

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

IN THE MATTER OF THE CLAIM OF

**THE FIRST NATIONAL CITY BANK OF
NEW YORK
55 Wall Street
New York 15, New York**

Claim No. **SOV-41.261**

Decision No. **SOV-3126**

Under the International Claims Settlement
Act of 1949, as amended

GPO 16-72126-1

Counsel for Claimant:

**SHEARMAN & STERLING & WRIGHT
20 Exchange Place
New York 5, New York**

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 \$3,543,067.31, 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:

A W A R D

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, 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:
Washington 25, D. C.

JUL 20 1959

Paul Lee

Whitney Williland

Robert L. Kemp

COMMISSIONERS

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

IN THE MATTER OF THE CLAIM OF

**THE FIRST NATIONAL CITY BANK OF
NEW YORK
55 Wall Street
New York 15, New York**

Claim No. **SOV-41,261**

Decision No. **SOV-** *3/26*

Under the International Claims Settlement
Act of 1949, as amended

GPO 16-72126-1

Counsel for Claimant:

**SHERMAN, STERLING & WRIGHT
28 Exchange Place
New York 5, New York**

PROPOSED DECISION

This is a claim for \$29,160,765.96 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:

	<u>Amount Claim</u>
<u>SCHEDULE A</u> Balance due on account of a judgment in favor of Herbert J. Grant against the Russo-Asiatic Bank	\$ 799,133.1
<u>SCHEDULE B</u> 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	\$ 2,201,833.1
<u>SCHEDULE C</u> 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	\$ 344,398.7
<u>SCHEDULE D</u> 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	\$ 1,236,461.9
<u>SCHEDULE E</u> 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	\$ 69,662.8

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, 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

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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 nationalisation decree, all private banking operations 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 9, 1918, by direction of the Soviet authorities said Branch was again transferred

from Volodya 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-Atlantic 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 309(a)(2) of the Act.

CLAIMANT'S SCHEDULE A, "GRANT" JUDGMENT AGAINST
RUSSO-ATLANTIC BANK

This item was heretofore considered by the Commission as a preferred claim under Section 309(a)(1) of the Act, and was denied by Final Decision dated January 30, 1957, without prejudice to its consideration under Section 309(a)(2) of the Act. The assignment by Claimant to Grant under which the latter procured the judgment against the Russo-Atlantic Bank covered (1) Claimant's deposit of 486,989.23 rubles with

the Russ-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 herewith. 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 \$266,487.50.

- (2) \$ 1/2% 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 herewith. 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 (1) in the principal amount of \$365,727.50, with interest on \$275,000 from November 1, 1919 in the amount of \$231,687.50.

(2) Participation Certificates in 6 1/2% 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 hereto. The sum of \$483,000, the principal amount of such certificates, was owned by claimant on February 1 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"

	<u>Principal</u>	<u>Interest</u>
(1)	\$1,288,156.25	\$366,487.80
(2)	365,727.50	231,487.80
(3)	<u>548,000.00</u>	<u>415,863.00</u>
TOTAL	\$2,201,883.75	\$1,014,838.60

CLAIMANT'S SCHEDULE G; DOLLAR LOANS AND ADVANCES, SECURED AND UNSECURED.

(1) G. 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 term 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 \$112,574.89 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 Sibirie Petrograd
(hereinafter 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 calafkins 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"

	<u>Principal</u>	<u>Interest</u>
(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	<u>78,246.20</u>	<u>74,568.63</u>
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 \$962,976.20.

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

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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 \$74,818.36 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 \$222,623.66 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 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 225,678,411.13 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, 204,334,857.13 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 35,185,856.87 rubles (amounting to \$4,574,827.39 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 deposit, if the nationality requirements had been met. (In the Matter of the Claim of The Tanglefoot Company, Claim No. SOV-41,795).

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 \$3,630,805.82 plus 23,592,310 rubles in currency. The currency rubles were paid during the years 1922 through 1926 as follows:

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

<u>1922</u>	<u>Average</u>
January - March	0.177 cents per ruble
April - June	0.153 " " "
July - December	0.092 " " "
<u>1923</u>	0.066 " " "
<u>1924</u>	0.108 " " "
<u>1925</u>	0.098 " " "
<u>1926</u>	(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 (\$3,630,895.02) totals \$3,665,499.68. Since the debit of \$4,574,957.39 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
5 1/2% 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, 5 1/2% 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 his 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 \$461,879.83.

CLAIMANT'S SCHEDULE M: CUSTOMERS' SECURITIES HELD
AS COLLATERAL AND FOR SAFEKEEPING

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

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

The record establishes that Claimant's above-mentioned personal property located in the 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 files 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-22,020, 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 suing 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 G, 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 heretofore 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.

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OPINION

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 \$1,890,043.72), 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 concludes 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 \$1,890,044.72 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 B) 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 307(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

	<u>Principal</u>	<u>Interest</u>
Claimant's Schedule B	\$2,201,883.75	\$1,814,838.00
" " C	344,298.88	328,109.14
" " D	1,010,461.91	962,979.20
" " E	74,818.35	71,301.89
" " I	650,000.00	614,900.00
" " J	420,995.71	388,846.40
" " K	432,455.18	412,129.79
" " L	484,649.35	461,870.83
" " 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

A W A R D

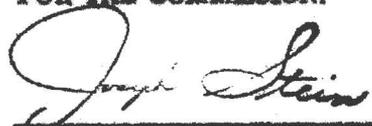
On the above evidence and grounds and upon the entire record an award is hereby made under Section 305(a)(2) of the Act to THE NATIONAL CITY BANK OF NEW YORK, Claimant herein, in the principal amount of Three million five hundred forty-three thousand sixty-seven dollars and fifty-one cents (\$3,543,067.51)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

JUN 9 1959

FOR THE COMMISSION:



 Joseph Stein, Director
 General Claims Division