidiary.

In view of the foregoing, that portion of the claim based on

labor riots, on illegal taxes and contributions, on furniture and furnishings owned by the executives of the company, and on good will is hereby denied.

Bank Accounts

The Commission finds that claimant, through its subsidiary, the Aktieselskabet United Shoe Machinery Company of Copenhagen, Denmark, was the owner of eleven (11) bank deposits, described above under I, in the aggregate amount of 2,426,010.46 rubles; that on December 28, 1917, the Soviet Government imposed restrictions on the payment of bank deposits which ultimately resulted in their confiscation; that the exchange rate of the ruble on the New York market in 1917 was quoted at 13 cents for 1 ruble; and that claimant is entitled to compensation for this item of the claim under Section 305(a) (2) of the Act in the amount of \$315,381.36, plus interest as described in more detail below.

Machinery

The record before the Commission shows that claimant, through its Danish subsidiary, was the owner in 1918, of the machinery listed below and of the value set forth, which machinery was, on or about June 28, 1918, confiscated by the Soviet Government.

Machines for lease in stock at the company's warehouse in Petrograd, valued at -----	\$141,614.00
Other machines in stock at the company's warehouse in Petrograd, valued at -----	13,735.18
Sundry machinery in stock on the premises of the branch office in Petrograd -----	23,695.38
Machine parts in stock on the premises of the branch office in Petrograd -----	7,675.00
Machines out on lease in 62 Russian factories in prewar Russia, valued at 5,102,076 rubles, converted into dollars at 13 cents for 1 ruble, equal to -----	663,269.88
Less machines rented to 9 factories located in postwar Poland at Lithuania, valued by claimant in the aggregate amount of 763,120 crowns or at the exchange rate of 15.35 cents for 1 crown at -----	117,138.92
	546,130.96
Total value of machinery -----	732,850.52

The machines out on lease had been rented to Russian factories during the years 1911 to 1917. In 1918 the average age of the machines in use was in excess of 4 years; taking into account a rate of depreciation of 10% for each year, a deduction for depreciation of 40% on the amount of \$546,130.96 is hereby made, amounting to ----- 218,452.38

So that the net value of the machinery is established at \$514,398.14

Accordingly, claimant is entitled to compensation for this item of the claim in the sum of \$514,398.14 plus interest as specified in more detail below.

Insurance Claim and Accounts Receivable

The record shows that claimant's subsidiary had on deposit with the Insurance Company "Rossija" of Petrograd, 40,000 rubles, on account of losses of part of goods shipped on the S/S Kursk and that it had outstanding an amount of 80,175.88 rubles for merchandise delivered to various Russian governmental agencies prior to the year 1918. The Commission finds that part of the assets confiscated by the Soviet authorities, on June 28, 1918, consisted of the aforesaid claim against the Insurance Company "Rossija" and against the Russian Government or its subdivisions in the aggregate amount of 120,175.88 rubles.

The records of the Commission disclose that the exchange rate of the Russian ruble was quoted in June 1918, on the New York market at 14 cents for 1 ruble.

Accordingly, claimant is entitled to compensation for the accounts receivable in the amount of \$15,622.86 with interest as specified below.

Personal Property

The evidence before the Commission shows that the branch office of claimant's subsidiary had furniture, furnishings and some equipment in their offices and warehouses in Petrograd and Moscow, all of which was confiscated by the Soviet Government. No evidence has been submitted with respect to the value of such personal property. Considering that such property was acquired in 1911, and shortly thereafter, and that it had been used since its acquisition, the Commission determines that the value of such personal property was \$10,000.00.

The Commission, therefore, finds that claimant is entitled to compensation for personal property (furniture, furnishings, equipment, etc.) in the amount of \$10,000.00 plus interest as described below.

Interest

In addition to the awards as stated above claimant is entitled to 6% interest per annum on the principal amounts of the awards from the date the claim arose until November 16, 1933, the date of the Litvinov Assignment (Section 301(6) of the Act). The computation of the principal amounts and of interest is shown, as follows:

	Principal amount	Date claim arose	Amount of 6 percent interest until Nov. 16, 1933
Bank accounts -----	\$315,381.36	Dec. 28, 1917	\$300,558.43
Machinery -----	514,398.14	June 28, 1918	474,789.48
Insurance and accounts re- ceivable -----	15,622.86	---do-----	14,419.90
Personal property -----	10,000.00	---do-----	9,230.00
Total -----	\$855,402.36		\$798,997.81

AWARD

On the above evidence and grounds, and upon the entire record, this claim is allowed and an award is hereby made to UNITED SHOE MACHINERY CORPORATION, claimant herein, in the principal amount of eight hundred fifty-five thousand four hundred two dollars and thirty-six cents (\$855,402.36) plus interest thereon in the amount of seven hundred ninety-eight thousand nine hundred ninety-seven dollars and eighty-one cents (\$798,997.81). No determination is made with respect to interest for any period subsequent to November 16, 1933.

Payment of the award herein shall not be construed to have divested claimant herein, or the Government of the United States on claimant's behalf, of any rights against the Government of the Soviet Union for the unpaid balance, if any, of the claim.

Dated at Washington, D.C.
May 20, 1959

Confiscation of leased property.—The instant claimant, which operated two branch offices, two warehouses, and a workshop in Russia, and leased machinery to shoe manufacturers in Russia, received an award for its assets which were confiscated by the

Soviet Government, including bank deposits, furniture and equipment, and machinery. In addition to the machinery in stock, claimant was the owner of all the machines on lease to Russian manufacturers which also were lost, and all were included in the award.

Indirect losses.—A portion of the claimed amount was for loss of good will, which was denied as an indirect loss, not reasonably certain and susceptible of accurate determination. Similarly, in the *Claim of Westinghouse Air Brake Company* (Claim No. SOV-41804, Dec. No. SOV-3124, 10 FCSC Semiann. Rep. 240 (Jan.-June 1959)), where the value of a nationalized enterprise was being determined on the basis of net worth as calculated from a balance sheet, an asset item of 60,000 rubles for patents, good will and license was eliminated. In the absence of any evidence to reflect a value for such items, they were considered worthless in ascertaining the net worth of the company.

Amounts claimed by the United Shoe Machinery Corporation as losses resulting from labor riots and unjustified increases in wages, taxes and contributions, were denied on the ground that it had not been established that these were attributable to illegal actions of the Soviet Government.

Royalties.—It was not always clear whether an action of the Soviet Government constituted a taking of property from which a compensable claim arose. In the *Claim of General Electric Company* (Claim No. SOV-42234, Dec. No. SOV-3119, 10 FCSC Semiann. Rep. 234 (Jan.-June 1959)), based upon the nationalization of *Wseobschtchaia Electriceskaja Kompania (WEK)*, claimant received an award as a creditor of the nationalized firm, and also as the owner of 40,000 shares of stock therein. A further portion of the claim, for \$250,000.00, was based upon an agreement between claimant and WEK under which the latter was to pay royalties of not less than \$50,000.00 per year for the use of certain of claimant's patents and facilities. The claimed amount was for royalties for a period subsequent to the nationalization of WEK. The Commission denied this portion of the claim, stating:

The question presented is whether the Soviet Government took the aforesaid contract by the nationalization of WEK or by such nationalization rendered impossible the performance of such contract whereby the claimant's rights thereunder were not taken by that Government but frustrated by its lawful action. Although a case directly in point has not been found, courts of the United States have ruled on similar questions relating to governmental "takings" within the meaning of the fifth amendment to the United States Constitution. In *Omnia Commercial Co., Inc. v. United States*, 43 Sup. Ct. 437, 438 (1923), the Supreme Court stated that destruction of, or injury to, property is frequently accomplished without a "taking" in the constitutional sense. To prevent the spreading of a fire, property may be destroyed without compensation to the owner. The conclusion to be drawn from the various cases cited in such decision is that for consequential loss or injury resulting from lawful governmental action the law affords no remedy.

If, under any power, a contract or other property is taken for public use, the government is liable; but, if injured or destroyed by lawful action, without a taking, the government is not liable.

In the present case the nationalization of the Russian Company by the Soviet Government appears to have terminated the contract and did not keep it alive for the use of that Government. In view of the foregoing, the item of the claim must be denied.

Claims arising after November 16, 1933.—Another claim for unpaid royalties, resulting from an unauthorized publication of the Russian translation of a scientific book by two American authors, was denied because the Russian publication of the book took place in 1937; that is, after November 16, 1933; and claims which arose after that date were not compensable under Section 305 of the Act, which specifically covered claims of United States nationals arising prior to November 16, 1933. (*Claim of Gabor Szeco, et al.*, Claim No. SOV-40912, Dec. No. SOV-2447, 10 FCSC Semiann. Rep. 208 (Jan.-June 1959).) A claim based upon the loss of certain real property assertedly taken by the Soviet Government was denied, inasmuch as the property was located in territory which was formerly a part of Czechoslovakia and was ceded to the U.S.S.R. on November 16, 1933, and the Commission found that the claim arose subsequent to November 16, 1933. (*Claim of Samuel Waldman*, Claim No. SOV-40083, Dec. No. SOV-239, 10 FCSC Semiann. Rep. 178 (Jan.-June 1959).)

Extraterritorial effect.—A claim based upon property outside of Russia involved a ruble deposit in the Shanghai branch of the Russo-Asiatic Bank. The Russo-Asiatic Bank was chartered under Russian law and had branches in other countries, each conducting its own business so as to preserve a balance of assets and liabilities. All banking institutions in Russia were nationalized on December 27, 1917, and the Russo-Asiatic Bank was merged into the People's Bank. Thereafter the Paris office acted as head office of the foreign branches of the former Russo-Asiatic Bank, and liquidated the Shanghai branch in 1926, paying 55% of amounts owing to general creditors who filed claims in Shanghai. The Commission denied the claim before it, finding that the nationalization of the Russo-Asiatic Bank affected only its property in Russia, and that the foreign branches had continued to operate without interference from the Soviet Government, which neither took their assets nor assumed their liabilities. In this respect, following the general rule of international law, the Commission refrained from giving extraterritorial effect to the nationalization decree of the Soviet Government. (*Claim of Hugo Paul Bankert, Sr.*, Claim No. SOV-40520, Dec. No. SOV-1938, 10 FCSC Semiann. Rep. 193 (Jan.-June 1959).)

Two decisions of the United States Supreme Court which may appear to be to the contrary, in *United States v. Belmont*, 301 U.S. 324 (1937), and *United States v. Pink*, 315 U.S. 203 (1942), are distinguishable from the *Bankert* claim. In the *Belmont* case, the nationalization by the Soviet Government of a Russian corporation included a sum of money deposited by the corporation with Belmont, a private banker in New York. As a part of the

Litvinov Assignment of November 16, 1933, the claim of the Soviet Government against Belmont for these funds was assigned to the United States Government, which recovered in its suit. In the *Pink* case, the nationalization by the Soviet Government of a Russian insurance company included assets of that company in the hands of the Superintendent of Insurance in New York, and the claim of the Soviet Government therefor also was included in the Litvinov Assignment so that the United States Government recovered in its suit. In both cases, the Russian nationalization decrees specifically included all of the property of the nationalized enterprises, wherever situated; and in both cases the assignment of the claims to the United States Government was a part of a larger plan to bring about a settlement of the rival claims of the two countries by international compact in which the United States recognized the U.S.S.R. as the *de jure* Government of Russia. The principle of judicial refusal to review a foreign act of government continues to apply where the property affected is located within the territorial jurisdiction of the country enacting the measure, but not where the property is located outside of that country, "in the absence of some overriding international compact." (Re, Foreign Confiscations in Anglo-American Law 43 (1951).)