

BEFORE THE INDIAN CLAIMS COMMISSION

KLAMATH AND MODOC TRIBES, ET AL.,)	
)	
Petitioner,)	
)	
v.)	Docket No. 100
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: Jan. 31, 1964

Appearances:

Glen A. Wilkinson, Donald C. Gormley, and Richard A. Baenen, Attorneys for Petitioner.

Keith Browne, with whom was Mr. Assistant Attorney General, Ramsey Clark, Attorneys for Defendant.

OPINION OF THE COMMISSION

Watkins, Chief Commissioner, delivered the opinion for the Commission.

In the findings of fact entered this date herein, we have found and concluded that the compromise settlement of the above claim is fully justified as a matter of fairness to the petitioning Indians and to the defendant.

The Indians were fully advised in the matter and gave almost unanimous approval to the settlement in meetings set up and conducted according to the requirements of the Commission governing such matters. The findings of fact fully set forth all the essential facts, evidence, and procedures with respect to the settlement so that it is not necessary to repeat them here to any considerable extent.

It is worthy of note that the Klamath Tribe which included the Klamath, Modoc and Yahooskin Band of Snake Indians, was the subject of the so-called Termination Act enacted by Congress in 1954. (68 Stat. 718, 25 U.S.C. § 564, et seq.) That act gave to each member of the tribe an opportunity to elect either to remain with the members of the tribe or to withdraw from the tribe and have his interest in the tribal property converted into money and conveyed to him. Approximately 77.825% of the membership elected to withdraw and they received under a per capita distribution a share of the tribal assets with the exception of their interest in tribal claims against the United States. This division gave rise to the so-called "remaining" and "withdrawing" members.

Following the election by the members and completion of other procedures required by the Termination Act, the Secretary of the Interior, as he was required to do, published in the Federal Register a proclamation declaring that the federal trust relationship to the affairs of the tribe and its members had terminated. The Termination Act provided that after such proclamation:

" . . . except as otherwise provided in /this Act/ all statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable to the members of the tribe. . ." (Emphasis supplied)

In accordance with the excepting clause in the foregoing section, the same act contained two specific provisions dealing with the prosecution of tribal claims against the United States. One protected the right of tribal members to share in the proceeds of tribal claims even though

they had elected to withdraw from the tribe, and the other protected any right, privilege or benefit which the tribe, or its constituent part had been granted by the Indian Claims Commission Act of 1946. The first provision reads: (25 U.S.C. § 564e(c))

"Members of the tribe who receive the money value of their interests in tribal property shall thereupon cease to be members of the tribe; Provided, That nothing shall prevent them from sharing in the proceeds of tribal claims against the United States."

The second provision is as follows:

"Nothing contained in this Act shall deprive the tribe or its constituent parts of any right, privilege, or benefit granted by the Indian Claims Commission Act."

Thus the Termination Act did not dissolve the Klamath Tribe. It retained ownership as an entity of all the tribal assets which had not been distributed to the so-called withdrawing members. And it also retained the ownership of all the claims of the tribe against the United States for the purpose of prosecuting them to a final determination. The property retained by the remaining members of the tribe following termination is now administered by the United States National Bank of Portland, Oregon, under a trust agreement.

The Commission has heard considerable evidence with respect to the physical features of the land in southern Oregon and it has viewed some of the area involved in this proceeding. Based on these considerations and the evidence presented in the compromise settlement proceedings, the Commission has no difficulty in finding that the settlement

is fair and just to the Indians as well as to the defendant.

A petition for the allowance of attorneys' fees has also been filed by the attorneys representing the Klamath Tribe. We have entered findings with respect to attorneys' fees as part of the findings in this compromise proceeding. The fee for the attorneys is fixed by contract at 9% of the recovery, less \$10,000 retainer fee which is to be deducted from the fee based on 9% of the award to the tribe. With this deduction the net fee allowed is \$215,000.

In accordance with the findings of fact and this opinion, final judgment will be entered awarding the petitioners the sum of \$2,500,000 as against the defendant and so awarding the law firm of Wilkinson, Cragun & Barker an attorneys' fee of \$215,000.

Arthur V. Watkins
Chief Commissioner

We Concur:

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner

* This Opinion has been corrected to conform to the Commission's Order of February 7, 1964, amending its original Opinion.