

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

IN THE MATTER OF THE CLAIM OF

EAGLE PENCIL COMPANY, INC.
703 East 13th Street
New York 9, New York

Claim No. SOV-41,323

Decision No. SOV-2934

Under the International Claims Settlement
Act of 1949, as amended

gpo 16-72128-1

FINAL DECISION

The Commission issued its Proposed Decision on this claim on April 27, 1959, a copy of which was duly served upon the claimant. Full consideration having been given to the objections of the claimant, filed within the twenty-day period after such service which has now expired, and general notice of the Proposed Decision having been given by posting for thirty days, it is

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

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

Washington 25, D. C.

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Whitney Hilliland
Robert Kunzig

COMMISSIONERS

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PROPOSED DECISION

This claim for L 4848-11-0 under the provisions of Section 305(a)(2) of the International Claims Settlement Act of 1949, as amended, by the Eagle Pencil Company, Inc., a corporation organized under the laws of the State of Delaware, is based upon the loss sustained by the claimant as the owner of deposits with Russian banks and of accounts receivable from Russian debtors.

The Commission finds it established that the Eagle Pencil Company, Inc., was incorporated in New York State in 1885; that on December 26, 1922, the claimant, a Delaware corporation, succeeded the New York corporation and took over all of its assets and liabilities; that at all pertinent times since 1915, more than 50% of the outstanding capital stock of the claimant corporation and of its predecessor was owned by United States nationals; that on December 31, 1917, claimant's predecessor, through its wholly owned British subsidiary in London, had on deposit with three Russian Banks in Moscow an aggregate cash amount of 39,911.39 rubles; that it had at the same time on its books accounts receivable from 46 customers in Russia in the amount of L 1209-12-11; that of these 46 customers 18 individual persons or firms, domiciled in Russia proper, owed the claimant a total of L 437-15-10, while all

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the other customers were residents of that part of Russia, which after 1918 became part of the Republic of Poland; that on December 28, 1917, the bank deposits were confiscated by the Soviet Government; that actions on pre-revolutionary claims against debtors in Russia were barred before Soviet courts on January 1, 1923, the date of the Law enacting the Soviet Civil Code which provided in Section 2 that "no court or other authority of the republic shall take cognizance of disputes over private rights arising out of relations that originated before November 7, 1917". The Commission finds that from and after the effective date of the Soviet Civil Code, namely, January 1, 1923, there was a denial of justice in that claimant was barred from enforcing its contractual rights arising out of the accounts receivable on which the claim, in part, is based; and that claimant has a claim as a creditor for the compensation of the accounts receivable from customers in Russia.

Creditor claims have heretofore been considered by the Commission but with specific reference to Section 303 only (see 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 (which relates to claims against the Governments of Hungary, Rumania and Bulgaria), the only creditor claims which come within the purview of Section 303 are those which fall within the narrow confines of subsection 3 thereof. It was, however, pointed out in that decision that:

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

The background, history and language of Section 305 differ materially from that of Section 303 which follows an exclusionary pattern listing three specific classes of claims to be compensated. Section 305 on the other hand, contains no similar restrictions as to the type and scope of claims which may constitute the basis of an award against the Soviet Government.

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

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

The rights and remedies of the claimant in the instant case were for all intents and purposes completely extinguished by the Soviet Law enacting the Civil Code. No court or other tribunal was made available to the claimant for the collection of the accounts receivable.

The Commission finds that the conduct of the Soviet Government constituted a denial of justice, and that by reason thereof claimant has a valid claim for the accounts receivable under Section 305(a)(2) of the Act.

However, accounts receivable are, under normal conditions and general business practices, subject to a proper deduction for bad debts. Conditions that prevailed in Russia at the time the accounts in question came into being were not normal but rather "abnormal", due to World War I development and its aftermath. The Commission finds that a deduction of 30% for uncollectible accounts in the sum of L 131-6-8 should be made, reducing the item of compensable accounts receivable from L 437-15-10 to L 306-9-2. Therefore, the Commission concludes that claimant is entitled to compensation for the claim based on bank deposits in the amount of 39,911.39 rubles and for the claim based on accounts receivable from customers in Russia, in the amount of L 306-9-2.

The Commission's records disclose that the exchange rate of the ruble in New York in December 1917 was quoted at 13 cents for 1 ruble, and the exchange rate of the pound sterling in January 1923, at \$4.68 for 1 pound sterling.

Accordingly, the Commission concludes that the claimant is entitled to an award for the bank deposits in the amount of \$5,188.48, plus 6% interest per annum thereon from December 28, 1917, and for the accounts receivable in the amount of \$1,434.22, plus 6% interest per annum thereon from January 1, 1923 to November 16, 1933, the date of the Litvinov Assignment.

A W A R D

On the above evidence and grounds, this claim is allowed and an award is hereby made to the EAGLE PENCIL COMPANY, INC., claimant herein, in the amount of six thousand six hundred twenty-two dollars and seventy cents (\$6,622.70), plus 6% interest per annum on the amount of \$5,188.48 from December 28, 1917 to November 16, 1933, and 6% interest per annum on the amount of \$1,434.22 from January 1, 1923 to November 16, 1933, in the aggregate interest amount of five thousand eight hundred eighty dollars and forty-five cents (\$5,880.45). No determination is made with respect to interest for any period subsequent to November 16, 1933.

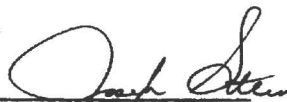
Payment of the award herein, in whole or in part, shall not be construed to have divested claimant herein, or the Government of the United States on claimant's behalf, of any rights against the Government of the Soviet Union for the unpaid balance, if any, of the claim.

Dated at Washington, D. C.

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FOR THE COMMISSION:


Joseph Stein, Director
Soviet Claims Division