

BEFORE THE INDIAN CLAIMS COMMISSION

THE DUWAMISH TRIBE OF INDIANS)	
)	
Petitioner,)	
)	
v.)	Docket No. 109
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: July 20, 1962

ADDITIONAL FINDINGS OF FACT

The Commission has heretofore made findings of fact numbers 1 through 40 and now makes the following additional findings of fact which are supplemental to those already made.

41. That on July 13, 1962, the parties herein filed with the Commission a Joint Motion for Entry of Final Judgment based upon a Stipulation for Entry of Final Judgment in the above-entitled case which is executed by Frederick W. Post, Attorney of Record for Petitioner, Ramsey Clark, Assistant Attorney General of the United States and Walter J. Muir, attorney for defendant. Said stipulation is set forth in words and figures as follows, to-wit:

STIPULATION FOR ENTRY OF FINAL JUDGMENT

On July 6, 1959, the Commission determined that petitioner in the present suit was entitled to recover the sum of \$74,000.00, subject to deduction of counterclaims and offsets to be thereafter determined (7 Ind. Cl. Comm 725).

The parties to the present suit have, after negotiation and compromise, stipulated that the sum of \$12,000.00 shall represent counterclaims and offsets properly to be deducted from the interlocutory award of \$74,000.00. This stipulation has been approved by the Duwamish Tribe (Resolution dated July 23, 1960), by the defendant and by the Commissioner of Indian Affairs.

The stipulated sum of \$12,000.00 shall be taken to include all counterclaims and offsets which defendant has asserted or could have asserted for the period March 8, 1859, to June 30, 1960 inclusive, but shall be without prejudice to any claim in any other suit or action between the parties relating to a period prior to March 8, 1859, or after June 30, 1960.

Therefore, it is hereby stipulated between counsel for the parties that final judgment be entered in the sum of \$62,000.00 representing the net recovery after deduction of counterclaims and offsets in the sum of \$12,000.00.

This stipulation shall be without prejudice to the right of either party to appeal on any issue of fact or law in the case other than the amount of counterclaims and offsets, but as to the amount of such counterclaims and offsets this stipulation shall be final and non-appealable.

Counsel for the parties shall execute and file with the Commission a joint motion for entry of final judgment pursuant to this stipulation, submitting a proposed form of order of final judgment for the approval of the Commission.

42. A contract of employment of attorneys for the Duwamish Tribe of Indians together with the approval and extension thereof by the Commissioner of Indian Affairs, acting for the Secretary of the Interior, are on file with the Commission. These show that Kenneth J. Selander and Frederick W. Post were the original attorneys for the Duwamish Tribe in this case, however, on September 25, 1950, all interest of Kenneth J. Selander in said contract was assigned with the approval of the Commissioner of Indian Affairs to Frederick W. Post who assumed the sole representation of petitioner, and is now the attorney for petitioner.

43. On June 22, 1962, six affidavits were filed on behalf of the petitioner "in support of compromise and settlement of defendant's claim of set-off against judgment" which affidavits have been considered by the Commission. The six affidavits are by Frederick W. Post, Attorney

of Record for the petitioner; Henry Moses, who states he is a member of the Duwamish Tribe and a member and Chairman of its Tribal Council; and Levi Slade, Ruth Eley Scranton, Ruby S. Wells (formerly Ruby Scheuerman), and Myron T. Overacker who are members of the Duwamish Tribe and members of its Tribal Council.

In the affidavit of petitioner's attorney, Frederick W. Post, dated June 20, 1962, he states that he attended the regular annual meeting of the Duwamish Tribe on June 18, 1960 at its usual meeting place in the I.O.O.F. Hall in Renton, Washington where he explained to the tribal members that the defendant's counterclaims and offsets claimed in its amended answer amounted to \$32,141.00, as shown by the General Accounting Office report, and recommended that he be authorized to compromise the claim for not more than \$16,000.00; that thereafter he was so authorized and did reach an agreement to compromise the same for the sum of \$12,000.00.

In the sworn statements of the five members of the Duwamish Tribe and its council, each affiant states that at the regular annual meeting of the tribe they attended held on June 18, 1960 at the tribe's usual meeting place in the I.O.O.F. Hall in Renton, Washington, there was a quorum of the tribe's members and a quorum of its tribal council present, and, that the tribe's attorney recommended to the tribe that it settle and compromise the Government's claim of set-offs of a total claimed of \$32,141.00 for the sum of \$16,000.00; that the tribe being fully advised, voted unanimously to follow the attorney's recommendation and the tribal council was authorized to adopt a resolution in the exercise of its

sound discretion, after reviewing the General Accounting Office report, to settle and compromise the said claim of set-offs; that thereafter, on July 23, 1960 the council adopted a resolution authorizing the tribe's attorney to compromise the defendant's claim of set-offs for the amount of not to exceed \$16,000.00. Each of the affiants also state that as a council member and member of the tribe the proposed compromise and settlement for the sum of \$12,000.00 of the defendant's counterclaims and offsets is a fair and reasonable compromise and settlement and requests that the same be approved and entered by the Indian Claims Commission.

44. The attorneys' contract of employment provides that the attorneys shall be subject to the supervision of the Commissioner of Indian Affairs and they shall not make any settlement or other adjustment of the claims or matters in controversy except with the approval of the Commissioner of Indian Affairs and the Tribe. An approval in accordance with the attorneys' contract, and also as required by the Commission, of the proposed Stipulation for Entry of Final Judgment is contained in a letter dated August 25, 1961, and filed with the Commission on July 9, 1962, from Edward W. Fisher, Acting Solicitor for the Department of Interior and addressed to Frederick W. Post, Seattle, Washington. It reads in pertinent part as follows:

We have given careful consideration to the information furnished by you and the views expressed by the Duwamish Tribe concerning the proposed compromise and have concluded that your request to enter into a compromise with the Department of Justice on offsets in the amount of \$12,000.00 in the Duwamish case, Docket No. 109, should be approved. Therefore, your proposal to compromise offsets in Docket No. 109 in the amount of \$12,000.00 with the

Department of Justice in the manner provided by the copy of the proposed stipulation furnished this office with your letter of December 19, 1960, is approved.

45. The Commission finds that the proposed compromise settlement for the sum of \$12,000.00 for all counterclaims and offsets which defendant has asserted or could have asserted for the period March 8, 1859 to June 30, 1960, inclusive, was understood by the members and officials of the Duwamish Tribe and that they voluntarily approved it; that said compromise settlement is fair and just to the petitioner and the defendant and said stipulation is approved and a final judgment will be entered in favor of the petitioner in the amount of \$62,000.00 against the defendant.

Arthur V. Watkins
Chief Commissioner

William M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner