

BEFORE THE INDIAN CLAIMS COMMISSION

THE SWINOMISH TRIBE OF INDIANS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Docket No. 233
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: July 6, 1972

ADDITIONAL FINDINGS OF FACT

This matter is now before the Commission for approval of a compromise final settlement of the case and entry of a final judgment in the amount of \$29,000, with a waiver of review or appeal, said judgment to dispose of all claims, demands, payments on the claim, counterclaims or offsets which plaintiff or defendant has asserted or could have asserted under the provisions of Section 2 of the Indian Claims Commission Act, 25 U.S.C. §70a (1970).

The Commission has heretofore determined on November 18, 1971, 26 Ind. Cl. Comm. 371 (Findings of Fact Nos. 1-11), that plaintiff, the Swinomish Tribe of Indians, residing principally upon or near to the Swinomish Reservation in the State of Washington, is an identifiable group of American Indians authorized to maintain this action under Section 2 of the Indian Claims Commission Act; that as of March 8, 1859, the effective date of the 1855 Treaty of Point Elliott, 12 Stat. 927, the Swinomish Tribe held aboriginal title to a tract of land described in Finding of Fact No. 11; and that the case would proceed to the remaining stages of the litigation.

This left for determination the issues of acreage of the tract ceded, value of the tract as of the date of cession, consideration paid for the tract, and offsets, if any. The Commission, on February 16, 1972, ordered trial set for February 12, 1973, to determine value and related issues.

Thereafter, a settlement of the case was agreed to by the parties, conditioned upon approval of the Secretary of the Interior or his authorized representative and this Commission. Pursuant to that settlement the Commission makes the following additional findings:

12. During late 1971 and early 1972, the parties, through counsel, discussed possible compromise and settlement of the claim. On February 18, 1972, the Swinomish Tribe of Indians met at the Swinomish Community Building on the Swinomish Reservation, State of Washington, to consider the recommendation of its counsel that the case be settled in the net amount of \$29,000. Personal notice of the meeting and its purpose had been previously given to the members of the Swinomish Tribe.

13. The tribal meeting was presided over by the Chairman of the General Council of the Swinomish Tribe, and 39 adult members of the tribe were present. The Tribal Operations Officer (Enrollment) of the Western Washington Agency of the Bureau of Indian Affairs was also present and attested to the Council Chairman's signature to the subsequently adopted resolution showing that all 39 adult Swinomish Indians present voted for the proposed settlement and none voted against.

The resolution (Jt. Ex. S-2) provides as follows:

Resolution of the Swinomish Tribe of Indians  
Approving Settlement of Docket No. 233

The Swinomish Tribe of Indians is the Petitioner in Docket No. 233 now pending before the Indian Claims Commission.

The Claims Attorney for the Tribe, Frederick Post, has recommended that the case be compromised and settled for a net judgment (after all offsets and deductions have been made) of \$29,000.

THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The proposed settlement of Docket No. 233 by entry of a final judgment in the net amount of \$29,000 is hereby approved by the General Council of the Swinomish Indian Tribe, and it is understood that by accepting the settlement the Tribe waives the right to appeal.

2. The Claims Attorney of the Swinomish Tribe is hereby authorized and directed to sign a Stipulation for Compromise Settlement and Entry of Final Judgment, and file it with the Indian Claims Commission.

3. The Chairman of the Swinomish Tribe is hereby authorized, if it is necessary to submit a statement, or appear before the Indian Claims Commission in or for any proceeding or hearing which may be held on said settlement and to act on behalf of the Tribe in any other action or actions necessary to complete said settlement. [Sic.]

The Authorized representative of the Secretary of the Interior and of the Indian Claims Commission are hereby requested to approve the settlement.

CERTIFICATION AS TO GENERAL COUNCIL

The foregoing resolution was duly adopted at a meeting of the General Council of the

Swinomish Tribe of Indians at the Swinomish Community Building on the Swinomish Reservation on February 18, 1972, at which a representative number of members was considered to be present, the tribe having no quorum requirement, by a vote of 39 for and 0 against.

ATTEST:

/s/Martin O. Sampson  
Martin O. Sampson, Chairman  
Swinomish General Council

/s/ Henry Williams  
Secretary, Swinomish General Council

AUTHENTICATION OF SIGNATURES

I hereby certify that the foregoing signatures of the Chairman and Secretary are genuine and that the resolution as written was approved while I was present at the meeting and that I was designated to attend the meeting as the official representative of the Superintendent of the Western Washington Agency.

Dated this 18th day of February, 1972.

Chester J. Higman  
Tribal Operations Officer (Enrollment)  
Western Washington Agency  
Everett, Washington

14. By letter dated February 18, 1972, Mr. Frederick W. Post, counsel for the plaintiff, advised Mr. Craig A. Decker, counsel for defendant, of passage of this resolution approving of settlement of the claim for \$29,000.00. On March 10, 1972, the Department of Justice, acting through Mr. Kent Frizzell, Assistant Attorney General, advised Mr. Post by letter that the offer in Mr. Post's letter of February 18, 1972, was accepted subject to stated conditions. These conditions provided that the

Swinomish Tribe accept the terms of the compromise settlement by appropriate resolution, which had already been done, and that approval of the settlement and the tribal resolution authorizing it be secured from the Secretary of the Interior or his authorized representative.

15. The compromise settlement and resolution were approved on behalf of the Department of the Interior by letter to plaintiff's counsel dated April 19, 1972, from the Deputy Commissioner, Bureau of Indian Affairs. The letter reads as follows (Jt. Ex. S-5):

Tribal Operations

Mr. Frederick W. Post  
936 N. 143rd Street  
Seattle, Washington 98133

Dear Mr. Post:

We have before us a proposed compromise to settle Indian Claims Commission Docket No. 233 with entry of a final judgment in the net amount of \$29,000.00 in favor of the Swinomish Tribe of Indians.

You are prosecuting Docket No. 233 under contract Symbol 14-20-0500 No. 3332, dated March 26, 1971, between you and the Swinomish Tribe of Indians. It was approved on April 6, 1971, for a period of five years beginning with the date of approval. The contract provides that the attorney shall not make any compromise of the matters in controversy unless first approved by the tribe and the Secretary of the Interior or his authorized representative.

On February 18, 1972, you made an offer to the Department of Justice to compromise and settle Docket No. 233 for a net judgment of \$29,000.00. The Assistant Attorney General accepted your offer on March 13, 1972, with the conditions that the proposed settlement

be approved by an appropriate resolution of the governing body of the Swinomish Tribe and that the approval of the settlement, as well as the resolution of the tribe, be secured from the Secretary of the Interior or his authorized representative.

It is our understanding that entry of final judgment by the Indian Claims Commission in favor of the Swinomish Tribe of Indians and against the United States in the total net sum of Twenty-nine Thousand Dollars (\$29,000.00) shall settle and dispose of Docket No. 233, that no review therefrom is to be sought by either party, that no offset claims are to be asserted against the judgment entered, and that nothing connected with the compromise may be construed as an admission by either party as to any issues for purposes of precedent in any other case.

In accordance with the tribe's claims attorney contract, the proposed settlement was presented to the Swinomish Tribe. A general meeting of the Swinomish Indians was scheduled to be held on February 18, 1972, in the Community Building on the Swinomish Reservation. The members of the Swinomish Council personally contacted one or more members of each family whose ancestors were Swinomish reservation allottees, and advised them of the meeting and the purpose for which it was called. We are satisfied that the Swinomish Indians received adequate notice of the meeting.

The meeting was held as scheduled. A representative of the Bureau of Indian Affairs was present and reported on it.

A total of thirty-nine adult Swinomish Indians were present. The Chairman of the meeting pointed out that there were representatives present from all except two of the twenty-seven original Swinomish reservation allottees who were of Swinomish blood. You explained the proposed settlement giving a brief history of the case, stating the amount and location of the land taken from the Swinomish, and advising as to the basis for establishing the value of the land. After

the explanation, you answered the questions asked of you by the Indians.

Following the question and answer period, the Chairman of the meeting asked if anyone desired to make a motion concerning the compromise. A resolution was then passed, by a vote of 39 for 0 against, accepting the settlement of \$29,000.00. The Chairman and Secretary of the Swinomish Tribe signed the resolution and the Bureau's representative certified the signatures as genuine.

We are satisfied that the meeting was well attended by adult Swinomish Indians, that they reasonably understood the terms of the proposed compromise before voting to accept it, and that the resolution expressed the views of the membership of the Swinomish Tribe. The resolution is hereby approved.

In light of the information furnished to us, that which was submitted by our field offices, and that obtained from other sources, we believe the proposed settlement to be fair. The proposed settlement is hereby approved.

One of the requirements set out by the Indian Claims Commission in its 'Omaha' decision is that representatives of the tribe testify at the hearing which the Commission holds on each compromise settlement. However, the Commission stated that if unusual and unexpected circumstances existed which conceivably could cause undue hardships to the parties if the procedures were rigidly enforced, the Commission will hear counsel for the parties with respect to modifications that may properly be allowed. The Swinomish Tribe is financially poor, the members live in the State of Washington, which is a great distance from Washington, D. C., and the net final judgment is not a substantial sum. We believe an undue hardship would result to the tribe for representatives to appear as witnesses before the Commission. Accordingly, you may desire to request the Commission to modify its requirement and

accept statements from the tribal representatives in lieu of testifying in person.

Sincerely yours,

/s/ John O. Crow  
(Sgd.) John O. Crow  
Deputy Commissioner

16. Following the Department of the Interior approval, the parties entered into a Stipulation for Entry of Final Judgment which provides as follows:

STIPULATION FOR ENTRY OF FINAL JUDGMENT

The parties, by and through their respective counsel, hereby stipulate 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, after all allowable deductions, credits and offsets, a net judgment for plaintiff in the amount of twenty-nine thousand dollars (\$29,000.00).
2. Entry of final judgment in said amount shall finally dispose of all rights, claims and demands which plaintiff has asserted or could have asserted with respect to the subject matter of Docket No. 233, and plaintiff shall be barred thereby from asserting any such right, claim or demand against the defendant in any future action.
3. Entry of final judgment in the aforesaid amount shall finally dispose of all rights, claims, demands, payments on the claim, counterclaims or offsets which defendant has asserted or could have asserted against the plaintiff under the provisions of section 2 of the Indian Claims Commission Act (c. 959, 60 Stat. 1049) for the period from March 8, 1859, through June 30, 1951, and defendant shall be barred thereby from asserting against plaintiff in any future action, any such rights, demands, payments on the claim, counterclaims or offsets attributable to such period. It is agreed that defendant shall



not be barred by this stipulation or by entry of judgment pursuant thereto from claiming in any future action offsets accruing before March 8, 1859, and after June 30, 1951.

4. 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.

5. The final judgment entered 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 or otherwise seek review of such final determination.

6. The parties agree to execute and file with the Commission a Joint Motion for Entry of Final Judgment pursuant to this stipulation.

7. Attached to this stipulation and incorporated herein by reference is a Resolution approving the settlement adopted by the Swinomish General Council, plaintiff's governing body, and by the adult members of the Swinomish Tribe, held at the Swinomish Community Building on the Swinomish Reservation, on February 18, 1972, authorizing counsel for plaintiff to enter into this stipulation on the basis set forth herein, and a copy of a letter dated April 19, 1972, approving the settlement of this litigation by the Deputy Commissioner of the Bureau of Indian Affairs.

Dated the 24th day of May 1972.

/s/ Frederick W. Post  
Frederick W. Post  
Attorney for Plaintiff

/s/ Kent Frizzell  
Kent Frizzell  
Assistant Attorney General

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

17. The Joint Motion for Entry of Final Judgment referred to in paragraph 6 of the stipulation, together with the stipulation and the above-noted Joint Exhibits S-1 through S-5 were filed with the Commission on May 25, 1972. A copy of a letter from plaintiff's counsel addressed to defendant and dated May 9, 1972, was also filed on May 25, 1972, stating in pertinent part that:

With reference to the preparation of a final order, you might inform the Commission that, in view of the fact that the tribal meeting was so well attended and thoroughly publicized, a hearing on whether or not the settlement has been authorized by the Tribe is not necessary. The lengthy letter from the Bureau of Indian Affairs supports this.

You might also invite the Commission's attention to the Stilliguamish case, where a judgment was entered without a hearing. If a hearing was deemed not necessary on the Stilliguamish [sic] case, certainly none is required on this case, where the tribal meeting was so well attended. At that meeting, held on February 18, 1972, a vote of 39 to 0 voted unanimous acceptance of the settlement.

And in its transmittal letter to the Commission of May 24, 1972, the defendant stated the following:

There is also enclosed a copy of the letter from Mr. Frederick W. Post, counsel for plaintiffs, dated May 9, 1972, in which he requests that no settlement hearing be required and sets forth certain justifications for the request. In this connection, it is noted that the approval of the settlement by the Bureau of Indian Affairs (Jt. Ex. S-5) recommends that, in view of the relatively modest amount involved the settlement expenses caused to the Swinomish Tribe be limited to the extent feasible. The Department of Justice concurs in these requests to limit the expenses insofar as the Commission may find it proper to do so.

18. In view of the fact that this is a relatively small case, that the record shows good and sufficient notice was given to tribal members of the settlement meeting, and that the settlement was unanimously approved by

the adult members present, that the plaintiff has requested there be no settlement hearing and this request has been generally concurred in by the defendant and the Department of the Interior, the Commission finds that a settlement hearing is not required in this case.

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

Taking into consideration the record as a whole, we find and conclude that the compromise settlement of this case in the net amount of \$29,000.00 is fair and just to the plaintiff and to the defendant and the said settlement is 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