

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

In the Matter of the Claim of

C. B. MILLER

Under Title V of the International Claims
Settlement Act of 1949, as amended

Claim No. CN- 0213

Decision No. CN-

33

PROPOSED DECISION

This claim, for \$6,760.00, against the Chinese Communist regime, under Title V of the International Claims Settlement Act of 1949, as amended, is based upon the loss of personal property in Shanghai, China. Claimant, C. B. Miller, has been a national of the United States since his birth on September 3, 1900.

Under Title V of the International Claims Settlement Act of 1949 (78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643K (1964), as amended by 80 Stat. 1365 (1966)), the Commission is given jurisdiction over claims of nationals of the United States against the Chinese Communist regime. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Chinese Communist regime arising since October 1, 1949 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right or interest including any leasehold interest, and debts owed by the Chinese Communist regime or by enterprises which have been nationalized, expropriated, intervened, or taken by the Chinese Communist regime and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Chinese Communist regime.

The Commission appreciates the fact that there may be instances wherein primary evidence in support of a claim may not be available due to its loss or destruction during ensuing years between the taking of claimants' property and the enactment of Title V of the International Claims Settlement Act of 1949, as amended. Also, the Commission notes that due to the political conditions which now exist in Communist China claimants have no access to the primary evidence which is obtainable only in said country. In addition, the Commission takes administrative notice that, in many instances, there was no decree, law or order issued under which the Chinese Communist regime nationalized or otherwise took the property of nationals of the United States. In the absence of said decrees, laws and orders, the Commission will examine the specific actions of the Chinese Communist regime which resulted in claimants' loss of their property. Accordingly, when claimants have established a sufficient basis for the unavailability of primary evidence, the Commission may accept and consider secondary evidence.

The evidence of record here does not include any copy of a Chinese Communist decree, law or order and the Commission agrees that such are unobtainable in this case. The record does contain affidavits of third parties, a letter from the General Conference of Seventh-Day Adventists, claimant's employer and claimant's statement of losses sustained in China which was filed with claimant's employer in 1950. The Commission deems the evidence submitted to be sufficient in this case.

Based on the entire record, the Commission finds claimant C. B. MILLER, while serving as a missionary in China under the auspices of the General Conference of Seventh-day Adventists, was the owner of certain household furniture, appliances and personal effects located in his residence at 1207 Yu Yuen Road, Shanghai, China.

Claimant has been unable to furnish the exact date on which his property was taken by the Chinese Communist regime. He does state, however, that he was forced by Communist pressures to flee to Hong Kong on September 24, 1949 and that he had to leave the claimed property behind. Based on records available to it, the Commission finds that Shanghai fell under the control of the Chinese Communist forces on May 26, 1949 and that on October 1, 1949 the People's Republic of China was proclaimed with Mao Tse-Tung as chairman. The Commission finds that for the purposes of this claim claimant effectively lost his control, use and enjoyment of his property on October 1, 1949 from actions taken by, or under the authority of, the Chinese Communist regime.

Claimant states that the property in question had a value of \$2,860.00. The Commission finds the claimed items of personal property were reasonable and necessary to claimant's station in life and the value, including freight, duty and import expenses to be fair and reasonable. The Commission concludes that claimant suffered a loss in this amount within the meaning of Title V of the Act.

A portion of the claim in the amount of \$1,800.00 is based upon the asserted loss of a 1942 Buick automobile purchased in 1946. Claimant states that before he left China in 1949 he sold the car for \$500.00 and the amount claimed represents the loss in value he suffered because of the sale.

This part of the claim has been considered and the Commission concludes that the loss, if any, did not result from a nationalization or other taking of property by the Chinese Communist regime within the meaning of Title V of the Act and, accordingly, it is hereby denied.

(See Claim of Pauline P. Gillespie, Claim No. CN-0047, Decision No. CN-12.)

A further portion of this claim in the amount of \$2,100.00 is based upon money expended by claimant for the room and board of his daughter, Victoria Miller and his mother-in-law, Jane Dawson. Claimant states that his daughter was a student of the Far Eastern Academy in Shanghai which was forced to evacuate to Hong Kong as the Chinese Communist armies moved toward Shanghai. Said daughter assertedly remained in school at Hong Kong until the summer of 1949. Claimant's mother-in-law was assertedly evacuated from Shanghai in November of 1948 and until July of 1949 she stayed in the homes of various missionary families in Canton and Hong Kong. Under a policy set up by the missionaries in China the host missionaries were entitled to a \$3.00 per diem for such room and board.

After consideration of the statute and the legislative history of the Act, the Commission finds that the said expenses incurred herein were not intended by Congress to constitute "property" within the meaning of Section 502(3) of the Act and a "loss" resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against property of nationals of the United States by the Chinese Communist regime within the meaning of Section 503(a) of the Act. Accordingly, this portion of the claim is denied.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement. (see Claim of Clarence Burton Day and Ethelwyn C. Day, Claim No. CN-0030, Decision No. CN-001); and in the instant claim it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that C. B. MILLER suffered a loss in the amount of Two Thousand Eight Hundred Sixty Dollars (\$2,860.00) with interest thereon at 6% per annum from October 1, 1949 to the date of settlement, as a result of the actions of the Chinese Communist regime, within the scope of Title V of the International Claims Settlement Act of 1949, as amended.

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

SEP 3 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Feidberg

Sidney Feidberg, Commissioner

This is a true and correct copy of the decision of the Commission which was entered as the final decision on 14 OCT 1969

[Signature]
Clerk of the Commission

CERTIFICATION

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, 32 Fed. Reg. 412-13 (1967).)

The statute does not provide for the payment of claims against the Chinese Communist regime. Provision is made only for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations.