

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

IN THE MATTER OF THE CLAIM OF

METRO-GOLDWYN-MAYER/UNITED
ARTIST ENTERTAINMENT COMPANY

Claim No. V-0333

Decision No. V-0420

Hearing on the Record held on **JAN 22 1986**

Counsel for Claimant:

Maria C. Angeletti, Esquire

FINAL DECISION

This claim in the amount of \$96,918.00 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 certain assets of Metro-Goldwyn-Mayer.

By Proposed Decision issued June 26, 1985, the Commission made an award to claimant in the principal amount of \$42,032 for the loss of certain film prints and for an advance rental payment, however, the Commission denied that part of claimant's claim for the loss of bank accounts on the ground that claimant had not established what, if any, bank accounts existed or the amounts thereof at the time of the fall of South Vietnam.

Claimant objected on the record to that part of the decision which denied claimant's claim for the loss of bank accounts. In support of this objection, claimant has submitted substantial documentation, including evidence obtained from a review of the records of the Hong Kong and Shanghai Banking Corporation in Hong Kong which establishes to the Commission's satisfaction that at the time of the fall of South Vietnam, claimant had bank accounts in the total amount of 23,727,554 piasters.

In the matter of the Claim of THE PEARL S. BUCK FOUNDATION, Claim No. V-0261, Decision No. V-0439, the Commission held that bank accounts existing in Vietnam as of May 1, 1975 would be considered as having been taken by or on behalf of the Socialist Republic of Vietnam as of that date and that in determining the dollar valuation of such accounts, the last exchange rate in effect in Vietnam of 755 piasters to the dollar would be used. The Commission, therefore, finds that claimant suffered an additional loss in the principal amount of \$31,427.22.

Claimant argues that as to the loss of the bank accounts, although not to other property losses, claimant should be awarded compound interest computed at the existing United States prime rate from the date of loss until a claims settlement is reached.

In awarding simple interest, the Commission has followed the generally accepted rule of international law. As set forth by Whiteman, "There are few rules within the scope of the subject of damages in international law that are better settled than the one that compound interest is not allowable." III Whiteman, Damages in International Law, 1997.

In determining the rate of interest, the Commission finds no acceptable rationale for distinguishing among awards based upon the type of property which may have been taken. It is a matter of speculation what may have happened to assets if they had not been taken by a foreign government. Bank accounts may have been used to purchase real property or, conversely, real property may have been sold and the proceeds placed into bank accounts. Therefore, the Commission finds no basis to use a different rate of interest for the loss of claimant's bank accounts than was used for the award based upon the loss of other assets.

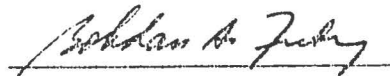
For the above reasons, the Commission withdraws its previous award and makes the following award to claimant as its final determination of this claim.

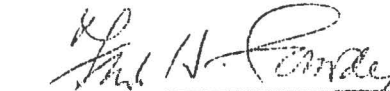
A W A R D

Claimant METRO-GOLDWYN-MAYER/UNITED ARTIST ENTERTAINMENT COMPANY is entitled to an award in the principal amount of Seventy-Three Thousand Four Hundred Fifty-Nine Dollars and Twenty-Two Cents (\$73,459.22), 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 Final
Decision of the Commission.

JAN 22 1986


Bohdan A. Futey, Chairman


Frank H. Conway, Commissioner


Joseph W. Brown, Commissioner

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

IN THE MATTER OF THE CLAIM OF

METRO-GOLDWYN-MAYER/UNITED
ARTIST ENTERTAINMENT COMPANY

Claim No. V-0333

Decision No. V-0420

PROPOSED DECISION

This claim in the amount of \$96,918.00 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 certain assets of Metro-Goldwyn-Mayer.

At the time of loss Metro-Goldwyn-Mayer, Vietnam was a wholly owned subsidiary of METRO-GOLDWYN-MAYER, Inc., a Delaware Corporation incorporated in 1919, over 50% of the stock of which was at all relevant times held by nationals of the United States. On February 29, 1980 METRO-GOLDWYN-MAYER, Inc spun-off METRO-GOLDWYN-MAYER Film Company, a Delaware Corporation, which had among its assets the claim for losses by Metro-Goldwyn-Mayer, Vietnam. METRO-GOLDWYN-MAYER Film Company, subsequent to its acquisition of United Artist Corporation, changed its name to MGM/UA Entertainment Company, more than 50% of whose stock has at all relevant times been held by United States nationals.

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... ."

Claimant asserts claim for the loss of some 37 prints of feature motion pictures which were located in Vietnam at the time of the fall of the government in South Vietnam in 1975. These were under control of Metro-Goldwyn-Mayer, Vietnam. In addition claim is asserted for the loss of an account which was being held by Metro-Goldwyn-Mayer, Vietnam on April 29, 1975 as well as for certain advance payments which had been made.

In support of the claim claimant has submitted copies of extensive correspondence between the manager of Metro-Goldwyn-Mayer Vietnam and its parent company, METRO-GOLDWYN-MAYER, Inc. After carefully reviewing this material the Commission finds that claimant has established that 37 prints of commercial motion pictures had been forwarded to Vietnam and were there present as of April 29, 1975. Although no evidence has been submitted to show precisely what happened at the time of fall of Saigon, the Commission will presume that the prints of these films were taken by the Government of the Socialist Republic of Vietnam on May 1, 1975. (See Claim of BETTY JANET MITCHELL, Claim No. V-0358, Decision No. V-0259 (1948).)

Claimant asserts that the value of these films and accompanying "trailers" was in the amount of \$82,012.00. A copy of an internal memorandum dated March 3, 1982 sets forth the basis for arriving at this value. The memorandum states that it utilized the present print cost. The Commission interprets this as meaning the 1982 costs to produce a new copy of each of these films.

It is the Commission's understanding, based partially on its own knowledge and from information contained in the copies of correspondence forwarded by claimant, that one or more original or master copies of a commercial film are maintained by a company such as MGM in the United States. From these, copies are made which are then distributed and are used for showing in movie

theaters. The issue presented to the Commission is the value of those prints which were lost in Vietnam as of 1975. The cost of reproducing such a print in 1975 is relevant to valuation of the prints which were lost. The Commission concludes, however, that absent evidence to the contrary, it must be assumed that the cost in the United States of reproducing a copy of a film in 1975 would have been less than the cost in 1982. The Commission further concludes that although the cost of replacing a print in 1975 is relevant evidence, consideration must be given to the age and condition of the actual copy of the film as of 1975 in determining a value for that film.

Considering the films for which claim is made, 15 of the 37 films had been imported into Vietnam on or after January 9, 1973. An inventory dated August 19, 1974, includes 13 of those 15 films, and lists five of them as being in good condition, four of them as being in fair condition, two of them as having "weak sprockets" and one of them as being in poor condition. The two additional films presumably were shipped in 1975 and the Commission assumes were in good condition. The replacement cost for copies of these films and accompanying trailers, as of 1982 totalled \$34,302. Taking into consideration the lower replacement cost as of 1975, and further taking into consideration the condition of these films as of 1974, the Commission concludes that these 15 films had a value in 1975 of \$24,000.

The remaining films and trailers had been imported into Vietnam in a period from 1964 thru 1972. Inventory of these films prepared in August 1974 listed five of them as being in poor condition, 11 of them as having "weak sprockets" and six of them as being in fair condition. The 1982 replacement cost for these films as asserted by claimant totals \$47,410. Taking into consideration the lower replacement cost in 1975, and the age and condition of the various films which were imported before 1973

the Commission finds that these films had a value of \$18,000.00. Claimant therefore is entitled to an award in the principal sum of \$42,000.00 for the loss of its films in Vietnam.

Claimant has submitted a copy of the lease agreement for its premises for the period commencing January 1, 1975 and ending June 30, 1975. Advance rental for this period in the amount of VN\$72,000.00 had been paid. The Commission finds that such a lease constitutes an interest in property which was taken as of May 1, 1975. The remaining two months of this lease had a value of VN\$24,000 or the equivalent \$32 and claimant is entitled to an award in that principal amount.

The remaining part of claimant's claim is based on the assertion that the Hong Kong and Shanghai Banking Corporation transferred VN\$10,410,000.00 from claimant's Vietnam account no. 1 to its Vietnam account no. 2, of which VN\$10,275,000.00 was for prepayment of a portion of taxes for the fiscal year 1974/75 and the remaining VN \$135,000 was to be used for both the next installment of the rental charge as well as for certain overhead and maintenance charges for the office. The assertion is made that all of these funds are confiscated by the new government of Vietnam.

The record in support of this part of claimant's claim is vague. Copies of correspondence make reference to such a transfer, however, it is not clear whether an actual bank account was created or a line of credit established, and if the latter whether the Vietnamese government was entitled to or did draw against such credit. On March 3, 1975 some VN \$2,600,000 was transferred to the Government of Vietnam as income tax for the second quarter of fiscal year of 1974/1975. According to the copies of correspondence submitted by claimant, the fiscal year ran from September 1, through August 31, and the second quarter of the fiscal would have been for the months of December, January and February. Even if the payment were for a later quarter this payment was made to the former Government of Vietnam and the

Commission does not consider that such payment would constitute property nationalized by the subsequent Government of Vietnam. Furthermore, the balance of this account or line of credit as of April 29, 1975 is not established, although it is indicated that the account was also to be used for the payment of other expenses of operating the office.

On this state of the record, the Commission finds the evidence insufficient to establish a compensable loss of this part of claimant's claim.

Claimant is therefore entitled to an award in the principal sum of \$42,032.

The Commission has concluded that in granting awards on claims under Section 703 of Title VII of the act, for the nationalization, expropriation, or other taking of property, interest shall be allowed at the rate of 6% simple interest per annum from the date of loss to the date of settlement. (See Claim of BETTY JANET MITCHELL, Claim No. V-0358, Decision No. V-0259 (1984).)

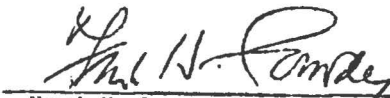
AWARD

Claimant METRO-GOLDWYN-MAYER, Inc. is entitled to an award in the principal amount of Sixty Thousand Thirty-Two Dollars (\$42,032.00), 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.

JUN 26 1985


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.)