

BEFORE THE INDIAN CLAIMS COMMISSION

THE LUMMI TRIBE OF INDIANS,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 110
)	
THE UNITED STATES,)	
)	
Defendant.)	

Decided: February 18, 1966

ADDITIONAL FINDINGS OF FACT

The Commission makes the following findings of fact which are supplemental to the findings numbered 1 through 30 heretofore made herein, and to the findings of fact numbered 1 through 14 heretofore made in the decision resolving common issues of various Point Elliott Treaty claims reported as Upper Skagit Tribe of Indians, et al v. United States, 13 Ind. Cl. Comm. 583 (1964), including the instant Docket No. 110.

31. This Commission has earlier in this case, (10 Ind. Cl. Comm. 286, 293 (1962)), found that the tract of land held under original Indian title by the Lummi Tribe and ceded to the United States under the Point Elliott Treaty of January 22, 1855 (12 Stat. 927), had a fair market value of \$52,067.00 on March 8, 1859, the effective date of said treaty. The Commission ordered the case to proceed with proof of the consideration paid to the Lummi Tribe under the provisions of said treaty.

32. The Lummi Tribe and some twenty-two other Indian tribal groups participated in the aforesaid Point Elliott Treaty and also ceded their lands under said treaty. As the consideration for the entire cession, the treaty provided for the payment of certain sums to the signatory parties thereto and for the creation of certain reservations for them.

Since the treaty did not provide that the payments should be made in specific proportions to the respective tribes and groups, the Commission ordered this Docket No. 110 consolidated with ten other Dockets involving claims arising out of the Point Elliott Treaty for the limited purpose of determining the consideration attributable to each petitioner in said cases under the said treaty. In these consolidated cases, Upper Skagit (supra), Finding No. 14 expressed the conclusion of this Commission that the consideration attributable to the Lummi Tribe under the Point Elliott Treaty was \$33,634.13.

33. The Point Elliott Treaty negotiations were conducted by Governor Isaac Stevens, who was ably assisted by a surveyor, an interpreter, and an Indian agent, all of whom were familiar with Indian affairs. The interpreter spoke several of the Indian languages and was familiar with the Indian language known as Chinook jargon. While there was no one, single language common to all of the tribes and groups, Chinook jargon, a mixed language made up of English, French, and Indian words, was understood by many of the assembled Indians.

The treaties were interpreted to the Indians and Governor Stevens assured them that the purpose of the treaties was to give the Indians

homes where they could cultivate the soil, schools for the education of their children, a doctor to administer to their sick, and other facilities to promote their welfare. The speeches were couched in plain, simple language, explaining the terms of the treaties, and patience was exercised to effect agreements. Governor Stevens was frank with the Indians and neither sought nor practiced any means to take advantage of them. The Indians understood the interpreter correctly and the regularity of the proceedings was not a subterfuge to ensnare the Indians in disadvantageous transactions.

34. In the case at bar, the attributable consideration -- \$33,634.13 -- amounts to about 65% of the fair market value of \$52,067.00. This disparity of price, alone, may be expressed as the plaintiff having not received one-third of the fair market value. This disparity is comparatively slight and there is no irregularity of transaction with which it may be coupled so as to appear more serious.

The standard for measuring "unconscionable" consideration standing alone is ". . . only where the inequality of the bargain is very gross, does disparity of price alone justify a conclusion that the consideration was unconscionable." Osage Nation v. United States, 119 C. Cls. 592 (1951). While there is no exact formula for determining what is "very gross", clearly the disparity in the case at bar is not "very gross".

35. This Commission cannot regard the Lummi segment of the Point Elliott Treaty as if revised on the ground of unconscionable consideration within the contemplation of Clause (3) of Section 2 of the Indian Claims

Commission Act of 1946 (25 U.S.C. 70a(3)) because the consideration was not unconscionable when measured against any acceptable standard; neither can it regard the Lummi segment of the Point Elliott Treaty as if revised on the ground of unfair and dishonorable dealings within the contemplation of Clause (5) of Section 2 of the Act because the Treaty transactions were not in any way tainted by other than exemplary conduct on the part of the negotiators, and the Indians suffered no misapprehension of any material fact.

The defendant's motion for judgment is granted and the petition in Docket No. 110 is dismissed.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner