

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

IN THE MATTER OF THE CLAIM OF

ROBERT J. BURNS

Claim No. V-0001  
V-0002

Decision No. V-0440

Counsel for Claimant:

Paul Sowa, Esquire

PROPOSED DECISION

These claims in the total amount of \$297,637.18 against the Government of the Socialist Republic of Vietnam under Title VII of the International Claims Settlement Act of 1949, as amended by Public Law 96-606 (94 Stat. 3534), are based upon the loss of two savings deposits in The Chartered Bank in Saigon, \$30,000 in fees assertedly owed by the former government of South Vietnam, and \$218,000 in cash assertedly contained in a safe at Ton Son Nhut Air Base near Saigon.

Claimant acquired United States nationality by birth.

Under section 703 of Title VII of the International Claims Settlement Act of 1949, as amended, the Commission is given the following jurisdiction:

"The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of claims by nationals of the United States against Vietnam arising on or after April 29, 1975, for losses incurred as a result of the nationalization, expropriation, or other taking of (or special measures directed against) property which, at the time of such nationalization, expropriation, or other taking, was owned wholly or partially, directly or indirectly, by nationals of the United States to whom no restoration or adequate compensation for such property has been made."

The first portion of this claim is based on the loss of savings deposits at The Chartered Bank in Saigon. Claimant has submitted a copy of a letter dated December 28, 1976, bearing the letterhead of the bank, which states that as of the time of the communist takeover of South Vietnam he owned two deposits in the

bank containing a total balance of 37,476,070 piasters. At the exchange ratio prevailing at the end of April 1975, this was equivalent to \$49,637.18.

The Commission has determined that bank deposits in South Vietnam which were in existence at the time of the communist takeover were nationalized, expropriated or otherwise taken, within the meaning of the present Act, as of May 1, 1975. See Claim of THE PEARL S. BUCK FOUNDATION, INC., Claim No. V-0261, Decision No. V-0439 (1985).

Therefore, based on the evidence in the record, the Commission finds that claimant ROBERT J. BURNS owned bank deposits having a value of \$49,637.18 which were nationalized or otherwise taken by Vietnam as of May 1, 1975. For the loss of the deposits, claimant is accordingly entitled to a principal award in this amount, dating from May 1, 1975.

The second portion of these claims is based on fees said to have been owed by the former Government of South Vietnam to claimant's former business firm, "International Development & Exploration, Inc." ("INDEX"), in connection with food services provided under contract for personnel of the "International Commission for Control and Supervision" over a period of three months prior to the communist takeover. Claimant has variously asserted that the amounts owed totalled \$30,000, \$60,000, or \$122,749.08. As supporting evidence, he has submitted copies of two invoices dated October 29, 1975, whereby he attempted to collect portions of the fees from the communist regime in South Vietnam through the offices of the U.S. Department of State, as well as a copy of a letter from the former ICCS Liaison Officer at the U.S. Embassy in Saigon confirming that claimant's firm had held the food service contract in question. However, the only support submitted for the figures asserted consists of claimant's statement that \$30,000 represented an unrecovered deposit he had

made with the ICCS as a performance guarantee, and that he further "estimates that a \$30,000 amount is due" for "other services for the Delegations served under the contract."

The Commission is aware that the ICCS was an international body set up under the provisions of the "Agreement Ending the War and Restoring Peace in Viet-Nam" of January 27, 1973, the parties to which were the United States, the Republic of (South) Vietnam, the Democratic Republic of (North) Vietnam, and the Provisional Revolutionary Government (PRG) of South Vietnam, and was composed of military officers and other personnel assigned by the governments of Hungary, Poland, Indonesia and Iran, among others. Further, a reading of the pertinent protocol to the agreement shows that the expenses of the ICCS were to be borne to the extent of 23% each by the North and South Vietnamese governments, the PRG, and the United States, and according to the legislative history of Public Law 96-606, the "Vietnamese share" of the unpaid debts of the ICCS is to be deemed included within the definition of "property" set forth in the claims statute.

Therefore, having considering the evidence and information submitted, the Commission finds it reasonably established that, at minimum, claimant sustained a compensable loss with respect to 69% of his firm's \$30,000 contract guarantee deposit with ICCS. Accordingly, claimant is entitled to a further principal award of \$20,700 for that loss, dating from May 1, 1975.

The third portion of this claim involves the asserted loss of \$218,000 in cash at the Ton Son Nhut Air Base, near Saigon. Claimant asserts that he had left this cash in a safe at the ICCS messing facility at the air base prior to the communist takeover. However, he has submitted no supporting evidence to substantiate his assertion as to the value of the cash involved. Nor does the record contain supporting evidence or explanation as to why claimant would have had such a large quantity of cash in his

possession--particularly in view of the fact that according to other evidence in the record the ICCS was chronically short of funds, causing him to be in arrears in his payments to the U.S. government commissary for food supplies.

Subsection 531.6(d) of the Commission's regulations provides:

"The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim."

The Commission must conclude that claimant has not met the burden of proof as to the issues of value and loss of the property involved in this portion of his claim. Accordingly, this portion of the claim must be and is hereby denied.

The Commission has concluded that awards granted under Public Law 96-606 shall include interest at the rate of 6% simple interest per annum from the date of loss to the date of settlement.

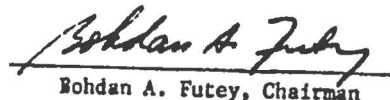
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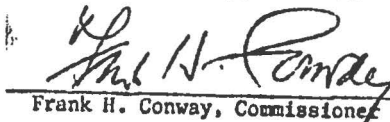
Claimant ROBERT J. BURNS is therefore entitled to an award in the total principal amount of Seventy Thousand Three Hundred Thirty-Seven Dollars and Eighteen Cents (\$70,337.18), plus interest at the rate of 6% simple interest per annum from May 1, 1975, to the date of settlement.

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

AUG 22 1985

This is a true and correct copy of the decision  
of the Commission which was entered as the final  
decision.

  
Bohdan A. Futey, Chairman

  
Frank H. Conway, Commissioner

  
Joseph W. Brown, Commissioner

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.)