

BEFORE THE INDIAN CLAIMS COMMISSION

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|------------------------------------|---|----------------|
| THE QUINAIELT TRIBE OF INDIANS, ON |) | |
| its own behalf; QUINAIELT TRIBE OF |) | |
| INDIANS, on its own behalf and on |) | |
| behalf of the QUEETS TRIBE OR BAND |) | |
| OF INDIANS; QUEETS TRIBE OR BAND |) | |
| OF INDIANS, on the relation of and |) | |
| represented by Harry Shale, on its |) | |
| own behalf, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Docket No. 242 |
| |) | |
| THE UNITED STATES OF AMERICA, |) | |
| |) | |
| Defendant. |) | |

FINDINGS OF FACT IN THE MATTER OF THE JOINT MOTION OF THE
 PETITIONER AND DEFENDANT IN THE ABOVE ENTITLED DOCKET NO. 242
 FOR THE APPROVAL OF A PROPOSED COMPROMISE SETTLEMENT.

1. This is a companion case to Docket No. 155 entitled The Quileute Tribe of Indians et al., v. The United States of America. The claims on which these cases were based arose out of the cession of contiguous lands by said petitioning tribes to the defendant in the Treaty of Olympia of 1855-1856. The claims were based on the allegations that the compensation paid for the cession of the lands was unconscionable; that the conduct of the defendant in dealing with said Indian Tribes was not fair and honorable.

The petitioners in each case employed the same firm of attorneys and for the most part the same expert witnesses.

By reason of the foregoing circumstances, and by agreement of counsel for the parties and with the consent of the Commission the two cases were tried in a consolidated hearing. As a consequence, the hearing record is a joint record of the proceedings.

The lands ceded to the defendant in said treaty by the joint petitioners are located in the extreme western part of the State of Washington and in the combined cases the claims were for approximately 1,540,000 acres. The ownership claimed by the Indians was based on aboriginal or Indian title. The areas at the time of the cessions were forested.

The Commission finally found in its amended findings that the petitioners in the two cases were in the possession of and had Indian or aboriginal title to the land described in the findings, of approximately 688,000 acres; and that the effective date of taking said lands was March 8, 1859.

2. Findings of Fact No. 1 through No. 15, inclusive, together with an Opinion and Interlocutory Order, were entered in Docket No. 242 by the Commission on December 1, 1958. The Interlocutory Order as amended on June 29, 1959, it was provided "The Interlocutory Order of December 1, 1958, is amended to add after the words 'Finding 13' (appearing twice in the Order), the words 'as amended.'" The said amended Interlocutory Order is as follows:

Upon the findings of fact this day filed herein and which are hereby made a part of this order, the Commission concludes as a matter of law:

1. That petitioners above named have the right to maintain the claim set forth in the amended petition;
2. That petitioners have established Indian title to the land described in Finding No. 13, as amended, as of March 8, 1859, the effective date of the Treaty of July 1, 1855.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

- a. That petitioners were in possession of and had title to the lands described in Finding No. 13, as amended, at the time of the effective date of the Treaty of July 1, 1855 (12 Stat. 971), March 8, 1859.

b. That the case shall proceed with proof of the acreage of said land, the consideration defendant paid therefor, the value thereof and of such other matters that are necessary for a final determination of the case, including proof of payments on the claim, if any, the offsets allowed by law to be postponed until proper disposition of the matters referred to above has been made.

Dated at Washington, D. C., this 1st day of December, 1958.
(The order was signed by all three Commissioners)

From this amended Interlocutory Order both the petitioners and the defendant appealed to the Court of Claims; said appeals being designated in the Court's record as Appeal Docket No. 6-61; and that as of the day of the hearing (June 29, 1962) on the above entitled motion, said appeals were in good standing before said Court of Claims.

The Commission issued a temporary order stating that it would approve the proposed compromise settlement and thereupon the Court of Claims dismissed said appeals in Docket 242 upon the request of said parties; the files in said matter have been returned to the Commission and it now has jurisdiction to approve a compromise settlement of said claims.

3. That on the 25th of June 1962, the parties hereto entered into a stipulation in said Docket No. 242 entitled "Stipulation for Entry of Final Judgment" and that said stipulation is as follows:

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

- (1) There shall be entered in the above-entitled case, after all allowable deductions, counterclaims, credits and offsets, a net judgment in favor of petitioner and against defendant in the amount of \$205,172.40.
- (2) Entry of final judgment in said amount shall finally dispose of all rights, claims or demands, which petitioner has asserted, or could have asserted, with respect to the

subject matter of this claim, and petitioner shall be barred thereby from asserting any such right, claim or demand against defendant in any future action.

(3) Entry of final judgment in said amount shall finally dispose of all rights, claims, demands, payments on the claim, counterclaims or offsets which the defendant has asserted, or could have asserted, against the petitioner under the provisions of Section 2 of the Indian Claims Commission Act (c. 949, 60 Stat. 1049, 25 U.S.C. § 70a), including the offset proposed in H. R. 4945 and S. 507, now pending before Congress, and defendant shall be barred thereby from asserting any such rights, demands, payments on the claim, counterclaims or offsets for the period from March 8, 1859, through June 30, 1960, against petitioner in any future action. 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 between these same parties offsets arising prior to March 8, 1859, or accruing subsequent to June 30, 1960, except that it shall have no right to a further offset growing out of H. R. 4945 and S. 507, or the subject matter dealt with in those bills.

(4) The final judgment entered by the Indian Claims Commission and the dismissal of the appeal by the Court of Claims, pursuant to this stipulation, shall be by way of compromise and settlement and shall not be construed as an admission of 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 of the case by the Commission, and shall become final on the day it is entered, both 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, submitting a proposed form of final judgment for the approval of, and entry by, the Commission.

(7) The parties further agree that if the Commission accepts this stipulation of settlement, they will dismiss their appeals (Appeal Docket No. 6-61) filed in the Court of Claims from the interlocutory determination entered by the Commission on June 29, 1959. It is agreed that if the stipulation for entry of final judgment is acceptable to the Commission, it may enter an order which accepts this stipulation, and may set aside the interlocutory determination

made by the Commission in Docket No. 242, and may enter final judgment in the net sum of \$205,172.40 on the basis of this stipulation of settlement, forthwith after the furnishing to the Commission of certified copies of orders of dismissal of said appeals (Appeal Docket No. 6-61) in the United States Court of Claims.

(8) Attached to this stipulation and incorporated herein by reference are resolutions of the Quinaielt Tribal Council and Quinaielt General Council, authorizing designated representatives of the Tribe and counsel for petitioner to execute this stipulation on the basis outlines in paragraphs 1 through 7 hereof.

Date 5/29/62

s/ Glen A. Wilkinson
Attorney of Record for Petitioner

Date 25 June 1962

s/ Ramsey Clark
Ass't. Att. Gen. of the U.S.

Date 6/25/62

s/ Ralph A. Barney
Att. for Defendant

Attached to the said Stipulation for Entry of Final Judgment are the following documents:

1. Approval of the Stipulation by the Quinaielt Tribe of Indians by its Tribal Council and its General Council, executed by Horton Capoeman, Chairman and Fred Saux, Secretary. Signatures to the approval of both the Chairman and the Secretary of the Tribal and General Councils were properly authenticated.
2. Approval of the Stipulation by the law firm of Wilkinson Cragun, and Barker, (formerly Wilkinson, Boyden, Cragun and Barker.)
3. Approval of the sole surviving heirs of Kenneth R. L. Simmons, original contract attorney with said petitioner. (Approval properly notorized)
4. Resolution of the Quinaielt Tribe of Indians General Council approving the compromise settlement and activities with reference thereto.
5. Resolution of Quinaielt Tribal Council approving said

compromise settlement.

The signatures of the Tribal and General Council Chairman and Secretary, respectively, to all of the foregoing approvals and resolutions were duly authenticated.

In addition there were received exhibits 127 and 128, copies of resolutions of the said petition relating to said compromise; exhibit No. 129, a copy of the minutes of the meeting of said petitioner tribe where said resolutions were adopted; exhibits 130 and 131 relating to certification of said resolutions and other miscellaneous matters; exhibit 132, a copy of the minutes of petitioner's Tribal Council meeting where action was taken on the compromise settlement; exhibit 133, a certificate of the Secretary with reference to the meeting of said Tribal Council as set forth in exhibit 132; exhibit 134, a summary of the meeting of the General Council of March 31, 1962; and exhibit 139, a letter from Assistant Attorney General to the Indian attorneys.

4. The law firm of Wilkinson, Boyden, Cragun, and Barker, attorneys of Washington, D. C., represent the petitioning Indian Tribe or bands in Docket No. 242 under a ten year contract which became effective April 13, 1953, and in 1954 said firm changed its name to Wilkinson, Cragun and Barker and continue to represent said Indian tribes or bands before the Indian Claims Commission, and elsewhere, in the prosecution of their claims against the United States; the said firm being the contract attorneys representing the said petitioners; and Glen A. Wilkinson, the signer of said contract the Attorney of Record, and a member of the firm. Said contract has been duly approved by the Secretary of the Interior as required by law; and the said law firm has also represented said petitioners in their claims against the United States for a considerable period of time prior to the said 13th day of April, 1953.

5. In response to requests by petitioners, Frank J. Barry, Solicitor for the Department of Interior, acting under authority given him by said Secretary, approved the Stipulation for Entry of Final Judgment in a letter to Wilkinson, Cragun, and Barker, Attorneys for said Indian petitioners in Docket No. 242. Said letter reads as follows:

UNITED STATES
DEPARTMENT OF THE INTERIOR
Office Of The Solicitor
Washington 25, D. C. B-61-1115.9a

June 25, 1962

Wilkinson, Cragun & Barker
Attorneys at Law
1616 H Street, N.W.
Washington, D. C.

Gentlemen:

Because of the terms of the claims attorney contracts between your law firm and the Quinaielt Tribe and Quileute Tribe, you have requested our approval of the proposed stipulated settlement of the cases entitled the Quinaielt Tribe of Indians v. United States, Docket No. 242, and Quileute Tribe of Indians v. United States, Docket No. 155, before the Indian Claims Commission.

The contract between the Quinaielt Tribe and your law firm provides that the attorneys shall not make any compromise, settlement or other adjustment of the matters in controversy unless with the approval of the Commissioner of Indian Affairs and that the attorneys shall pursue the litigation in question to and through the court of final resort unless authorized by the Commissioner of Indian Affairs to terminate the proceedings at an intermediate stage thereof. Your contract with the Quileute Tribe contains similar provisions.

You have furnished us a report concerning the claims of the Quinaielt Tribe and the Quileute Tribe, together with copies of resolutions adopted respectively by the tribes on March 31, 1962 and May 31, 1962, authorizing your firm to compromise their claims for \$317,325, to be allocated in the amount of \$205,172.40 to the Quinaielt Tribe and \$112,152.60 to the Quileute Tribe. By letters of February 16, 1962, the Department

of Justice advised your firm that your offer to compromise in these amounts as set forth in your letter of February 9, 1962 was acceptable to that Department. The letters further stated that upon receipt of appropriate resolutions by the Quinaielt and Quileute General and Tribal Councils, together with a copy of the approval of the Secretary of the Interior or his authorized representative of the tribal resolutions and the terms of the settlement, the Department of Justice would cooperate with you in drawing appropriate documents and initiating proceedings to effect the settlement.

You are of the view that the proposed compromise constitutes a fair and reasonable outcome from the point of view of the tribes. Your report furnishes information concerning the background of the claims and the proposed settlement and reasons why you have concluded that the settlement is advantageous to the tribes. The Bureau of Indian Affairs has advised us that the compromise settlement was presented, explained and discussed at general council meetings of the Quinaielt and Quileute Tribes at which a representative of the Bureau was present. From the Bureau's report it appears that the Indians have been fully advised of the proposed compromise as is indicated by their adoption of the resolutions approving it.

Upon full consideration of the information made available to this office by your firm and the Bureau of Indian Affairs, we hereby approve on behalf of the Secretary of the Interior the resolutions of the Quinaielt Tribe and the Quileute Tribe referred to above and the settlement of the cases of the Quinaielt Tribe of Indians v. United States, Docket No. 242, and the Quileute Tribe of Indians v. United States, Docket No. 155, before the Indian Claims Commission, as proposed in your letter of February 9, 1962, to the Assistant Attorney General and accepted in his replies of February 16, 1962.

Sincerely yours,

s/Frank J. Barry
Solicitor

6. Glen A. Wilkinson and Donald Gormley of counsel for said petitioners, attended meetings of the General and Tribal Councils of petitioners, as is more fully set forth in Finding No. 3 herein, and fully explained to said petitioners the provisions of the proposed Stipulation for Entry of

Final Judgment and its meaning with reference to their claim against the United States as stated in Docket No. 242, and in all the orders and proceedings of the Commission affecting said claim.

Mr. Wilkinson said that the Indians seemed to understand the compromise settlement and were in favor of its adoption.

7. Mr. Horton Capoeman testified that he was a resident of Taholah, Washington, on the Quinaielt reservation and a member of the Quinaielt tribe of Indians. He also said that he had been a member of the Quinaielt tribal council for fifteen years but for the past two years had been serving as Chairman of the tribal council and as presiding officer of meetings of the general council. He gave his age as 55 years and his occupation as a fisherman, restaurant owner, and Chairman of the Tribal Council.

Mr. Capoeman said that a meeting of the Quinaielt General Council was called for May 13, 1961, to consider a proposal of compromise on their claim before the Indian Claims Commission. He said that notice of the meeting as well as information as to its purpose was publicized by means of newspaper, radio and posters in local post offices and stores in areas where the tribe members lived, at least ten days before the meeting was to take place. Mr. Capoeman further testified that at the May 13, 1961 meeting, at which he presided and which was attended by Mr. Wilkinson and Mr. Gormley, the General Council was made fully aware of the purpose of the meeting. The witness said a compromise proposal of \$209,847.40 was presented by the above-named attorneys at the meeting, but that action on this proposal was deferred by common consent due to complications arising from the Cape Elizabeth restoration bill then before Congress. Mr. Capoeman said it was agreed at the above meeting to defer further action on the compromise

proposal until the fall session of Congress and then subsequently deferred again until Congress convened this year.

Mr. Capoeman testified that at another meeting of the Quinaielt General Council held March 31, 1962, Mr. Wilkinson presented both the pros and cons of the compromise settlement proposal and that after discussing the matter thoroughly among themselves, the members of the council, including this witness, deemed it advisable to accept the compromise proposal of \$205,172.40 in full settlement of all claims before the Commission under Docket No. 242 including the Cape Elizabeth offsets compromise.

The witness testified that of the approximately 200 members of the tribe 65 were present at the above meeting and though the proposals by Mr. Wilkinson were not translated into the Quinaielt language, the vast majority of the tribe members understood English and those who didn't were briefed in the Indian language with respect to the proposals both before and after the meeting.

8. Mr. James Jackson, age forty-four, a 9/16th Quinaielt Indian, testified that he was a resident of Moclips, Washington, a town situated at the edge of the Quinaielt Indian Reservation, and that he was Vice-Chairman of the Tribal Council. He owns and operates a shake mill in Moclips and hires about 20 people, 10 of which are members of the Quinaielt Tribe.

Mr. Jackson said he had been unanimously re-elected Vice-Chairman of the Tribal Council by a vote of 65-0 prior to the General Council meeting of March 31, 1962. He said he was present at the May 13, 1961 meeting and was also in Washington, D. C., earlier this year to discuss with the tribal attorneys the advisability of settling the present claim. He also said he acquiesced in the recommendation that the tribe

settle the Cape Elizabeth offset for half the value indicated by the Department of the Interior. The witness said that he personally understood what was involved in the compromise settlement and felt that all those present at the May 1961 and March 1962 meetings understood this also and that he thought the compromise was a wise course to follow. He said the attendance for both the above meetings was about normal and that the resolution was approved at the March 31, 1962 meeting by a vote of 36 to 1. Mr. Jackson said that members of the tribe talked about the compromise proposal prior to the meetings but voiced no opposition to it after it was explained to them although they had an opportunity to so express themselves during the meetings. He repeated that he understood that the \$205,172.40 in this case was in full and complete settlement of the tribe's aboriginal claim to land and he felt the other members of the tribe also understood this.

9. The Commission in the hearings and the proceedings prior to the entry of the interlocutory order detailed in Finding No. 1 herein, became acquainted with many of the physical facts relating to the area which was involved in Docket No. 242. In 1960 all members of the Commission viewed in a general way the lands which were the subject of said interlocutory order.

By reason of these circumstances the Commission came into the possession of information with respect to the subject tract which would aid it in judging the fairness of the proposed compromise settlement.

10. The compromise agreement has been carefully and fully presented to the members of the petitioning tribe and its terms and effects apparently

were understood by them.

Based on the record, the Commission concludes that the compromise agreement is fair and just to the petitioners and to the defendant; and should be approved.

Arthur V. Watkins
Chief Commissioner

William M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner