

BEFORE THE INDIAN CLAIMS COMMISSION

THE CONFEDERATED TRIBES OF THE)	
COLVILLE RESERVATION,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 178
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: September 17, 1970

FINDINGS OF FACT ON COMPROMISE SETTLEMENT

1. The petition in this case was filed before the Indian Claims Commission by the Confederated Tribes of the Colville Reservation (hereinafter sometimes referred to as the "Confederated Tribes") on July 31, 1951. The claims herein involved are for a general accounting by the defendant of its administration and management of the trust funds and property of the Confederated Tribes.

2. The plaintiff, the Confederated Tribes, is a tribal organization existing at the Colville Reservation in the State of Washington, and it is an organization recognized by the Secretary of the Interior as having the authority to represent the Indians enrolled on the Colville Reservation. The plaintiff is an identifiable group of American Indians consisting of the descendants of various aboriginal tribal groups.

3. In 1966, the defendant filed an accounting for the period up to and including June 30, 1951. Exceptions to the accounting were then filed by plaintiff to which the defendant filed a response.

4. At this stage of the proceedings, the attorneys for the parties entered into negotiations for the settlement of the claims for the period to June 30, 1951. It was proposed to settle the accounting claims from the time defendant took the responsibilities of trustee of the Confederated Tribes, to June 30, 1951, since the parties could not agree as to the plaintiff's right to an up-to-date accounting.

5. By letter dated June 18, 1970, the attorneys for plaintiff submitted an offer of compromise, along with a "Proposed Stipulation for Entry of Final Judgment" to the Attorney General. By letter dated August 3, 1970, from Assistant Attorney General Shiro Kashiwa to the attorneys, the offer was accepted subject to certain conditions which have been met.

6. The agreed amount of the settlement of the accounting claims to June 30, 1951, was determined to be \$5,540,598. The parties also agreed that any claim that the plaintiff has to an accounting from July 1, 1951, to date of judgment, would be severed and designated as Docket No. 178-A, and its prosecution continued before the Commission.

7. Pursuant to the offer and acceptance, a "Stipulation for Entry of Final Judgment" was signed for the parties herein, and was attached as part of a "Joint Motion for Entry of Final Judgment" filed with the Commission on September 2, 1970. The said stipulation was also approved

by the plaintiff, the Confederated Tribes. The stipulation reads as follows:

"Before the INDIAN CLAIMS COMMISSION

"THE CONFEDERATED TRIBES OF)	
THE COLVILLE RESERVATION,)	
)	
Petitioner,)	
)	
v.)	Docket No. 178
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

"STIPULATION FOR ENTRY OF FINAL JUDGMENT

"It is hereby stipulated by the parties, through their attorneys, as follows:

"(1) All claims asserted in Indian Claims Commission Docket No. 178, except for that portion of the claims which will be severed as hereinafter stated and designated as Docket No. 178-A, shall be settled by entry of a final judgment in favor of the petitioner, the Confederated Tribes of the Colville Reservation, in the amount of \$5,540,598.00. No review is to be sought and no appeal is to be taken by either party.

"(2) This judgment shall finally dispose of all claims and demands which petitioner has asserted or could have asserted against defendant in Docket No. 178 (with the exception of the severed portion to be placed in Docket No. 178-A). The judgment shall also dispose of all claims, demands, payments on the claim, counterclaims or offsets which defendant has asserted or could have asserted against petitioner under the provisions of Section 2 of the Indian Claims Commission Act (60 Stat. 1049), for the period commencing July 2, 1872 and ending June 30, 1957.

"(3) The settlement does not preclude the petitioner from continuing to prosecute the claims for an accounting with respect to the period from July 1, 1951, to the date of judgment on such claims. Such claims will be severed from Docket No. 178 and designated as Docket No. 178-A.

"(4) This stipulation and the entry of final judgment thereon shall not operate to deprive the defendant from exercising its right to collect from the proceeds of timber sales (as authorized by statute), any expenses of managing, protecting and selling timber as authorized by the Act of February 14, 1920, as amended (25 U.S.C. §413), nor shall it affect any right of the petitioner to have credited to the trust funds of the tribe, bands or groups represented, all or a portion of such administrative deductions by reason of such trust funds having borne expenses of management, protection and sale of timber to the extent provided by 25 U.S.C. §413.

"(5) This stipulation and the entry of final judgment thereon shall not be construed as an admission of any party as to any issue for purposes of precedent in any other case or otherwise.

"Respectfully submitted,

WEISSBRODT & WEISSBRODT

by /s/ I. S. Weissbrodt
I. S. Weissbrodt

/s/ Abe W. Weissbrodt
ABE W. WEISSBRODT

Attorneys for petitioner
in Docket No. 178

/s/ Shiro Kashiwa
SHIRO KASHIWA
Assistant Attorney General
of the United States

/s/ John D. Sullivan
Attorney for defendant

"Approval of Stipulation For Entry
of Final Judgment in Docket No. 178

"The above and foregoing Stipulation for Entry of Final Judgment In Docket No. 178, is hereby approved by the undersigned on behalf of the Confederated Tribes of the Colville Reservation pursuant to Resolutions adopted on August 8, 1970, by the Business Council and by the members of the Confederated Tribes of the Colville Reservation.

"The Confederated Tribes of the
Colville Reservation

by /s/ Narcisse Nicholson, Jr.
Narcisse Nicholson, Jr.
Chairman, Business Council
Confederated Tribes of the
Colville Reservation

"ATTEST:

/s/ Barney Rickard
Barney Rickard
Secretary, Business Council
Confederated Tribes of the
Colville Reservation"

8. On August 8, 1970, a General Meeting of the members of the Confederated Tribes was held at the Old Council Hall at Nespelem, Washington, to consider the proposed settlement. Notices of the meeting had been mailed to the last known address of each enrolled member of the Confederated Tribes and had been posted at the usual posting places throughout the reservation. Widespread notice of the meeting had also been given through local newspapers, radio and television stations.

9. The General Meeting was called to order by Mr. Barney Rickard, chairman of the Claims Committee of the Tribal Business Council, which

is the governing body of Confederated Tribes. A detailed explanatory report on the proposed settlement, prepared by the attorneys for plaintiff, was passed out and read to the tribal members. Speakers of the several tribal languages served as interpreters. Many questions were asked and they were answered by the attorneys. The advantages and disadvantages of the proposed settlement were freely and openly discussed.

10. The General Meeting then voted to accept the proposed settlement. The following resolution was adopted by a vote of 393 for and 1 against.

"Resolution Adopted at a General Meeting
of the Members of the Confederated Tribes of the
Colville Reservation"

"BE IT RESOLVED by the members of the Confederated Tribes of the Colville Reservation:

"(1) that the terms of the offer of settlement, in Docket No. 178 of certain of the accounting claims of the Confederated Tribes before the Indian Claims Commission, as set forth in a letter dated June 18, 1970, from Claims Attorney Abe W. Weissbrodt, with accompanying Proposed Stipulation for Entry of Final Judgment, which were transmitted to Attorney General John N. Mitchell, Department of Justice, Washington, D. C., and as accepted by the letter dated August 3, 1970, of Assistant Attorney Shiro Kashiwa, are hereby approved, confirmed and ratified; and

"(2) that approval and consent are hereby given to the execution of the Stipulation for Entry of Final Judgment by the Claims Attorneys on behalf of the Confederated Tribes;

"(3) that the Chairman or Vice Chairman of the Business Council of the Confederated Tribes of the Colville Reservation are hereby authorized on behalf of the Confederated Tribes of the Colville Reservation to sign and execute any writing

which may be appropriate or required to carry said Stipulation into effect.

"Certification

"The foregoing Resolution was duly adopted by the members of the Confederated Tribes of the Colville Reservation at a meeting duly held on August 8, 1970, at Nespelem, Washington by a vote of 393 For, and 1 Against.

"/s/ Narcisse Nicholson, Jr.
Chairman, Business Council
Confederated Tribes of the
Colville Reservation

"ATTEST

/s/ Barney Rickard
Secretary, Business Council
Confederated Tribes of the
Colville Reservation

"AUTHENTICATION OF SIGNATURES

"I hereby certify that the foregoing signatures of the Chairman and Secretary of the Business Council of the Confederated Tribes of the Colville Reservation are genuine.

"Dated: August 8, 1970

"/s/ Elmo Miller
Elmo Miller, Superintendent
Colville Indian Agency"

11. Following the General Meeting, the Business Council met to consider the proposed settlement. The Business Council discussed the proposed settlement and then adopted a resolution approving it by a vote of 12 for and 0 against.

12. Superintendent Elmo Miller of the Colville Indian Reservation attended both meetings as a representative of the Bureau of Indian Affairs and submitted a report to the Department of the Interior, which by letter of August 31, 1970, approved the proposed settlement as follows:

"UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
1951 Constitution Ave., N. W.
Washington, D. C. 20242

"Tribal Operations

"Weissbrodt and Weissbrodt
1614 Twentieth Street, N. W.
Washington, D. C. 20009

Aug 31 1970

"Gentlemen:

"You submitted to this Bureau for approval a proposed compromise to dispose of all claims in Indian Claims Commission docket No. 178, except the accounting claims for the period of years after June 30, 1951, for a net final judgment of \$5,540,598.00 in favor of the Confederated Tribes of the Colville Reservation.

"The prosecution of the claims is governed by one contract.

"The Confederated Tribes of the Colville Reservation entered into Contract No. 1-1-Ind. 42242, dated November 28, 1949, with Attorneys James E. Curry and I. S. Weissbrodt with Mr. Lyle Keith as associate attorney. It was approved on April 13, 1951, for a term of ten years beginning with the date of approval. An amendment to the contract relieving Mr. Curry of any obligations and responsibilities under the contract and adding Attorneys David Cobb and Patrick H. Winston was approved on December 23, 1955. An agreement to amend the contract to add Attorney Abe W. Weissbrodt; to associate Attorney Rolla R. Shwartz (now deceased) with Messrs. Cobb, Weissbrodt and Weissbrodt; and to extend the contract until August 18, 1964, was approved on December 31, 1959. An agreement to add Attorney Martin Liftin as an additional attorney under the contract, to relieve Attorney David Cobb of further duties and obligations under the contract, and to extend the contract for a period of five years beginning on August 18, 1964, was approved on January 4, 1965. Later, an extension of the contract until August 18, 1974, was approved on October 2, 1969. The contract is currently in effect. It provides that the attorneys shall not make any compromise of matters in controversy unless with the approval of the tribes and the Commissioner of Indian Affairs.

"You submitted an offer to the Attorney General on June 18, 1970, to settle the claims in docket No. 178, as provided in the 'Proposed Stipulation for Entry and Final Judgment' which accompanied your letter, for a net final judgment of \$5,540,598.00 in favor of the Confederated Tribes of the Colville Reservation. Your offer was accepted on August 3, 1970, with conditions. Two of the conditions were that the proposed settlement be approved by appropriate resolution of the governing body of the Confederated Tribes of the Colville Reservation and that the approval of the settlement, as well as the resolution of the tribes, be secured from the Secretary of the Interior, or his authorized representative.

"Entry of final judgment will finally dispose of all claims and demands which the petitioner has asserted or could have asserted against the United States in docket No. 178 (with the exception of the accounting claims for the period of years after June 30, 1951, which are to be severed and placed in docket No. 178-A). The judgment will also dispose of all claims, demands, payments on the claims, counterclaims or offsets which the United States has asserted or could have asserted against the petitioner covering the period commencing July 2, 1872, and ending June 30, 1957. No review is to be sought and no appeal is to be taken by either party.

"You presented the proposed settlement to the Confederated Tribes of the Colville Reservation in a general meeting held at Nespelem, Washington, on August 8, 1970. A representative of this Bureau attended the meeting and reported on it. Wide publicity was given to notify all members of the meeting and the purpose for which it was called. A notice appeared in the Tribal Tribune of August 3, 1970, which was circulated among 2,509 tribal members. Notices were posted in various places, announcements made over TV and radio stations, and items appeared in various newspapers which serve the area in which most of the tribal members live.

"Each member who attended the meeting was given a report which the claims attorneys had prepared. It explained the claims in docket No. 178 and the proposed settlement. The report was read at the meeting and you made a comprehensive explanation of the terms of the proposed settlement. Questions were asked by tribal members which you answered to remove doubts which some of them had. Indians assisted in having the members understand the proposed settlement by interpreting in two different dialects.

"We are satisfied that the meeting was widely noticed, that the members of the tribes had an opportunity to attend, that the meeting was one of the largest of its kind, and that the Indians appeared to understand the proposed settlement before voting to accept or reject it. The Indians accepted the proposed settlement by a resolution adopted by a vote of 393 for and 1 against.

"The Business Council of the Confederated Tribes of the Colville Reservation also met on August 8, 1970, and approved the proposed settlement by adoption of Resolution No. 1970-307 by a vote of 12 for and 0 against.

"Our representative certified that the signatures of the tribal officials affixed to the resolutions are genuine.

"We are satisfied that the general meeting of the tribal members and that of the Business Council were properly called and that the resolutions were duly adopted. The resolutions are hereby approved.

"Based upon the information which you have furnished us, that submitted by our field offices, and that obtained from other sources, the proposed settlement of claims of the petitioner Confederated Tribes of the Colville Reservation of Indian Claims Commission docket No. 178 as set out in the 'Proposed Stipulation for Entry of Final Judgment' for a net final judgment of \$5,540,598.00 is hereby approved.

"Sincerely yours,

(Sgd) Louis R. Bruce

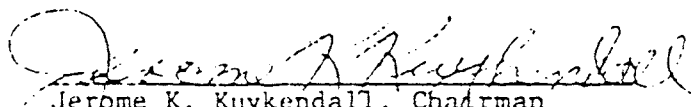
Commissioner"

13. The Commission held a hearing on the proposed settlement on September 8, 1970. Documents filed by the parties in support of their joint motion for entry of final judgment were admitted in evidence. Narcisse Nicholson, Jr., Chairman of the Business Council, Barney Rickard and Lucy Covington, the three members of the Tribal Claims Committee were present. Superintendent Miller was also present.

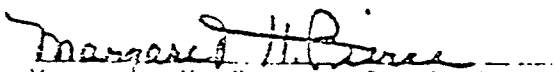
Mr. Rickard testified that the attendance at the General Meeting was unusually large and that in his opinion the members of the Confederated Tribes understood the issues involved in the proposed settlement when they voted to approve it.

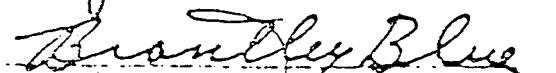
14. The attorney for the defendant, John D. Sullivan, expressed the opinion that the proposed settlement was reasonable^{and} and fair to both parties.


15. Based on the evidence in the record, the testimony of the tribal witness, the approval of the proposed compromise settlement by Louis R. Bruce, Commissioner of Indian Affairs, the General Meeting of the Confederated Tribes of the Colville Reservation, the Colville Business Council, and representations of counsel for the parties that the settlement is fair to the plaintiff and to the Government, the Commission finds that the settlement is fair to the parties. The joint motion for entry of final judgment is granted and a final award is made to the Confederated Tribes of the Colville Reservation in the amount of \$5,540,598. The claims in this case made for the period July 1, 1951, to date will be continued before this Commission as Docket No. 178-A.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner


Richard W. Yarbrough, Commissioner