

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

IN THE MATTER OF THE CLAIM OF

RICHARD C. CHISHOLM

Claim No. CU -4901

Decision No. CU
2007

Under the International Claims Settlement
Act of 1949, as amended

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 RICHARD C. CHISHOLM, in the amount of \$9,754.15, based upon his interest in bonds issued by the Association of the Religious Community of the Company of Jesus of Bethlehem College of Havana. Claimant has been a national of the United States since his 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.

On the basis of evidence of record, the Commission finds that claimant is, and since prior to May 3, 1961, has been the owner of seventeen bonds in the original face amount of \$1,000.00 each, and nine bonds in the original face amount of \$500.00 each, issued by the Association of the Religious Community of the Company of Jesus of Bethlehem College of Havana, and known as 5-1/4% First Mortgage Six Year Gold Bonds, due February 1, 1934, under an Agreement of May 22, 1928, with the Bankers Trust Company, Trustee. The bonds were secured by all of the Association's property in Cuba. The \$1,000.00 bonds in question are Nos. M0249, M0007, M1324, M1289, M1282, M1273, M1226, M1225, M1224, M1223, M1222, M1221, M1191, M1190, M1189, M1175, and M1168. These bonds are evidenced by Deposit Receipt Nos. M1968, M1969, and M1900 through M1914, inclusive. The \$500.00 bonds in question are Nos. D0134, D0132, D0131, D0130, D0127, D0125, D0110, D0101, and D0096. These are evidenced by Deposit Receipt Nos. D222 through D230, inclusive.

The record shows that the properties of the College were intervened by the Government of Cuba on May 3, 1961, by Resolution No. 4352 of the Directora Provincial de Educacion de la Havana (Provincial Educational Directors Office of Havana). Therefore, claimant is entitled to file this claim based upon the bonds in question which represent a debt which was a charge upon intervened property as defined in Section 502(3) of the Act. (See Claim of Gustavus Basch, Claim No. CU-0972.)

The record reflects that on April 4, 1933, Cuba declared a moratorium on mortgage indebtedness, which was later extended to June 1942. On December 5, 1939, the maturity of the bonds was extended by the Association to February 1, 1944, and interest was reduced to 1-1/2% beginning February 1, 1939. On June 4, 1940, a new Cuban Constitution

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was adopted, having certain "Transitory Provisions" which extended the maturity date on mortgage indebtedness in excess of \$800,000 to June 30, 1970 and provided for interest at 1%, and amortization by certain annual installments.

On June 1, 1942, a "Procedure for Deposit" was entered into by the Association with Mississippi Valley Trust Company (now the Mercantile Trust Company) as Agent, and the bondholders. Those bondholders depositing their bonds under this Procedure received registered Deposit Receipts entitling them to payment of principal and interest according to the applicable schedule of the 1940 Transitory Provisions, without subsequent presentation of the bonds. The record shows that the last principal payment made was that due on June 30, 1958, leaving the principal due on such \$1,000.00 bonds as \$449.03 and the principal due on such \$500.00 bonds as \$224.52; and the last interest payment made was that due on February 1, 1959. Thereafter, the Trustee declared the principal due and payable in accordance with the provisions of the Agreement of 1928.

The Commission finds that the total amount of unpaid indebtedness on claimant's bonds on May 3, 1961, the date of loss, was \$9,872.20, including the principal amounts of \$7,633.51 and \$2,020.68 on the \$1,000 and \$500 bonds, respectively, and the interest due on May 3, 1961, in the amounts of \$172.38 and \$45.63, respectively.

The Commission has decided that in certification of losses 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, FCSC Claim No. CU-0644.)

Accordingly, the Commission concludes that the amount of loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from May 3, 1961, the date of loss, to the date on which provisions are made for settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that RICHARD C. CHISHOLM 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 Seventy-Two Dollars and Twenty Cents (\$9,872.20) with interest thereon at 6% per annum from May 3, 1961 to the date of settlement.

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

26 JUN 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

NOTICE TO THE 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 thereof.

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).)