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Claims Court Favors Saipan Trust

By Diane Maddex
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SAIPAN - In an opinion touching on the question of United States jurisdiction over Micronesian claims against the U.S., a trial judge for the U.S. Court of Claims has recommended the United States government compensate a Saipan man for postwar use of his father's land.

The Feb. 20 recommendation is subject to final approval by the full Court of Claims in Washington.

A companion Saipan case was dismissed last November because it fell outside the statute of limitations.

"While this opinion still managed to skirt the jurisdictional issue, I think it supports the theory we were able to advance," said William B. Nabors, attorney for the claimant, Gregorio P. Castro.

"This is that noteworthy change the 'limbo' status of the Trust Territory. It affirms the fact that the Constitution of the United States applies in the TT and that the obligations of the U.S. follow the flag."

Filed in October 1968, Castro's claim was the second Saipanese one brought under the Fifth Amendment of the Constitution.

Eleven other claims were brought at the same time. All but four, the two Saipan claims and two from Palau, were withdrawn when it appeared they would come under the 1971 Micronesian Claims Act, said Nabors.

The Palauan claims were dropped last year.

Claims for war-related losses in Micronesia also are being adjudicated under the claims act, based on criteria established by the U.S. Congress rather than on constitutional protections. These claims will be paid out of specially earmarked funds.

Castro, as heir of Vicente D. de Castro, sought compensation for U.S. use of five hectares in Saipan's Marpi area from 1944 to 1968 and destruction of 800 coconut trees.

The trial judge concluded Castro is entitled to compensation for 22 years at \$50 a year, or \$1,100. He also recommended that 4 per cent annual interest be paid from

September 1957, the midpoint of the claim, to the date of payment.

In the absence of other evidence, the \$50 figure was stipulated to by both sides as a reasonable value for use of the land and was not based on size of the lots claimed.

"We felt the principle of the claim was the overriding concern, not the money," said Nabors.

The judge accepted the U.S. government's argument that Castro is not entitled to payment for the 800 trees because they were destroyed during the invasion of Saipan. The is not compensable under the Fifth Amendment, he stated.

The government contended Castro's claim also should be barred by the statute of limitations. The judge concluded, however, that "when a taking occurs over a period of time, the owner is entitled to wait until the full extent or duration of the taking becomes clear before the time for bringing suit for just

compensation commences to run against him."

Owners of land in the Marpi area were prevented from returning to their property until September 1968 when it was finally declared free of war-time explosives.

Castro's title to the four lots at issue in this claim also was not determined by the TT High Court until May 1968. In 1956 the family had exchanged an additional 11 hectares in Marpi for 33 hectares under a government program.

After several continuances and other delays, a hearing into the Castro and companion Camacho claim was held on Saipan in May 1973.

Nabors said yesterday he does not intend to file any objections to the judge's recommendation "and I assume the Justice Department won't either." He added that a final decision from the court could come in 60 days.

The final ruling in the TT's favor, commented Nabors, "explodes the argument that the Trust Territory is a sovereign

government and not answerable for any of its actions."

He said that while the Castro claim presents "a narrow issue," its rationale "is applicable to various causes of action that Micronesians have." As examples, Nabors cited grievances over military retention areas and indefinite military leases in Truk.

Nabors added that if the Court of Claims accepts the judge's recommendation, "the doors of the Treasury of the United States will be open to pay similar awards without special congressional appropriation."

Another action asking the Court of Claims to assert jurisdiction over claims in Micronesia also is pending. Filed last March by George C. Kiskaddon and other shareholders in Transpacific Lines, it centers on the U.S. government's failure to allow the TT a concession to oversee the TT government shipping franchise, resulting in a \$31 million loss to Transpac stockholders.

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FILED IN THE OFFICE OF THE ATTORNEY GENERAL
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