

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

IN THE MATTER OF THE CLAIM OF

B.A. CHEQUE CORPORATION

Claim No. V-0207

Decision No. V-0444

Hearing on the Record held on JAN 22 1986

Counsel for Claimant:

James M. Brundy, Esquire

FINAL DECISION

This claim in the amended asserted amount of \$396,870.00 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 an asserted loss through the negotiation of travelers checks.

By Proposed Decision dated August 22, 1985, the Commission denied this claim on the ground that claimant had not submitted evidence to establish that it qualified as a national of the United States as that term is defined in Public Law 96-606. By letter dated September 12, 1985, claimant objected on the record to the Proposed Decision. On December 11, 1985, claimant submitted additional evidence in support of the objection, and the Commission has reviewed the entire record.

Claimant has submitted evidence that it is wholly owned subsidiary of BankAmerica Corporation and that both claimant and BankAmerica Corporation were incorporated in the State of Delaware. Claimant has submitted evidence that at all relevant times 99% of the outstanding stock of BankAmerica Corporation was owned by residents of the United States. Claimant has submitted further evidence as to withholdings from dividend payments required in the case of non-resident aliens indicating that only approximately 1% of stock was held by non-resident

aliens. The Commission concludes that the evidence submitted is sufficient to presume that natural persons who were citizens of the United States owned directly or indirectly 50 per centum or more of the outstanding capital stock or other beneficial interest of said corporation so that the claimant qualifies as a national of the United States as that term is used in Public Law 96-606.

In turning to the merits of this claim, the Commission notes at the outset that although claimant has the burden of proving the validity and amount of its claim, and although claimant filed its claim in July of 1982, it was not until December 11, 1985, that the Commission received any substantive evidence in support of claimant's assertions, and then only following a series of telephone calls and correspondence from the Commission's General Counsel commencing in May of 1985. In claimant's latest submission, claimant asserts that there is other evidence in support of their claim which it will provide "if the Commission allows its claim" and a request is made that the Commission permit claimant to submit additional evidence which the Commission may deem necessary to substantiate its claim. The claimant has had 3 1/2 years since filing its claim to submit evidence in support thereof. Claimant's suggestion made in the waning hours of this program that there is other evidence contained in claimant's own records which it might be willing to submit in support of its claim, if requested, appears to the Commission to be totally unjustified. The Commission will reach a final determination of this claim based upon the record presently before it.

Claimant has submitted evidence in the form of summaries of their records which the Commission believes is sufficient to establish that at the time of the fall of South Vietnam, travelers checks issued by claimant in an unknown amount remained in Vietnam. Of these, travelers checks in the amount of \$398,000 were in claimant's branch bank in Saigon. In addition, there

were travelers checks in the hands of sellers in Vietnam, but claimant is unable to provide an accounting of these. Although instructions had been sent to the employees at the Saigon branch to destroy unsold travelers checks, this was not accomplished and according to affidavits submitted by such employees, these unsold checks were locked in the vault of the branch when the employees departed.

From the time of the fall of South Vietnam through June of 1982, travelers checks of the face amount of \$484,230, of those checks left in Vietnam, have been presented for payment. Of those presented, through June of 1982, recoveries totalling \$193,100 were made through bank collections from last endorsers. Between July of 1982 and October of 1984, additional travelers checks in the face amount of \$2,490 were presented, of which recoveries in the amount of \$990 were made through bank collections from endorsers. As of July 1982, travelers checks of a face value of \$104,610 which had been with the branch bank in Saigon had not been presented for payment. During the period between July 1982 and October 1984, travelers checks of a value of \$370 of these unaccounted for checks were presented for payment, although it is not clear how much of the \$990 recovered from endorsers may have applied to these checks.

As to the travelers checks above referred to, claimant has submitted summaries giving the denomination and travelers check number of each check.

Several issues are presented by the evidence. For a claim to be compensable, claimant must establish a loss resulting from ". . .the nationalization, expropriation, or other taking of (or special measures directed against) property. . . ." Claimant has been required to honor a large portion of the unsold travelers checks due to the fact that the counter signatures on the check agreed with the signatures. As the checks, in fact, had not been sold, claimant had received no value for the checks and thus

suffered a loss. The question is presented as to whether this loss was caused by governmental action on the part of or on behalf of the Socialist Republic of Vietnam. In this regard, claimant relies upon Communique No. 3 issued by the provisional government on May 1, 1975 which called for the confiscation, among other enterprises of all commercial establishments, banks ". . . and so forth", together with documents, files, property and technical means of U.S. imperialism and the Saigon administration. The Communique continued that persons who, prior to "liberation," were entrusted by U.S. imperialism and the Saigon administration with a management of such establishments together with documents, files and property were required to declare to the revolutionary administration all the documents, files, property and technical means in the offices. The Commission is also aware that immediately following the fall of South Vietnam, banking establishments were taken over and vaults opened. As to the travelers checks which resided in the vault of the branch in Saigon, these clearly would have come under the control of the new revolutionary government. The Commission also concludes that travelers checks in the hands of sellers must also be presumed to have come into the hands of the new revolutionary government due to the strict requirements of the Communique, above referred to, which required that all such documents and property had to be declared.

Claimant asserts it is entitled to an award for all the checks which it was required to pay and upon which it could not recover from endorsers, in addition to the value of those blank travelers checks which had been identified as having been in the branch in Saigon which have not yet been presented for payment but potentially might be in the future. Whether or not they will be presented is, of course, unknown and the Commission notes that the rate of presentation of travelers checks has slowed radically. In the period between July 1982 through October 15, 1984,

travelers were presented for payment at a rate equal to only 1% of the average rate they were presented during the period from 1975 through 1982.

The Commission has held that for a claim to be compensable, among other necessary elements, it must be established that a property loss occurred before December 28, 1980, the date of passage of Public Law 96-606. (See Claim of Anh Ngoc La, Claim No. V-0048, Decision No. V-0003) Losses, otherwise compensable, arising after that date would have to be asserted in a subsequent claims program. In the Commission's view, other than the nominal cost of originally printing the checks, claimant has suffered no loss unless and until a travelers check left in Vietnam is presented for payment. Claimant is, therefore, entitled to an award for the value of those travelers checks presented for payment before December 28, 1980, after deducting the recoveries obtained by claimant from previous endorsers.

Unfortunately, claimant has not submitted to the Commission the dates upon which the various travelers checks were presented for payment, although apparently such evidence is available to claimant. Claimant has submitted evidence of the total amount of checks presented between May 1975 and July 1, 1982, as well as those presented from July 1982 through October 15, 1984. The Commission, therefore, will deduct from the total amount of loss through July 1, 1982, an amount which the Commission believes represents the value of checks presented between December 28, 1980 and July 1, 1982, and in determining the amount of the deduction is willing to assume that the rate of presentation during those 18 months was the same as the rate of presentation during the period from July 1, 1982 until October 15, 1985. The Commission, therefore, concludes that claimant has suffered a loss in the total amount of \$290,165.

The Commission has concluded that awards granted under Public Law 96-606 for the nationalization or other taking of property, or interest therein, shall include interest at the rate of 6% simple interest per annum from the date of loss to the date of settlement. As the Commission has held that the date of loss occurred as of the date that claimant was required to pay a check for which it could not pursue a claim against an endorser, technically, interest should run on the amount of each check from the date of presentation. As set forth here and above such evidence, although available to claimant has not been submitted.

The Commission has therefore considered whether claimant should not be limited to interest from December 28, 1980, based upon the Commission's finding that all compensable checks had been presented by that date. From the information supplied by claimant, however, including the very low rate of presentation of checks as of 1982, the Commission is satisfied that most of the checks were presented well before December 28, 1980. It also appears probable to the Commission that few checks were presented in the months immediately following the fall of Vietnam as such checks would require the time to pass through international channels before being presented for payment by claimant.

Faced with this state of the record, but in an attempt to be fair to claimant, the Commission is willing to presume that half the checks were presented for payment between January 1, 1976 and July 1, 1978 and the remaining half in the period thereafter. The Commission, therefore, will award interest on the entire principal amount of the award from July 1, 1978 until the date of settlement.

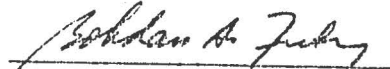
The Commission, therefore, makes the following award as its final determination of this claim.

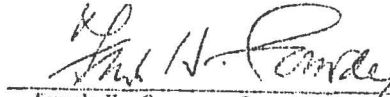
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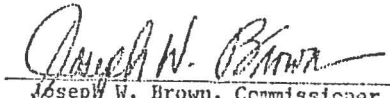
Claimant, B.A. CHEQUE CORPORATION, is therefore entitled to an award in the principal amount of Two Hundred Ninety Thousand One Hundred Sixty-Five Dollars (\$290,165.00), plus interest at the rate of 6% simple interest per annum from July 1, 1978 to the date of settlement.

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

JAN 22 1986


Eohdan A. Futey, Chairman


Frank H. Conway, Commissioner


Joseph W. Brown, Commissioner

FOREIGN CLAIMS SETTLEMENT COMMISSION
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IN THE MATTER OF THE CLAIM OF

B.A. CHEQUE CORPORATION

Claim No. V-0207

Decision No. V-0444

Counsel for Claimant:

Daniel Farthing, Esquire

PROPOSED DECISION

This claim in the amount of \$395,290.00 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 an asserted loss through the negotiation of travelers checks.

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 702(1)(B) of the Act defines the term "national of the United States" as meaning:

"(B) 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;"

Claimant asserts that certain blank travelers checks were located in Vietnam as of April 1975. Instructions had been given to forward all such travelers checks to the Saigon branch of Bank

of America and that further instructions were given to destroy any unsold travelers checks at such time as the employees of the Saigon branch might be evacuated. It is asserted that on April 24, 1975 the employees of Bank of America, Saigon branch, were advised to evacuate to Guam on two hours notice and that in view of the limited time, the staff did not realize until they arrived in Guam that the travelers checks were left in the vault. Claimant then asserts that a number of travelers checks were negotiated from May 1975 until the present time and that they were negotiated throughout the world bearing multiple signatures. Claimant asserts that since the counter signatures compared very favorably with the signatures on the travelers checks, B.A. CHEQUE CORPORATION, San Francisco, has honored most of the travelers checks presented for payment, although on a substantial number of such checks recoverys were made back through bank collections from the last endorsers.

None of these assertions are supported by any documentary evidence or affidavits in support of the facts as asserted.

Although claimant has submitted an affidavit that the corporation was incorporated on October 27, 1972 in the State of Delaware and that all outstanding shares of the corporation are owned by BankAmerica Corporation, a corporation existing under the laws of the State of Delaware, no evidence has been submitted to establish whether or not natural persons who are citizens of the United States owned directly or indirectly 50 per centum or more of the outstanding capital stock or other beneficial interest in claimant and, therefore, claimant has not established that it is a national of the United States as defined by statute.

To establish a valid claim, claimant must establish its status as a national of the United States. Further, claimant must establish that its losses occurred as a result of some action which is the responsibility of the Socialist Republic of Vietnam and constitutes a nationalization, expropriation or other

taking of property. Claimant asserts that certain of the checks for which claim is made were left in the vault of the Saigon branch of Bank America. Claimant has submitted evidence that shortly after the fall of Saigon, banks such as Bank America were confiscated together with documents, files and property. If, in fact, the blank travelers checks did come under the control of the Revolutionary Government which then allowed negotiation of such checks, the Commission is of the view that to the extent claimant was required to honor such checks, a taking of property occurred as defined by the statute. On the other hand, if these checks either remained in the hands of employees of the bank who were evacuated, or came into the hands of private individuals in Vietnam who have improperly negotiated them, the loss would not appear to the Commission to constitute government action in the nature of a nationalization or expropriation.


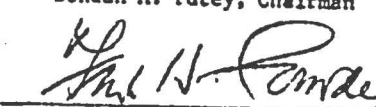
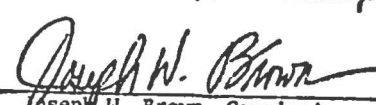
The only information provided to the Commission is an unverified and unsigned attachment to the claim form which provides general third-hand information.

As claimant has not established that it qualifies as a national of the United States, this claim must be and hereby is denied.

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

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

AUG 22 1985


Behdan 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.)