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

In the Matter of the Claim of	
Estate of M. SERGEY FRIEDE, deceased by DONALD S. FRIEDE, Administrator, C.T.A. 11 East 44th Street New York 17, New York	Claim No. SOV-40,000 Decision No. SOV-1
Under the International Claims Settlement Act of 1949, as amended	

Counsel for Claimant:

SAMSON SELIG, Esquire
11 East 44th Street
New York 17, New York

PROPOSED DECISION OF THE COMMISSION

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
		$ 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	$ 3,399,503.62

(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, amounting 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 . . ." (Underscoring 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. . ." (Underscoring 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 determination 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 Kommercheski Bank, otherwise known as Banque de Commerce de L'Azoff Don and

Jacob Moiyevitch 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 Tacob 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 Azoff 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. <u>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?</u>

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 Mavrikij 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. <u>What constitutes the principal amount of an award made pursuant to Section 305(a)(1) of Public Law 285, 84th Congress?</u>

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 payment 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 (1/2 X 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 Russo-Asiatic 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

This is certified to be a true and correct copy of the original.

By Julius M. Klenzo
Administrative Officer of the Commission

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

In the Matter of the Claim of Estate of M. SERGEY FRIEDE, deceased by DONALD S. FRIEDE, Administrator, C.T.A. 11 East 44th Street New York 17, New York Under the International Claims Settlement Act of 1949, as amended	Claim No. SOV-40,000 Decision No. SOV-1

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New York 17, New York

FINAL DECISION OF THE COMMISSION

A certified copy of the Proposed Decision on the above claim, dated July 20, 1956, was duly served upon Samson Selig, attorney for the claimant. More than twenty days have elapsed after such service and no objections to the Proposed Decision have been filed by or on behalf of the claimant, nor has a request been made for a hearing on the claim pursuant to § 531.5 of the regulations. However, during the thirty day period while General Notice of the Proposed Decision was posted on the bulletin board of the Commission, the Guaranty Trust Company of New York, through its attorneys, Davis, Polk, Wardwell, Sunderland & Kiendel, filed a document entitled "Petition of Guaranty Trust Company of New York as Intervenor" urging that the claim herein be disallowed under section 305(a)(1) of the Act.

Although the Commission has no procedure for intervention in the ordinary usage of the term, it has provided that any document of that character which may be filed, or any other information, oral or written, tending to cast doubt on the Proposed Decision which may

be brought forward by third parties during the period of general notice shall be brought to the attention of the General Counsel to the end that proper consideration be given thereto, and such referral was promptly made in this case. At a meeting of the Commission held on August 30, 1956, the Office of the General Counsel consulted with the Commission concerning the document in question. The Office of the General Counsel was instructed to continue the examination into the questions raised in the document and report its findings and recommendations to the Commission. Such a report has been prepared and made part of the record.

Regardless of the extent of petitioner's examination of the Commission's docket, the petition shows that petitioner has within its knowledge all of the matters contained therein. Many questions are raised which inhere in the legal proceedings on which this claim is based and which, therefore, need not be considered unless such proceedings are found to be invalid within the meaning of Public Law 285, 84th Congress, approved August 9, 1955, 22 U.S.C.A. 1621-41. Such invalidity is asserted solely on the ground that the Russo-Asiatic Bank, a Russian corporation against which the claimant instituted proceedings in rem and obtained a judgment, has been dissolved under the laws of its domicile, and therefore, the judgment, as well as the attachment with which a lien was obtained, were void as a matter of law.

Under established principles of law, a dissolved corporation ceases to exist and its capacity to sue and be sued is extinguished. Moreover, it is undisputed that upon recognition of Russia on November 16, 1933, the decrees of that country were deemed to be valid retroactively. In the much cited case of United States v. Pink, 315 U.S. 203 (1942), the Supreme Court of the United States held that the Russian decree of 1918, under which insurance companies were nationalized, embraced the New York assets of the First Russian Insurance Company doing business in New York, and that the property of the Company passed to the United States under the Litvinov Assignment. However, the court flatly stated that it

intimated no opinion respecting rights acquired and proceedings had prior to the Assignment.

The legislative history of Public Law 285 indicates that the Congress was aware of the *Pink* case and the legal effect it would have upon litigation pending at the time of the Litvinov Assignment. The hearings before the Committees which recommended the enactment of H. R. 6382, the bill which became Public Law 285, and the language of the Act, clearly establish an intention to remedy this situation and restore, to American litigants within its terms, rights which would have existed had there been no Litvinov Assignment. Accordingly, it is concluded that the lien which resulted from the issuance of the attachment and the levy thereof may be deemed to be valid for the purpose of Public Law 285.

Accordingly, the Commission hereby adopts such Proposed Decision as the Commission's Final Decision on this claim. It is ordered, therefore, that the award of $761,486.50 made to the Estate of Marcus Sergey Friede, deceased, in Proposed Decision No. SOV-1 be certified to the Secretary of the Treasury for payment.

Dated at Washington, D. C.

SEP 6 1956

Whitney Gillilland
Whitney Gillilland, Chairman

Pearl Carter Pace
Pearl Carter Pace, Commissioner

Henry J. Clay
Henry J. Clay, Commissioner

This is certified to be a true and correct copy of the original.

By Julius M. Kleizo
Administrative Officer of the Commission