

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

**IN THE MATTER OF THE CLAIM OF**

**JAMES E. COLE, II**

**Claim No. CU-7277**

**Decision No. CU-5833**

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

Represented by Cia. Azucarera Atlantica del Golfo

Counsel for Cia. Azucarera Atlantica del Golfo:

Dewey, Ballantine, Bushby, Palmer & Wood - By William C. Bush, Esq.

**FINAL DECISION**

Under date of January 20, 1971, the Commission issued its Proposed Decision in this matter finding claimant owned stock certificates for 6,500 shares of Atlantica del Golfo, certifying a loss to claimant in the amount of \$73,835.35 consisting of \$71,517.60 for 2,100 shares of Atlantica del Golfo purchased prior to August 6, 1960, the date of loss, and \$2,317.75 for 1,500 shares purchased subsequent to the date of loss.

The decision denied claim for 2,900 shares as the record did not establish the dates of acquisition thereof nor the price, if purchased subsequent to August 6, 1960.

Claimant has since submitted evidence to establish that these 2,900 shares (included in a 1968 certificate for 3,400 shares) were in fact acquired by him prior to August 6, 1960.

Accordingly, the Commission now finds that claimant suffered a loss of \$170,280 in connection with 5,000 shares of Atlantica del Golfo (at \$34.056 per share) and \$2,317.75 in connection with 1,500 shares purchased subsequent to August 6, 1960.

Interest will be added to claimant's losses, as follows:

<u>FROM</u>	<u>ON</u>
August 6, 1960	\$170,280.00
January 23, 1961	1,815.00
November 26, 1962	212.00
November 29, 1962	92.75
December 4, 1962	198.00
	<hr/>
	\$172,597.75


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.

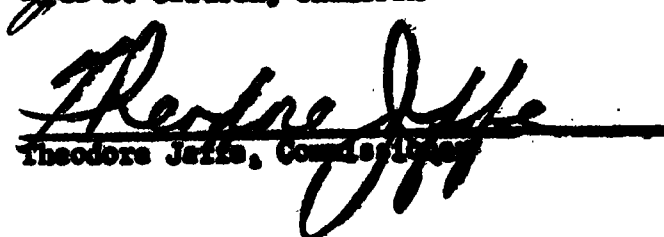
CERTIFICATION OF LOSS

The Commission certifies that JAMES E. COLE, II, 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 One Hundred Seventy-two Thousand Five Hundred Ninety-seven Dollars and Seventy-five Cents (\$172,597.75) with interest at 6% per annum from the aforesaid dates to the date of settlement.

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

SFP 1 1971

  
Lytle S. Carlock, 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.

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
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IN THE MATTER OF THE CLAIM OF

JAMES E. COLE, II

Claim No. CU-7277

Decision No. CU 5833

Under the International Claims Settlement  
Act of 1949, as amended

Represented by Cia. Azucarera Atlantica del Golfo

Counsel for Cia. Azucarera Atlantica del Golfo:

Dewey, Ballantine, Bushby, Palmer & Wood - By William C. Bush, Esq.

PROPOSED DECISION

Claimant, JAMES E. COLE, II, who owned 6,500 shares of Cia. Azucarera Atlantica del Golfo, asserts a claim under Title V of the International Claims Settlement Act of 1949, as amended, against the Government of Cuba because of its nationalization of said Company.

In our decision entitled the Claim of Helen M. Drye (Claim No. CU-0807 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 August 6, 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 \$34.056.

On the basis of evidence in the record in the instant case, the Commission finds that this claimant comes within the terms of the Drye decision; that he was an American national at the requisite times; that he has been the owner of 2,100 shares of stock in the Cia. Azucarera Atlantica del Golfo since prior to August 6, 1960, and that he suffered a loss in the amount of \$71,517.60 within the meaning of Title V of the Act in this connection.

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.

On the basis of evidence of record, the Commission finds that claimant acquired an additional 4,400 shares of Atlantica stock evidenced by a certificate for 1,000 shares issued on January 26, 1961 and a certificate for 3,400 shares issued on March 26, 1968. He has established purchase of 1,500 of these shares as follows:

1,000 on January 23, 1961 for	\$1,815.00
200 on November 26, 1962 for	212.00
100 on November 29, 1962 for	92.75
<u>200 on December 4, 1962 for</u>	<u>198.00</u>
1,500	\$2,317.75

Under the provisions of Section 504(a) of the Act, a claimant is required to establish that the claim for any loss has been continuously owned by a national or nationals of the United States from the date of loss to the date of filing with the Commission. The loss occurred on August 6, 1960. In similar cases, claimants have been unable to obtain information or evidence to establish the nationality of the owner of the securities on the date of loss, and to establish continuous United States ownership of the securities until the date on which claimant acquired them.

Evidence of record before the Commission discloses that securities of the type subject of this claim were almost entirely owned and traded by persons or firms having addresses in the United States. The Commission has considered whether an inference may be justified that the claimed securities were continuously owned by a national or nationals of the United States from the date of loss to the date on which purchased by the claimant, and, in the absence of evidence to the contrary, has concluded that the securities were continuously so owned. (See Claim of Samuel J. Wikler, et al., Claim No. CU-2571, 1968 FCSC Ann. Rep. 47.)

Section 507 of the Act provides, as to assignment of claims, that

(b) The amount determined to be due on any claim of an assignee who acquires the same by purchase shall not exceed (or, in the case of any such acquisition subsequent to the date of the determination, shall not be deemed to have exceeded) the amount of the actual consideration paid by such assignee, or in case of successive assignments of a claim by any assignee.

The Commission finds that claimant, as an assignee by purchase, acquired the claim for the loss sustained by the assignors of the above-listed 1,500 shares, but under the limitations provided in Section 507 of the Act (supra), is limited to \$2,317.75, the actual consideration paid for these shares.

As to the remaining 2,900 shares owned by claimant, he has failed to establish the date of purchase and consideration paid, as required by the Act. Accordingly, this part of the claim is denied.

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.)

The Commission concludes, however, that the amount of loss sustained by claimant herein shall be increased by interest thereon at the rate of 6% per annum from the dates below to the date on which provisions are made for the settlement thereof:

<u>FROM</u>	<u>ON</u>
August 6, 1960	\$71,517.60
January 23, 1961	1,815.00
November 26, 1962	212.00
November 29, 1962	92.75
December 4, 1962	<u>198.00</u>
	\$73,835.35

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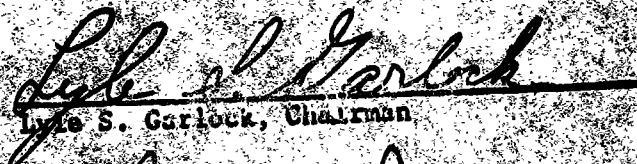


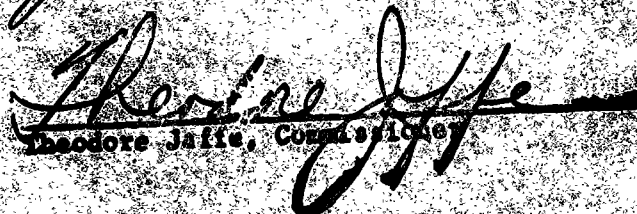
CERTIFICATION OF LOSS

The Commission certifies that JAMES E. COLE, II 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 Eight Hundred Thirty-five Dollars and Thirty-five Cents (\$73,835.35) with interest at 6% per annum from the aforesaid dates to the date of settlement.

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

**JAN 20 1971**

  
Lytle S. Garlock, Chairman

  
Theodore Jaffe, Commissioner

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

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