

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

IN THE MATTER OF THE CLAIM OF

JAMES F. ROBNETT

Claim No. V-0201

Decision No. V-0401

Counsel for Claimant: Charles R. Stubblefield, Esquire

PROPOSED DECISION

This claim in the amount of \$395,500.00 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), is based upon the loss of an airplane, various spare airplane parts, radio equipment and instruments, two helicopters, various articles of household property, and payments for the leasing of the airplane and two helicopters.

Claimant acquired United States nationality by birth in Tennessee on April 23, 1923.

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 property involved in this claim is described as a Beechcraft D-18S airplane, various spare airplane parts, instruments, and radio equipment, two UH-1 helicopters, and various articles of household property. In addition, claim is made for payments in the amount of \$20,000 said to have been owed for the leasing of the airplane and helicopters. At the time of filing,

claimant stated that the airplane and helicopters, spare parts, and household property items were all located in Phnom Penh, Cambodia, and the lease payments were owed by two Cambodian airline companies, and further stated that the loss of the aircraft and other property and the lease payments took place on or after April 13, 1975, when he was "ordered to evacuate by the U.S. Embassy due to the advancement of the North Vietnamese and Cambodians."

In a letter from the Commission staff dated August 10, 1984, claimant was advised that his claim did not appear eligible for favorable consideration under Public Law 96-606, since he had stated that the losses involved in his claim all took place within the territory of Cambodia and he had submitted nothing to show that the losses were the result of a "nationalization, expropriation or other taking" by the successor Communist regime in South Vietnam, as opposed to being the result of actions by the Communist regime which took power in Cambodia on April 17, 1975. Accordingly, he was advised that unless a taking by the Vietnamese Communist regime was established, the Commission would have no alternative but to deny his claim.

In response to the staff's letter, claimant has since submitted, through counsel, an affidavit dated November 21, 1984, regarding the loss of his airplane, helicopters and other property. In addition, he has submitted a "Report of Title Search" relating to his ownership of the Beechcraft airplane, a copy of a handwritten affidavit which he executed before the United States consul in Tehran, Iran, on July 16, 1975, regarding his property losses, and photocopies of certain other documents.

In these new submissions claimant asserts that his airplane in fact was lost not in Cambodia but in a locale in South Vietnam called Sray Venth, which was taken over by the Viet Cong "the latter part of March, 1975;" that on April 10, 1975, he took his wife and daughter from Saigon to Bangkok because of the worsening political situation in South Vietnam; and that "during

the time [he] lived in Saigon, Vietnam, [his] address was 285/1 Nguyen Minhchieu, his South Vietnam." As for the two helicopters, he refers to his 1975 affidavit in which he indicated that they were located at 47 Chau Bantiet in Cholon, South Vietnam.

In considering these new submissions, the Commission first notes that elsewhere in claimant's 1984 affidavit he indicates that this last cited address was merely that of the office of a Mr. Qong in Saigon who had arranged for him to make certain flights in the Beechcraft airplane between Saigon and Phnom Penh. Furthermore, the Commission's maps of Vietnam fail to show any town or village by the name of Sray Venth as being located in the country. A town by the name of Svay Rieng is shown, but it is located in Cambodia. In addition, the title search document which claimant has submitted includes the statement that a "cover letter to FAA [the Federal Aviation Administration] executed 5-10-75 . . . states in part that . . . an Aircraft operator in Thailand is alleging Mr. Robinett is going to sell him the Aircraft in order to get it out of Cambodia," and that in an "attached note Mr. Robinett covenants and promises not to . . . remove the aircraft from Cambodia without . . . permission." Moreover, nothing in these newly-submitted materials directly shows that any of the other property at issue herein was in fact located in South Vietnam rather than in Cambodia, as stated at the time of filing.

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 concludes that the burden of proof has not been met in this claim. Although claimant has submitted evidence tending to show his ownership of some of the property for which he has claimed, the conflicting and contradictory documentation and statements he has submitted are entirely insufficient to

establish a loss of any of the property through nationalization, expropriation or other taking by the Communist regime in South Vietnam which took power on or about April 29, 1975. Under the terms of the present Act, his claim for the property therefore may not be favorably considered.

Accordingly, the Commission determines that this claim must be and it is hereby denied.

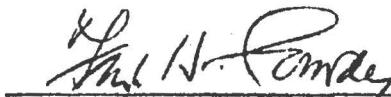
The Commission finds it unnecessary to make determinations with respect to other elements of this claim.

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

JUN 26 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.)