

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

In the Matter of the Claim of

Trust Under Will of JOHN M. LEE, deceased,
by the FIRST NATIONAL BANK OF CHICAGO
and CATHERINE A. LEE, Trustees
38 South Dearborn Street
Chicago 3, Illinois

Claim No. SOV-40,323

Decision No. SOV-7a

Under Section 305(a) of the International
Claims Settlement Act of 1949, as amended

FINAL DECISION

The Commission issued its Proposed Decision on this claim on
October 30, 1957, a certified copy of which was duly served upon
the claimant(s). 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.

Washington 25, D. C.

JAN 7 - 1958

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mss
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Whitney Hilliland
Pearl Pace
Henry S. Clay

COMMISSIONERS

S-28

FOREIGN CLAIMS SETTLEMENT COMMISSION
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In the Matter of the Claim of

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by THE FIRST NATIONAL BANK OF CHICAGO and
CATHERINE A. LEE, Trustees
38 South Dearborn Street
Chicago 3, Illinois

Claim No. SOV-40,323

Decision No. SOV-7

Under the International Claims Settlement
Act of 1949, as amended

FINAL DECISION

More than twenty days having elapsed since a certified copy of the Proposed Decision on the above claim was served upon the claimant and no objections or request for hearing having been filed, and the thirty-day period of general notice provided by posting having expired, it is

ORDERED that such Proposed Decision be, and the same is hereby, entered as the Final Decision, that this claim does not come within the purview of Section 305 (a)(1) of the Act; it is further

ORDERED that this claim be considered under Section 305 (a)(2) of the Act.

Dated at Washington, D. C.

OCT 9 1956

mgs
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Whitney Gilliland
Whitney Gilliland, Chairman

Pearl Carter Pace
Pearl Carter Pace, Commissioner

Henry J. Clay
Henry J. Clay, Commissioner

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Under the International Claims Settlement
Act of 1949, as amended

GENERAL COUNSEL'S STATEMENT

No information of sufficient merit to cast doubt on the accuracy of the Proposed Decision on this claim has been brought to the attention of the General Counsel during the period of general notice provided by posting.



Andrew T. McGuire
General Counsel

Dated: 10/8/56

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IN THE MATTER OF THE CLAIM OF

Trust under Will of JOHN M. LEE, de-
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Decision No. SOV-7a

Under the International Claims Settlement
Act of 1949, as amended

gpo 16-72126-1

SUPPLEMENTAL PROPOSED DECISION

The above-captioned claim being based upon a judgment was heretofore treated by the Commission as a preferred claim against the Soviet Government under Section 305(a)(1) of the International Claims Settlement Act of 1949, as amended. It was denied under that Section for the reasons stated in the Commission's Proposed Decision dated August 9, 1956, without prejudice, however, to further consideration under Section 305(a)(2) of the Act. The Proposed Decision was confirmed by the Commission's Order dated October 9, 1956.

The question now before the Commission is whether the claim is compensable under Section 305(a)(2) of the Act.

The record before the Commission discloses that the judgment, which is the basis of the claim, was entered against the Russian Transport and Insurance Company in favor of Joseph P. Grabfield on March 19, 1915 in the office of the Clerk of the County and State of New York. Execution thereon was returned unsatisfied. Joseph P. Grabfield, judgment creditor, by formal instrument dated November 29, 1926 assigned the judgment to Morris & Company, a corporation organized under the laws of the State of Maine whose name had been changed to American Food Products Company on May 14, 1923.

On December 29, 1941, the American Food Products Company, then in complete liquidation executed a Bill of Sale (photostat of which was submitted by claimant) wherein and whereby "for and in consideration of the sum of Two and no/100 (\$2.00) Dollars and other good and valuable considerations" it granted, bargained, sold, assigned, transferred and set over to John M. Lee (the decedent named and designated in the above caption), among other things, "All (of its) property real, personal and mixed, including choses in action of any kind or character whatsoever known or unknown, disclosed or undisclosed --".

Although the judgment under consideration was not mentioned in the Bill of Sale and apparently no formal assignment thereof was executed in connection with such sale, it will be assumed for the purpose of this Proposed Decision that it was among the property "known or unknown, disclosed or undisclosed" covered by the Bill of Sale.

In a "Statement of Facts" dated June 21, 1941 (Claimants' Exhibit No. 1) previously filed with the Department of State by the American Food Products Company in support of its claim based on the subject judgment, there is a statement to the effect that the Union of Socialist Soviet Republics confiscated, took over and liquidated all the assets and property of the Russian Transport and Insurance Company (judgment debtor) on or about December 1, 1918.

The Commission has held that where the Soviet Government nationalizes an enterprise without compensation, expropriates its property and subsequently annuls all of its obligations which arose prior to nationalization, a claim arises against that Government under Section 305(a)(2) of the Act in favor of creditors of the enterprise adversely affected thereby. In arriving at the Proposed Decision in the instant claim, the Commission has assumed that it can be established that the Russian Transport and Insurance Company was an enterprise within this category.

However, Section 307 of the Act provides that:

"The amount of any award made pursuant to this title based on a claim of a national of the United States other than the national of the United States to whom the claim originally accrued shall not exceed the amount of the actual consideration last paid therefor either prior to January 1, 1953, or between that date and the filing of the claim, whichever is less."
(Underscoring supplied).

As heretofore indicated, the consideration expressed in the Bill of Sale is \$2.00 and other good and valuable consideration, for which the purchaser (John M. Lee) received (1) \$2,500 in cash; (2) \$6,000 of City of New York $4\frac{1}{2}\%$ Bonds held by Bureau of Workmens Compensation as security for payment of an award commuted to the payment of but \$2,535.35, thus resulting in an equity to purchaser of approximately \$3,500; (3) \$21,611.23 principal due or to become due from the Government of Germany under an award allowed by the Mixed Claims Commission and \$24,347.44 interest thereon; (4) other known or unknown, disclosed or undisclosed property of the seller.

The "other good and valuable considerations" above referred to was the purchaser's agreement (1) to assume liability of the above-mentioned compensation award; (2) assume and pay, if required, in his sole discretion properly established claims of railroads for additional freight by reason of certain shipments; and (3) cause the Company (Seller) to withdraw from the State of Illinois and effect its dissolution under the laws of the State of Maine at purchaser's expense.

No evidence whatsoever has been submitted which would indicate or tend to indicate that John M. Lee paid anything on account of the railroad claims. Nor is there any evidence to show how much he expended to cause the Company to withdraw from the State of Illinois and effect its dissolution under the laws of the State of Maine.


From the foregoing it is concluded that the judgment was either among the "unknown" property conveyed by the Bill of Sale, or among the known, unnamed and undescribed property and the parties placed no value on the judgment whatsoever. Consequently, the actual consideration paid was, in either event, insignificant. Accordingly, the Commission will apply the principal of de minimis non curat lex. The claim must therefore be and hereby is likewise denied under Section 305(a)(2).

This determination shall not be construed as having divested claimant herein, or the Government of the United States on its behalf, of any rights against the Government of the Soviet Union with respect to the claim herein.

Dated at Washington, D. C.

OCT 30 1957

FOR THE COMMISSION:



Joseph Stein, Director
Soviet Claims Division

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

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Trust under Will of JOHN M. LEE, deceased		:
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Chicago 3, Illinois	Decision No. SOV-7	:
		:
Under the International Claims Settlement		:
Act of 1949, as amended		:
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PROPOSED DECISION OF THE COMMISSION

This is a claim for \$17,603.79 plus interest at the rate of five per cent per annum from March 19, 1915 by the First National Bank of Chicago and Catherine A. Lee, trustees under the Last Will and Testament of John M. Lee, deceased, under section 305 of the International Claims Settlement Act of 1949^{1/}, as amended by Public Law 285, 84th Congress, approved August 9, 1955^{2/}, and is based upon a judgment for \$17,603.79 entered on March 19, 1915 in the Supreme Court of New York, County and State of New York, in favor of Joseph P. Grabfield against the Russian Transport and Insurance Company.

The claim originally accrued in 1914 in favor of Morris and Company, a Maine corporation, by virtue of the failure of the Russian Transport and Insurance Company to pay fire losses on certain property of the Corporation which was insured by this Insurance Company. On February 12, 1915 Morris and Company assigned such claim to Joseph P. Grabfield who obtained the above-mentioned judgment. Subsequent to that time, on May 1, 1923, Morris and Company was reorganized and became known as the American Food Products Company. Joseph P. Grabfield assigned, on November 29, 1926

1/ 64 Stat. 12, 22 U.S.C.A. § 1621-27 (1952).

2/ 69 Stat. 562, 22 U.S.C.A. § 1621-41 (Supp. 1955).

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all his right, title and interest in and to the above judgment to the American Food Products Company; that company, in liquidation, sold the claim to John M. Lee on December 29, 1941. John M. Lee died testate between 1944 and 1946.

Under section 305 (c) of the International Claims Settlement Act of 1949, as amended the Commission must give preference to the disposition of those claims falling within the purview of section 305 (a) (1) of the Act. Accordingly, this claim will be considered under section 305 (a) (1) without prejudice to the merits of the claim under section 305 (a) (2).

Section 305 (a) (1) of the Act confers jurisdiction upon the Commission to determine:

"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, 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)

Claimant has filed no evidence showing that the above judgment created a lien upon those assets recovered by the United States Government, which assets constitute the Soviet Claims Fund and from which claims coming under section 305 of the Act will be paid. Furthermore, the records of the Departments of Justice and Treasury and of this Commission do not show that any property of the above judgment debtor was taken, collected, recovered or liquidated by the Government of the United States pursuant to the Litvinov Assignment. Accordingly, this claim must be and is hereby denied under the provisions of section 305 (a) (1) of the Act.

This decision and finding is without prejudice to the further consideration of the claim under section 305 (a) (2) of the Act, which section confers jurisdiction upon the Commission to determine ". . . claims arising prior to November 16, 1933, of nationals of the United States against the Soviet Government. . ."

Dated at Washington, D. C.

E.A. Kuwatek AUG 9 1956
HWM
HMM

Whitney Gilliland
Whitney Gilliland, Chairman

Pearl Carter Pace
Pearl Carter Pace, Commissioner

Henry J. Clay
Henry J. Clay, Commissioner