

APPENDIX H



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

FEB 12 2004

MEMORANDUM

To: Stephen D. Sander, Designated Federal Official, Guam War Claims Review Commission

From: Timothy E. Murphy, Assistant Solicitor, Branch of General Legal Services, Division of General Law

Subject: Extent of Jurisdiction – Guam War Claims Review Commission

This memorandum responds to your November 20, 2003, request for an opinion from the Office of the Solicitor on two issues concerning the extent of the Guam War Claims Review Commission's ("Commission") jurisdiction.¹

The Guam War Claims Review Commission Act ("Commission Act"), Public Law 107-333, 116 Stat. 2873, enacted by Congress on December 16, 2002, establishes the Commission and sets forth its duties in section 5. As set forth in subsection 5(1) of the Commission Act, one of the Commission's duties is to review the effectiveness of the Guam Meritorious Claims Act, enacted on November 15, 1945 ("Claims Act of 1945"), in addressing the war claims of American nationals who resided on Guam between December 8, 1941, and July 21, 1944.

As explained in your memorandum, the first issue is whether, under subsection 5(1) of the Commission Act, the Commission is limited in its investigative authority to the time period between December 8, 1941, and July 21, 1944, or whether the Commission is free to examine damage suffered by residents of Guam in the months after July 21, 1944. The Commission seeks an opinion on this issue because it believes certain Guamanians may have suffered loss of life or property at the hands of Japanese stragglers after the technical end of Japanese occupation of Guam. As will be explained below, we believe the authority of the Commission extends beyond July 21, 1944.

A review of the plain language of subsection 5(1) of the Commission Act, the Claims Act of 1945, and the legislative history and purpose for the Commission Act support a conclusion that the Commission is not limited in its investigative authority to the time period between December 8, 1941, and July 21, 1944. Subsection 5(1) of the Commission Act provides: "The Commission shall: (1) review the facts and circumstances surrounding the implementation and administration of the Guam Meritorious Claims Act and the effectiveness of such Act in addressing the war claims of American nationals residing on Guam between December 8, 1941, and July 21, 1944[.]" Pub. L. 107-333, § 5(1). Subsection 5(1) only limits the Commission's authority to review the effectiveness of the Claims Act in addressing the war claims of those American nationals who actually resided on Guam between December 8, 1941, and July 21, 1944. By its terms, subsection 5(1) does not limit the Commission's investigative authority to the time period between December 8, 1941, and July 21, 1944.

¹The November 20, 2003, memorandum also requested an opinion from the Chief Counsel of the Foreign Claims Settlement Commission.

Moreover, the Claims Act of 1945, the Act that the Commission is authorized to review, did not limit its coverage to damage occurring before July 21, 1944. More specifically, the Claims Act of 1945 authorized the Secretary of the Navy to create a commission to, among other things, settle war claims by residents of Guam for property damage arising in Guam “when such damage, loss, or destruction is the result of or incident to hostilities or hostile occupation, or is caused by or incident to noncombat activities of the United States Army, Navy, or Marine Corps forces or individual members thereof, where the amount of such claim does not exceed \$5,000[.]” Pub. L. 79-224. The Claims Act of 1945 required that, if the war claim arose out of an accident, incident, or engagement that occurred after December 6, 1941, but prior to December 1, 1945, residents of Guam had one year from December 1, 1945, to file their war claims. By authorizing the Secretary of the Navy to review, settle, or certify war claims caused by or incident to noncombat activities, i.e., activities that occurred after the date of secure, and war claims that arose after December 6, 1941, but prior to December 1, 1945, it is unlikely that Congress intended to exclude war claims for damages that occurred after July 21, 1944.

Finally, according to the legislative history of the Commission Act, Congress created the Commission, in part, because previous legislation either excluded Guam or failed to completely rehabilitate the island and redress the damages suffered by American nationals who resided on Guam during World War II. For instance, the Claims Act of 1945 did not authorize the Secretary of the Navy to settle war claims for death or personal injury, or those in excess of \$5,000, but required that the Secretary certify such claims to Congress. Moreover, the War Claims Act of 1948, and the 1962 amendments to that Act, completely excluded Guam. “This led to the anomaly that many people from Guam who happened to be in the Philippines at the time were eligible for war claims, whereas their families who remained on Guam under enemy occupation were ineligible.” 147 Cong. Rec. H850 (daily ed. Mar. 13, 2001).

Therefore, in order to fulfill its duties under section 5 of the Commission Act, including the duty to “advise on any additional compensation that may be necessary to compensate the people of Guam for death, personal injury, forced labor, forced march, and internment[.]” Pub. L. 107-333, § 5(5), the Commission may examine damages suffered by residents of Guam after July 21, 1944, when the damages resulted from hostilities or hostile occupation by Imperial Japanese forces, or incident to noncombat activities. This conclusion leads to a sensible construction, *see Church of the Holy Trinity v. United States*, 143 U.S. 457 (1892), and comports with the purpose of the Commission Act.

The second issue raised in your memorandum is whether, under subsection 5(4) of the Commission Act, the Commission is limited in its investigative authority to territory occupied by the Imperial Japanese military forces during World War II or whether the Commission is free to examine payments that were made to United States citizens or nationals as a result of damage suffered outside the Asia-Pacific region, such as Europe. The Commission seeks an opinion on this issue because a member of the Commission believes that war claims of victims of the action of other Axis powers, e.g. Nazi Germany, are potentially relevant to determining parity of war claims.

Subsection 5(4) of the Commission Act provides: “The Commission shall: . . . (4) determine whether there was parity of war claims paid to the residents of Guam under the Guam Meritorious Claims Act as compared with awards made to other similarly affected United States citizens or nationals in territory occupied by the Imperial Japanese military forces during World War II[.]” Pub. L. 107-333, § 5(4). The plain language of subsection 5(4) clearly limits the Commission’s jurisdiction to considering parity of war claims of U.S. citizens or nationals in territory occupied by the Imperial Japanese military forces during World War II. It would be

outside the scope of the Commission's delegation of authority or jurisdiction for it to investigate war claims paid to victims of other Axis powers, such as Nazi Germany.

Please contact Nathalie Smith at (202) 208-4471 or Tim Murphy at (202) 208-5216 if you have any further questions or need further assistance in this matter.



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WASHINGTON, DC 20240

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MEMORANDUM

To: Stephen D. Sander, Designated Federal Official Guam War
Claims Review Commission

From: Timothy E. Murphy, Assistant Solicitor, Branch of General Legal Services,
Division of General Law *Timothy E. Murphy*

Subject: The Aleut and Pribilof Islands Restitution Act and Guam War Claims

By memorandum dated April 30, 2004, you asked for the views of the Office of the Solicitor on whether the Guam War Claims Review Commission ("Commission") could properly consider Congressional legislation providing for payments to various residents of the Aleut Islands, Alaska in making recommendations to Congress regarding Guam war claims under the Guam War Claims Review Commission Act ("Commission Act"), P.L. 107-333, 116 Stat. 2873. We conclude that the Commission may legally consider the Aleut experience and legislation. We express no opinion on the weight to which the Aleut experience and the attendant legislation may be entitled. That is a matter for the Commission to consider.

As your memorandum points out, the United States evacuated the Aleuts from the Aleutian Islands prior to the Japanese invasion during World War II. By Title II of P.L. 100-383, 50 U.S.C. App 1989c, Congress provided for compensation to the Aleuts resulting from their World War II experience. Specifically, Congress provided for a per capita payment of up to \$12,000 for each eligible Aleut, as defined in the statute, subject to the availability of funds, 50 U.S.C. App 1989c-5.

In the Commission Act, Congress provided for the formation of a Commission to study and make recommendations on the payment of war claims to Guamanians. In Section 5(4) of the Commission Act, Congress directed the Commission to

"determine whether there was parity of war claims paid to the residents of Guam under the Guam Meritorious Claims Act as compared with awards made to other similarly affected United States citizens or nationals in territory occupied by the imperial Japanese military forces during World War II."

By memorandum to you dated February 12, 2004 titled "Extent of Jurisdiction – Guam War Claims Review Commission" (attached), this Office offered guidance in the implementation of the Claims Act. We concluded that under Section 5(4) the Commission could not consider payments made to United States citizens or nationals as a result of damage inflicted by Axis powers other than Japan, such as Nazi Germany. Implicit in our reasoning, however, and

required by the plain language of the Commission Act, was the conclusion that the Commission could properly consider payments made to United States citizens or nationals resulting from Japanese occupation. We stated: “[t]he plain language of subsection 5(4) clearly limits the Commission’s jurisdiction to considering parity of war claims of U.S. citizens or nationals in territory occupied by the Imperial Japanese military forces during World War II.”

The Aleutian Islands in Alaska were occupied by the Imperial Japanese military forces during World War II. Thus, we conclude that the Commission may properly consider the Aleutian experience and the Aleut restitution statute in making a recommendation to Congress on Guam war claims. Again, the extent to which the Aleut experience may be relevant is for the Commission to decide, and we express no opinion on the matter.

Please let me know if you have any further questions.

Attachment