

BEFORE THE INDIAN CLAIMS COMMISSION

THE SUQUAMISH TRIBE OF INDIANS,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 132
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: January 21, 1966

Appearances:

Frederick W. Post,  
Attorney for Petitioner

Walter J. Muir, with whom was  
Mr. Assistant Attorney General,  
Edwin L. Weisl, Jr.,  
Attorneys for Defendant

OPINION OF THE COMMISSION

Holt, Associate Commissioner, delivered the opinion of the Commission.

This case is now before the Commission for determination of defendant's liability to the petitioner.

Petitioner's claim is for additional compensation for lands it held under original Indian title in the present State of Washington and ceded to the United States under the Point Elliott Treaty of January 22, 1855 (12 Stat. 927). The treaty became effective March 8, 1859.

By a prior determination in this case (5 Ind. Cl. Comm. 140, 157) this Commission found that petitioner tribe held Indian title, as of March 8, 1859, to a certain tract of land in the present State of Washington which is described in Finding 29. Subsequently this Commission

determined (7 Ind. Cl. Comm. 747, 759) in Finding No. 49 that the said tract of land comprised 87,130 acres and that said land had a fair market value of \$78,500.00 as of March 8, 1859.

The cession made under the said Point Elliott Treaty also included the lands belonging to other Indian tribes or groups of Indians. Of these signatory tribes, ten other tribes in addition to the Suquamish Tribe, filed separate claims, each claiming additional compensation for their lands ceded under said treaty. Since the treaty provided as consideration for the entire cession the payment of certain sums to the signatory tribes but did not provide that the payments be made in specific proportions to the respective tribes, it was necessary to determine the amount of the consideration chargeable to each of said tribes. Therefore, the Commission by order of February 20, 1963, consolidated the said eleven cases for the limited purpose of determining all issues as to the consideration paid or allocable to each petitioner tribe in said eleven cases pursuant to the 1855 Point Elliott Treaty. Following the submission of proof on said issues in the consolidated cases the Commission found on August 13, 1964, in Upper Skagit Tribe of Indians, et al. v. The United States of America, 13 Ind. Cl. Comm. 583, 590, that the total consideration paid to the Suquamish Tribe for its aboriginal lands included in the 1855 treaty cession was \$36,329.51.

The issue in this case is whether the consideration found to have been paid by the United States for the Suquamish lands ceded to it under the 1855 Point Elliott Treaty was so inadequate as to constitute an unconscionable consideration.

We said in Miami Tribe of Oklahoma, et al., v. The United States, 6 Ind. Cl. Comm. 513, 576, that "payment of less than half the true value appears to be unconscionable." The case was appealed to the Court of Claims and that Court, 150 C. Cls. 725, at page 734, said: "It is true that there is no exact dividing line between what is unconscionable and what is not. The disparity between the price paid and the fair market value of the land must be very great. We think the Commission was correct when it said in this case that payment of less than half the true value is unconscionable."

The consideration we have found as having been received by the petitioner tribe from the defendant is only about 46% of the fair market value of petitioner's land when it was ceded to the United States. We are of the opinion that the consideration paid the tribe under the 1855 Point Elliott Treaty was so inadequate as to make the consideration unconscionable. Accordingly, the Commission concludes that the petitioner tribe is entitled, under Section 2, Clause 3 of the Indian Claims Commission Act, 27 U.S.C. Sec. 70a(3), to an award of \$78,500.00, less the sum of \$36,329.51, constituting the United States' payment on the claim, or a net amount of \$42,170.49, less such gratuitous offsets as may be chargeable against the petitioner tribe under the provisions of the Indian Claims Commission Act.

Wm. M. Holt  
Associate Commissioner

We concur:

Arthur V. Watkins  
Chief Commissioner

T. Harold Scott  
Associate Commissioner