

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

IN THE MATTER OF THE CLAIM OF

WILLIAM PIZZIMENTI AS EXECUTOR
OF THE ESTATE OF ANGELINA S.
PIZZIMENTI, DECEASED, AND
ROSE M. CHIRICO

Claim No. CU-2701

Decision No. CU - 772

Under the International Claims Settlement
Act of 1949, as amended

AMENDED PROPOSED DECISION

By Proposed Decision dated November 30, 1967, the Commission denied this claim based on bondholders' interests in the Cuba Railroad Company on the ground that claimants had not met the burden of proof in that they had failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Subsequently, claimants submitted additional evidence. Upon full consideration of the evidence of record, it is

ORDERED that the Proposed Decision be and the same is hereby amended to read as follows:

The evidence of record reflects that WILLIAM PIZZIMENTI, Angelina S. Pizzimenti, Deceased, and ROSE M. CHIRICO were nationals of the United States at all times pertinent hereto.

On the basis of the evidence of record, the Commission finds that ROSE M. CHIRICO is, and since prior to October 13, 1960 has been the owner of 20 bonds in the original face amount of \$1,000.00 each, issued by the Cuba Railroad Company and known as First Mortgage Gold Bonds, 4%, due June 30, 1970 issued under a Supplemental Indenture of July 1, 1952, with Guaranty Trust Company of New York as Trustee (formerly First Mortgage, 50 Year Gold Bonds issued September 18, 1902, 5%, due July 1, 1952, with the Morton Trust Company of New York as Trustee). The bonds in question are Nos. 547, 548, 551, 559, 561, 566, 895, 896, 1035, 1536, 3389, through 3393 inclusive, 3790, 3792, 6224, 10564, and 10566 with attached interest coupons Nos. 14 through 36 inclusive, due on and after July 1, 1959.

Pursuant to the Supplemental Indenture of July 1, 1952, the bonds are overstamped to set forth an outstanding principal balance of \$460.00, and to provide total annual interest of 4% of the outstanding principal balance. Information available to the Commission discloses that no part of the outstanding principal balance was ever paid, and that the last payment of interest was made on January 1, 1959.

The Commission, therefore, finds that the amount of the unpaid indebtedness on claimant's bonds on October 13, 1960, the date of loss, was \$9,857.20 including the principal amount of \$9,200.00, and the interest due on the bonds in the amount of \$657.20.

Further, on the basis of the evidence of record, the Commission finds that ROSE M. CHIRICO is, and since prior to October 13, 1960, has been the owner of 15 bonds in the original face amount of \$1,000.00 each issued by the Cuba Railroad Company and known as "Improvement and Equipment Gold Bonds, 4%, due June 30, 1970" issued under an Indenture of July 1, 1910, and Supplemental Indentures dated July 1, 1952 and December 1, 1959, with Chemical Bank New York Trust Company as Successor Trustee. The bonds in question are Nos. M 600, M 601, M 603, M 862, M 978, M 994, M 1010, M 1011, 1311, M 1312, M 2186, M 2476, M 2477, M 2478, and M 3199.

By Indenture dated July 1, 1910, and Supplemental Indentures dated July 1, 1952 and December 1, 1959, the Cuba Railroad Company issued Dollar bonds secured by mortgage upon the realty and equipment of the Company. By the Supplemental Indenture of July 1, 1952, the bonds were reissued as 4% bonds, due June 30, 1970. As of 1952, the outstanding principal balance on each \$1,000.00 bond was \$635.00, with interest at 4% per annum to be paid on the principal balance. The record discloses that the last payment of interest on the bonds was made on November 1, 1958.

The Commission, therefore, finds that the amount of the unpaid indebtedness on claimant's bonds on October 13, 1960, the date of loss, was \$10,270.20 including the principal amount of \$9,525.00, and the interest due on the bonds in the amount of \$745.20.

The Commission further finds that ROSE M. CHIRICO is and has been since prior to October 13, 1960, the owner of five bonds in the original face amount of \$1,000.00 each, issued by the Cuba Railroad Company, and known as "First

Lien and Refunding Bonds, Series B, 4%, due June 30, 1970" issued under Supplemental Indentures of June 2, 1926 and July 1, 1952, with the First National City Bank of New York as Successor Trustee. The bonds in question are numbered M 50 through M 53 inclusive and M 457.

The Cuba Railroad Company, by Indenture dated March 10, 1922, and Supplemental Indentures dated June 2, 1926 and July 1, 1952, issued Dollar bonds secured by mortgage upon the real property of the Company. By the Supplemental Indenture of July 1, 1952, the bonds were re-issued as 4% bonds, due June 30, 1970. As of 1952, the outstanding principal balance on each \$1,000.00 bond was \$635.00, with interest at 4% per annum to be paid on the principal balance. The record discloses that the last payment of interest on the bonds was made on December 1, 1958.

The Commission, therefore, finds that the amount of the unpaid indebtedness on claimant's bonds on October 13, 1960, the date of loss, was \$3,412.80 including the principal amount of \$3,175.00, and the interest due on the bonds in the amount of \$237.80.

Additionally, the Commission finds on the basis of evidence of record that Angelina S. Pizzimenti was the owner of 13 bonds issued by the Cuba Railroad Company on and prior to October 13, 1960 and thereafter until her death and that the beneficiaries under the will of the decedent, WILLIAM PIZZIMENTI and ROSE M. CHIRICO, both nationals of the United States inherited the interest of the decedent in these bonds. WILLIAM PIZZIMENTI was appointed Executor of the Estate of Angelina S. Pizzimenti and is entitled to file this claim. The bonds are as follows:

(1) Eleven bonds in the original face amount of \$1,000.00 each, known as "Improvement and Equipment Gold Bonds, 4%, due June 30, 1970," and numbered M 1731 through M 1740 inclusive and M 602. Information pertaining to the issuance terms of these bonds and the interest payments is recited above.

The Commission finds that the amount of the unpaid indebtedness on these bonds on October 13, 1960, the date of loss, was \$7,531.48 including the principal amount of \$6,985.00, and the interest due on the bonds in the amount of \$546.48.

(2) Two bonds in the original face amount of \$1,000.00 each, known as "First Lien and Refunding Bonds, Series A, 4%, due June 30, 1970," and numbered M 3280 and M 3281. The bonds were issued under an Indenture of March 10, 1922 and a Supplemental Indenture dated July 1, 1952, with the First National City Bank of New York as Successor Trustee. Information pertaining to the issuance terms of these bonds and the interest payments is recited above.

The Commission finds that the amount of the unpaid indebtedness on these bonds on October 13, 1960, the date of loss, was \$1,365.12 including the principal amount of \$1,270.00, and the interest due on the bonds in the amount of \$95.12.

The record discloses that the Cuba Railroad Company, incorporated in the State of New Jersey, was nationalized by Cuban Law 890, published in the Cuban Official Gazette on October 13, 1960. This corporation was wholly-owned by Consolidated Railroads of Cuba (Ferrocarriles Consolidados de Cuba), a Cuban corporation and therefore does not qualify as a corporate "National of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. Therefore, claimant is entitled to file this claim based upon the bonds in question which represent debts which are a charge on nationalized property within the purview of Section 502(3) of the Act. (See Claim of Joseph Gans, Claim No. CU-1720; Claim of Edgar F. Corliss, Claim No. CU-0785; and Claim of Albert I. Harris, Claim No. CU-2398.)

The Commission finds that, as to the bonds owned by ROSE M. CHIRICO, the total amount of unpaid indebtedness on October 13, 1960, the date of loss, was \$23,540.20 including the principal amount of \$21,900.00, and

the interest due on the bonds in the amount of \$1,640.20. Additionally, the Commission finds that, as to the bonds owned by the Estate of Angelina S. Pizzimenti, Deceased; the total amount of the unpaid indebtedness on October 13, 1960, the date of loss, was \$8,896.60 including the principal amount of \$8,255.00, and the interest due on the bonds in the amount of \$641.60.

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, Claim No. CU-0644).

Accordingly, the Commission concludes that the amount of loss sustained by claimants shall be increased by interest thereon at the rate of 6% per annum from October 13, 1960, the date of loss, to the date on which provisions are made for settlement thereof.

It will be noted that the total amount of loss found herein is in excess of the amounts asserted by claimants. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amounts which may be asserted by a claimant as the extent thereof.

CERTIFICATION OF LOSS

The Commission certifies that ROSE M. CHIRICO 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 Twenty-Three Thousand Five Hundred Forty Dollars and Twenty Cents (\$23,540.20) with interest thereon at 6% per annum from October 13, 1960 to the date of settlement; and

The Commission further certifies that WILLIAM PIZZIMENTI as Executor of the Estate of Angelina S. Pizzimenti, Deceased, succeeded to and 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 Eight Thousand Eight Hundred Ninety-Six Dollars and Sixty Cents (\$8,896.60) with interest thereon at 6% per annum from October 13, 1960 to the date of settlement.

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

MAY 29 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, 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 Amended 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).)

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 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.

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

IN THE MATTER OF THE CLAIM OF

WILLIAM PIZZIMENTI AS AGENT FOR
ROSE MICHELINA CHIRICO AND AS
EXECUTOR FOR THE ESTATE OF ANGELINA S.
PIZZIMENTI, DECEASED

Claim No. CU - 2701

Decision No. CU 772

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$31,155.00, was presented by WILLIAM PIZZIMENTI AS AGENT FOR ROSE MICHELINA CHIRICO, THE CLAIMANT, AND AS EXECUTOR FOR THE ESTATE OF ANGELINA S. PIZZIMENTI, DECEASED and is based upon the asserted loss of the value of an investment in bonds of the Cuba Railroad Company. WILLIAM PIZZIMENTI stated that ROSE MICHELINA CHIRICO, THE CLAIMANT, has been a United States national since her birth in the United States.

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.

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.

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) (Supp. 1967).)

Claimant has failed to submit evidence in support of this claim.

By Commission letter of August 7, 1967 and September 29, 1967, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act. By letters of September 1, 1967, September 27, 1967, and November 7, 1967, the Commission made additional suggestions to claimant, concerning the submission of supporting evidence in this matter. Specifically, the Commission suggested that the original bonds and evidence of date purchased and prices paid be submitted, indicating that a favorable recommendation on the claim could not be anticipated in the absence thereof. Further, claimant was asked to submit the power of attorney from ROSE MICHELINA CHIRICO authorizing him to represent her. However, no evidence in response to these letters has been received to date.

The Commission finds that claimant has not met the burden of proof in that he has failed to establish ownership of rights and interest in

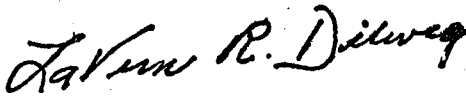
property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

30 NOV 1967


Edward D. Re, Chairman


Theodore Jaffe, Commissioner


LaVern R. Dilweg, Commissioner

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