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

OFFICE
OF THE CHAIRMAN

November 20, 1974

Mr. Santiago B. Magofna
Legislative Secretary
Fourth Mariana Islands District
Legislature
P.O. Box 929
Trust Territory of the Pacific
Islands
Saipan, Mariana Islands 96950

Re: Resolutions No. 18-1974 and
No. 20-1974, Fourth Mariana
Islands District Legislature
Trust Territory of the Pacific
Islands

Dear Mr. Magofna:

This is in reference to the above-referenced Resolutions of the Fourth Mariana Islands District Legislature, which you transmitted to the Secretary of the Interior. Mr. Stanley Carpenter, Director of Territorial Affairs, Department of the Interior, has referred the Resolutions to me for further response.

At the outset, let me say that I sincerely believe that the issues raised in these Resolutions with respect to the activities of the Micronesian Claims Commission are the result of a misconception on the part of the members of the Fourth Mariana Islands District Legislature of the Micronesian Claims Commission's authority and procedures. The members of that Commission have attempted, on many occasions, to explain the nature of the Micronesian Claims Program and the specific requirements of the legislation to all segments of the Micronesian community. Additionally, the General Counsel of the Foreign Claims Settlement Commission during a visit to Saipan in the latter part of August and early September 1974 met, on two occasions, with the Honorable Vincente N. Santos, President of the Mariana District Legislature, in an attempt to outline the role of the

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Micronesian Claims Commission in the administration of the Micronesian Claims Act of 1971. We had hoped that those meetings satisfactorily defined the responsibilities of the Micronesian Claims Commission and just what it could and could not do within the framework of the Act.

With respect to the conclusions in the third paragraph of Resolution No. 18-1974, that the claims of the Marianas are still unsettled after more than two years of operation of the Micronesian Claims Commission and that from all indications, the payment of these claims will be delayed, it should be noted that:

1. Section 103(e) of the Act, directs that the Commission shall wind up its affairs as expeditiously as possible and in any event not later than three years after the expiration of the time for filing claims under the Act. In view of the fact that the time of filing claims expired on October 15, 1973, criticism of the Commission's production of claims is premature.

2. The Act does not provide for giving preferential treatment to claims from any of the six separate districts of the Trust Territory. Accordingly, the Commission has proceeded to issue decisions on claims on which information and evidence are available to support findings with respect to nationality, ownership, damage and value. Moreover, many claims from the Mariana Islands District require extensive research and development into precedent issues before decisions can be forthcoming. This is due, in part, to the nature of these claims which often involve both claims against the Governments of Japan and the United States under Title I of the Act, (war damage claims), and claims against the United States for damage after securing of the islands under Title II of the Act, (post-secure claims). However, these claims will begin to be issued rapidly as soon as the necessary legal and factual groundwork has been laid.

3. The claims arising solely under Title I of the Act, the so-called "war claims," have been issued more rapidly because the Congress of the United States appropriated five million dollars in Fiscal Year 1972 for the payment of claims under Title I and also because many claims under Title I involved deaths, which, under the provisions of Section 104(a) of the Act, are entitled to initial payments of up to $1,000 thereon, while other awards were to be paid only after certification of all claims by the Commission to the Secretary of the Interior.

This provision was amended by Public Law 93-131 on October 19, 1973, to allow, inter alia, for the payment of claims, when certified by the Commission to the Secretary of the Interior in such a manner he may direct.

4. Because the majority of the claims filed by inhabitants of the Mariana Islands District involve claims under Title II (post-secure claims), and because these claims involve complicated and sensitive legal and factual questions, the Commission has not been able to proceed as easily or quickly to issue decisions on such claims. However, the people of the Mariana Islands District must appreciate the fact that the members of the Micronesian Claims Commission take their responsibilities under the Act seriously and therefore issues such as the value of real property damaged after the securing of the islands, are being studied carefully and fully before passing judgment on meritoricus claims.

As soon as this important issue is resolved, I can assure you that the claims within the Mariana Islands District will be decided expeditiously.

5. Payments under Title I of the Act, as amended, are now being made by the Secretary of the Interior through his designee on awards certified by the Commission in the amount of sixteen percent of the total amount awarded, except for death, in which case up to $1,000 can be paid initially. The sixteen percent represents the estimate of the Secretary of the Interior of a maximum pro rata distribution on awards at this early stage in the claims adjudication process. Under the Act, at least ten million dollars will be available for payments on Title I claims. However, no amount has been paid on awards granted under Title II of the Act. This is because an initial appropriation of $1,400,000, against the $20,000,000 authorized, was only recently made available to the Interior Department as a part of its current fiscal year appropriations.

The fourth paragraph of Resolution Number 18-1974 refers to the requirement for signing a release in order to receive an initial payment on awards. This matter will be discussed, infra, in connection with Resolution Number 20-1974.

The fifth and sixth paragraphs of Resolution Number 18-1974 refer to the fact that the Commission, in accordance with the procedures established by the Secretary of the Interior, adopted

regulations which indicate that payments on claims under both Title I and II of the Act would be on a pro rata basis.

The procedure governing the method of payment is within the discretion of the Secretary of the Interior as far as Title II claims are concerned, since the pro rata provision is not expressly provided for Title II in the Act. However, such a procedure would rest on sound equitable and procedural grounds, having been used in numerous claims programs by the Treasury Department to ensure that all claimants share equally in the funds that are available. Without this procedure, the likely result would be that claimants whose claims are adjudicated toward the latter part of the program would receive no payment while those claims adjudicated earlier would receive full payment from the funds available. Such an outcome would be highly inequitable.

The seventh paragraph of Resolution Number 18-1974 asserts that the Micronesian Claims Commission is deceiving and misleading the people of the Mariana Islands District by assigning extremely low values to property losses.

It should be pointed out that the well established principles of international law, which the Micronesian Claims Commission is directed to consider in the adjudication of claims under the Act, require that all determinations of value of losses to be compensated must be based on the value of the property at the time of loss. As may be expected, such valuations often do not meet the expectations of claimants who are relating the value of the items claimed to today's replacement costs.

The factual pattern and economic values which were the basis of the valuation for awards under the Act, were the outgrowth of extensive research. All of the Commissioners, including the two Micronesian Commissioners, have approved these values.

Moreover, if any claimant feels that the values are too low with respect to his particular claim, he may appeal the Commission's initial determination and submit written evidence and present oral testimony to establish his asserted value or loss. Where the submitted evidence is convincing, the Commission will increase the award granted or grant an award where a denial was initially entered.

With respect to the entire subject matter of Resolution Number 20-1974, it should be noted that the requirement that a release be signed is not a determination made by the Chairman of the Foreign Claims Settlement Commission or the Micronesian Claims Commission. The Commission's jurisdiction is limited to the receipt and determination of claims by Micronesian inhabitants for the specified losses and certification of the award, if any, to the Secretary of the Interior, who is specifically delegated the responsibility for making payments on such awards.

Section 104(d) of Title I of the Act specifically provides that "no payment shall be made on any award of the Commission unless the claimant shall first execute a full release to the United States and Japan in respect to any alleged liability of the United States or Japan, or both, arising before the date of the securing of the various islands of Micronesia by the United States Armed Forces."

Thus, the requirement that a release be signed by a claimant before the Secretary of the Interior or his designated agent, the High Commissioner, Trust Territory of the Pacific Islands, may make any payment on account of an award granted in his favor, is one over which neither the Micronesian Claims Commission, the Secretary of the Interior, nor the Chairman of the Foreign Claims Settlement Commission has control.

When the Commission issues its decision on a claim, it is personally delivered to the claimant by an employee of the Micronesian Claims Commission with a letter explaining to him that he has a right under the Act and Commission regulations to file objections and request a hearing before the Commission. He is also advised that he may file objections and submit additional or new evidence and if he does not wish an oral hearing, the Commission will nevertheless consider his objections and make any changes in the decision that may be warranted. The decision and letter are delivered by the Commission's field representative, a locally hired Micronesian, who explains all details in the claimant's own language.

As a matter of convenience to the claimants, many of whom wish to receive their initial payment as soon as possible, and the Secretary of the Interior, the Commission employee does deliver on behalf of the Secretary, a release which the claimant may sign, if he so desires. The Commission employee advises the claimant that he may mail the release to the Secretary's

agent in a self-addressed, postage paid envelope which is given to him or he may take the release to the District Administrator's office in his area, which will forward it for him. This procedure was agreed to by the Micronesian Claims Commission as a time saving device which would obviate the necessity of an additional personal delivery by personnel of the agent of the Secretary.

With respect to the sixteen percent initial payment on awards being too low, as previously noted, the Act gives the Secretary of the Interior sole authority to make such pro rata payments under Title I.

If you, or any of the members of the Legislature wish additional information concerning the Micronesian Claims activities, do not hesitate to contact me.

Sincerely,

J. Raymond Bell
Chairman