

BEFORE THE INDIAN CLAIMS COMMISSION

THE YAKIMA TRIBE,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 162
)	
THE UNITED STATES,)	
)	
Defendant.)	

Decided: August 31, 1965

ADDITIONAL FINDINGS OF FACT

The Commission makes the following findings of fact which are supplemental to those previously made herein numbered 1 through 26.

27. On June 5, 1956, the Commission entered its Findings of Fact, Opinion and Interlocutory Order holding that the Yakima Tribe of Indians, plaintiff, was entitled to recover of the defendant the sum of \$69,000.00 less the consideration paid by the defendant (Fdg. 26) of \$20,000.00, or \$49,000.00, less offsets to which defendant may be entitled under the Indian Claims Commission Act.

28. On June 15, 1965, the Yakima Tribe, plaintiff, by its attorney, filed a motion for entry of final judgment, stating therein that the parties had agreed any chargeable offsets be raised in other Yakima cases now pending before the Commission, with the plaintiff agreeing to waive its right to a rehearing or appeal. The approval of the motion and statement therein by the defendant is endorsed thereon by Keith Browne, attorney for defendant. Said motion and statement is set forth in words and figures as follows, to-wit:

PLAINTIFF'S MOTION FOR ENTRY OF FINAL JUDGMENT

Comes now the Yakima Tribe, Plaintiff, and moves the Commission for the entry of final judgment herein in the net amount of \$49,000.00, as determined by the Commission in its findings of fact, opinion, and interlocutory decree of June 5, 1956 (4 Ind. Cls. Comm. 269-300).

STATEMENT

In order to clear the way for entry of final judgment in the above-entitled case the parties agree that any offsets that might be applicable to this case, between 1894 and 1905, may be raised in any other Yakima case now pending before the Commission.

The Yakima Tribe has express approval and waiver of right of rehearing and appeal by Resolution of the Yakima Tribal Council, dated June 2, 1965, submitted herewith.

Respectfully submitted,
THE YAKIMA TRIBE, Plaintiff,
By /s/ Paul M. Niebell
Its Attorney of Record

Approved:

/s/ Keith Browne
Attorney for Defendant
6-15-65

29. A contract of employment of Paul M. Niebell as attorney for the Yakima 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 and currently in effect.

The contract provides in part that the attorney "shall be subject to the supervision and direction of the Commissioner of Indian Affairs, and the Yakima Tribe, and shall not make any compromise, settlement, or other adjustment of the matters in controversy unless with the approval of the said officer and tribe." The contract also provides that the attorney "shall also 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."

30. As evidenced by a resolution adopted June 2, 1965, by the Yakima Tribal Council by a vote of eleven for and none against, the attorney for the Yakima Tribe was authorized on behalf of said Tribe to enter into a stipulation with counsel for the United States for entry of a final judgment in favor of the Yakima Tribe in the net amount of \$49,000.00 in said case, with the Yakima Tribe agreeing to waive its right to a rehearing and appeal from said judgment so entered. The resolution, which is Plaintiff's Exhibit B, is set forth in words and figures as follows:

R E S O L U T I O N

T-134-65

BE IT HEREBY RESOLVED by the Yakima Tribal Council, held pursuant to notice, a quorum being present, that Paul M. Niebell, Attorney for the Yakima Tribe, Plaintiff in Docket No. 162 before the Indian Claims Commission, be, and he is hereby authorized on behalf of the Yakima Tribe of Indians to enter into a stipulation with counsel for the United States for the entry of final judgment by the Indian

Claims Commission against the United States in favor of the Yakima Tribe, in the net amount of \$49,000.00, in said Docket No. 162; and the Yakima Tribe hereby waives the right of rehearing and appeal from the final judgment of the Commission so entered in said Docket No. 162.

DONE AND DATED on this 2nd day of June, 1965, at the Yakima Indian Agency, Toppenish, Washington, by the Yakima Tribal Council by a vote of 11 for and none against.

/s/ Eagle Seelatsee
Eagle Seelatsee, Chairman,
Yakima Tribal Council

ATTEST:

/s/ Harvey E. Adams
Harvey E. Adams, Acting Secretary,
Yakima Tribal Council

31. The approval by the Bureau of Indian Affairs of the aforesaid Yakima Tribal Council Resolution and the termination of the litigation in this Docket No. 162 as agreed to by the parties, is contained in a letter signed by James E. Officer, Associate Commissioner of Indian Affairs, dated June 15, 1965, and addressed to plaintiff's attorney (Plaintiff's Exhibit A). The letter reads as follows:

Mr. Paul M. Niebell
Attorney and Counsellor at Law
1201 19th Street, N. W.
Washington, D. C.

Dear Mr. Niebell:

You submitted to this Bureau by letter dated June 14, 1965, a copy of Resolution No. T-134-65, adopted June 2, 1965, by the Yakima Tribal Council, by a vote of 11 for and none against, to waive the right of rehearing and appeal from the final judgment of the Indian Claims Commission entered in Docket No. 162.

Docket No. 162 is being prosecuted under claims contract, Symbol 14-20-0650 No. 673, dated December 10, 1958, between you and the Yakima Tribe. It was approved on April 16, 1959, for a term of ten years beginning February 14, 1959, and is currently in effect. The contract provides in part that the attorney shall not make any compromise, settlement or adjustment of the matters in controversy unless with the approval of the Tribe and the Commissioner of Indian Affairs.

An Interlocutory Order was issued by the Indian Claims Commission in Docket No. 162 on June 5, 1956, stating that the Yakima Tribe is entitled to recover the sum of \$49,000.00, less offsets.

According to your letter, the "Government has agreed to waive its offsets in this small case, so that final judgment may now be entered ..." You state also that the Commission "considers this in the nature of a compromise settlement, and requests approval by the Commissioner of Indian Affairs."

We are satisfied from the justification which you have offered that \$49,000.00 is a fair settlement for the Indians in Docket No. 162 and it would not be in their best interest to prolong the litigation. Therefore, we are disposed to give our approval to the Tribal Resolution waiving the right of the Yakimas to appeal the award of \$49,000.00. In so doing, however, we should like to point out that because we were not aware that this settlement was regarded by the Commission as a compromise we have not followed the customary procedure for getting Indian approval for such actions. No special meetings were held to explain the issues to the tribal membership and no Bureau representative was on hand for the Council meeting at which Resolution No. T-134-65 was adopted. It is for the Commission to decide whether it considers the Tribal action which was taken to be appropriate in this instance.

Waiver of offsets and termination of the litigation in Docket No. 162 are hereby approved pursuant to authority delegated by Section 11, Secretarial Order 2508 (27 F. R. 11560).

Sincerely yours,

/s/ James E. Officer

Associate Commissioner

32. A supplemental resolution adopted August 3, 1965, by the Yakima Tribal Council, by a vote of 9 for and 1 against, authorized the attorney for the Yakima Tribe, on behalf of said Tribe to consent with counsel for the United States for the entry of final judgment in favor of the Yakima Tribe, in the net amount of \$49,000 in said case, reserving to defendant the right to present any offsets that might be applicable to Docket No. 162, between 1894 and 1905, in any other Yakima case now pending before the Commission. The resolution, which is Plaintiff's Exhibit C, is set forth in words and figures as follows:

R E S O L U T I O N

T-10-66

BE IT HEREBY RESOLVED by the Yakima Tribal Council, held pursuant to notice, a quorum being present, that Paul M. Niebell, Attorney for the Yakima Tribe, plaintiff in Docket No. 162 before the Indian Claims Commission, be, and he is hereby authorized on behalf of the Yakima Tribe of Indians to consent with counsel for the United States for the entry of final judgment by the Indian Claims Commission against the United States in favor of the Yakima Tribe, in the net amount of Forty Nine Thousand Dollars (\$49,000.00), in said Docket No. 162, reserving to defendant the right to present any offsets that might be applicable to Docket No. 162, between 1894 and 1905, in any other Yakima case now pending before the Commission.

DONE AND DATED on this 3rd day of August, 1965 at the Yakima Indian Agency, Toppenish, Washington, by the Yakima Tribal Council by a vote of 9 for and 1 against.

/s/ Eagle Seelatsee
Eagle Seelatsee, Chairman,
Yakima Tribal Council

ATTEST:

/s/ Harvey E. Adams
Harvey E. Adams, Acting Secretary,
Yakima Tribal Council

AUTHENTICATION OF SIGNATURES

I hereby certify that the foregoing signatures of the Chairman and Acting Secretary of the Yakima Tribal Council are genuine, that said resolution was approved by the Yakima Tribal Council and certified in my presence and that said meeting was held in the Tribal Council room at the Yakima Indian Agency, Toppenish, Washington, on August 3, 1965.

/s/ Charles S. Spencer
Charles S. Spencer, Superintendent
Yakima Indian Agency

33. The approval by the Bureau of Indian Affairs of the aforesaid supplemental Yakima Tribal Council Resolution is contained in a letter signed by James E. Officer, dated August 18, 1965, and addressed to plaintiff's attorney (Plaintiff's Exhibit D). The letter reads as follows:

Mr. Paul M. Niebell
Attorney and Counsellor at Law
1201 19th Street, N. W.
Washington, D. C.

Dear Mr. Niebell:

You submitted to this Bureau by letter dated August 10, 1965, for approval, a copy of Resolution No. T-10-66, adopted August 3, 1965, by the Yakima Tribal Council by a vote of nine for and one against, reserving to defendant the right to present any offsets that might be applicable to Docket No. 162, between 1894 and 1905, in any other Yakima case now pending before the Commission.

Reference is made to our letter of June 15, 1965, approving waiver of offsets and termination of the litigation in Docket No. 162.

Resolution No. T-10-66, adopted by the Yakima Tribal Council on August 3, 1965, is hereby approved.

Sincerely yours,

/s/ James E. Officer

Associate Commissioner

34. Accordingly, the Commission has this day entered a final award herein in favor of the plaintiff, the Yakima Tribe of Indians, and against the defendant in the total amount of \$49,000.00 reserving to defendant the right to present offsets that might be applicable to this case, between 1894 and 1905, in any other Yakima case now pending before the Commission.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner