

FILED

JUL - 7 1952

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*James M. ...* Clerk  
INDIAN CLAIMS COMMISSION

BEFORE THE INDIAN CLAIMS COMMISSION

SAGINAW CHIPPEWA INDIAN TRIBE )  
OF MICHIGAN, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 UNITED STATES OF AMERICA, )  
 )  
 Defendant. )

Docket No. 13-H

Decided July 7, 1952

Appearances:

Arthur B. Honnold,  
Attorney for Plaintiff.

Sim T. Carman and Leon J. Moran,  
with whom was Mr. Assistant  
Attorney General Wm. Amory Underhill.

O P I N I O N

PER CURIAM. The evidence on the merits of this claim was closed on March 17, 1952, and thereafter, on April 7, 1952, plaintiff filed its motion to file an amended petition "to conform to the proof" and to reinstate an individual, one James Strong, as a party plaintiff. Thereafter, and before the Commission acted on that motion, plaintiff on May 1, 1952, filed a "substituted motion" for leave to file an amended petition to conform to the proof previously offered by the parties and to add the name of James Strong, an individual member of plaintiff tribe, as a party plaintiff. The last motion expressly withdrew the first motion mentioned

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above and had attached thereto the proposed amended petition.

Defendant opposes the making of James Strong a party plaintiff, suing as a representative of all the members of the plaintiff tribe, of which he is a member, on the ground that a new cause of action would be pleaded after the bar of Section 12 of the Indian Claims Commission Act.

The claim here under consideration was one of twenty-seven (the 18th) included in a petition filed on October 17, 1947, by the Saginaw Chippewa Indian Tribe of Michigan, a Federal Corporation, and James Strong, as representative of all members of the Chippewa Tribe of Indians of which he is a member. (Docket No. 13). On July 13, 1949, the Commission ordered a separation of the causes of action set forth in the original petition, and plaintiffs herein, accordingly, filed the petition here under consideration but inadvertently omitted James Strong as a party plaintiff. Under the circumstances we believe he should be reinstated as a party plaintiff in the petition herein.

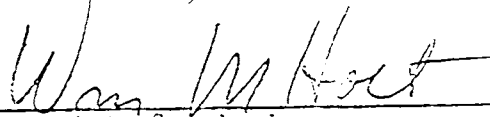
Defendant opposes the proposed amended petition on the further ground that the plaintiff has stated three new and different causes of action which, under the limitation of said Section 12 of the Indian Claims Commission Act, cannot now be asserted. As we read the proposed amended petition we believe it is merely an attempt to elaborate somewhat on the former allegations of the petition, and fairly construed cannot be said to change the causes of action alleged in the petition. The difference between the two, as claimed by defendant, is too elusive for practical application in the determination of these claims. However, since we are

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of the opinion that no new or different claims are attempted to be set up in the proposed amended petition, we see no need for the amendments proposed. The three claims now relied upon (First, Second and Fourth of the petition -- the Third, Fifth, Sixth and Seventh having been expressly withdrawn by the motion of May 1, 1952) are sufficiently pleaded in the original petition to permit an adjudication thereof, in fact, we believe the original petition is in some respects superior to the proposed amended pleading, so there seems to be no reason for encumbering the record with an unnecessary amendment. This is not a situation, it may be pointed out, that comes within Sec. 13(b) of our Rules.

The motion will therefore be overruled by appropriate order.

  
Associate Commissioner

  
Associate Commissioner