

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

IN THE MATTER OF THE CLAIM OF

AMERICAN INTERNATIONAL GROUP, INC.

Claim No. V-0332

Decision No. V-0405

Hearing on the Record held on

Counsel for Claimant:

Gibson, Dunn & Crutcher

FINAL DECISION

This claim in the amount of \$124,696.46 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 real property and other assets in Saigon.

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... ."

By Proposed Decision issued June 26, 1985, the Commission denied this claim on the ground that the assets were owned by Compagnie Americaine D'Assurance (CADA) which was a foreign corporation and that claimant had not established any indirect ownership in its assets by nationals of the United States at the time of loss. In addition, the assets of CADA had been transferred to foreign interests and claimant had not established that

CADA's claim for losses in Vietnam had been excluded from such a transfer. If CADA's claim for compensation had not been excluded, then the claim for loss would neither presently be owned by AMERICAN INTERNATIONAL GROUP, INC. nor would it have been continuously owned by nationals of the United States.

Objection was filed on behalf of claimant and request was made for an oral hearing, however, the request for an oral hearing was subsequently withdrawn and claimant was given an extension until December 31, 1985 to submit any further evidence in support of the objection.

In an attempt to show an indirect interest in the assets of CADA by United States nationals at the time of loss, claimant has submitted a computer printout of the shareholders as of December 5, 1975 of American International Reinsurance Company, Inc., which indirectly owned CADA. In a column following the names there is listed the symbols "FOR" or "USA". The Commission assumes that this indicates whether the address of the shareholder was in the United States or was a foreign address. Just under 89% of the shares are followed by the symbol "USA." The Commission notes, however, that over 50% of all the shares are held either by corporations or what appear to be brokerage houses and no evidence has been submitted as to the nationality of the beneficial owners of stock so held. The Commission further notes that the issue presented is not whether 50% or more of American International Reinsurance Company, Inc. was owned by natural persons who were citizens of the United States but claimant must establish the actual amount of indirect ownership by nationals who were citizens of the United States in the assets owned by CADA, a foreign corporation.

In the Commission's view of the record, however, it is not necessary to determine the actual extent of such indirect ownership at the time of loss for, whatever may have been the indirect ownership of United States nationals, the Commission

concludes that the claim for loss was transferred in 1976 to non nationals of the United States and for that reason the claim is not compensable.

Claimant has submitted a copy of an agreement for the purchase of the shares of CADA by the Societe Mediterraneenne de Commerce et de Finance. Claimant has submitted a full translation of paragraph 10 of the agreement which reads as follows:

"It is expressly agreed that all assets and liabilities in the Company's accounts for its Vietnam operations are included in the transaction, including real property registered under its name in that country. For the purchase price of the shares, such real property is estimated at the symbolic value of one Dirham (1DH) because of the present situation in Ho Chi Minh Ville (ex Saigon), making the actual control of said property and the exercise of property rights impossible.

However the following is stipulated:

(a) If the Seller recovers the property, such property will be estimated by mutual agreement or appraisal, and the Buyer will either pay such value as a supplement to the purchase price of the "O" shares, or transfer to the Seller all rights in the property, with no other consideration.

(b) Until the above-mentioned occurrence, the Buyer agrees not to sell any rights to the real property in Vietnam which he acquired hereunder for a period of 25 years without having previously given notice to the Seller, who will make his position known within three months of the receipt of the notice.

(c) If, for any reason, the Seller is in a position to negotiate directly with any governmental authority a compensation for the loss of the Company's real property in Vietnam, the Buyer agrees, to the extent of its capabilities and in conformity with Moroccan laws and regulations, to carry out all necessary steps and formalities (in order) to pay the Buyer the amount of the compensation, after deduction of all expenses incurred in obtaining it.

(d) Considering the Seller's knowledge of the real property described in this paragraph, the Buyer gives to the Seller or his agent, full power, authority and right to take in due time all necessary measures for recovery management or compensation of said real property."

The agreement by its terms transfers all assets, which would include the claim for CADA's losses in Vietnam, unless the agreement expressly excludes the transfer of the claim for such losses. Sub-paragraphs (a) and (b) refer to a factual situation

where the seller in fact recovers title to the property, which situation is not pertinent here. Even these sub-paragraphs appear to refer to the foreign buyer as having acquired rights in the real property.

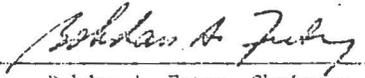
Sub-paragraphs (c) and (d) refer to obtaining compensation for the loss, which is pertinent in the present situation. The language of the subparagraphs is clear. The beneficial owner of the right to compensation is the foreign buyer.

Although claimant has presented an affidavit from Mr. R. Kendall Nottingham to the effect that he had instructed negotiators to retain for the seller the full interest in CADA's lost properties in Vietnam, including any potential proceeds from the sale or from any settlement program, such instructions would appear to be irrelevant in light of what the Commission considers to be the clear language of the agreement which was, in fact, executed.

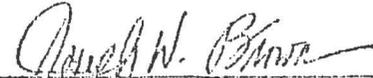
The Commission, therefore, affirms its original denial as its final determination of this claim.

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

JAN 22 1986


Bohdan A. Futcy, 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

AMERICAN INTERNATIONAL GROUP, INC.

Claim No. V-0332

Decision No. V-0405

Counsel for Claimant:

Joann Miles

PROPOSED DECISION

This claim in the amount of \$124,696.46 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 real property and other assets in Saigon.

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Claimant has asserted indirect claim for the losses of certain assets of Compagnie Americaine D'Assurance (CADA), a French corporation incorporated in 1931 in Shanghai China.

The Commission finds that CADA owned certain cash, Vietnamese Government bonds, and accounts receivable in Saigon of a value of \$15,256 of which were taken by the Socialist Republic of Vietnam on May 1, 1975. The Commission notes that these accounts included an account in the amount of \$4,517.45 held by AIU Vietnam, Inc., the losses of which are subject to a companion

claim filed by claimant. Although the Commission has included this within the loss suffered by CADA, a corresponding liability for such account would have to be deducted from any losses suffered by AIU Vietnam, Inc.

Claimant has submitted evidence of ownership of three pieces of property described as building no. 11 Nguyen Cong Tru Street; studio 213 Tu Do Street; and compartments of 24 Nguyen Truong To Street. The Commission finds that these three parcels of property were taken by the Socialist Republic of Vietnam on May 1, 1975.

Claimant has submitted appraisals of these pieces of property as of 1973. The Commission has considered the description of the properties, including the size of the lots involved, gross and net rentals received and finds that these appraisals are reasonable. The appraisal value of the building no. 11 Nguyen Cong Tru Street is in the amount of \$80,730.00. In addition, in 1974 improvements were made in this property, the cost of which were \$10,373.00 and the Commission finds that this property as of May 1, 1975 had a value of \$91,103.00.

Claimant has submitted evidence of ownership of property described as studio 213 Tu Do Street and compartment 24 Nguyen Truong To Street and appraisals of value in the amounts of \$13,590.00 and \$4,747.00, respectively. The Commission finds these appraisals reasonable valuation of the real property as of May 1, 1975. However, the evidence of ownership submitted as to these two buildings also indicates that in 1967 a mortgage in the amount of VN dollars 721,000 was placed against this property. From an examination of a document submitted, it appears that this was a blanket mortgage covering both pieces of property. At the exchange rate applicable in 1967, this mortgage would have a value of approximately \$9,000.00. The Commission, therefore, finds that the value of the equity in these buildings owned by

CADA as of May 1, 1975 was in the amount of \$9,337.00. The Commission, therefore, finds that a loss was suffered by CADA in the total amount of \$115,696.00.

Having determined that a loss was suffered by CADA, the remaining issue is whether claimant, AMERICAN INTERNATIONAL GROUP, INC., is entitled to be compensated for any or all of this loss.

Section 704 of Public Law 96-606 states as follows:

"A claim may be favorably considered under section 703 of this Act only if the property right on which it is based was owned, wholly or partially, directly or indirectly, by a national of the United States on the date of loss and only to the extent that the claim has been held by one or more nationals of the United States continuously from the date that the loss occurred until the date of filing with the Commission."

Section 705(c)(d) states as follows:

"A claim under section 703 based upon an indirect ownership interest in a corporation, association, or other entity may be considered, subject to the other provisions of this title, only if at least 25 per centum of the entire ownership interest thereof, at the time of such loss, was vested in nationals of the United States or if, at the time of the loss, nationals of the United States in fact controlled the corporation, association, or entity, as determined by the Commission.

(d) The amount of any claim covered by subsection (b) or (c) of this section shall be calculated on the basis of the total loss suffered by the corporation, association, or other entity, with respect to which the claim is made, and shall bear the same proportion to such loss as the ownership interests of the claimant at the time of loss bears to the entire ownership interest thereof."

The Commission, therefore, must resolve the following questions:

1. To what degree, if any, were the assets of CADA indirectly owned by nationals of the United States on May 1, 1975?
2. If any nationals of the United States indirectly owned property held by CADA as of 1975, to what extent has any claim arising from the loss of such property been indirectly owned by nationals of the United States continuously between May 1, 1975 and December 28, 1980, the date Public Law 96-606 was approved?

On May 1, 1975, CADA was principally owned by American International Assurance Company, Limited (AIA) and approximately 1% was owned by a Mr. Borodaewsky, but for the benefit of American International Reinsurance Company, Inc. (AIRCO, INC). Following May 26, 1975, however, the capital stock of CADA was increased so that 50% of the ownership of CADA, and consequently 50% of the indirect ownership of the claim held by CADA for the loss of property, became owned by the Moroccan corporation. Therefore, to the extent of 50%, the claim for the losses of CADA ceased to be continuously owned by United States nationals.

According to claimant, effective January 1, 1976, all interests in CADA were transferred to ABAAKIL Group of Casablanca Morocco. If CADA continued to own the claim for the loss of property in Vietnam on or after January 1, 1976, then the entire claim would have ceased to be owned by United States nationals. Claimant asserts, however, that all ownership was transferred "accept the interest in the property in Vietnam." Although normally in a transfer of ownership of a corporation, all assets and claims held by such a corporation are transferred to new owners, the Commission recognizes that certain assets and/or claims may be exempted from the transfer and transferred from the corporation to certain of its previous owners. However, no evidence has been submitted to establish that that is what occurred in the transfer of January 1, 1976. Presumably, if such reservation of the claim of CADA had been affected, it would be reflected either in a written agreement or in relevant corporate minutes. Absent such evidence, however, the Commission cannot conclude that any part of the claim of CADA passed to claimant.

If claimant can establish that in fact the claim for CADA's losses were not transferred in 1976 to ABAAKIL, it becomes necessary to determine whether, after May 26, 1975, the half interest in CADA not owned by the Moroccan corporation was indirectly owned by United States nationals. As set forth above,

this ownership interest in CADA was held for the benefit of AIRCO, INC., a Panamanian corporation which was not a United States national and by AIA, incorporated in 1931 under the laws of the British Crown Colony of Hongkong and thus itself not a United States national. 87.5% of AIA was in turn owned by American International Reinsurance Company, Ltd. (AI Reinsurance) and by AIRCO, INC. and certain directors of AIA, all of which assertedly was owned for the benefit of AI Reinsurance. AI Reinsurance ultimately became American International Reinsurance Holdings Ltd. (AIRH) which was a Bermuda corporation and does not qualify as a national of the United States. As of 1975, AIRH was assertedly 100% owned by AIRCO, INC., a Panamanian corporation. Therefore, to determine the indirect ownership of United States nationals in the assets of CADA at the time of loss, and the interest of United States nationals in the claim for such loss from May 1, 1975 until September 20, 1978, claimant must establish the nationality of the owners of AIRCO, INC. No evidence has been submitted, however, on this issue and therefore the Commission cannot conclude that the ownership interest of AIRCO, INC. provided the basis to find any indirect ownership interest in the property at the time of loss or in the claim arising therefrom between May 1, 1975 and September 20, 1978.

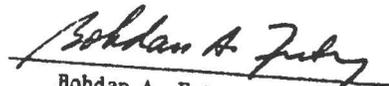
On September 20, 1978, AIRCO, INC. was merged into AMERICAN INTERNATIONAL GROUP, INC. the latter, qualifies as a national of the United States having been incorporated in the State of Delaware on June 9, 1967 and at all relevant times more than 50% of its shareholders being citizens of the United States

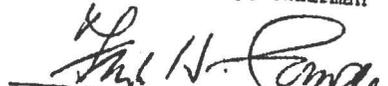
For the reasons above set forth, the Commission concludes that claimant has not established any indirect ownership of a claim for the loss of property indirectly owned by nationals of the United States, the claim for which has been continuously owned by nationals of the United States. The Commission has set forth its findings concerning this claim in some detail to afford

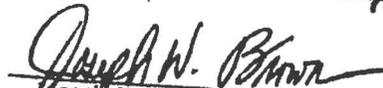
claimant the opportunity, by way of objection, to submit new evidence to make up for any of the present deficiencies of proof in the present record.

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.)