

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

IN THE MATTER OF THE CLAIM OF

STEWART MACFARLANE and ELMO WILLIAMS,
EXECUTORS OF THE ESTATE OF JAMES
MACFARLANE, DECEASED
and
ELMO WILLIAMS, EXECUTOR OF THE ESTATE
OF JESSIE D. MACFARLANE, DECEASED

Claim No. CU-0310

Decision No. CU-1524

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

Counsel for claimants:

Clarence Moore, Esq.
Rufus King, Esq.

Appeal and objections from a Proposed Decision entered on April 10, 1968;
no oral hearing requested.

Hearing on the record held on October 20, 1971.

FINAL DECISION

Under date of April 10, 1968, the Commission issued its Proposed Decision denying this claim for lack of proof. Subsequently, supporting evidence was submitted and the claim was reduced to \$106,000.00. Since the evidence now shows that the widow of JAMES MACFARLANE, DECEASED, had inherited an interest in the claim and had died testate prior to the filing thereof with the Commission. The Executor of her Estate has been added as party claimant.

Upon consideration of the entire record, including the new evidence, the Commission amends the decision in this matter as follows:

The Commission finds that JAMES MACFARLANE, a national of the United States from naturalization on May 19, 1908 until his death on December 14, 1964, owned bonds of the Cuban Telephone Company in the face amount of \$39,000.00, and mortgage bonds of the Cuban Electric Company in the face amount of \$67,000.00 which were secured by real property of the debtor in Cuba.

The Commission has found that the assets of the Cuban Telephone Company, an American concern now defunct, were taken by the Government of Cuba on August 6, 1960, and that claims for debts of that concern may be maintained because although the Cuban Telephone Company was a national of the United States, it is now defunct. (See Claim of International Telephone and Telegraph Corporation, Claim No. CU-2615.) The Commission therefore finds that the late JAMES MACFARLANE sustained a loss of \$39,000.00 on August 6, 1960.

The Commission further finds that the late JAMES MACFARLANE sustained a loss of \$67,000.00 on August 6, 1960 when the security for his bonds of the Cuban Electric Company was nationalized by the Government of Cuba. (See Claim of Ebasco Industries, Inc., Claim No. CU-3548, 1969 FCSC Ann. Rep. 66.)

Therefore, the late JAMES MACFARLANE sustained losses on August 6, 1960 aggregating \$106,000.00.

The record shows that upon the testate death of JAMES MACFARLANE his claim against Cuba was inherited as follows: a 1/2 interest to his widow by a second marriage, JESSIE D. MACFARLANE, a national of the United States from birth until her death on July 4, 1965; and 1/6 interests each to his three children by a first marriage, namely STEWART MACFARLANE, a national of the United States since birth, and Dr. James Macfarlane and Janet M. Semple, nonnationals of the United States. Therefore JESSIE D. MACFARLANE and STEWART MACFARLANE succeeded to losses in the amounts of \$53,000.00 and \$17,666.67, respectively. Inasmuch as the interests to which Dr. James Macfarlane and Janet M. Semple succeeded were not owned by nationals of the United States continuously from the date of loss until the date of filing with the Commission, they are ineligible pursuant to the express provisions of Section 504(a) of the Act. (See Claim of Sigridur Einarsdottir, Claim No. CU-0728, 25 FCSC Semiann. Rep. 45 [July-Dec. 1966].)

It further appears that upon the testate death of JESSIE D. MACFARLANE her interest was inherited by native born Americans who are represented by the Executor of her estate.

The Commission has decided that in certifications of loss 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 Lisle Corporation, Claim No. CU-0644); and in the instant claim it is so ordered.

Accordingly, the following Certifications of Loss will be entered, and in all other respects the Proposed Decision as amended herein is affirmed.


CERTIFICATIONS OF LOSS

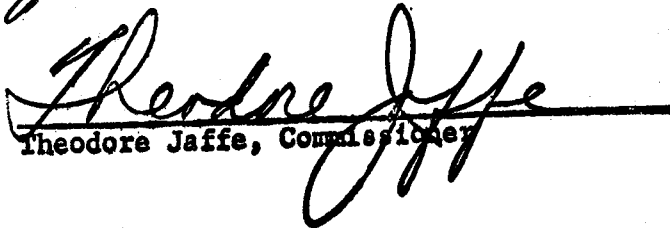
The Commission certifies that STEWART MACFARLANE and ELMO WILLIAMS, EXECUTORS OF THE ESTATE OF JAMES MACFARLANE, DECEASED, succeeded to and suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Seventeen Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$17,666.67) with interest thereon at 6% per annum from August 6, 1960 to the date of settlement for the sole use and benefit of STEWART MACFARLANE; and

The Commission certifies that ELMO WILLIAMS, EXECUTOR OF THE ESTATE OF JESSIE D. MACFARLANE, DECEASED, succeeded to and suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Fifty-Three Thousand Dollars (\$53,000.00) with interest thereon at 6% per annum from August 6, 1960 to the date of settlement.

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

OCT 20 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

NOTICE TO TREASURY DEPARTMENT: STEWART MACFARLANE is the subject of a Certification of Loss in Claim No. CU-0204 involving asserted losses not covered under this Final Decision.

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made 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 with the Government of Cuba.

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

IN THE MATTER OF THE CLAIM OF

STEWART MACFARLANE
AND ELMO WILLIAMS, AS
EXECUTORS OF THE ESTATE
OF JAMES MACFARLANE, DECEASED

Claim No. CU-0310

Decision No. CU- 1524

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

Clarence Moore, Esq.
Rufus King, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$173,000.00, was presented by STEWART MACFARLANE AND ELMO WILLIAMS, AS EXECUTORS OF THE ESTATES OF JAMES MACFARLANE, DECEASED, and is based upon the decedent's asserted ownership and loss of several types of bonds and bank deposits in a Cuban bank. Claimants state that decedent acquired United States nationality by naturalization on May 19, 1908.

Under Title V of the International Claims Settlement Act of 1949, [78 Stat. 1110 (1964) 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. 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 Government of Cuba arising since January 1, 1959 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 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 Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

Claimants assert that this claim is based on the decedent's ownership of bonds issued by the Cuban Telephone Company, the Cuban Electric Company, and the Republic of Cuba. Claimants also assert that decedent owned certain bank accounts. No evidence has been submitted in support of the decedent's asserted ownership of the subject property. The only documents submitted in support of this claim are certified copies of the decedent's death certificate and Will and of claimants' Letters Testamentary. No evidence has been submitted concerning the United States nationality of decedent and his heirs.

By Commission letter of July 7, 1966, claimants were advised, through counsel, as to the type of evidence proper for submission to establish this claim under the Act. Thereafter, by letter of November 15, 1966, the Commission made additional suggestions to claimants, through counsel, concerning the submission of supporting evidence in this matter.

On January 8, 1968, counsel were invited to submit any evidence available to them within 45 days from that date, and they were informed that absent such

evidence, it might become necessary to determine the claim on the basis of the existing record. The only evidence submitted to date in response to the Commission's suggestions are copies of decedent's death certificate.

The Commission finds that claimants have not met the burden of proof in that they have failed to establish ownership, by a national or nationals of the United States, of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this claim is denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

APR 10 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

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