

BEFORE THE INDIAN CLAIMS COMMISSION

THE LOWER PEND D'OREILLE OR)	
KALISPEL TRIBE OF INDIANS,)	
)	
Petitioner,)	
)	
v.)	Docket No. 94
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: March 21, 1963

ADDITIONAL FINDINGS OF FACT IN COMPROMISE SETTLEMENT OF THE CLAIM SET FORTH IN DOCKET NO. 94

22. On June 9, 1958, the Commission entered its Findings of Fact (Findings 1 through 21), Opinion and Interlocutory Order after a hearing on Docket 94. The last paragraph of said Interlocutory Order is as follows:

IT IS THEREFORE ORDERED, that the case shall now proceed for the determination of the time or times on which said lands were acquired by defendant and upon such determination the value of such lands as of the time the petitioner was deprived thereof shall be determined, provided, however, that if the parties should agree upon a time on which the petitioner was deprived of its said lands, and such agreement is filed with the Commission, the case shall proceed with a hearing on such value as the date that may be agreed upon.

23. That on January 9, 1963, the parties herein filed with the Commission a Joint Motion For Entry Of Final Judgment in the above Docket number, based upon a Stipulation made and executed by John W. Cragun, Attorney of Record for the petitioner and Ramsey Clark, Assistant Attorney General and John D. Sullivan attorneys for defendant; said Stipulation is in words and figures as follows:

STIPULATION TO COMPROMISE AND SETTLE

WHEREAS, on January 29, 1951, the Kalispel Tribe of Indians, also known as the Lower Pend d'Oreille Tribe of Indians, filed a petition in this case, alleging that the United States took certain lands belonging to petitioner without paying compensation therefor; and on June 9, 1958, the Commission determined that petitioner had proved aboriginal title to specifically described lands in Washington, Idaho and Montana, and that petitioner was entitled to recover for the fair market value thereof, and it was stipulated that the area contained 2,373,000 acres, and that the date of valuation was July 1, 1903, NOW THEREFORE THE PARTIES AGREE THAT:

1. The claim shall be compromised and settled by stipulation and entry of final judgment in the Indian Claims Commission, no review to be sought or appeal taken by either party.
2. Judgment shall be entered in favor of petitioner against defendant in the amount of \$3,000,000.
3. The stipulation and entry of final judgment shall finally dispose of all claims or demands which petitioner has asserted or could have asserted in this case against defendant, and petitioner shall be barred from asserting all such claims or demands in any future actions.
4. The stipulation and entry of final judgment shall finally dispose of all offsets, claims or demands which defendant has asserted or could have asserted in this case against petitioner up to June 30, 1957.
5. The stipulation and judgment shall not be construed as an admission of either party as to any issue, for purposes of precedent in any other case.

Attached to the Stipulation is the properly signed and executed approval of the petitioner of said stipulation in the form of a resolution (Exhibit B) which is as follows:

KALISPEL RESOLUTION NO. 63-3

BY THE COMMUNITY COUNCIL OF THE
KALISPEL INDIAN COMMUNITY OF THE
KALISPEL INDIAN RESERVATION,
WASHINGTON

WHEREAS, the Kalispel Indian Community (the Tribe) has a claim pending before the Indian Claims Commission, Docket No. 94, for the taking of land without compensation, said claim having been filed on January 29, 1951, in the name of the Lower Pend d'Oreille or Kalispel Tribe of Indians; and

WHEREAS, the Commission on June 9, 1958, held that the Tribe was entitled to recover the fair market value of its aboriginal habitat, comprising 2,373,000 acres more or less, located in Washington, Idaho, and Montana, as of a date later agreed to be 1903; and

WHEREAS, the Tribe is represented in the aforesaid claim by the law firm of Wilkinson, Cragun & Barker of Washington, D. C.; and

WHEREAS, the attorneys have reported to the Tribe in a duly called meeting of the Community Council, that they and the Government have agreed to compromise and settle the case for the sum of \$3,000,000, after offsets, subject to the approval of the Tribe and of the Secretary of the Interior; and

WHEREAS, the background of the claim and all aspects of the proposed settlement have been fully and freely discussed among the members here assembled, both in the English language and in the Kalispel language, so that the membership of the Tribe is fully informed in the premises;

NOW THEREFORE BE IT RESOLVED, that the proposed final settlement of the Tribe's claim on a basis which will result in a judgment in favor of the Tribe, in the amount of \$3,000,000, after offsets, is hereby approved; and the Chairman is hereby authorized to sign the settlement stipulation on behalf of the Tribe.

BE IT FURTHER RESOLVED, that the Chairman, Vice-Chairman, and the Secretary, or any one or two of them, are authorized to testify before the Commission concerning the circumstances of the Tribe's approval of the settlement.

CERTIFICATION

The foregoing resolution was duly adopted at a general meeting of the Kalispel Community Council, held this 12 day of January, 1963, pursuant to notice duly given in accordance with tribal practice and procedure, by a vote of 35 for and 0 against, a quorum being present.

The signature of the Chairman of the Kalispel Community Council, Louis Andrews, attached to said resolution was duly attested by the Secretary of the Council, Alice Ignace; and the signatures of the said Chairman and Secretary were duly attested by William E. Ensor, Jr., Superintendent of the Northern Idaho Indian Agency (a division of the Bureau of Indian Affairs of the Department of the Interior.)

Also attached to said Stipulation is the approval of it by the surviving heirs of Kenneth R. L. Simmons, deceased, who was the original contract attorney for said petitioner. Said approval is as follows:

APPROVAL OF SOLE SURVIVING HEIRS OF KENNETH R. L. SIMMONS

WHEREAS Kenneth R. L. Simmons died intestate leaving as his sole heirs his wife, Hazel Day Simmons, and the two children, Newton and Sara, and his estate was closed on February 4, 1955; and WHEREAS Hazel Day Simmons died testate leaving all her property to the two children, Newton and Sara, and her estate was closed on March 25, 1960; and WHEREAS we are the two afore-said children of Kenneth and Hazel Simmons and jointly entitled to any interest Kenneth or Hazel Simmons may have in attorney fees realized from the Kalispel claim, NOW THEREFORE, we do hereby approve the foregoing settlement agreement.

The signatures of said heirs were duly authenticated.

Another attachment to said Stipulation is the approval of Wilkinson, Cragun and Barker, contract attorneys by assignment for said petitioner. Said approval is as follows:

APPROVAL OF WILKINSON, CRAGUN & BARKER

WHEREAS the original contract attorney for the Kalispel Tribe was Kenneth R. L. Simmons, contract 1-1-ind 42429, approved September 11, 1950; and WHEREAS by assignment approved November 16, 1951, the law firm of Wilkinson, Boyden & Cragun became associated as co-contract attorneys for the Kalispel tribe; and

WHEREAS upon the death of Kenneth R. L. Simmons in 1953 the law firm of Wilkinson, Boyden & Cragun (now Wilkinson, Cragun & Barker) became the sole surviving contract attorney for the Kalispel Tribe, NOW THEREFORE, this law firm hereby approves the foregoing settlement agreement, on this 12th day of January, 1963.

The Commission recognizes the signature of Glen A. Wilkinson, and we find that he signed the approval in behalf of the said law firm as one of the partners.

All of the aforesaid documents including the "Stipulation to Compromise and Settle" were marked as Petitioners' Exhibit A and received in evidence at the hearing held on this matter.

24. Part of Exhibit B is an approval of the said Stipulation of Compromise by the Business Committee of the petitioner. It is signed by Louis Andrews, Chairman; Raymond L. Pierre, Vice Chairman, and Alice E. Ignace, Secretary-Treasurer, and the signatures of the signers are certified as being genuine and affixed to the document on the 17th day of January, 1963, by William E. Ensor, Jr., Superintendent of the Northern Idaho Indian Agency.

Exhibit C is a duly certified copy of the minutes of the meeting of Kalispel Community Council and Kalispel Business Committee held January 12, 1963, wherein the said Stipulation of Compromise was discussed by attorneys for petitioner and others and approved by the members of the Kalispel Tribe of Indians, petitioner. Said minutes by this reference are made a

part of this Finding. The minutes were signed by Alice E. Ignace, Secretary, and her signature was certified by the Superintendent of the Northern Idaho Indian Agency, William E. Ensor, Jr., on the 12th day of January 1963.

25. Exhibit D, which was received in evidence as a part of petitioner's showing in behalf of said motion, consisted of the following documents relating to notice of the meetings mentioned in previous findings:

CERTIFICATION

I HEREBY CERTIFY, that a "notice" of a meeting to be held at the Kalispel Community Building, Kalispel Reservation, Washington, was mailed from the Northern Idaho Agency office on December 21, 1962, to each adult member of the Kalispel Community known to this office.

The purpose of the meeting being to meet with representatives of the law firm of Wilkinson, Cragun & Barker, Washington, D. C., on the Kalispel Claims Case.

February 3, 1963

John J. Weber, Acting
Superintendent
Northern Idaho Agency
Lapwai, Idaho

NOTICE

ALL ADULT MEMBERS OF THE KALISPEL INDIAN COMMUNITY:

We have been notified by Mr. Charles A. Hobbs with the Wilkinson, Cragun & Barker law firm in Washington, D. C., that the Government has offered a settlement to satisfy the claim which the Kalispel Indian Community has before the Indian Claims Commission.

Mr. Hobbs says in his letter that he would like to meet with the members of the Community at the Kalispel Community Building (Old School House) on SATURDAY JANUARY 12, 1963,
AT 10:00 A.M.

It is our understanding that Mr. Glenn Wilkinson of the same law firm will accompany Mr. Hobbs to this meeting. This is a very important meeting for all members of the Kalispel Indian Community. The decision of whether to accept or reject the offer made by the Indian Claims Commission is one to be made by all adult members of the Community. The effects of this decision will be felt by the entire Community for years to come. We urge that all adult members of the tribe plan to attend this meeting if at all possible.

Representatives from the Northern Idaho Agency at Lapwai will be present at this meeting and this will provide an opportunity for any of you to contact them if you feel you need to discuss anything of interest.

John J. Weber
Acting Superintendent

26. Exhibit E, which was offered in evidence by petitioner, is a letter of approval of the said Stipulation to Compromise and Settle from John O. Crow, Acting Commissioner of Indian Affairs, addressed to petitioner's attorneys under date of January 25, 1963. The letter, which was received in evidence is as follows:

January 25, 1963

Wilkinson, Cragun and Barker
1616 H Street, N.W.
Washington, D.C.

Gentlemen::

On January 18, 1963, you sent us a proposed settlement of Kalispel Claim, Indian Claims Commission Docket No. 94, for consideration.

Claims in Docket No. 94 were filed with the Indian Claims Commission on January 29, 1951, on behalf of the Lower Pend D'Oreille or Kalispel Tribe of Indians. The case has been prosecuted under claims contract No. I-1-ind. 42429, dated May 22, 1950, between the Kalispel Indian Community and Attorney Kenneth R. L. Simmons, approved by the Acting Commissioner on September 11, 1950.

An assignment of one-sixth interest in that contract by Attorney Simmons to your law firm was approved by the Acting Commissioner on November 16, 1951. Attorney Simmons died on April 13, 1953, and your firm has continued to prosecute the case.

Section 3 of contract No. 42429 provides:

The said attorney in performance of the duties required of him under this contract shall be subject to the supervision and direction of the Commissioner of Indian Affairs and the Tribe, and shall not make any compromise, settlement, or other adjustment of the matters in controversy unless with the approval of the Commissioner of Indian Affairs and the Tribe; said attorney shall pursue the litigation in question to and through the court of final resort unless authorized by the Commissioner of Indian Affairs to terminate the proceedings at an intermediate stage thereof.

The Indian Claims Commission issued Findings of Fact and an Opinion in Docket No. 94 on June 9, 1958 (6 Ind. Cl. Comm. 353) holding that the petitioner had aboriginal Indian title to a contract of land in what are now the States of Washington, Montana, and Idaho. Later, on March 3, 1961, it issued an order approving an agreement between both parties that the date of taking of the lands be fixed at July 1, 1903.

The stipulation is to compromise and settle the case at \$3,000,000.00 covering an area stipulated as containing 2,373,000 acres as of the fixed ate of July 1, 1903. It provides that no review or appeal action is to be taken by either party and that the petitioner shall be barred from asserting in any future action all claims or demands which petitioner asserted or could have asserted in this case. It also disposes of all offsets, claims and demands which defendant has asserted or could have asserted in the case up to June 30, 1957.

The stipulation is signed by John W. Cragun, Attorney of Record for the Kalispel Tribe; by Ramsey Clark, Assistant Attorney General; and by John D. Sullivan, Attorney for the Defendant. Resolution No. 63-3 was adopted at a meeting of the General Council of the Kalispel Indians on January 12, 1963, accepting the stipulation on behalf of the petitioner in Docket No. 94. The stipulation was approved by the Chairman and Secretary of the Kalispel Community Council, the sole surviving heirs of Kenneth R. L. Simmons, and by Glen A. Wilkinson, partner of your law firm. The Acting Area Director, Portland, Oregon, stated in his letter of transmittal of the resolution that the proposed settlement, the claim, and the appraisal of the land was discussed at the meeting and all votes cast were for acceptance. He further states that he and the Superintendent of the Northern Idaho Agency recommend approval of

the Resolution of the Kalispel Community giving tribal approval of the compromise. Minutes of the meeting show that a representative of the Bureau was present at the meeting.

The action taken by the Kalispel Community appears to have complied with the basic requirements and steps to be followed by a Tribe in considering a proposed settlement by compromise as set forth in the opinion of the Indian Claims Commission of February 11, 1960, in the Omaha case, Docket No. 225-A consolidated (8 Ind. Cl. Comm. 407).

In light of an analysis of the proposed settlement which you have furnished us and the acceptance of the settlement by the Indians, we approve the proposed Stipulation to Compromise and Settle.

Sincerely yours,

John O. Crow,
Acting Commissioner

27. Counsel for petitioner, Charles A. Hobbs of the law firm of Wilkinson Cragun & Barker, advised the Commission at a hearing held on the Motion for approval of the Compromise Settlement (Tr. p. 2) that both the petitioner and the defendant had the land valued in this case. The area consisted of 2,247,000 acres located mostly in the eastern corner of Washington and the panhandle of Idaho. There were also 126,000 acres of water area. He said the Indian tribes lost their land gradually through the taking of it by white settlers and railroad companies etc. This occurred between 1890 and 1920. It was agreed by the parties that the average taking date was 1903. The land was valuable mainly for its timber.

Mr. Hobbs said the attorneys for the tribe had considered other comparable sales of forested lands in the same general area and that under all the circumstances, including the matter of offsets, the settlement was fair to the Indians.

Mr. Sullivan, counsel for the defendant, stated the government appraiser

valued the land at 61 cents per acre which indicates the amount of the settlement awarded the Indians was fair to them. As to offsets, the General Accounting Office reported that there was a total of \$4,100.00 gratuity expenditures for the Kalispel tribe, but it was not determined whether all of these were offsetable. It was concluded by the counsel for the parties that offsets were of small importance in arriving at a settlement.

28. The recitals in the exhibits A through F, all of which were received in evidence, are factual and they are adopted as such by the Commission, except the statement in the notice of the meeting which said "The decision of whether to accept or reject the offer made by the Indian Claims Commission is one to be made by all adult members of the Community." The use of the words "Indian Claims Commission" instead of the defendant, United States, was clearly a clerical error, but we find it was harmless since it was clearly understood by all concerned that the "United States" was the meaning intended instead of the Indian Claims Commission.

29. Louis Andrews, called by the petitioner as a witness, testified that he was a Kalispel Indian; that he was 25 years of age and speaks the Kalispel language. He resides in the Kalispel Community on the Kalispel Reservation; works in a sawmill; is a member of and Chairman of the Kalispel Tribe, and gives the official name of the petitioning tribe as The Kalispel Indian Community. He stated that a notice of the meeting of the tribe, to be held on January 12, was sent out by the Wilkinson law firm and that letters were also sent from the Lapwai Indian Agency in Idaho. He identified a notice from the agency at Lapwai, Idaho announcing the

meeting and said that he personally passed out word of the meeting and that someone from the Indian Superintendent's office went around in his own car after some of the members who weren't able to attend on their own. He did not know of any one who didn't receive a copy of the notice of the meeting. Notices were also posted at a local grocery store and in the local post office. The notice he posted was the same as one of the exhibits in the case, and was prepared and signed by the Indian Agent out there. Mr. Andrews presided at the meeting of January 12th of the tribe and there were 35 voting members present, which constituted a quorum. Altogether there were 67 eligible voters. Others who attended the meeting were Superintendent William Ensor, Jr., and Assistant Superintendent Weber of the Northern Idaho Indian agency; Mr. Hickman from the Forestry Division of the Indian Agency; Paul Weston from the Portland Area Office and Mr. Rogers from the credit department of the Indian Agency.

The meeting was called to approve or disapprove the resolution accepting the proposed 3 million dollar settlement. The proposition was explained by Mr. Hobbs, a lawyer, through an interpreter. Mr. Glen Wilkinson also explained it. Their remarks were interpreted to the Indians who did not understand English; it was explained very carefully and thoroughly, and some questions were asked. The witness said he believed the membership understood the proposed settlement and that the 3 million dollars included all the offsets which the Government might have claimed against the tribe. The vote was 35 for and none against the resolution approving the settlement. No one from the Indian Office asked the members to vote yea or no. They did not put pressure on the members of the tribe to vote one way or the other.

The tribe, he stated, had a general meeting before the January 12th meeting, at which the proposed settlement was discussed. The lawyers for the tribe were not present at this meeting, just the members of the Indian Community. At the meeting where the Stipulation was approved a Mr. Vital Pierre acted as interpreter. He is a Flathead Indian married to a Kalispel woman. The witness heard the interpretation given and it was correct. He was personally satisfied that 3 million dollars was a fair award for the tribe. He does not know of anyone who was not satisfied. He corresponded with some of those who did not attend. Most of them were not there because they were too far removed. About 15 members of the tribe live in other parts of the United States. There were five or six who were sick and probably several who were not interested.

The witness identified the Stipulation to Compromise and Settle, as set out in full in these findings, and said that on page three his signature was attached. He identified the signature of Mr. William Ensor, Jr., and the Kalispel Resolution No. 63-3. He said that he signed in behalf of the tribe and also in behalf of the Kalispel Business Committee.

The witness testified he had gone to school through the 10th grade in high school and now worked in a sawmill. He had had no business experience except presiding over the tribe. The Indians do very little farming on the reservation because they have nothing to farm since very little of their land is suitable for farming. The majority of the Indians are working at whatever they can - sawmills or in the woods. The witness agrees with the statement that was made, that the Indians were living in poverty, that allotments have been made - 40 acre allotments - to each adult Indian of

the tribe. These allotments were made in 1914. He didn't believe the Indians were influenced to accept the settlement because they were in a poverty-stricken condition. He thought the principal motive for accepting the settlement was because they had a claim on the land and they felt they should get something out of it. The Indians have some other income out of the timber sales which are made occasionally. The Indian children go to white schools.

On cross examination he said there were 67 Indians right in the area but that there was information which would bring the number of Indians up to 125 or 145, but still insisted that there were 67 eligible voters, the rest were children. He said they had been preparing an Indian roll within the last 6 months. Before that time they had one done in 1935 and it was brought up to date in the last 6 months.

30. Alice E. Ignace, called by petitioner, among other things testified in substance as follows:

She lived on the Kalispel Reservation for 40 years; is Secretary of the Kalispel Indian Community Council and has held that position since 1951. She is a full blood member of the Kalispel tribe; has an eighth grade education; and at one time worked as a nurses' aid in a rest home. She received a notice of the meeting of the tribe sent out by the Indian Agency; and thought everybody among the Kalispel Indians knew about the meeting. The witness said she and Mr. Andrews talked to many of the Indians about the notices and the meeting before it took place. They called on them in their homes in the town and on the road. She told the Indians that the lawyers were going to be down there for a meeting for the tribe to vote on a settlement on the claim and for them to be thinking of it. There were 35 eligible members present at the meeting to vote. This was the biggest

meeting ever held on the reservation. She was present all the time during the meeting and heard the explanation made and believed that the membership understood what it was voting on. The vote was unanimous. No one expressed any doubts about what the tribe had done. No pressure was put on the members of the tribe to vote one way or the other by the lawyers or by any outside members from Spokane of the Coeur d'Alene Tribes. No one from the agency put any pressure on anyone either. The membership could have voted no if they had wanted to.

The witness was satisfied that 3 million dollars was a fair award for the Indians' claim. She agreed with other witnesses and the statement made by counsel that the Kalispel Indians are in an impoverished condition; that they are having a difficult time getting along and are one of the poorest tribes in the United States. She said that the amount of money that would come would not be a temptation to them in deciding whether the settlement was fair or not. She believed that the Indians actually felt that this was a fair settlement. She said she wanted it understood that she thinks the settlement is fair and good, and that the Indians are not approving it because they are impoverished or because they feel there is no use fighting the United States. In her own case she thinks she understands the settlement fully and sincerely believes the settlement is fair and just.

She speaks the Kalispel language, but doesn't know what percentage of the Kalispel Indians do not speak the English language. Some of them do speak a little bit, but some would have to have an interpreter to explain the business to them. There is no business house of any kind on the reservation. The Indians go to surrounding towns to do their trading.

The Indians do not have to have an interpreter with them when they trade. Those Indians who do not understand the English language can still use words such as oranges, apples, etc., and they can count money. Most of the Indian people are on the welfare system of the Pend D'Oreille County. About half of the families when they can't find work, are on relief. They have a Catholic church on the reservation and they meet there socially as well as religiously. She says there has been a lot of discussion about the education of Indian children. The witness was asked if she would tell something about the allotments which took place after 1900. She stated that according to her grandfather, the Government offered them an allotment of 180 acres for each Indian. She couldn't give the exact date when this was done because she didn't have the records with her, but she said the Indians did not want to accept this offer because they felt they owned a big reservation "the whole works", and they didn't want to give that up. Then the Government began allotting 40 acres to each Indian and they either had to take that or move somewhere else. They were given a choice on either side of the river so they chose the land on the east side of the river. Her people took the 40 acres, otherwise they would have had to move from the reservation. She stated, "If they had taken the 180 acres, they would have a big reservation, but they turned it down."

The witness said she was Secretary of the meeting on January 12th, and that her name was signed, Alice E. Ignace, to those minutes.

31. The Commission finds that the parties in this docket have substantially complied with the basic requirements and steps to be followed in entering into a settlement by compromise as set forth in its opinion

