

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

IN THE MATTER OF THE CLAIM OF

LEWIS T. KANE and
RUTH KANE

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -1937

Decision No. CU-6511

Counsel for claimant:

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

FINAL DECISION

On August 11, 1971 the Commission issued a Proposed Decision on this claim certifying losses to claimants in the total amount of \$19,792.06. 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 arising from asserted ownership 87.67 shares of stock of Tractores.

Claimants have since 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 87.67 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 \$119,303.27 for their interest in the 87.67 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>LEWIS T. KANE</u>	<u>RUTH KANE</u>
Atesa	October 24, 1960	\$ 4,312.70	\$ 4,312.69
Tractores	October 24, 1960	59,651.63	59,651.64
Money deposited	August 9, 1961	<u>5,583.34</u>	<u>5,583.33</u>
		\$69,547.67	\$69,547.66

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

	<u>FROM</u>	<u>ON</u>
LEWIS T. KANE	October 24, 1960	\$63,964.33
	August 9, 1961	<u>5,583.34</u>
		\$69,547.67
RUTH KANE	October 24, 1960	\$63,964.33
	August 9, 1961	<u>5,583.33</u>
		\$69,547.66

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.

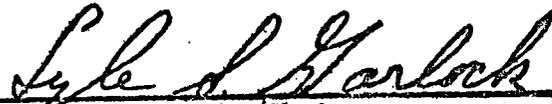
CERTIFICATIONS OF LOSS

The Commission certifies that LEWIS T. 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-Nine Thousand Five Hundred Forty-Seven Dollars and Sixty-Seven Cents (\$69,547.67) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that RUTH 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-Nine Thousand Five Hundred Forty-Seven Dollars and Sixty-Six Cents (\$69,547.66) 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

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.

CU-1937

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IN THE MATTER OF THE CLAIM OF

LEWIS T. KANE and
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Claim No. CU-1937

Decision No. CU - 6511

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 LEWIS T. KANE and RUTH KANE for \$270,892.55 based upon the asserted ownership and loss of stock interests in Cuban enterprises and other personalty. Claimant LEWIS T. KANE has been a national of the United States since 1920. RUTH KANE has been a national 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); 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 two of the three Cuban companies subject of this claim, 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 against 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 Atasa, within the meaning of Title V of the Act.

Tractores

Pursuant to the aforementioned agreement of December 19, 1966 it would appear that after the assignments made therein, claimants owned 87.67 shares of Tractores. Claimants, however, have not submitted any certificates evidencing such ownership or other supporting evidence to indicate their actual share ownership. The Commission is therefore constrained to and does deny this portion of the claim for lack of sufficient proof.

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 19, 1966 wherein H. A. Kane, (CU-1936) explains 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 financial statements from which the value of Petrolera can be ascertained. Accordingly the Commission is constrained and does deny this portion of the claim for lack of proof.

Money Deposited

Based on the evidence of record and evidence available to the Commission, the Commission finds that H. A. Kane (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 these funds for exchange under Law 963, but received nothing in return. This 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>LEWIS T. KANE</u>	<u>RUTH KANE</u>
Atesa	October 24, 1960	\$4,312.70	\$4,312.69
Money Deposited	August 9, 1961	<u>5,583.34</u>	<u>5,583.33</u>
		\$9,896.04	\$9,896.02

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>
LEWIS T. KANE	October 24, 1960	\$4,312.70
	August 9, 1961	5,583.34
RUTH KANE	October 24, 1960	4,312.69
	August 9, 1961	5,583.33

CERTIFICATION OF LOSS

The Commission certifies that LEWIS T. 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, Nine Thousand Eight Hundred Ninety-Six Dollars and Four Cents (\$9,896.04) with interest at 6% per annum from the respective dates of loss to the date of settlement; and

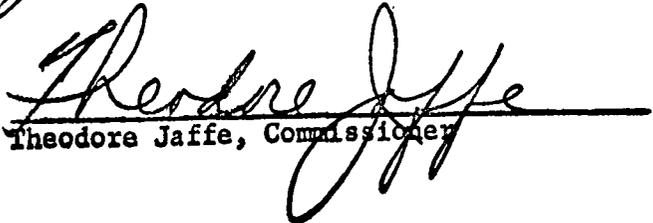
CU-1937

The Commission certifies that RUTH 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 Nine Thousand Eight Hundred Ninety-Six Dollars and Two Cents (\$9,896.02) 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 11 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).)

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