FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON 25, D. C.

IN THE MATTER OF THE CLAIM OF

FAJBUS ZAKRZEWSKI
52-15 Palisade Avenue
West New York, New Jersey

Claim No. PO-1695

Decision No. PO-83

Under the Polish Claims Agreement of 1960 and the International Claims Settlement Act of 1949, as amended

GPO 908483

Counsel for Claimant:

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170 Broadway
New York 38, New York

FINAL DECISION OF THE COMMISSION

The Commission issued its Proposed Decision on this claim on May 10, 1961. A copy of the Proposed Decision was served upon the claimant, who filed objections thereto, but did not request a hearing before the Commission. Full consideration having been given to the objections, and general notice of the Proposed Decision having been given by posting for twenty days, it is

ORDERED that such Proposed Decision be and the same is hereby entered as the Final Decision on this claim.

Dated at Washington, D. C.
JUL 13 1961

Edward D. Re

Theodore Jaffe

COMMISSIONERS

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PROPOSED DECISION OF THE COMMISSION

This claim is based upon the asserted ownership and loss by the claimant, FAJBUS ZAKRZEWSKI, of property in Poland. The claim was filed on December 29, 1960, at which time the claimant, who had been born in Poland, had filed a declaration of intention to become a citizen of the United States, but had not yet become such a citizen.

The Commission's jurisdiction over claims of this nature arises from Section 4(a), Title I, of the International Claims Settlement Act of 1949, as amended, which states that "The Commission shall have jurisdiction to receive, examine, adjudicate, and render final decisions with respect to claims of the Government of the United States and of nationals of the United States...within the terms of any claims agreement hereafter concluded between the Government of the United States and a foreign government...." (underlining added)

Article 1 of the Polish Claims Agreement of 1960 provides for the settlement and discharge of "claims of nationals of the United States, whether natural or juridical persons, against the Government of Poland...." (underlining added) Article 2, which defines the types of claim included in the Agreement, begins with the words

"claims to which reference is made in Article 1 and which are settled and discharged by this Agreement are claims of nationals of the United States...." (underlining added)

The term "claims of nationals of the United States" is defined in Annex A to the Agreement as including only claims which have been owned continuously, from the date of nationalization, appropriation, or other taking of property to July 16, 1960, by juridical persons (such as corporations) which meet certain requirements, or by natural persons who were "nationals of the United States." For a definition of the term "nationals of the United States", we refer back to Section 2(c), Title I, of the International Claims Settlement Act of 1949, as amended, which provides that:

> The term "nationals of the United States" includes (1) persons who are citizens of the United States, and (2) persons who, though not citizens of the United States, owe permanent allegiance to the United States. It does not include aliens.

This claim may not be found compensable unless the claimant qualifies as a national of the United States as defined above. Since he was not a citizen of the United States when he filed the claim, his claim can be valid only if he owed permanent allegiance to the United States within the meaning of the definition.

The reports of both houses of Congress 1/ on H.R. 4406, the bill which was enacted by the 81st Congress to become the International Claims Settlement Act of 1949, state that the above-quoted definition of "nationals of the United States" was that which had been employed in the Nationality Act of 1940 2/. From that Act it appears that the reference to noncitizens owing permanent allegiance to the United States involved persons in certain outlying possessions of the United States, who were neither aliens nor United States citizens. The

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1/ H.R. Rep. No. 770, 81st Cong., 1st Sess. 6 (1949); S. Rep. No. 800, 81st Cong., 1st Sess. 7 (1949)

2/ 54 Stat. 1137 (1940); 8 U.S.C. § 1101 (1958)

history of subsequent legislation makes clear that permanent residence in the United States or a declaration of intention to become a United States citizen do not bring a person within the ambit of the phrase "owe permanent allegiance to the United States."

The Senate passed H.R. 4406 with an amendment providing that if a later agreement between the United States and a foreign government should purport to settle claims of persons who, at the time of nationalization or other taking of their property, were permanent residents of the United States and had declared their intention to become citizens, such persons would be deemed "nationals of the United States" if they acquired United States citizenship prior to the effective date of the agreement. In the committee of conference, the Senate receded in this respect and adopted the House version, so that the law was passed without the amendment. 3/ It would not have availed the present claimant in any event, inasmuch as the Polish Claims Agreement did not contain the requisite provision, and the claimant was not a United States citizen on its effective date. The rejection of the amendment clearly establishes, however, that the claimant was not such a person as was within the contemplation of Congress in defining "national of the United States."

Title III was added to the International Claims Settlement Act of 1949 by Public Law 285, 84th Congress, and defined "national of the United States" in part as "...a natural person who is a citizen of the United States, or who owes permanent allegiance to the United States...." This bill was passed by the House of Representatives as H.R. 6382, and had been amended to provide, as to certain losses, that the claimant need not have been a United States citizen when the loss was suffered, provided that he was a permanent resident who had declared his intention to become a citizen of the United States,

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3/ H. R. Rep. No. 1693, 81st Cong., 2d Sess. (1950)

and did become a citizen by September 15, 1947. The Senate Committee on Foreign Relations noted that this proposed extension of eligibility, if adopted, "would mark the first time in the claims history of the United States that a declaration of intention was equated with citizenship." The Committee deleted the amendment for the stated purpose of limiting the eligible class to claimants who were American citizens at the date the loss was sustained. 4/ In this form, the bill became law.

With this understanding of the intention of Congress in defining "nationals of the United States" as it has done in the Nationality Act of 1940, the International Claims Settlement Act of 1949, and the amendments thereto, it is clear that the claimant herein, at the time of filing the claim, was neither a citizen of the United States nor a person owing permanent allegiance to the United States, within the meaning of such legislation. Accordingly, he was not a national of the United States, and not an eligible claimant.

Even if the claimant has become a national of the United States since the filing of the claim, or becomes a national of the United States hereafter, the claim is not compensable under the Agreement for the reason that it was not owned continuously by a United States national or nationals, as defined in the Act, from the time it arose to July 16, 1960; and therefore it is not a claim of a national of the United States within the meaning of the Agreement, and is not a claim settled and discharged by the Agreement.

Accordingly, the claim is denied.

Dated at Washington, D. C.
MAY 10 1961

BY DIRECTION OF THE COMMISSION:

Francis T. Masterson

Francis T. Masterson
Clerk

4/ S. Rep. No. 1050, 84th Cong., 1st Sess. 9-10 (1955)