

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

