

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

IN THE MATTER OF THE CLAIM OF

JOSEPH S. STURGEON, JR.

DIEP MY STURGEON

Under the International Claims Settlement
Act of 1949, as amended

Claim No. V-0051

Decision No. V-0441

Hearing on the Record held on NOV 19 1985

FINAL DECISION

This claim in an unstated amount 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 a bank deposit in the Dai-Nam Bank in Saigon.

Claimant JOSEPH S. STURGEON, JR. acquired United States nationality by birth in New Jersey on June 4, 1944. Claimant DIEP MY STURGEON acquired United States nationality by naturalization in 1976.

By Proposed Decision dated August 22, 1985, the Commission denied this claim, based on a determination that the bank deposit which is the subject of the claim was not owned by a national of the United States at the time of loss, as required for favorable consideration under sections 703 and 704 of the Act.

Under date of September 4, 1985, claimants objected to the Proposed Decision and submitted affidavits in support of their objection. The argument advanced in these affidavits is that the bank deposit in question should be considered in fact to have been the property of JOSEPH S. STURGEON, JR, notwithstanding the documentation showing that the deposit was in the record ownership of DIEP MY STURGEON, because he had furnished the funds comprising it and she was merely holding it on their common behalf, either with the view that it was a jointly owned asset

from the time of its creation in January 1974, or with the intention of donating it to the marriage community which they established when they were married in Texas in May 1974. In the alternative, they contend that, should this argument not be accepted, then at least the interest earned on the deposit between their date of marriage and the date of loss should be considered to qualify as community property, thereby making it eligible for compensation as property owned by a national of the United States at the time of loss.

The Commission has carefully considered the claimants' objection, and has again reviewed the entire record in their claim. However, given the clear and express documentation in the record, the only possible conclusion is that the principal of the subject bank deposit, together with the interest earned thereon before May 1974, was legally the separate property of DIEP MY STURGEON as of the May 1, 1975, loss date. As such, it did not constitute property owned by a national of the United States at the time of loss, and the claim for its loss may not be favorably considered.

At the same time, however, it appears that claimants have raised a valid point with their alternative argument that the interest earned on the deposit after their marriage constituted community property for purposes of their claim. Accordingly, based on the documentation in the record, which indicates that the initial principal amount of the deposit was 1,000,000 piasters and that it was earning interest at the rate of 24% simple interest per annum, the Commission finds that at the time of claimants' marriage the deposit had a value of 1,080,000 piasters and that during the subsequent twelve months leading up to its loss on May 1, 1975, it earned further interest amounting to 259,200 piasters. As community property, a one-half share in that earned interest, amounting to 129,600 piasters, would have been held by JOSEPH S. STURGEON, JR. and thus was property owned

by a national of the United States as of the May 1, 1975, loss date. At the exchange ratio of 755 piasters to \$1.00 prevailing at that time, this would have been equivalent to \$171.66. Claimant JOSEPH S. STURGEON, JR. is therefore entitled to a principal award in this amount.

The Commission has concluded that awards granted under Public Law 96-606 for the nationalization or other taking of property, or interests therein, shall include interest at the rate of 6% simple interest per annum from the date of loss to the date of settlement.

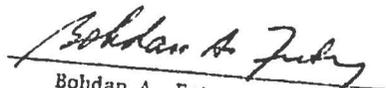
Accordingly, the Commission grants the following award as its final determination in this claim.

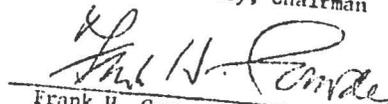
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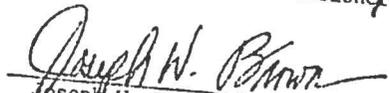
Claimant JOSEPH S. STURGEON JR. is entitled to an award in the principal amount of One Hundred Seventy-One Dollars and Sixty-Six Cents (\$171.66), plus interest at the rate of 6% simple interest per annum from May 1, 1975 until the date of settlement.

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

NOV 19 1985


Bohdan A. Futey, Chairman


Frank H. Conway, Commissioner


Joseph W. Brown, Commissioner

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IN THE MATTER OF THE CLAIM OF

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DIEP MY STURGEON

Claim No. V-0051

Decision No. V-0441

PROPOSED DECISION

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Claimant JOSEPH S. STURGEON, JR. acquired United States nationality by birth in New Jersey on June 4, 1944. Claimant DIEP MY STURGEON acquired United States nationality by naturalization in 1976.

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 704 of the Act limits the Commission's jurisdiction 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."

Documentation submitted in this claim indicates that claimant DIEP MY STURGEON owned a time deposit in the Dai-Nam Bank in Saigon containing a balance of 1,240,000 piasters as of January 4, 1975. As for the loss of the deposit, claimants state the belief that "the assets on deposit were confiscated/nationalized by the Socialist Republic of Vietnam" after the Communist takeover of South Vietnam in April 1975.

The Commission has held that bank accounts in South Vietnamese banks which were in existence before the end of April 1975 shall be presumed to have been nationalized, expropriated or otherwise taken by Vietnam, within the meaning of the present Act, as of May 1, 1975. See Claim of THE PEARL S. BUCK FOUNDATION, INC., Claim No. V-0261, Decision No. V-0439 (1985). Therefore, it follows that the bank deposit here in question was subjected to nationalization or other taking as of May 1, 1975.

As mentioned above, however, the evidence shows that as of May 1, 1975, the subject deposit was owned by claimant DIEP MY STURGEON and that she did not acquire United States nationality until 1976. Thus, the deposit cannot be said to have been owned by a national of the United States at the time of loss, as required for favorable consideration under Section 704 of the present Act, quoted above.

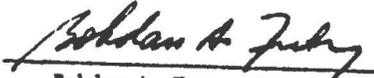
Claimant JOSEPH S. STURGEON, JR., has sought to meet this point by offering the theory that he should be considered as claimant for the bank deposit on his wife's behalf, noting that they were married in May 1974. However, this theory cannot be accepted as the basis for an award, since the evidence clearly shows that DIEP MY STURGEON was the record owner of the deposit.

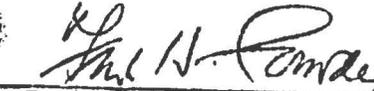
Accordingly, the Commission concludes that this claim must be and it is hereby denied.

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

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

AUG 22 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.)