

BEFORE THE INDIAN CLAIMS COMMISSION

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|-------------------------------------|---|----------------|
| THE STILLAGUAMISH TRIBE OF INDIANS, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Docket No. 207 |
| |) | |
| THE UNITED STATES OF AMERICA, |) | |
| |) | |
| Defendant. |) | |

Decided: January 8, 1970

ADDITIONAL FINDINGS OF FACT

The Commission makes the following additional findings of fact which are supplemental to the findings numbered 1 through 18 heretofore entered in this matter (15 Ind. Cl. Comm. 1 (1965)):

19. In Stillaguamish Tribe of Indians v. The United States of America, 15 Ind. Cl. Comm. 1 (1965), the Commission determined that the plaintiff had aboriginal title to a certain tract of land ceded under the Point Elliott Treaty of January 22, 1855. It had been previously determined by the Commission that the consideration for this cession under the 1855 treaty was \$15,890.03. This left for determination the issues of the acreage of the tract ceded, the value of the land as of the date of cession, and offsets.

20. On or about March 31, 1965, the parties, acting through their counsel, discussed the possible compromise and settlement of the above-captioned case. On April 8, 1965, Mr. J. Edward Williams, on behalf of the defendant, wrote to plaintiff's attorney, Mr. Frederick W. Post, outlining a basis for settlement.

21. On July 24, 1965, a meeting of the Stillaguamish Tribe was held in Arlington, Washington, and a resolution was adopted by the Tribe to compromise and settle their claim for \$48,570.00. Said resolution was signed by Acting Chairman Esther R. Ross and Kathleen Johnson, Secretary. By letter dated July 26, 1965, counsel for the Stillaguamish Tribe, Mr. Frederick W. Post, advised the defendant of this resolution and offered to settle the claim for \$48,570.00. On March 25, 1966, the Department of Justice, acting through Mr. Edwin L. Weisl, Jr., Assistant Attorney General, advised Mr. Post by letter that the offer contained in Mr. Post's letter of July 26, 1965, was accepted subject to stated conditions. These conditions included that nothing shall preclude the Government in any subsequent litigation from claiming offsets prior to January 22, 1855, or subsequent to June 30, 1951, that the Stillaguamish Tribe accept the terms of the settlement by an appropriate resolution, and that the Secretary of the Interior or his authorized representative approve the resolution and also the settlement itself.

22. On September 10, 1966, a meeting of the Stillaguamish Tribe was held at Arlington, Washington, to consider a compromise settlement of their claim and also the conditions set forth in the March 25, 1966, letter from the Department of Justice. The meeting was attended by a representative from the Western Washington Indian Agency who submitted a report on the meeting. After considering the compromise proposal as set forth in the March 25, 1966, letter from the Department of Justice, the Stillaguamish Tribe adopted the following resolution which was submitted to the Bureau of Indian Affairs for approval:

"RESOLUTION OF STILLAGUAMISH TRIBE OF INDIANS

"The Stillaguamish Tribe of Indians adopted on the day below written, at Arlington, Washington, the following resolution:

"WITNESSETH:

"WHEREAS, the Stillaguamish Tribe of Indians on the 24th day of April, 1965, resolved to compromise and settle its claim against the United States pending before the Indian Claims Commission under Docket No. 207 for the net sum of \$48,570.00, and

"WHEREAS, the proposed compromise settlement was submitted for approval to the Department of Justice by its attorney in his letter dated July 26th, 1965, as supplemented by his letter of October 6th, 1965, and

"WHEREAS, the Department of Justice accepted the offer of the Stillaguamish Tribe to compromise and settle its claim for said net sum but subject to certain conditions, and

"WHEREAS, the Tribe's attorney requested approval of the United States Department of Interior of said compromise but the Department of Interior refused approval unless a new meeting be held by the Tribe to consider the new conditions imposed by the Department of Justice, all as stated in the letter of A. W. Galbraith, Acting Area Director, Bureau of Indian Affairs, at Portland, Oregon, dated April 28th, 1966, and

"WHEREAS, the Stillaguamish Tribe of Indians has fully considered the said conditions and find that none of said conditions adversely affect the interests of the Tribe,

"NOW THEREFORE, IT IS HEREBY RESOLVED that the Tribe's attorney, Frederick W. Post, be and he hereby is authorized to compromise and settle its claim for the net sum of \$48,570.00 by entering into a stipulation with the Department of Justice for the entry of a final judgment for said net amount, all subject to the conditions set forth in the letter to the Tribe's attorney from the Department of Justice dated March 25th, 1966 signed by Mr. Edwin L. Weisl, Jr., Assistant Attorney General, as follows:

"1. That nothing shall preclude the Government in any subsequent litigation from claiming offsets prior to January 22, 1855, or subsequent to June 30, 1951.

"2. That nothing shall prevent the Secretary of the Interior from exercising his authority to charge the Stillaguamish Tribe for the expenditures heretofore made for the expenses of the sale and management of timber under the Act of February 14, 1920, and acts amendatory thereof.

"3. That an appropriate resolution be secured from the governing body of the Stillaguamish Tribe accepting the terms of the settlement.

"4. That the approval of both the resolution of the Tribe and of the settlement itself by the Secretary of the Interior, or his authorized representative, be secured.

"5. That copies of such resolution showing the approval by the Secretary of the Interior, or his authorized representative, of the resolution and of the settlement be furnished this Department.

"6. That the terms and conditions of the settlement as agreed upon be incorporated into a formal stipulation of settlement.

"DATED at Arlington, Washington this 10th day of September, 1966.

/s/ John D. Silva
Chairman

/s/ Kathleen A. Johnson
Secretary"

23. On December 1, 1966, the Bureau of Indian Affairs wrote a letter to Mr. Frederick W. Post, attorney for the Tribe, as follows:

"UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
Washington, D. C. 20242
December 1, 1966

"In Reply Refer to:
Tribal Operations
4523-66

"Mr. Frederick W. Post
Attorney at Law
14311 Aurora Avenue North
Seattle, Washington 98133

"Dear Mr. Post:

"You have requested our approval of a proposed compromise to settle the claims of the Stillaguamish Tribe of Indians in Indian Claims Commission Docket No. 207 for a net judgment of \$48,570.00.

"The Indian Claims Commission issued an opinion in Docket No. 207 on February 26, 1965, holding that the Stillaguamish Tribe had original title to an area of land described in the Commission's Finding No. 18, ceded under the Point Elliott Treaty of January 22, 1855. Previously, the Commission decided on August 13, 1964, that consideration in the sum of \$15,890.03 had been paid for the cession under the terms of the 1855 Treaty. This left for determination the main issues of the acreage of the tract ceded, the value of the land as of the date of taking, and offsets.

"Your authority to represent the Stillaguamish Tribe as claims counsel is governed by three contracts. Contract No. I-1-ind. 42494, dated March 7, 1951, between the Stillaguamish Tribe and Attorneys Frederick W. Post, Malcolm S. McLeod, and Warren J. Gilbert was approved July 12, 1951, for a period of five years beginning with the date of approval. Contract, Symbol 14-20-0650 No. 1023, dated December 3, 1957, between the Stillaguamish Tribe and Attorneys Frederick W. Post and Warren J. Gilbert was approved February 9, 1962, for a period of seven years beginning July 12, 1956. A contract which is currently in effect, Symbol 14-20-0500 No. 2092, dated October 17, 1964, between the Stillaguamish Tribe and Attorney Frederick W. Post, was approved December 7, 1964, for a period of five years beginning July 12, 1963.*

"Contract No. 2092 provides in pertinent part that:

"The said attorney, in the performance of the duties required of him under this contract, shall be subject to the supervision and direction of the Secretary of the Interior or his duly authorized representative and the Tribe, and shall not make any compromise, settlement, or other adjustment of the matters in controversy unless with the approval of the Secretary of the Interior or his duly authorized representative and the Tribe.'

*This contract was extended for five years effective July 12, 1969.

"You have been in contact with the Department of Justice regarding a compromise to settle Docket No. 207 which was in accordance with the terms of your contract. You then took the matter to the members of the tribe at a general council meeting held at Arlington, Washington, July 24, 1965. The members present were satisfied that the land area ceded as described by the Indian Claims Commission contained 58,600 acres. They were also satisfied that the land was worth \$1.10 an acre when ceded. This value was acceptable because the land of the Stillaguamish Tribe was comparable to land valued in another case at \$1.10 per acre. The members then adopted a resolution authorizing you, as claims counsel for the Stillaguamish Tribe, to negotiate a compromise and settlement of the tribe's case for a sum no less than 58,600 times \$1.10, less \$15,890, or for \$48,570.00.

"Proceeding under the authority and the directions of the tribe as set out in the resolution, you made an offer to the Department of Justice by letter dated July 26, 1965, as supplemented by your letter of October 6, 1965, for a final and complete settlement of Docket No. 207 for \$48,570.00, with both parties waiving their right of appeal. The Department of Justice accepted the offer on March 25, 1966, with conditions. The conditions included those that nothing shall preclude the Government in any subsequent litigation from claiming offsets prior to January 22, 1855, or subsequent to June 30, 1951; that the Stillaguamish Tribe accept the terms of the settlement by an appropriate resolution; and that the Secretary of the Interior or his authorized representative approve the resolution and also the settlement itself.

"Traditionally, the members of the Stillaguamish Tribe hold their annual general council during September. They met at Arlington, Washington, on September 10, 1966. You were present. The Bureau was represented by our Tribal Operations Officer of the Bureau's Western Washington Agency. He reported on the meeting.

"Our representative reported that eighteen adult eligible voting members of the Stillaguamish Tribe were present and also three adults who were not members but married to members of the Tribe who attended the meeting. These persons are named in the minutes of the meeting. You explained the tribe's claim and the proposed compromise which the members appeared to be familiar with in light of the resolution adopted on July 24, 1965. You read the letter of the Department of Justice, dated March 25, 1966, in which the terms and conditions of settlement were set out. Reenactment of the resolution adopted by the members on July 24, 1965, was then requested.

"Our representative reported that, as a group, the members appeared to understand the proposed settlement and the conditions set out by the Department of Justice. One elderly member of the tribe who could not read or write and who spoke little English may not have understood. However, attempts were made by those present to have her understand but none could speak the Stillaguamish language. A resolution was then adopted unanimously by the eighteen adult voting members of the Stillaguamish Tribe. The resolution set out the terms of the proposed settlement and the conditions that the Department of Justice required to be met on the part of the tribe.

"In light of your explanation of the proposed compromise and settlement at the meetings of the members of the Stillaguamish Tribe held July 24, 1965, and September 10, 1966, and the report of our representative, we are satisfied that the members, as a whole, understood the terms of the proposed compromise and settlement. We are further satisfied that the members present and voting at the September 10 meeting were representative of the Stillaguamish Tribe, that they duly adopted a resolution which reflected the desires of the membership of the tribe. The resolution adopted September 10, 1966, is hereby approved.

"In light of the decision issued in Docket No. 207, the information supplied by our field offices, and information obtained from other sources, we believe that the proposed compromise and settlement is fair to the Indians. The proposed settlement of Docket No. 207 for a net judgment of \$48,570.00 is hereby approved under Section 11, Secretarial Order 2506 (27 F.R. 11560).

"Sincerely yours,

/s/ William E. Finale
Deputy Assistant Commissioner"

24. After previous notification to the Tribal members, a meeting of the Stillaguamish Tribe was held December 28, 1969, in Arlington, Washington. At this meeting a resolution was adopted by a vote of 16 to 2 to authorize the Tribe's attorney, Mr. Frederick W. Post, to compromise and settle the Tribe's claim against the United States in

Docket No. 207 in accordance with earlier Tribal resolutions, for the net sum of \$48,570.00. The said resolution was signed by John Silva, Chairman, and Kathleen A. Johnson, Secretary.

25. Counsel for both the plaintiff and the United States are experienced in Indian claims litigation, and both have represented that the proposed settlement is fair and just to both the plaintiff and the United States.

26. On September 11, 1969, counsel filed with the Commission a Joint Motion for Entry of Final Judgment based upon a stipulation for Entry of Final Judgment filed with said Motion and made and executed by Frederick W. Post, attorney of record for the plaintiff, and Edwin L. Weisl, Jr., Assistant Attorney General, and Craig A. Decker, attorney for the defendant. Said stipulation is set forth as follows:

"STIPULATION FOR ENTRY OF FINAL JUDGMENT

"It is hereby stipulated between counsel for the parties that the above-entitled case shall be settled, compromised, and finally disposed of by entry of final judgment as follows:

"1. There shall be entered in the case a net judgment for petitioner in the amount of \$48,570.

"2. Entry of final judgment in said amount shall finally dispose of all rights, claims or demands which the petitioner has asserted or could have asserted under the provisions of the Indian Claims Commission Act of August 13, 1946 (60 Stat. 1049).

"3. This stipulation for entry of final judgment shall also finally dispose of all claims, demands, payments on the claim, counterclaims and offsets which the defendant has asserted or could have asserted against said petitioner under the provisions of section 2 of said Act for all disbursements, transactions and occurrences from January 22, 1855, to and including, June 30, 1951.

"4. The entry of final judgment pursuant hereto shall not operate to deprive the defendant of exercising its right to collect from the proceeds of the sale of timber, as authorized by statute, expenses of managing, protecting and selling timber, as authorized by the Act of February 14, 1920 as amended (25 U.S.C. §413).

"5. The final judgment entered pursuant to this stipulation shall be by way of compromise and settlement and shall not be construed as an admission by either party, for the purposes of precedent or argument, in any other case.

"6. The final judgment of the Indian Claims Commission pursuant to this stipulation shall constitute a final determination by the Commission of the above-captioned case, and shall become final on the day it is entered, all parties hereby waiving any and all rights to appeal from such final determination.

"7. The parties agree to execute and file with the Commission a joint motion for entry of final judgment pursuant to this stipulation, submitting a proposed form of final judgment for the approval of said Commission.

/s/ Frederick W. Post
Frederick W. Post
Counsel of Record for Petitioner

Date: September 3, 1969

/s/ Edwin L. Weisl, Jr.
Edwin L. Weisl, Jr.
Assistant Attorney General

Date: December 12, 1966

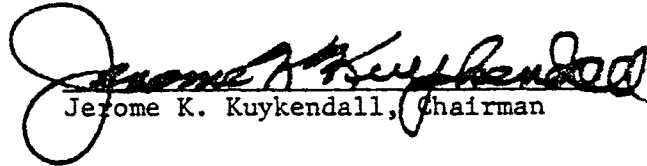
/s/ Craig A. Decker
Craig A. Decker
Attorney for Defendant"

Date: December 12, 1966

27. The Commission finds that the parties in this case have substantially complied with the basic requirements and steps to be followed in entering into a compromise settlement. We find that the plaintiff Tribe has approved said settlement by duly adopted resolution and that said compromise settlement has been approved by the Bureau of Indian Affairs and by counsel for both parties.

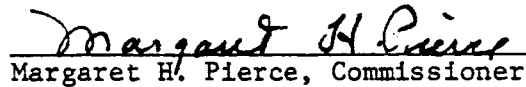
Taking into consideration all the pleadings in this case, we find and conclude that the stipulation to compromise and settle the plaintiff's claim is fair and just to the plaintiff and the defendant and said stipulation should be, and is hereby, approved.

A final judgment will be entered in accordance with the joint motion of the parties.


Jerome K. Kuykendall, Chairman

John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner