REPORT OF THE INTERNATIONAL CLAIMS COMMISSION OF THE UNITED STATES

on the

SETTLEMENT OF THE PROPERTY CLAIMS AGAINST THE REPUBLIC OF PANAMA UNDER THE CLAIMS CONVENTION BETWEEN THE UNITED STATES AND PANAMA OF OCTOBER 11, 1950

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INTRODUCTION

Panama declared its independence from the Republic of Colombia on November 31, 1903. Relationships between the United States and the Republic of Panama since that date have become progressively intimate. In the course of these friendly efforts by both governments to foster harmonious relations, a Convention between the United States and Panama was proclaimed by the President of the United States on October 23, 1950. Under the terms of this Agreement the United States Government was authorized to designate an agency to settle certain claims of the United States citizens against that government. The International Claims Commission of the United States was immediately designated as the adjudicating body.

The Commission set up a procedure to receive claims and set a date within which to file such claims. It commenced its work by communicating with some 322 potential claimants to advise them of their rights as settled by the United States Government. The Commission finally received 67 claims against the Government of Panama for sums approximating $1,532,000. Since receipt of these claims, and up until March 4, 1954, the Commission accumulated evidence and developed the facts in each claim. However, the Commission did not issue any proposed decisions or awards during this period.

President Eisenhower, on August 12, 1953, appointed Mr. Harold B. Teegarden, of the Securities and Exchange Commission, and Mr. George w. Spangler, of the Department of Justice, as Acting Chairman and Acting Member, respectively, of the Commission. The work of the Commission was immediately reorganized and its claims procedure streamlined. Unfortunately, due to the death of Mr. Teegarden, on November 17, 1953, there was little opportunity to further process these particular claims in the absence of a quorum of Commissioners. On March 4, 1954 the President appointed Henry J. Clay, *Esq.,* a New York attorney, as Acting Chairman of the Commission. Since that date, a concerted effort has been exerted by the Commission staff to complete the investigations of these claims, issue proposed decisions, and wind up the affairs insofar as they specifically relate to the Panamanian claims. The Commission made proposed awards in 63 cases aggregating the sum of $446,182.87 and denied relief in 4 such claims. Inasmuch as the Convention provides for satisfaction of' all claims out or the lump sum settlement of $400,000, the awards made will be prorated by the U.S. Treasury to provide tor payment of approximately *90¢* on the dollar.

HISTORICAL BACKGROUND

The history of the transfer of lands called "El Encanto" is somewhat vague in origin and involved in fact. Title to this tract of land, situated in the Province of Colon, Beregues and Coele in the Republic of Panama, was based upon an auction sale undertaken in 1689 by the Kingdom of' Spain through its Assessor General in Panama City to one Bernardo Antonio. The property involved was successively handed down through buyer Antonio's family to one Manuel A. Borrero who sold the lands on November 9, 1860 to Simon G. Rojas for a reported consideration of 200 silver pesos. The first recorded evidence of title to the tract appears in a public document dated November 10, 1860 which was prepared for registration in the Register of Public Documents and Contracts but actually not recorded until a later date in the Notarial office of the Circuit of Chiriqui on November 23, 1913.

On December 8, 1913, Rojas sold the El Encanto Tract to an American by the name of Herbert H. Howe for $500. Title was thereafter duly recorded in the Notarial office of the Circuit Court of Panama. Howe subdivided the property, selling part on December 19, 1913 to the Mariposa Development Company for a reported $1000 and the remainder on November 25, 1914 to one Leslie R. Drake for the same consideration. Portions of the property subsequently passed by various successive conveyances to other individuals and companies for different considerations.

On June 28, 1928, Raymond Morales, a Panamanian citizen, petitioned the Minister of Hacienda in Panama to commence an action at law for the recovery of the El Encanto lands on behalf of the State.

The action instituted by Morales was brought under the so-called Bienes Ocultos Law of 1924. This statute provided that hidden properties lawfully belonging to the State could be recovered through suit undertaken by a private citizen who would; in return for his successful efforts, receive 50% of the proceeds of such suit. Morales' compensation for successful prosecution under this law and based on the values alleged would have been between $650,000 and $750,000 as the properties in the tract by this time were valued, for tax purposes, at $1,500,000. Morales' original petition to the Court was denied October 3, 1930. The dismissal of suit was based on the grounds that the titles to these lands had been registered and, therefore, could not be considered Bienes Ocultos, or hidden properties.

After this opinion, the Panamanian legislature on December 27, 1928 enacted a special law under which national properties in the hands *of* private citizens who have not legitimately acquired them, and for which any reason could not be considered hidden lands of the State, can be denounced as if they were. Morales immediately seized upon this new legislation and instituted suit before the First Circuit Court of Colon. The Court, after hearing the case, decided that the action was not sustainable and rendered a decision upholding the validity of the defendants titles. In the course of its decision, the court called attention to the fact that the plaintiff had produced absolutely no evidence to show the alleged invalidity of the titles attacked.

Morales appealed to the Supreme Court of Panama., notwithstanding the fact that the Attorney General of Panama had submitted an opinion recommending that the decision of the Circuit Court be sustained due to the fact that all of the titles attacked were duly registered legal titles. The Attorney General also argued that it was illegal to attack in such a suit a combination of separate titles without indicating what lands each defendant was supposed to be holding illegally. Nevertheless, the Supreme Court of Panama reversed the decision of the Circuit Judge and directed cancellation of the titles of the Mariposa Development Company and the other American owners.

Subsequent to the Supreme Court decision, a number of claims against the Government of Panama, on behalf of persons interested in the El Encanto Tract, were filed with the American and Panamanian General Claims Arbitration established pursuant to a General Claims Convention concluded between the two governments on July 28, 1926.

Prior to its termination, the 1926 Claims Commission rendered a decision on June 27, l933 to the effect that it had authority under the Claims Convention of July 28, 1926, to decide only those claims which arose prior to October3, 1931, the date when the Convention became effective through the exchange of ratification between the two governments. The Commission found that the El Encanto claims did not arise before the October 3, 1931 termination date and, therefore, it did not have authority to adjudicate those particular claims. Fortunately for the claimants, this decision related only to the question of jurisdiction and did not in any way affect the merits of the claims.

This decision caused considerable embarrassment in the relations between the two governments which the Convention was obviously designed to avoid. One important lesson, as a result thereof, is to be found in the fact that vagueness in the Agreement led to the disappointing result of delaying the final adjudication of obviously meritorious' claims. Negotiations between the United States and Panama relative to these particular claims followed. A further convention between the United States and the Republic of Panama was signed a.t Panama on January 26, 1950 and ratified by the President of the United States on August 18, 1950.

CONVENTION TERMS

By the terms of this Agreement, the two governments recognized that it was most desirable to dispose of, on an equitable basis and without reference to the legal aspect of the controversies, claims of the United States against the Republic o! Panama arising as a consequence of the judgment rendered by the Supreme

Court of Justice of the Republic of Panama on October 20, 1931, which declared as the property of the Republic of Panama the El Encanto properties which certain nationals of the United States alleged that they had acquired in good faith.

The Government of Panama agreed to pay the United States the sum of $400,000 with respect to property losses suffered by United States nationals in relation to the El Encanto lands. Article 5 of the Agreement provides as follows:

> With reference to the so-called El Encanto claims, the Government of the Republic of Panama expressly declares that, in agreeing to the settlement of these claims, it has not ignored or disregarded the decision rendered by the Supreme Court of the Republic of Panama in a litigation relating to the El Encanto lands, which judgment sets forth the legal aspects *of* the matter. In agreeing to the settlement of those claims, the Government of the Republic of Panama is prompted by reasons *of* strictest equity to make good the losses suffered by several nationals of the United States of America who acted in good faith in the acquisition of lands to which reference is made.

The Agreement further provides that upon execution of the provisions of the Convention, the two governments shall consider as reciprocally cancelled, renounced and satisfied, all claims in reference to the El Encanto Tract. It further provided that, if upon such adjudication of all the claims the Claims Commission shall find the sum of $400,000 in excess of the total amount of the claims which may be determined to be valid, plus the cost of adjudication, the Government of the United States should return such excess to the Government of Panama.

AREA OF TRACT

All of the principal purchasers covered under the 1950 Agreement had deeds properly recorded in Panama. It is clear, however, that the recording system in Panama at the time or recordation was somewhat inf ormal and the description of the area recited in the deeds had been accepted at face value by the Panamanian authorities with little effort to verify the description.

There appears to be no accurate description of the El Encanto Tract. Its area is one of conjecture. Due to the impossibility or locating the exact boundaries of the tract from the description contained in the original deed, the area of the El Encanto lands has always been unknown and the exact boundaries of the section a matter of dispute.

It has been claimed at various times that the El Encanto lands contained 112,755 hectares. The claims made before the General Claims Commission of 1932 involved some 114,000 hectares. Since that time, additional claimants have alleged ownership to other areas in the tract. However, it would appear that the estimate of 120,000 hectares, as alleged by Ramon Morales, probably is the closest approximation to being a correct statement of the area of the tract.

The unit of land measurement in Panama is the hectare. A hectare is equivalent to 2.47 acres. The area of 120,000 hectares would, therefore, approximate some 296,400 acres.

The Mariposa Development Company and Drake sent a team of surveyors to Panama in 1915 and their survey, which was extremely sketchy, is the only survey or recitation of what appears to be an accurate description of the properties. Drake stated in an affidavit executed on November 30, 1932 before the Consul General of Panama in San Francisco:

> No man living today has seen the four corners of this ranch. No government official in Panama knows, and no official in Washington knows, precisely where and how they are located. My surveyors succeeded in locating the Atlantic Ocean on the north side, which

> down there is called the Caribbean Sea, and they found the San Roque River and it seems no one has moved to Cerro Negro Mountain. Also, they think they found the Palmea River; but they told me the natives told them that there were many rivers called the Palmea River, which means the River of Palms.

For the purposes of this Commission, the tract has been regarded as containing 120,000 hectares, which we believe to be a reasonable estimate, based on the facts and evidence submitted. No evidence has been filed with this Commission indicating that any of the land in the tract was improved or that it varied in value per hectare.

VALUE OF PROPERTY

The principal problem before the Commission has been one of assessing the correct value of the property involved. It appears that when the claims were filed with the former General Claims Commission in 1932 the claimants sought approximately $1,409,000 plus interest, for a total area approximating 114,000 hectares. This would fix a rate of $12.50 per hectare, which is the price paid by certain purchasers of small parcels.

There is no conclusive evidence to serve as a guide as to the amounts which were actually paid in taxes by the principal claimants to the Panamanian Government. Many claimants were unable to produce receipts evidencing any tax payments. The Mariposa Development Company, for example, alleged payment of taxes in the total amount of $23,116.00, but receipts totaling only $1774.85 were submitted.

The undertaking in its inception was something of a speculative nature. Howe, the original promoter, paid $500 for the entire tract. The Mariposa Company and Drake paid $1,000 each when they bought out Howe's interest s. A number or small parcels were sold by the large owners at $5.00 an acre and many were sold below that price.

Although the land value alleged by claimants and espoused by the United States in its Memorial before the General Claims Commission in 1932 was $12.50 per hectare, a further examination disclosed that this figure was based on a few sales of property by the Mariposa Development Company and other principal claimants. There is, however, evidence that during a certain period the property was valued for tax purposes at approximately $12.50 per hectare.

In light of the valuation of the El Encanto lands at $1,407,344.59 before the General Claims Commission, it is remarkable that the total payment of taxes on the basis of receipts appears to be only approximately $10,000. In further conflict with this evidence is the Panamanian appraisal at $80,000 of the tract in 1935, which was arrived at in the course of liquidating the denouncer Morales' claim for one-half the value of the El Encanto lands.

It has been charged by the Panamanian Government that Howe's original acquisition in 1913 was merely as a go-between for the principal claimants, who in the execution of a predesigned land speculation scheme thereafter transferred among themselves parcels of the tract at grossly exaggerated prices. The obvious purpose of such manipulations, it was argued, was the artificial creation of an inflated market value, which was represented to buyers in the United States as a true reflection of the actual worth of the El Encanto Tract.

In arbitrating the claims, the Government of the United States indicated at the beginning that it was prepared to accept a lump sum settlement on the basis of lower valuation. In the course of negotiations between the two countries, the United States advocated compensation in the amount of $470,000. The basis of this figure was 120,000 hectares at $3.00 per hectare ($360,000), plus interest at 2% ($110, 000). The $3.00 per hectare was generally accepted as a fair valuation, as that was the appraised value of the

tract for tax purposes at the time of the Supreme Court Decision. Finally, the United States agreed to accept $400,000 in full and fin.al settlement of the claims and this figure was incorporated in the Convention of 1950. Based upon all the circumstances, and in view of the evidence of record, this Commission has found that all of the land in the El Encanto tract worth at least $4.00 per hectare on October 20, 1931, the date of the final judgment or the Supreme Court of Panama, and has allowed all meritorious claims at that value.

DATE OF TAKING

In the course of formulating rules of procedure governing the filing of claims, it was suggested that the Commission officially establish and adopt October 20, 1931 as the date or taking by the Panamanian Government of the American property interest in the El Encanto Tract. In discussing this proposal, the opinion was expressed that the date of taking of the property interest involved should not be judicially pre-established but should be alleged and proved in each individual case filed. It was argued that the date of taking by the Panamanian Government of the entire El Encanto Tract, smaller parcels of which are the subject of the individual claims in question, should not be officially determined. The date of taking, it was further contended, should be separately and individually presented and adjudicated in each particular claim.

In the event that it was found that a blanket determination of the time of taking was possible, it was then argued that October 20, 1931 was not the actual date of taking but that the acts which constituted the confiscation of these lands were committed much earlier. It was euggested1 in such a case, that the legal date of taking should be found to be several years prior to October 20, 1931.

The El Encanto Tract in the Republic of Panama comprises some 296,400 acres and the claims for which settlement has been effected arise from the confiscation of the entire tract and, consequently, of all individual lots contained therein. Whatever date *ot* taking may have been adopted, or whatever set of circumstances may have been decided upon as constituting such act of confiscation, it is clear that the taking of the entire tract was accomplished by the same act and at the same time. The titles to the individual lots contained therein were also, and necessarily, nullified at the time the title to the tract as a whole was cancelled and such lands declared the public property of Panama. To have required each claimant to allege and prove the acts amounting to confiscation as well as the time thereof would have occasioned needless multiplicity from the standpoint of filing and presenting evidence and would have required the Commission to pass repeatedly upon what constituted the act of' confiscation and what constituted the date of taking, followed by an identical finding in each of the claims presented for adjudication.

Situations of this nature occurred frequently in the course of administering other settlements where the point of time of nationalization or other taking is or paramount importance. Practically all owners of holdings in the El Encanto Tract were American nationals either by birth or by naturalization. These persons had been nationals for many years prior to the earliest act by the Panamanian Government which could have been legally considered an act of confiscation.

Whatever weight might be given to the arguments above adduced., the vital and conclusive reason for the Commission's establishing an official date of taking is found in the terms of the Claims Convention with Panama of 1950 itself. The clear and unequivocally stated purpose of the 1950 Convention was to provide for settlement of "Claims of the United States of America against the Republic of Panama arising as a consequence of the judgment rendered by the Supreme Court of Justice of the Republic of Panama on October 20, 1931, through which there were declared as the property of the nation certain lands called El Encanto, which several nationals or the United States of America alleged that they acquired in good faith. Thus, it is apparent that the intention of this convention was to effect settlement of claims accruing as a result of the decision of the Supreme Court of Justice or Panama on October 20, 1931.

INTEREST

The Commission ha$ disallowed requests for interest in each award as the 1950 Convention between the Government of the United States and the Government or Panama contains no acknowledgment or legal liability or violation or property rights. The Republic of Panama in agreeing to the payment under the Convention, expressly declared that it was not disregarding the decision rendered by the Supreme Court of Justice of Panama, which decision sets forth the legal aspects or the matter, but that it was prompted to make such payment solely by reasons or strictest equity to make good losses suffered by United States nationals. Any award under the Agreement would be a settlement of such losses and not a judgment as such.

It should be noted that this reasoning ia considered realistic in view of the fact that there is only $400,000 available, less authorized deductions for administration expenses for distribution. It is apparent from the total amount of proposed awards issued that an additional award of interest could not be satisfied from the proceeds of the fund.

EXPENSES OF THE COMMISSION

The International Claims Commission is not financed by the taxpayers of the United States, although the Congress is called upon to make annual appropriations. These appropriations are reimbursed, so to speak, out or deductions or loading charges on awards made to claimants by the Commission. Pursuant to the International Claims Settlement Act of 1949, Section 7, Subdivision (b), it is provided that: "there shall be deducted from the amount of each payment made, as reimbursement for the expenses incurred by the United States, an amount equal to 3% of such payment. All amounts so deducted shall be covered into the Treasury to the credit of miscellaneous receipts." An amendment to the said Settlement Act approved August 8, 1953, in Section 2 thereof, amended Section 7, subdivision (b), to increase the deduction for expenses to 5%.

On the basis of the total sum covered in the Agreement, the loading charge to pay for the administrative expenses of the Commission incident with processing these claims amounted to $20,000. It should be noted that this amount is but a small portion of the total expenses incurred by the Department of State and this Commission for preparation and processing these claims. As has been stated, extensive negotiations and time-consuming effort has been expended in the preparation of legal memoranda, briefs on questions of law, and numerous conferences with representatives of the Panamanian Government. Many of these efforts were made prior to the signing of the Convention between the United States and Panama. It would be difficult to assess the actual cost of time and effort expended in disposing or these claims on behalf of the citizens involved. Nevertheless, a lengthy and protracted effort on the part of the United States Government to intervene on behalf of its citizens who have been deprived of their properties stands as a milestone in settlement of international differences by a combination of efforts on the part or the Department or State and the agency created to administer these claims. The work of the Commission has been complicated by the additional fact that the original owners of the parcels of property contained in this tract made their purchases prior to World War I. Although some of the awards made were extremely small, the job of getting the money in the hands of the rightful beneficiaries was a problem.

CONCLUSION

There have been many details and numerous difficulties encountered in bringing this work to a conclusion. Many of the problems were the result of' passage of time. The original claimants, in a number of cases, died years ago and as a result complicated problems of inheritance and decedent estate law were created. The problem or valuation and description has been related. Resolution of each individual situation in the light of principal or internat1onal law, sound judgment and equity does require time, but the interests of the claimants also had to be considered.

Up until President Eisenhower's reorganization of the Commission by the appointment of new members, the Commission had entertained these claims for nearly three (3) years without issuance of a proposed award. The appointment of new members provided an opportunity to expedite disposal of the claims by streamlining and eliminating cumbersome and time consuming claims procedure.

In the spirit of the present administration's desire to get things done expeditiously and economically, we are pleased to report that all proposed decisions under the Convention of 1950have been issued in less than four (4) months since the most recent quorum of Commissioners were appointed.