

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

CLARENCE BURTON DAY

ETHELWYN C. DAY.

Claim No. YCN-0030

Decision No. YCN- 1

~~Under the Yugoslav Claims Agreement of 1964~~
~~Under the International Claims Settlement~~
~~Settlement Act of 1949, as amended~~

PROPOSED DECISION

This claim against the Chinese Communist regime, under Title V of the International Claims Settlement Act of 1949, as amended, for \$760.05, is based upon the loss of personal property, consisting of household furnishings and personal effects, in Hangchow, province of Chekiang, China. Claimants, CLARENCE BURTON DAY and ETHELWYN C. DAY, have been nationals of the United States since their births on September 1, 1889 and January 9, 1893 respectively.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964) 22 U.S.C. §§1643-1643K (1964), as amended by 80 Stat. 1365 (1966)], the Commission is given jurisdiction over claims of nationals of the United States against the Chinese Communist regime. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Chinese Communist regime arising since October 1, 1949 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Chinese Communist regime or by enterprises which have been nationalized, expropriated, intervened, or taken by the Chinese Communist regime and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Chinese Communist regime.

Claimants also filed a claim under the War Claims Act of 1948, as amended by Public Law 87-846 (Claim No. W-13368). In that claim, the Commission found that claimants were the joint owners of household furnishings and personal effects which were lost in Hangchow during World War II as a direct consequence of Japanese military operations of war and granted them awards each in the amount of \$384.75. That file has been associated with this claim for reference.

The Commission appreciates the fact that there may be instances wherein primary evidence in support of a claim may not be available due to its loss or destruction during ensuing years between the taking of claimants' property and the enactment of Title V of the International Claims Settlement Act of 1949, as amended. Also, the Commission notes that due to the political conditions which now exist in Communist China claimants have no access to the primary evidence which is obtainable only in said country. In addition, the Commission takes administrative notice that, in many instances, there was no decree, law or order issued under which the Chinese Communist regime nationalized or otherwise took the property of nationals of the United States. In the absence of said decrees, laws and orders the Commission will examine the specific actions of the Chinese Communist regime which resulted in claimants' loss of their property. Accordingly, when claimants have established a sufficient basis for the unavailability of primary evidence, the Commission may accept and consider secondary evidence.

The evidence of record here does not include any copy of a Chinese Communist decree, law or order and the Commission agrees that such are unobtainable in this case. The record does include the affidavits of Roy S. Lautenschlager, a member of the faculty of Hangchow University and Hsu Iching, a resident of the Hangchow University campus; written

statements from The United Presbyterian Church in the United States of America, claimants' employer; and a list, dated August 14, 1951, comprising the claimed personal property items which had been forwarded to claimants' employer. The Commission deems such submitted evidence as sufficient in this case.

The Commission finds that claimants, while serving as missionaries in China under the auspices of The United Presbyterian Church in the United States of America, were stationed on the campus of Hangchow University, Chekiang, China; that they jointly owned certain personal property consisting of household furnishings and personal effects. The Commission further finds that the said personal property was taken by the Chinese Communist regime on March 5, 1951, the date on which claimant CLARENCE BURTON DAY was forced to evacuate his residence and abandon the personal property therein. Claimant was obligated to use a travel permit granted by the Chinese Communist regime for the express purpose of leaving China and was allowed to take with him only those possessions which he could carry. Claimant ETHELWYN C. DAY had left China in September, 1949.

On August 14, 1951, claimants submitted to The United Presbyterian Church in the United States of America a list of their losses of personal property in China valued at \$2,502.30. The value was predicated upon figures from receipted bills and notebook records. The Commission finds that the personal property had a value in that amount. The record reflects that claimants received the sum of \$1,742.25 from The United Presbyterian Church in the United States of America on account of the same loss which is the subject matter of this claim.

Section 506 of the Act provides as follows:

"In determining the amount of any claim, the Commission shall deduct all amounts the claimant has received from any source on account of the same loss or losses."

In accordance with the foregoing section of the Act, the sum received by claimants must be deducted from the amount of loss sustained by claimants. Accordingly, the Commission finds that claimant CLARENCE BURTON DAY suffered a loss in the amount of \$380.03 and that claimant

ETHELWYN C. DAY suffered a loss in the amount of \$380,02.

The question arises as to whether interest shall be included in losses for the nationalization or other taking of property by the Chinese Communist regime.

In similar claims of nationals of the United States against the Government of Cuba, also decided under Title V of the International Claims Settlement Act of 1949, as amended, the Commission held that, pursuant to international law, interest should be included as a part of the certification and that such interest should be at the rate of 6% per annum from the date of loss to the date on which provision is made for the settlement of such claims. (See Claim of Lisle Corporation, Claim No. CU-0644).

After full consideration of this issue, the Commission affirms its holding and concludes that in claims against the Chinese Communist regime under Title V of the International Claims Settlement Act of 1949, as amended, interest shall be included in the certification of losses.

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from March 5, 1951, the date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that CLARENCE BURTON DAY suffered a loss in the amount of Three Hundred Eighty Dollars and Three Cents (\$380.03) with interest thereon at 6% per annum from March 5, 1951 to the date of settlement, as a result of the actions of the Chinese Communist regime, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, and

The Commission certifies that ETHELWYN C. DAY suffered a loss in the amount of Three Hundred Eighty Dollars and Two Cents (\$380.02) with interest thereon at 6% per annum from March 5, 1951 to the date of settlement, as a result of the actions of the Chinese Communist regime, within the scope of Title V of the International Claims Settlement Act of 1949, as amended.

Dated at Washington, D. C.
and entered as the Proposed
Decision of the Commission

SEP 11 1968

Leonard v. B. Burton
Leonard v. B. Burton, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

Sidney Feinberg
Sidney Feinberg, Commissioner

VERIFICATION
This is a true and correct copy of the decision of the Commission which was entered as the decision on OCT 15 1968

William M. ...
Mark of the Commission

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)

The statute does not provide for the payment of claims against the Chinese Communist regime. Provision is made only for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations.