

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

IN THE MATTER OF THE CLAIM OF

TERRY KANE
and
JANET KANE

Claim No. CU-1938

Decision No. CU-6767

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

H.S. and H.L. Wood
and
Baker and McKenzie
By Eugene A. Theroux, Esq.

FINAL DECISION

On August 18, 1971 the Commission issued a Proposed Decision on this claim certifying losses to each claimant in the amount of \$60,578.98. The claim was based on the loss of stock interests in Cuban enterprises and other personalty. The Proposed Decision denied for failure of proof a portion of the claim based on the loss of 19.66 shares of stock of Tractores.

Claimant had asserted the ownership of 87.66 shares of Tractores but the evidence only supported the ownership of 68 shares.

Claimants thereafter submitted satisfactory evidence in support of this portion of the claim. Based on the entire record including the new evidence the Commission now finds that claimants owned 87.66 shares of stock of Tractores.

In our decision entitled the Claim of Dorothy Kelly, Individually and as Administratrix of the Estate of H. A. Kane, Deceased (Claim No. CU-1936 which we incorporate herein by reference), we held that the properties owned by the Company were nationalized or otherwise taken by the Government of Cuba on October 24, 1960, and that this type of claim is compensable to an American national under the facts and conditions set forth therein. We need not again detail here the reasons or the method used in determining the value per share of \$1,360.8221.

In view of the foregoing the Commission finds that claimants suffered a loss of \$119,289.66 for their interest in the 87.66 shares of Tractores, within the meaning of Title V of the Act.

Claimants' total losses are now summarized as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>Terry Kane</u>	<u>Janet Kane</u>
Atesa	October 24, 1960	\$ 4,312.70	\$ 4,312.69
Tractores	October 24, 1960	59,644.83	59,644.83
Furnishings	December 6, 1961	4,415.00	4,415.00
Money deposited	August 9, 1961	<u>5,583.33</u>	<u>5,583.34</u>
	TOTAL	\$73,955.86	\$73,955.86

The Commission reaffirms the inclusion of interest, and in the instant case it is now ordered as follows:

	<u>FROM</u>	<u>ON</u>
Terry Kane	October 24, 1960	\$63,957.53
	August 9, 1961	5,583.33
	December 6, 1961	<u>4,415.00</u>
	TOTAL	\$73,955.86
Janet Kane	October 24, 1960	\$63,957.52
	August 9, 1961	5,583.34
	December 6, 1961	<u>4,415.00</u>
	TOTAL	\$73,955.86

Accordingly, the Certification of Loss in the Proposed Decision is set aside, the following Certification 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 TERRY KANE 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 Seventy-Three Thousand Nine Hundred Fifty-Five Dollars and Eighty-Six Cents (\$73,955.86) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that JANET KANE 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 Seventy-Three Thousand Nine Hundred Fifty-Five Dollars and Eighty-Six Cents (\$73,955.86) with interest thereon at 6% per annum from the respective dates of loss 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

**FOREIGN CLAIMS SETTLEMENT COMMISSION
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IN THE MATTER OF THE CLAIM OF

**TERRY KANE and
JANET KANE**

Claim No. CU - 1938

Decision No. CU - 6767

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

Counsel for claimants:

**H. S. and H. L. Wood
Attorneys at Law**

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by TERRY KANE and JANET KANE for \$279,722.56 based upon the asserted ownership and loss of stock interests in Cuban enterprises and other personalty. Claimants have been nationals of the United States since birth.

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 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.

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)(1970).)

This claim is based on the loss of stock interests in Agencia de Tractores y Equipos, S.A. (Tractores), Compania de Perforaciones Atesa, S.A. (Atesa), and Compania Petrolera Castillo de Morro, S.A. (Petrolera); household furnishings and car; and \$11,000 deposited in a depository in Cuba.

Based on the evidence of record, discussed in detail below, the Commission finds that claimants, pursuant to the Community Property Law of Cuba, each owned a one-half interest in certain shares of stock in the three Cuban companies subject of this claim, the household furnishings and car, and a deposit of money.

Atesa

On the basis of the entire record including a report from abroad, a stock certificate in Atesa representing 10,736 shares issued to claimant's brother, H. A. Kane, and a copy of a formal agreement entered into on December 19, 1966 wherein H. A. Kane explains that these shares were in fact owned by the three brothers, himself, TERRY KANE and Lewis T. Kane and their wives, the Commission finds that claimants owned 3,579 shares of Atesa.

In our decision entitled the Claim of Harry Wassall, (Claim No. CU-0243 which we incorporate herein by reference), we held that the properties owned by the Company were nationalized or otherwise taken by the Government of Cuba on October 24, 1960, and that this type of claim is compensable to an American national under the facts and conditions set forth therein. We need not again detail here the reasons or the method used in determining the value per share of \$2.41.

In view of the foregoing the Commission finds that claimants suffered a loss of \$8,625.39 for their one-half interest in the 3,579 shares in Atesa, within the meaning of Title V of the Act.

Tractores

On the basis of the entire record including a report from abroad, and stock certificates issued to claimant TERRY KANE on August 30, 1960 evidencing ownership of 68 shares, the Commission finds that claimants owned 68 shares of Tractores. In this regard the aforementioned agreement of December 19, 1966 indicated that claimants owned 87.66 shares but claimants herein have not established their ownership of an additional 19.66 shares.

In our decision entitled the Claim of Dorothy Kelly, Individually and as Administratrix of the Estate of H. A. Kane, Deceased (Claim No. CU-1936 which we incorporate herein by reference), we held that the properties owned by the Company were nationalized or otherwise taken by the Government of Cuba on October 24, 1960, and that this type of claim is compensable to an American national under the facts and conditions set forth therein. We need not again detail here the reasons or the method used in determining the value per share of \$1,360.8221.

In view of the foregoing the Commission finds that claimants suffered a loss of \$92,535.90 for their interest in the 68 shares of Tractores, within the meaning of Title V of the Act.

Petrolera

The record includes copies of five bearer share certificates in Petrolera representing a total of 40,000 shares of 25 cents par value each, the authorized capital. The record includes a report from abroad and the aforementioned agreement of December 12, 1966 wherein H. A. Kane (Claim No. CU-1936) explained that these shares were in fact owned by the three brothers, himself, TERRY KANE and Lewis T. Kane and their wives.

The record, however, contains no evidence regarding the nationalization or other taking of Petrolera and no balance sheet or other financial statements from which the value of Petrolera can be ascertained. Accordingly the Commission is constrained to and does deny this portion of the claim for lack of proof.

Household Furnishings and Automobile

Claimants assert the loss of household furnishings and a 1959 Impala when they were forced to flee Cuba in 1960. Based on the evidence of

record it appears that claimants left Cuba subsequent to October 6, 1960.

On December 6, 1961, the Cuban Government published its Law 989 which confiscated all assets, personal property and real estate, rights, shares, stocks, bonds and securities of persons who had left the country.

Based on the entire record, the Commission finds that claimants owned certain household furnishings and an automobile in Cuba and that they were taken by the Government of Cuba on December 6, 1961 pursuant to the provisions of Law 989.

The record includes an affidavit by claimant, TERRY KANE, in which he lists the household furnishings and automobile including their estimated value. On the basis of the evidence of record the Commission finds that the total value of \$8,830.00 asserted for this personalty is fair and reasonable, and concludes that claimants suffered a loss in this amount within the meaning of Title V of the Act.

Money Deposited

Based on the evidence of record and evidence available to the Commission the Commission finds that H. A. Kane, (Claim No. CU-1936) deposited 33,500 pesos to the American Embassy in Habana in 1960. Subsequently, upon the closing of the American Embassy, this and other funds deposited with the Embassy were turned over to a private depository which surrendered those funds for exchange under Law 963, but received nothing in return. The Law 963 created "special accounts" for this type of fund.

The Commission finds that the funds deposited were taken by the Government of Cuba on August 9, 1961 pursuant to Law 964. (See Claim of Dorothy G. O'Kieffe, Claim No. CU-1242.)

Based on the entire record including the aforementioned agreement of December 19, 1966 the Commission finds that claimants owned a third of this fund and concludes that they suffered a loss in the amount of \$11,166.67 (the peso being on a par with the United States dollar) for their interest in the 33,500 pesos.

Recapitulation

Claimants' losses are summarized as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>TERRY KANE</u>	<u>JANET KANE</u>
Atesa	October 24, 1960	\$ 4,312.70	\$ 4,312.69
Tractores	October 24, 1960	46,267.95	46,267.95
Furnishings	December 6, 1961	4,415.00	4,415.00
Money Deposited	August 9, 1961	5,583.33	5,583.34
		<u>\$60,578.98</u>	<u>\$60,578.98</u>

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 case it is so ordered as follows:

	<u>FROM</u>	<u>ON</u>
<u>TERRY KANE</u>	October 24, 1960	\$50,580.65
	August 9, 1961	5,583.33
	December 6, 1961	4,415.00
		<u>\$60,578.98</u>
<u>JANET KANE</u>	October 24, 1960	\$50,580.64
	August 9, 1961	5,583.34
	December 6, 1961	4,415.00
		<u>\$60,578.98</u>

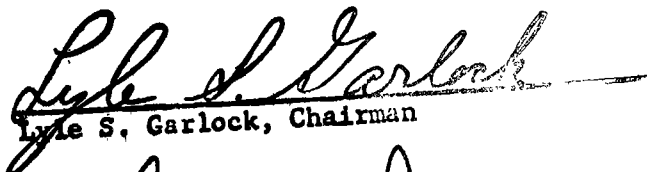
CERTIFICATION OF LOSS

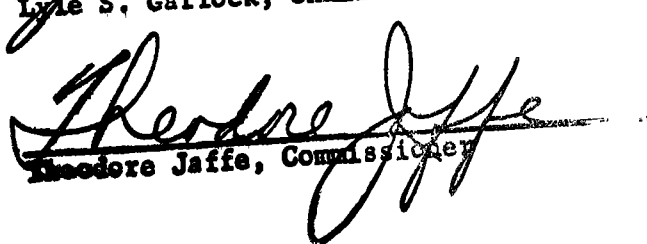
The Commission certifies that TERRY KANE suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Sixty Thousand Five Hundred Seventy-Eight Dollars and Ninety-Eight Cents (\$60,578.98) with interest at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that JANET KANE 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 Sixty Thousand Five Hundred Seventy-Eight Dollars and Ninety-Eight Cents (\$60,578.98) with interest at 6% per annum from the respective dates of loss to the date of settlement.

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

AUG 18 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

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.

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 (1970).)