

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

IN THE MATTER OF THE CLAIM OF

BANK OF AMERICA NT&SA

Claim No. V-0208

Decision No. V-0388

Counsel for Claimant: Daniel Farthing, Esquire

PROPOSED DECISION

This claim in the amount of \$3,539,813 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 the assets of the Saigon branch of claimant.

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."

Section 706 of the Act reads as follows:

"In determining the amount of any claim under this Title, the Commission shall deduct all amounts the claimant has received from any source on account of the same loss or losses for which the claim is filed."

Claimant initially submitted a copy of a balance sheet for the Saigon branch of the Bank of America reflecting a net worth in the amount of \$593,200. After filing the claim, the claimant, on December 29, 1983, entered an Agreement of Settlement with the Overseas Private Investment Corporation (OPIC) pursuant to a

guarantee agreement between OPIC and claimant. Pursuant to the agreement OPIC agreed to indemnify claimant for all amounts by which "(i) the sum of the Net Worth, Payments and Costs exceeds (ii) the sum of recoveries; providing, however, that OPIC's liability hereunder shall not exceed and shall be limited to \$6,000,000." Pursuant to section VII of the agreement, claimant agreed to assign and transfer to OPIC any part of the claim for which indemnity had been granted. The total liability for payment which may be required of claimant due to the former operation of their Saigon branch is not yet known. The Agreement of Settlement indemnifies claimant for all losses which have been asserted by claimant in the above claim.¹

Claimant therefore has been indemnified for the total claim which it has made before the Commission, and by operation of law, OPIC has become subrogated to claimant's claim.

A claim by OPIC is not eligible for consideration and validation by the Commission, but rather will become a claim of the United States of America to be separately asserted against the Government of Vietnam. This was specifically set forth in the legislative history of Public Law 96-606 by way of report of the Committee on Foreign Affairs of the House of Representatives which stated:

"Any portion of the loss which is insured or guaranteed by the Overseas Private Investment Corporation is ineligible for consideration and validation by the Commission. Such losses become subrogated to the U.S. government after payment, and are, therefore, no longer private losses."

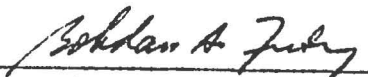
¹ 1. Expressly excluded from the agreement were losses from travelers checks, which losses are the subject of Claim V-0207.

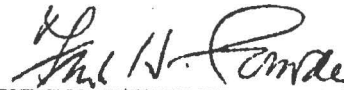
For the above reason claimant's claim before the Commission must be and it is hereby is denied.

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.)