

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

IN THE MATTER OF THE CLAIM OF

FIRST NATIONAL CITY BANK

Under Title V of the International Claims
Settlement Act of 1949, as amended by
Public Law 89-780

Claim No. CN-0440

Decision No. CN-497

Counsel for claimant:

Shearman & Sterling

AMENDED PROPOSED DECISION

The Commission in its Proposed Decision, dated June 30, 1970, determined among other items, that claimant's real property in Peking, Tientsin, Hankow and Canton was taken on December 31, 1952. Claimant objected to the Commission's determination that for the purposes of this decision one taking date, that is December 31, 1952, was found for all four of the aforementioned properties. Claimant requested that the Commission reconsider this aggregation of claims which deprived it of interest on the value of properties taken prior to December 31, 1952. It also requested the Commission to correct certain misspellings of Chinese names and factual inaccuracies.

The entire record has been reviewed including claimant's objections. The Commission now finds that those properties to which objections were raised were nationalized or otherwise taken by the Chinese Communist regime as follows:

<u>Property Location</u>	<u>Date of Taking</u>
Peiping (Peking)	September 15, 1951
Tientsin	December 26, 1952
Hankow	November 21, 1950
Canton	April 8, 1950

In addition, the language of the Proposed Decision is amended to read as follows:

(1) On page 5 where a reference is made to architects "Kwan, Chu & Yong," this reference should be changed to read Kwan, Chu & Yang.

(2) On page 7 referring to (Item 4) Canton, where it is stated that "In 1948 the branch manager in Shanghai estimated the value of the property at \$164,000.00 and in the same year the same building including warehouse was insured for \$150,000.00 . . ." these two figures should be changed to read \$156,000.00 and \$160,000.00, respectively.

(3)(a) On Page 8, (Item 6) Payment of Liquidation Tax, there is a statement of a special liquidation tax of 5,753,897,400 Jen Min Piao.... This amount should read 5,753,987,400 Jen Min Piao.

(3)(b) There appears a statement that "The Banque de l'Indochine in Hong Kong paid to the People's Bank of China for the account of the claimant \$233,033.43, which sum in turn was paid over to the Shanghai Taxation Bureau. (An unused amount of \$28,034.08 was subsequently returned to claimant.)" This sentence is deleted and the following language replaces said sentence and the parenthetical reference which follows it: "The Banque de l'Indochine in Hong Kong paid to the People's Bank of China for the account of the claimant \$224,708.75, which sum in turn was paid over to the Shanghai Taxation Bureau and which sum, together with a \$67.14 charge for transfer and transmittal expenses and the two payments in 1951 by the Bank which aggregated \$8,257.54, comprise the total payment of \$233,033.43 in satisfaction of the liquidation tax."

Accordingly, it is

ORDERED that the Proposed Decision be amended to reflect the foregoing. The Certification of Loss is restated below.

CERTIFICATION OF LOSS

The Commission certifies that FIRST NATIONAL CITY BANK suffered a loss in the amount of One Million Five Hundred Sixty-Two Thousand One Hundred Forty-Four Dollars and Sixty-Eight Cents (\$1,562,144.68) with interest at 6% per annum on the amount of Two Hundred Sixty-Two Thousand Eight Hundred Fifty Dollars (\$262,850.00) thereof from September 15, 1951; on the amount of Three Hundred Forty-Eight Thousand Two Hundred Forty-Eight Dollars and Seventy-Five Cents (\$348,248.75) from December 26, 1952; on the amount of Three Hundred Ninety Thousand Nine Hundred Dollars (\$390,900.00) from November 21, 1950; on the amount of One Hundred Sixty-Four Thousand Dollars (\$164,000.00) from April 8, 1950; on the amount of One Hundred Sixty-Three Thousand One Hundred Twelve Dollars and Fifty Cents (\$163,112.50) from January 20, 1956; and on the amount of Two Hundred Thirty-Three Thousand Thirty-Three Dollars and Forty-Three Cents (\$233,033.43) from April 9, 1956 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 Amended
Proposed Decision of the
Commission

OCT 28 1970
CERTIFICATION
 This is a true and correct copy of the decision of the Commission which was entered as the final decision on **NOV 1970**

Lyle S. Garlock
 Lyle S. Garlock, Chairman

Theodore Jaffe
 Theodore Jaffe, Commissioner

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.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Amended 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).)

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

IN THE MATTER OF THE CLAIM OF

FIRST NATIONAL CITY BANK

Claim No. CN-0440

Decision No. CN- 497

Under Title V of the International Claims
Settlement Act of 1949, as amended by
Public Law 89-780

Counsel for claimant:

Shearman & Sterling

PROPOSED DECISION

This claim against the Chinese Communist regime under Title V of the International Claims Settlement Act of 1949, as amended, based upon the asserted loss of real and personal property in China, was filed by FIRST NATIONAL CITY BANK in the revised amount of \$1,631,410.92.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), as amended by 80 Stat. 1365 (1966), 22 U.S.C. §§1643-1643k, Supp. II (1967)], 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.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The record shows that on July 17, 1865 the National City Bank of New York was duly organized under the National Bank Act of the United States with its seat in the city of New York, New York. On March 30, 1955, in connection with a merger, the Bank's title was changed to The First National City Bank of New York and on January 19, 1962 the Bank's title was further changed to its present title FIRST NATIONAL CITY BANK.

Carl W. Desch, a Senior Vice President and Cashier of FIRST NATIONAL CITY BANK, in a sworn statement executed July 2, 1969, stated that from 1950 to the present 95% of the capital stock of the Bank outstanding at any one time during that period was owned by persons with addresses in the United States, and that more than 50 per cent of the outstanding capital stock of all classes and of other beneficial interest in the Bank has been owned, directly or indirectly, by shareholders who were United States nationals. Accordingly, the Commission holds that FIRST NATIONAL CITY BANK and its predecessors, The National City Bank of New York and The First National City Bank of New York were nationals of the United States at all times pertinent to this claim within the meaning of Section 502(1)(B) of the Act.

Claimant states that prior to World War II, The National City Bank of New York either directly or through its wholly-owned subsidiary, the International Banking Corporation, was doing a banking business in China. The National City Bank of New York was the owner of five properties in the cities of Peking, Tientsin, Hankow, Canton, and Shanghai. After 1946 it maintained a branch office in Shanghai. All properties consisted of improved real property constructed for business and residential purposes and the buildings contained appropriate furniture, fixtures, and equipment.

Claimant further states that at no time has the Bank received an official notification that the properties have been nationalized or that title was transferred to the Chinese Communist regime. However, the Bank has been deprived of the use and enjoyment of its properties by reason of the seizure of such properties by local authorities and by the enforced liquidation of its business affairs. These actions of the local authorities started in April 1950 in Canton and were completed on January 20, 1956 in Shanghai by the final liquidation of the Bank's branch office in that city.

The Commission appreciates the fact that there may be instances wherein primary evidence in support of a claim may not be obtainable due to its loss or destruction during ensuing years between the taking of claimant's 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 such evidence may not be available. 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 property of American individuals or corporations. In the absence of said decrees, laws and orders, the Commission will examine the specific actions of the Chinese Communist regime which resulted in claimant's loss of its property. Accordingly, when claimant

has 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 concerning the nationalization or taking of claimant's property, but the circumstances surrounding this claim and the correspondence furnished by the claimant with its branch manager in Shanghai during the years 1950 through 1956 indicates that the local Chinese authorities forced claimant's branch office in Shanghai into liquidation as early as 1950; that local military authorities deprived claimant of the enjoyment, use and possession of the real property in the cities of Peking, Tientsin, Hankow, and Canton at various dates during the years 1950 through 1952; and that the forced liquidation of the Shanghai branch office was completed on January 20, 1956, when title to the real property in Shanghai was transferred to the Financial Affairs Control Bureau of Shanghai, pursuant to the plan for the final liquidation of the Bank's affairs in China. The Commission, therefore, holds that for the purposes of this decision, claimant's real property in Peking, Tientsin, Hankow and Canton was taken on December 31, 1952, and the real property in Shanghai on January 20, 1956, by the Chinese Communist regime.

Claimant states that it suffered the following losses:

(1) Real and personal property in Peking	\$ 262,850.00
(2) " " " " " Tientsin	348,248.75
(3) " " " " " Hankow	390,900.00
(4) " " " " " Canton	164,000.00
(5) " " " " " Shanghai	163,112.50
(6) Payment of enforced liquidation tax, including transmittal expenses (\$67.14)	233,033.43
(7) Payment of salary to bank manager in Shanghai (May 1950 - March 1956)	47,854.14
(8) Payment of expenses incurred in shipment of bank records to Shanghai	1,282.23
(9) Payment of rent for Shanghai branch office during liquidation	12,615.79
(10) Payment for termination of employment of branch staff employees	<u>\$ 7,514.08</u>
Total	<u>\$1,631,410.92</u>

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

(1) Peking

The National City Bank of New York was the owner of two adjacent lots situated on Legation Street in Peking, improved with a three-storied edifice of reinforced concrete. The building was designed for use as banking premises and for staff living quarters.

The original cost of the land and improvements in the years 1920 and 1928, respectively, was \$112,174.76. During and after World War II, the values of land and improvements in Chinese cities of the size of Peking increased very rapidly. In April 1946 Kwan, Chu & Yong, independent architects, appraised the value of the property at \$265,000.00. In 1948 claimant insured the building with the Westchester Fire Insurance Company of New York for \$227,700.00, an adjoining garage and servants' quarters for \$12,000.00, and furniture and fixtures in the buildings at \$36,000.00. In the claim the personal property is evaluated at \$2,596.67 as of the year 1950.

Based upon the record, the Commission finds that, at the time of taking, the land, improvements and personal property in Peking had a value, as asserted by the claimant of \$262,850.00

(2) Tientsin

The National City Bank of New York was the owner of a lot situated at No. 96 Chung Cheng Road (formerly 60 Victoria Road, also known as 96 Liberation Road North), improved with three adjacent buildings: a main building of three stories constructed of brick, concrete and stone, and designed for use as banking offices and for staff residences; an adjoining single-story building constructed of brick and designed for office use; and a two-story building constructed of brick and designed as a garage and servants' quarters.

The original cost of the land and improvements in the years 1918 and 1921, respectively, was \$125,596.50 but the property value increased rapidly during and after World War II. On April 14, 1948 the Tientsin Land Investment Company, Limited, appraised the property at \$300,995.00. In 1948 claimant insured the building with the Westchester Fire Insurance Company of New York for \$285,000.00, the garage for \$15,000.00, and the furniture and fixtures in the building for \$83,500.00. In the claim, the personal property was evaluated at \$8,796.36 as of the year 1951.

Based upon the record, the Commission finds that, at the time of taking, the land, improvements and personal property in Tientsin had a value, as stated by the claimant, of \$348,248.75.

(3) Hankow

The National City Bank of New York was the owner of land situated on Main Street and the corner of Wah Cheong Road, consisting of six (6) lots improved with a six-story building constructed of reinforced concrete, brick and granite, and designed for use as a banking office and for staff accommodations. The property was further improved with a water tank and motor pumps.

The original cost of the land and improvements in the years 1921 and 1931 was \$211,612.52, but in 1948 claimant's branch manager in Shanghai estimated the value of the property at \$378,300.00. In 1948,

the property (building and garage) was insured for \$403,500.00 with the Westchester Fire Insurance Company of New York.

Based upon the record, the Commission finds that, at the time of taking, claimant's land and improvements in Hankow had a value, as stated by the claimant, of \$390,900.00.

(4) Canton

The National City Bank of New York was the owner of land situated at 42 Fook Hing Road in the Shahmeen section of Canton, consisting of a building lot improved with a three-story office building designed for banking, warehousing, and residential purposes.

The original cost of the land and improvements in 1924 and 1931 was \$131,959.37. In 1948 the branch manager in Shanghai estimated the value of the property at \$164,000.00 and in the same year the building including warehouse was insured for \$150,000.00 and the furniture and fixtures reportedly for \$12,000.00 with the Westchester Fire Insurance Company of New York.

Based upon the record, the Commission finds that, at the time of taking, claimant's land and improvements in Canton had a value, as stated by the claimant, of \$164,000.00.

(5) Shanghai

The National City Bank of New York was the owner of land located at No. 1899 Huai Hai Lu, Shanghai, improved with a main building of two stories used as the residence of the branch manager of claimant's local bank offices, of a two-story building used for servants' quarters, six one-story bungalows constructed of brick, used for the accommodation of staff members, and of a greenhouse.

The original cost of the land purchased in 1923 and of the improvements was \$39,737.50. The branch manager estimated the sales value of the property in 1948 to be \$181,950.00; but claimant states this was due to abnormal economic circumstances then prevailing in Shanghai and in

1948 claimant insured the buildings with the Westchester Fire Insurance Company of New York for \$90,000.00 plus \$50,000 for furniture and furnishings. In this claim, claimant evaluates the property including furniture and furnishings in the amount of \$163,112.52.

Based upon the record, the Commission finds that, at the time of taking, the value of the property in Shanghai including land, buildings, furniture and furnishings, etc. was \$163,112.50.

(6) Payment of Liquidation Tax

Claimant states that in 1951 the local Chinese authorities imposed on the branch office a special liquidation tax of 5,753,897,400 Jen Min Piao, payable by September 26, 1951, else a 1% fine would accrue for each late day in paying the tax. The bank made a payment of JMP 88,850,000 on November 8, 1951 and of JMP 100,000,000 on December 26, 1951. During the next four years, no further payments of this tax were made and the branch manager tried to negotiate this matter with the local fiscal authorities. During all this time, the branch manager was not permitted to leave China and the liquidation of the bank in Shanghai was delayed. Finally, in 1956 claimant decided to pay \$250,000 for the unpaid balance of the liquidation tax, including fines, and \$12,500 in payment of other obligations which had arisen in connection with the liquidation of the branch office. The record shows that claimant was granted a license by the Treasury Department on January 13, 1956 under License No. B-32883 and that an amount of \$262,500 was paid to the French American Banking Corporation, New York for transmittal to the Banque de l'Indochine, Hong Kong. The Banque de l'Indochine in Hong Kong paid to the People's Bank of China for the account of the claimant \$233,033.43, which sum in turn was paid over to the Shanghai Taxation Bureau. (An unused amount of \$28,034.08 was subsequently returned to claimant.) After the transfer was made, the Chinese authorities granted an exit visa to claimant's manager in Shanghai who then was permitted to leave China and who arrived in Hong Kong in April 1956. On April 9, 1956

the Shanghai Taxation Bureau issued a receipt for a deposit of JMP 563,949.86 (new currency) in satisfaction of the liquidation tax. Thus, claimant paid \$233,033.43 (including \$67.14 for transmittal expense) as the U. S. dollar equivalent for the aforesaid tax.

The circumstances surrounding this transfer of funds from the United States clearly indicate that this transaction was made under duress and that the demand and threat constituted a violation of the accepted principles of international law. It is concluded, therefore, that this transaction gave rise to a taking of American-owned property by the Chinese Communist regime within the meaning of Title V of the Act. (See Claim of Sondovitch Bros., Inc., in Liquidation, Claim No. CN-0515, Decision No. CN-451, where a similar issue was determined.)

- (7) Payment of Salary to Bank Manager
- (8) Payment of Expenses for Shipment of Records
- (9) Payment of Rent for Branch Office
- (10) Payment for Termination of Employment

Claimant seeks compensation for the salary paid to Fred Harnden, branch manager in China, from May 1950 to March 1956, in the amount of \$47,854.14 because he was forced to remain in Shanghai until the aforementioned liquidation tax had been deposited with the Shanghai authorities.

Claimant further seeks compensation for packing and shipping expenses for the shipment in early 1956 of its records from Peking to Shanghai which amounted to \$1,282.23. This shipment was ordered by the Chinese authorities in Peking obviously for the reason that they needed space in the premises of claimant's former building in Peking where the records had been stored.

Claimant seeks compensation for the payment of rent for the period of time from 1950 to 1955 when the Bank in Shanghai was in liquidation. Claimant states that had it not been for the unjustified and confiscatory imposition of the liquidation tax, there would have been no requirement for the extension of the lease for the Bank's branch office and thus the rent was an additional penalty imposed on the claimant.

Claimant finally states that under local law, the branch office in Shanghai was forced to discharge its employees inasmuch as it no longer needed their services. But, according to labor regulations introduced by the local authorities, claimant was obliged to make severance payments to all such employees in the aggregate amount of \$7,514.08, an expense directly attributable to the illegal measures of the Chinese Communist regime which forced the Bank to liquidate its affairs.

The Commission has given careful consideration to the above-mentioned four items of the claim. As stated above, the forced liquidation of the claimant's branch office in Shanghai was tantamount to the nationalization or taking of that branch within the meaning of Section 503(a) of the Act. The imposition of the liquidation tax was a special measure directed against claimant's property and amounted, in fact, to a confiscation of claimant's funds. Losses resulting from these actions are clearly compensable under Section 503(a) of the Act. The payments, however, made to claimant's local manager and employees, the rentals paid for the premises and the expenses incurred for the shipment of records fall into a different category of losses. Such payments and expenses are also normally a result of a voluntary liquidation of a business. Claimant's branch office in Shanghai was subjected to a long and protracted liquidation but the payment of salaries, rents, and shipping charges can not be attributed directly to actions of the Chinese Communist regime. Had the claimant voluntarily liquidated its branch office in Shanghai, it would also have paid severance pay to dismissed native employees; and it would also have paid rent for the leased premises, and shipping charges for the transfer of the Bank's records. Inasmuch as the payment of all these expenses took place prior to the date of final liquidation (January 20, 1956), the Commission holds that these expenses for salaries, rents and shipping charges are not proper items for the certification of losses within the scope of Section 503(a) of the Act;

and these portions of the claim for the salary of the bank manager, payment of rents, terminal salaries to employees, and for the expense incurred for the shipment of records are hereby denied. (See Claim of Cuban Electric Company, Claim No. CU-2578, Decision No. CU-4122, also decided under the provisions of Title V of the Act.)

Summarizing, claimant has suffered the following losses, certifiable under Title V of the Act:

(1) Real and personal property in Peking	\$ 262,850.00
(2) Real and personal property in Tientsin	348,248.75
(3) Real and personal property in Hankow	390,900.00
(4) Real and personal property in Canton	164,000.00
(5) Real and personal property in Shanghai	163,112.50
(6) Payment of enforced liquidation tax, including transmittal expenses (\$67.14)	<u>\$ 233,033.43</u>
Total	<u>\$1,562,144.68</u>

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Clarence Burton Day and Ethelwyn C. Day, Claim No. CN-0030, Decision No. CN-1); and in the instant claim it is so ordered.

CERTIFICATION OF LOSS

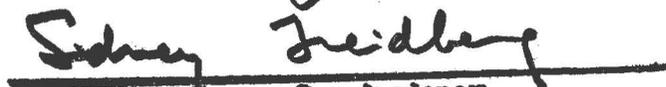
The Commission certifies that FIRST NATIONAL CITY BANK suffered a loss in the amount of One Million Five Hundred Sixty-two Thousand One Hundred Forty-four Dollars and Sixty-eight Cents (\$1,562,144.68) with interest at 6% per annum on the amount of \$1,165,998.75 thereof from December 31, 1952; on the amount of \$163,112.50 from January 20, 1956; and on the amount of \$233,033.43 thereof from April 9, 1956 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

JUN 30 1970


Louis S. Garlock, Chairman


Theodore Jaffe, Commissioner


Sidney Freidberg, Commissioner

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.

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