

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

IN THE MATTER OF THE CLAIM OF

ARTHUR B. COOLE
ELLA F. COOLE

Claim No. CN-0040

Decision No. CN- 2

Under the International Claims Settlement
Act of 1949, as amended.

PROPOSED DECISION

This claim against the Chinese Communist regime, under Title V of the International Claims Settlement Act of 1949, as amended, for \$1,500.00, is based upon the loss of improved real property at Peitaiho Beach, Province of Hopei, China. Claimants, ARTHUR B. COOLE and ELLA F. COOLE, have been nationals of the United States since their births in 1900 and 1898 respectively.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 110 (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.

Claimants also filed a claim under the War Claims Act of 1948, as amended by Public Law 87-846 (Claim No. W-13407). In that claim, the Commission found that claimants were the joint owners of household furnishings and personal effects of a summer house at Peitaiho Beach, Province of Hopei, China which were lost during World War II as a direct consequence of Japanese military operations of war and granted them awards each in the amount of \$415.00. That file has been associated with this claim for reference.

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 include the original title deed No. 75, registered at the American Consulate, Tientsin, China in 1935; a statement of the Board of Missions of the Methodist Church, claimants' employer; a statement of Wray H. Congdon, the former owner of the improved realty; original 1935 correspondence of the American Consul at Tientsin; map of Peitaiho Beach; photographs and a floor plan sketch of the property. The Commission deems such submitted evidence as sufficient in this case.

Based on the entire record the Commission finds that claimants, ARTHUR B. COOLE and ELLA F. COOLE, missionaries in China from 1924 to 1949 under the auspices of the Board of Missions of the Methodist Church, were owners of a summer residence at Peitaiho Beach, Province of Hopei, China; subsequent to the termination of World War II in 1945 claimants were unable to return to Peitaiho Beach because of the presence of Chinese Communist forces in that area; on May 1, 1950 workers of the People's Republic of China occupied the properties at Peitaiho Beach, including claimants' premises, and continued to do so for several years to the exclusion of claimants. The Commission further finds that the occupation of the premises resulting in claimants' loss of control, use and enjoyment of their property constituted a taking of this property by the Chinese Communist regime within the meaning of Title V of the Act and the claimants' property was taken on May 1, 1950.

The improved real property consisted of two one-story buildings, a house and servant quarters, on 2.18 mou of land (7176 square feet = 1 mou). The buildings were constructed about 1930 and in 1936 claimants added two student rooms to the servant quarters. The buildings had rock foundations with brick walls. The land was surrounded on three sides by a two-foot-high rock wall which designated the boundary lines. One side faced the sea. The house had three bedrooms, kitchen, laundry, store-room, parlor-dining room, courtyard and front porch. The servant quarters were to the rear and contained four rooms including the aforementioned student rooms.

The Commission finds that the improved real property had a value of \$4,080.00 at the time of loss and that claimants, ARTHUR B. COOLE and ELLA F. COOLE, each suffered a loss in the amount of \$2,040.00.

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).

It will be noted that the total amount of loss found herein is in excess of the amount asserted by claimants. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amounts which may be asserted by claimants as the extent thereof. (See Claim of Eileen M. Smith, Claim No. CU-3038).

CERTIFICATION OF LOSS

The Commission certifies that ARTHUR B. COOLE suffered a loss in the amount of Two Thousand Forty Dollars (\$2,040.00) with interest thereon at 6% per annum from May 1, 1950 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, and

The Commission certifies that ELLA F. COOLE suffered a loss in the amount of Two Thousand Forty Dollars (\$2,040.00) with interest thereon at 6% per annum from May 1, 1950 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 11 1968

Leonard v. B. Sutton
Leonard v. B. Sutton, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

Sidney Treiberg
Sidney Treiberg, Commissioner

This is a true and correct copy of the decision of the Commission which was entered as the final decision on OCT 15 1968

Marie M. ...
Member of the Commission

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.