

BEFORE THE INDIAN CLAIMS COMMISSION

THE ALEUT COMMUNITY OF ST. PAUL ISLAND,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 352
)	
THE UNITED STATES,)	
)	
Defendant.)	
)	
THE ALEUT TRIBE, ET AL.,)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 369
)	
THE UNITED STATES,)	
)	
Defendant.)	

Decided: July 29, 1970

Appearances:

Donald H. Green and Stephen M. Truitt,
Counsel for Plaintiffs,

James E. Clubb, with whom were Ralph A.
Barney and Mr. Assistant Attorney General
Shiro Kashiwa, Counsel for Defendant.

OPINION ON MOTIONS TO STRIKE AMENDED PETITIONS

Kuykendall, Chairman, delivered the Opinion of the Commission.

On May 2, 1968, this Commission concluded that the jurisdiction of the Indian Claims Commission comprehended the claims of Eskimos (there represented by Docket No. 285) and Aleuts (there represented by the above-captioned cases), and declined to decide whether Eskimos or Aleuts were "Indians". The Native Village of Unalakleet, et al., v.

United States, 19 Ind. Cl. Comm. 140 (1968). The Court of Claims affirmed. United States v. The Native Village of Unalakleet, et al., 188 Ct. Cl. 1, 411 F. 2d 1255 (1969). On December 23, 1969, the Commission denied the defendant's motions to suspend further proceedings pending the possible enactment of legislation which might settle claims of Alaskan natives. The Native Village of Unalakleet, et al., v. United States, 22 Ind. Cl. Comm. 356 (1969).

In 1970 the Aleut plaintiffs filed amended petitions in which they specified that the acts theretofore complained of were regarded as breaches of the defendant's obligations under Article III of the Treaty of Cession (March 30, 1867, 15 Stat. 539) transferring sovereignty over Alaska from Russia to the United States. The plaintiffs further alleged by their amendments to the petitions that the acts theretofore complained of were regarded as a taking of the plaintiffs' property for which the plaintiffs had not received just compensation. Finally, by their amendments to the petitions the plaintiffs sought damages including interest.

On March 26, 1970, the defendant moved for an order striking both amended petitions on the ground that both the allegation of breach of treaty obligations and the allegation of a Fifth Amendment taking amounted to the pleading of entirely new causes of action in violation of the jurisdictional statute of limitations contained in Section 12 of the Indian Claims Commission Act of 1946 (25 U.S.C. 70k). The plaintiffs have filed memoranda in opposition to these motions.

In order to determine whether the amended petitions do in fact present "entirely new" causes of action, the Commission must look to the earlier pleadings. In Docket 352, the plaintiff alluded to the Treaty of March 30, 1867, specifically mentioned Article III of that Treaty, and prayed for "fair compensation" to be determined by the Commission (Petition, par. 5, 6; prayers for relief). In Docket 369, the plaintiffs alluded to the Treaty of March 30, 1867, quoted from but did not cite Article III of that Treaty, and prayed for "fair compensation" (Petition, par. 14; prayer for relief).

This Commission must agree with the plaintiffs that the amended petitions "alleged no new facts, transactions, or occurrences", but simply set out with greater particularity the grounds upon which the plaintiffs were relying from the beginning. Respecting the alleged Fifth Amendment takings, use of the phrase "fair compensation" was sufficient to put the defendant on notice.

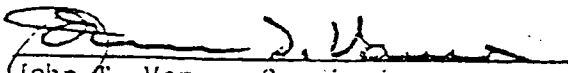
The posture of the cases at bar is wholly distinguishable from that discussed in C. W. McGhee, et al., v. United States, 22 Ind. Cl. Comm. 10 (1969), in which this Commission declined to permit an amendment which would have presented a new cause of action barred by the statute of limitations. In the McGhee matter, those plaintiffs contended that only the quantum of relief varied. The Commission disagreed, holding that the theory of recovery varied and so did the

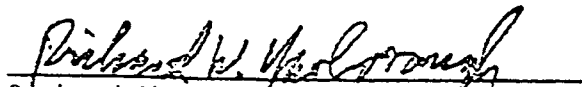
property upon which the claim of relief was founded (i.d., at 13). In the cases at bar, the amendments present no such variances. The property remains unchanged, as does the theory of recovery. The plaintiffs have sought only to clarify their petitions, not augment them.

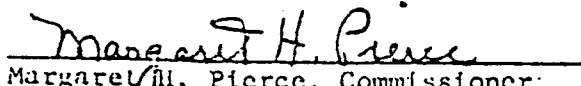
In view of the foregoing discussion, it is apparent that the defendant's motions must be, and they hereby are, denied.


Jerome K. Kuykendall, Chairman

Concurring:


John T. Vance, Commissioner


Richard W. Yarbrough, Commissioner


Margaret H. Pierce, Commissioner


Brantley, Blue, Commissioner