2-21-1967

Brief of Natural Resources in Opposition to Plaintiff's Opening Briefs, Appendix A

Arthur V. Watkins
Chief Commissioner

Wm. H. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner

BEFORE THE INDIAN CLAIMS COMMISSION

THE SPOKANE TRIBE OF INDIANS, suing on its own behalf and on behalf of THE UPPER, MIDDLE AND LOWER BANDS OF SPOKANE INDIANS or THE UPPER SPOKANE, MIDDLE SPOKANE, or LOWER SPOKANE BAND OF INDIANS, or any one or two of them alternatively,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Docket No. 331

April 17, 1961

FINDINGS OF FACT

1. Petitioner is a tribal organization recognized by the Secretary of the Interior. Its petition was timely filed with this Commission pursuant to authority of the Indian Claims Commission Act of 1946. As amended, the petition states a claim for additional compensation for land ceded to the United States by agreement of March 18, 1887, ratified July 13, 1892 (27 Stat. 120, 139, II Kapp. 446, 449, 453-4). An alternative claim is presented for damages as the result of duress and unfair and dishonorable dealings on part of defendant in obtaining this cession. By stipulation of the parties hereto the issue presently for determination is that of original Indian title, which necessarily includes that of identity of the land using entity or entities by which such title, if any, was held.

2. The area to which petitioner asserts its claim of original

APPENDIX A

title is located in northeastern Washington. It includes a small portion of those tracts which this Commission in Docket No. 181, 4 Ind. Clms. Comm. 151, 167, found was held by the Colville Tribe of Indians under original title and which this Commission in its Docket No. 81, 4 Ind. Clms. Comm. 1, 11, found was held under original title by the Coeur d'Alene Tribe of Indians, including what is known as Rathdrum Prairie. Small portions of the area claimed by petitioner are also claimed by the Yakima Tribe of Indians (Docket No. 161), the Moses Band of Columbia Indians (Docket No. 224), and the Palus Tribe of Indians (Docket No. 222), in other dockets presently pending before this Commission.

3. When the United States extended sovereignty over northeastern Washington about the middle of the 19th century, the Spokane Indians were a land-using tribal entity, comprised of three bands known as the Upper, Middle and Lower Bands of Spokane Indians. Most of the descendants of the Spokane Indians living between 1855 and 1887 now reside upon the Spokane Indian Reservation in Stevens County, Washington, and are members of petitioner organization. Substantial numbers of them also reside upon the Colville Indian Reservation in Washington and the Coeur d'Alene Indian Reservation in Idaho. Petitioner is entitled to institute this action in a representative capacity on behalf of all such survivors or descendants of the membership of the Spokane Tribe as it existed during the period beginning 1855 to and including March 18, 1887.

4. It is estimated that the Spokane Tribe numbered 1,400 souls in 1780. By 1850 smallpox and other diseases had reduced that number to around 500. There were 716 Spokane Indians in 1870, 685 in 1883, 901 in 1877, and 769 in 1905.

5. British and American trappers were the first white men to visit the claimed area. The region was traversed by the United States Naval Expedition under Commander Charles Wilkes during 1841, and sovereignty of the United States was acknowledged over it by Great Britian in the Treaty of June 15, 1846. It was included within Oregon Territory as that Territory was established August 14, 1848, and within the limits of Washington Territory when it was established March 2, 1853, with Isaac Stevens the first Governor. Isaac Stevens led a survey party through the area in 1853 and returned during 1855 as a treaty commissioner authorized to extinguish Indian title to land east of the Cascades.

6. Much friction developed between the Indians and the whites in both Oregon and Washington Territories when the Donation Act of September 27, 1850, was generally interpreted as opening all land within those Territories to settlement. Congress authorized extinguishment of Indian title to all land east of the Cascades in 1855. Governor Stevens as one of the designated treaty commissioners procured a series of treaties of cession with Indians to the south and east of the Spokanes and met with the Spokane Tribe in council on Spokane River during December, 1855. It was there agreed that he would return the following spring to discuss a cession of their land with them, an Indian uprising having made his immediate return to the capital expedient. Stevens never fulfilled this promise. Subsequently numerous councils were held with the Spokane Tribe but no cession was procured from that tribe until March 18, 1887.

7. With the discovery of gold near Colville, Washington, an influx of prospectors and other whites traveling through the Spokane country

followed. The Spokanes felt neglected by defendant in that no treaty was ever negotiated with them; they were envious of annuities paid to nearby treaty tribes and irritated by traffic through their country. During 1858 one Colonel E. J. Steptoe was directed to investigate two murders at Colville, Washington. The later writings of Benjamine F. Manring who was with Steptoe's troops, supported in part by official documents, disclose that while Steptoe's troops were encamped on Palouse River the Spokanes notified him they would resist the armed forces entering their countr and again he was told his forces might not cross the Palouse or Spokane rivers. On proceeding northward, the forces were attacked and defeated on Pine Creek near the present site of Steptoe, Washington, at Steptoe's Bluff, by united Spokane, Palus (Palouse) and Coeur d'Alene Indians. A few weeks later Colonel George Wright led a retaliatory force into this country and on September 24, 1858, entered into a treaty with the Spokane Tribe signed by 36 of their leaders, providing for cessation of all hostilities and granting whites passage through Spokane country, the specific area not being defined. The treaty specified it also applied to the Palouse Nation, but it was never presented to Congress for ratification. There is no other record of the Spokane Tribe or its separate bands ever bearing arms against the United States.

8. Commencing during 1859 there are numerous official reports that the Spokane Indians desired to treat for the sale of their land and that famine and disease had greatly reduced their number. On April 9, 1872, a reservation for the "Methow, Okanagon, San Poel, Lake, Colville, Calispel, Spokane, Couer d'Alene and other scattering bands of Indians in Washington" as well as such other Indians as the Department of Interior might wish to locate thereto, was by Executive Order created for the non-

treaty Indians of northeastern Washington. This reservation extended from the Spokane and Little Spokane Rivers north to the 49th parallel, and from the Columbia River eastward to the Pend d'Oreille River and the 117th meridian. The Order was revoked July 2, 1872, and in lieu thereof a reservation encompassing all that land between the Columbia and Okanogan Rivers south of the 49th parallel was set aside for the same Indians. This forms the present Colville Indian Reservation.

9. On March 3, 1875 (18 Stat. 402, 420), Congress provided that individual Indians who renounced their tribal relations and became citizens could acquire patents to tracts of lands occupied by them. The Spokane Indians refused to sever their tribal relations, or to leave their own lands to reside upon the Colville Indian Reservation. They continued to express a desire to remain in their own country and to retain possession of their fisheries along the Spokane River.

10. Thereafter the Indians residing upon the Colville Reservation sought to have annexed thereto a six-mile wide strip of land extending north and south along the east bank of the Columbia River from the Spokane River to the 49th parallel.

(a) On August 18, 1877, at a council held by Indian Inspector E. C. Watkins, General Frank Wheaton and Captain M. C. Wilkinson on behalf of the United States with the Coeur d'Alene, Spokane, Pend d'Oreille, Chewelah, Okanogan, Colville and Palus (Palouse) Indians, the Colville Reservation Indians waived their request for annexation of any land south of Numchin Creek. An instrument drafted for signature by Chiefs and headmen of the Spokane Tribe of Indians, agreeing on behalf of their people to accept and by November 1, 1877, go upon a tract of land north of Spokane River, south of a line extending from the mouth of Numchin Creek

of the Columbia River east to the source of Chamokane Creek was then executed by six Indians who are each identified as chiefs or headmen of the Lower Spokane Band. By separate instrument the Palus (Palouse) Indians on said date also agreed to move upon this Spokane Reservation or upon the Coeur d'Alene Indian Reservation by November 1, 1877. Neither of these treaties contained a cession of land, called for payment of consideration by the United States, or granted any future benefits or privileges to the signatory tribes, nor were they ever presented to Congress for ratification.

(b) In his official report concerning the treaty council of 1877, Inspector E. C. Watkins said the described area was recommended as a reservation for "the Spokan, Palus, and the other roaming Indians of the vicinity;" that it was entirely satisfactory to the Lower Spokane and "many of the upland and the Palus Indians;" that his arrangements took care of the greater portion of the Spokane Tribe, a few having expressed a preference for the Coeur d'Alene reservation and told to go there, a few wanting to retain their farms and become citizens and having been told they might do so, and "a few of Geary's band" having been told to remain where they resided since they neither wished to become citizens or to leave their farms without pay for their improvements.

(c) By Field Order No. 8 on September 3, 1880, the Army directed that all that part of the tract described above lying south of a line drawn east from the Columbia River to a point on Chamokane Creek eight miles north of the Spokane River should be protected from white settlement in anticipation of an Indian Reservation being established in that area. On January 18, 1881, an Executive Order issued setting aside as a reservation for the Spokane Indians all of the above tract

which is south of the 48th parallel.

11. Minutes of the 1877 council, the treaty of August 18, 1877, and the report of Inspector E. C. Watkins disclose that the treaty of August 18, 1877, was intended to bind the Spokane Tribe. These instruments and the Executive Order of January 18, 1881, disclose that the reservation established by that Order was for the use and occupancy of the Spokane Tribe. Throughout the 1877 council the Spokane Tribe was represented by its head or principal chief, Garry, and by lesser chiefs.

12. Most of the Lower Spokane Band resided within the area defined as a reservation by the Executive Order of January 18, 1881.Few members, if any, of the Upper or Middle Bands of Spokanes moved upon the reservation prior to 1888. Government officials referred to the reservation as an addition to the Colville Reservation, as the Spokane Reservation and later as the Lower Spokane Reservation. The Spokane Indians called it "Lot's (Whistlepossum's) Reservation," he being the chief of the Lower Spokane Band.

13. After the 1877 council white settlers gradually crowded the Spokane Indians away from their fisheries and settled upon their hunting and food gathering grounds outside the Spokane reservation. The general condition of the Spokanes became sadly deteriorated. Numerous reports were made to and by government officials concerning the need of aid for the Spokanes and about their unextinguished claim to land on and about the Spokane River.

On August 4, 1852, 10 Stat. 28, Congress authorized the granting of free right of ways across the public domain to facilitate construction of rail and plank roads. March 3, 1855, 10 Stat. 683, this Act was

extended to the public domain within the Territories. By 1884 at least one such grant had been made through the Spokane country for construction of a railroad. On May 29, 1858, 10 Stat. 293, existing laws for the survey and disposal of the public land in the Territories of Washington and Oregon west of the Cascade Mountains were extended to public land east of those mountains within those Territories. On August 15, 1876, 19 Stat. 207, Congress created the Whitman Land District which encompassed all that part of the present state of Washington north of Snake River and east of the Columbia Guide Meridian and included the claimed area.

14. The Spokane Indians did not oppose construction of the railroad nor did they attempt to prevent the survey of land within the Whitman Land District. Missionaries had early introduced agriculture among them and by 1880 many had small crudely fenced and cultivated fields. Defendant's agents repeatedly urged that they file upon individual tracts under the Act of February 8, 1887, 24 Stat. 388, which provided that every Indian not residing upon a reservation, or whose tribe had no reservation by treaty, Act of Congress or Executive Order, make settlement upon surveyed or unsurveyed, unoccupied public land for allotment purposes, or that they become citizens and file under the general homestead laws. Some few Indians did move upon separate tracts with intent of acquiring title, but most of them did not understand the need of filing their land claims, nor did they have money to pay the filing fees. Many Spokane Indians lost their farms to whites claiming title through a railroad grant or homestead filing. These instances emphasized the need for treating with the Indians both for their welfare and that conflict might be avoided through the extinguishment of Indian title.

15. On May 15, 1886, Congress among other things provided that negotiations be entered into with the Upper and Middle Bands of the Spokane Indians for their removal to the Colville Reservation in Washington, the Jocko Reservation in Montana, or the Coeur d'Alene Reservation in Idaho. The Commission appointed on July 27, 1886, to carry out this direction was known as the Northwest Indian Commission and consisted of J. V. Wright, H. W. Andrews and J. W. Daniels.

The Northwest Indian Commission arrived at Spokane Falls February 23, 1887, and on March 7, 1887, called a council with the Upper and Middle Bands of Spokane Indians which council was also attended by members of the Lower Spokane Band. On March 18, 1887, an agreement was entered into by defendant and the Middle and Upper Bands of Spokane Indians (27 Stat. 120, 139, I Kapp. 446, 449, 453). By Article 1 thereof the Indians ceded all the "right, title and claim which they now have, or ever had, to any and all lands lying outside of the Indian reservations in Washington and Idaho Territories, and they hereby agree to remove to and settle upon the Coeur d'Alene Reservation in the Territory of Idaho." Under Article 4 of the agreement all of those Indians who had settled upon and improved land outside of any reservation limits with intent to acquire title under homestead, pre-emption or other laws of the United States were permitted to remain thereon and receive a patent thereto as well as participate in the individual allotments the treaty provided the Spokanes should receive upon the Coeur d'Alene Reservation. Under Article 10 the Spokanes were permitted to go upon the Jocko or Colville Reservations if they preferred either one to the Coeur d'Alene Reservation, and to receive their pro-rata benefits

under the agreement when located thereon.

16. The Agreement of March 18, 1887, by its terms became binding upon ratification thereof. This occurred on July 13, 1892.

17. The Agreement of March 18, 1887, was signed by 87 chiefs and headmen of the Spokane Indians on that date and by 8 others on April 27, 1887. Petitioner has been able to identify the band affiliations of only three of the parties signatory thereto. Whistleposum or Lot, Chief of the Lower Spokane Band, did not execute the Agreement.

18. About 1888 many of the Upper and Middle Spokane Band members had moved upon the Spokane Reservation and thereafter Congress provided for their pro-rata participation in the benefits of the 1887 agreement. Those Spokane Indians who refused to go upon any reservation prior to 1897 were moved to a reservation during 1897. There are Spokane Indians now residing upon the Coeur d'Alene, Spokane, Colville and Jocko Reservations, as well as elsewhere.

19. The Spokane Indians and the Columbia, Sanpoil, Colville and Kalispel or Pend d'Oreille Indians to their west and north, each spoke Salish dialects and conversed with each other. The Coeur d'Alene Indians next east of the Spokanes spoke a Salish dialect but their language and that of the Spokanes were mutually unintelligible. There were dialectical differences among the Spokane Indians, the Lower Band or Sineka'lt group speaking a dialect more nearly resembling the Sanpoil language than that of the Sinkoomany or Upper Spokane and the Sqasi'lni (Ray's Skyseelny) or Middle Spokane. The Palus or Palouse Indians living south of the Spokanes spoke a Sahaptin dialect. Many of the members of these tribes were bi-lingual, and the tribes were friendly, frequently hunting and gathering food together or meeting at Moses Lake and elsewhere for horseracing and other sports.

20. The culture of the Spokane Indians was typical of the central Plateau region. As stated by Dr. Verne F. Ray, an ethnologist testifying on behalf of petitioner, the Spokane Indians like other central Plateau tribes placed considerable emphasis on peacefulness, democracy and religion. Cultural differences between them and the Sanpoil and between them and the Colville Indians were relatively slight, but sufficient to be distinguishing. Greater differences existed between the Spokanes and their other neighbors, the greatest occurring between them and the Palus or Palouse Indians to their south.

21. Documentary reference to the Spokane Indians covers a long period beginning with the Lewis and Clark Journals of 1804-6, although Lewis and Clark were not in this vicinity. The name "Spokane" was first applied to them in 1807 by David Thompson, a trapper with the Northwest Trading Company and the first white man known to have visited them. They were identified as a tribe of Flathead (i.e., Salish) Indians in 1811 by another trapper, Alexander Henry, who described them as river-dwellers, seldom leaving their country to hunt buffalo on the plains. Agents of the Pacific Fur Company applied the name "Spokane" to the river along which they dwelt in 1813. They were said to be divided into three groups or bands, each under its own chief or chiefs, by Alexander Henry (1822-23), J. W. Dease (1827) and John Work (1830). The region within which they lived was mapped first by the French in 1821, about 1825 by Reverend Samuel Parker, and a few years later by Father Pierre-Jean DeSmet who located them and neighboring tribes roughly with respect to various topographical features of the country.

Official contact with the Spokane Indians began during 1841 with the United States Naval Exploring Expedition under Commander Charles Wilkes. Ethnological or ethnohistorical work has been done among them by James M. Teit about 1904, by Dr. Verne F. Ray between 1928 and 1947, including a five-month term as Director of Indian Emergency Conservation work in 1940, and by Mr. Stuart A. Chalfant whose research occurred between 1951 and 1954, inclusive. Students of historical data touching Spokane history include Professor Leslie Spier who published in 1936, and petitioner's witness, Dr. Angelo Anastasia. Other students of the North American Indians have contributed to existing information respecting the culture, organizational formation and areas of use and occupancy of the Spokane Indians.

22. The Spokane Indians possessed a concept of local band autonomy but had a single form of tribal government in the nature of a council under one head chief. When affairs of tribal importance required consideration the duly recognized leaders or chiefs of the various autonomies met. The chairman of such meetings was the chief of the Little Spokane Band residing at Little Falls on the Spokane River. He was known as The Raven, a name indicative of his office and passed on to his successor. During 1854 Governor Isaac Stevens issued a document to one Spokane Garry, a half-breed who had attended white schools, naming him head chief of the Spokane Tribe, and thereafter Spokane Garry was frequently referred to and recognized by the whites as principal chief of the Spokane Indians.

23. The Spokane Indians were a tribe of Indians and were usually recognized and considered to be such by defendant and its representatives and agents. The tribe was the land-using unit, all members making use

of the hunting and food gathering grounds without regard to their band affiliations. It was divided into three major bands known as the Upper, Middle and Lower Bands of Spokane Indians. These bands were much intermarried and an over-all council united them for tribal action.

24. The Spokane Indians covered a wide range in their quest for food, having acquired horses in the first decade of the 18th century. They left their winter village or camp during March or in early April and spent about six weeks gathering dry-land camas on the plains south of Spokane River, traveling in minimal groups of 30 or 40 adults, the women digging camas while the men hunted. The roots were then cashed away and most of the Spokanes went west to the vicinity of Moses Lake near central Washington where they spent from two weeks to a month in social activities, gambling, dancing, horse racing, and trading with other tribes that gathered there. From June to October the Spokanes fished the Columbia and Spokane Rivers, and raced horses on the plains south of the Spokane. Bitterroot was gathered in June and after July of each year moist-land camas was dug on upper Latah Creek and north of Spokane River. Sometimes the Spokanes joined the Colville and Kalispel Indians at camas fields near Cusick, Washington, and sometimes they went eastward beyond the Coeur d'Alene Lake in Idaho. Berries and wild parsnip were gathered in the fall. Antelope, deer, groundhog, jack rabbit, and other small game were found in the plains region between the Spokane and Palouse Rivers. During August buffalo hunting parties left for the plains east of the Rocky Mountains, some returning during November and others wintering there. In December most of the Spokane Indians retired

to their winter villages or camps, where they subsisted on dried fish, roots and game supplemented sometimes, of necessity, by dried moss.

With the arrival of the traders and the establishment of trading houses at the junction of the Spokane and Little Spokane Rivers in 1810 and at Kettle Falls on the Columbia River in 1826, hunting and trapping assumed great importance for the Spokanes. When the game became scarce about 1845, they began to take up agriculture, particularly the growing of wheat and potatoes which were introduced by the missionaries about 1835. By 1880 many Spokane Indians were attempting to live by fishing and farming, having abandoned the hunter life.

25. About thirty-five miles south of the Spokane River and apparently in the vicinity of the present townsite of Sprague, Washington, there were a number of Spokane graves. This site had special sacred significance for the Spokane Indians.

26. A study of the various camp and village sites used by the Spokane Indians has been made by petitioner's witness, Dr. Verne F. Ray. All such sites are within the area defendant's witness, Mr. Chalfant, considered to be most greatly used by the Spokane Indians with the exception of two villages in the Huckleberry Mountain region north of Spokane River. The most northern permanent village sites of the Spokanes were one near Springdale, one near the mouth of Deer Creek and one of moderate size near the Upper fork of Deer Creek. The most southern village was near the present town of Spokane, the most southern camp site was on Latah Creek near the mouth of Rock Creek, north of Spangle, Washington. Dr. Ray did not ascertain the occupancy dates for any of these sites, nor was he able to ascertain whether two villages in the Huckleberry Mountains, one on Chamokane Creek and one each at Tumtum, Denison, and Buckeye, Washington,

were occupied by Lower, Upper or Middle Spokane Indians, or by members of two or three of these bands jointly. Not all of the Spokane villages were continuously occupied.

27. There was no definite territorial boundary line between the Spokane Indians and the Coeur d'Alene Indians to the east of them. Our earliest information respecting the country used and occupied by these two tribes discloses that they made common use of an area in eastern Washington and western Idaho. From sixty to one hundred fifty Coeur d'Alene Indians resided within Washington Territory, their westernmost permanent village being on the Spokane River about twenty miles east of present Spokane City. Along with the Spokane Indians the Coeur d'Alene used Peone Prairie in the fork of Deadman Creek, Spokane Valley along the Spokane River and the country along Latah Creek above the mouth of Rock Creek, and about Spangle, Rosalie, Teoka, and Farmington, Washington.

28 The Spokane Indians used the country in the northern portion of the northern Palouse River drainage and the southern limits of the plain between the Palouse and Spokane Rivers jointly with the Palus or Palouse Indians. The Palouse, Spokane and Coeur d'Alene were united during the 1858 battle at Steptoe's Bluff near Steptoe, Washington, in an attempt to prevent United States troops from entering this country. "Nez Perce Indians" who were the Palouse Indians, pursued a party of white men northward to within a day's journey of Spokane River during 1832, although their appearance that far north was resented by the Spokane Indians. During a meeting at the Grand Ronde in Oregon during 1854, when various Indian tribes of the northwest were attempting to divide the country among themselves, the Spokanes claimed the land south of the Spokane River for

a distance of 20 miles. On various occasions prior to the execution of the 1887 treaty the Spokane Indians claimed as far south as the Palouse River, or to Cow Creek. They enjoyed exclusive use of the country south of the Spokane River to at least as far south as Sprague, Washington.

29. The Colville Indians residing about the mouth of Kettle River and around Kettle Falls on the Columbia River made use of the Huckleberry Mountains for berrying and hunting, and joined with the Kalispel or Pend d'Orielle and Spokane Indians in using the camas fields about Cusick, Washington. With the Coeur d'Alene and Spokane Indians they used Peone Prairie in the fork of Deadman Creek for religious purposes, and they are known to have upon occasion gathered food near Hillyard, Washington, within the immediate vicinity of permanent Spokane villages. They do not appear to have come farther south along the Columbia River than Hunters Creek.

30. The Spokane Indians maintained hunting camps at the mouths of Hunters Creek and Hawk Creek on the Columbia River. They had a village near Gerome, Washington, at the mouth of O-ra-pak-en Creek. These are their most westerly sites of definite location, the Columbia River between Hunters Creek and Peach, Oregon, forming a recognized boundary, west of which they did not venture. They used the country about Loon Lake to the north. South and east of Peach, Washington, at the bend in the Columbia River, the Nespelem and Sanpoil Indians joined the Spokanes in hunting, food gathering and horse racing, the Nespelem and Sanpoil going east as far as the present town of Davenport, Washington. Southwest of Davenport, Washington, as far as the present town of Ritzville, Washington, and southeast of Davenport as far as Colville Lake and the present

town of Pine City, Washington, the country was exclusively used and occupied by the Spokane Tribe of Indians.

31. On March 18, 1887, and until extinguished by the defendant, the Spokane Tribe of Indians held original Indian title to a tract of land in northeastern Washington which lies within the following boundaries, to-wit: Commencing on the Columbia River at the mouth of Hunters Creek and running thence up Hunters Creek to the fork thereof, thence by a direct line to Bald Mountain immediately north of Deer Lake, thence eastward around Deer Lake and by direct line southeast to the mouth of Beaver Creek on the Little Spokane River a short distance north of the present town of Milan, Washington; thence southeast by a direct line to the fork of Deadman Creek near the present town of Peone, Washington, and thence southeastwardly to the northeast corner of the present townsite of Opportunity, Washington, on the Spokane River; thence southwest to the mouth of Rock Creek on Latah Creek, and continuing in a southwesterly direction to the southwest corner of the present townsite of Spangle, Washington, the southwest corner of the present townsite of Malden, Washington, the southwest corner of the present townsite of Pine City, Washington, and the southwest corner of the present townsite of Ritzville, Washington; thence northeasterly along a straight line to the southwest corner of the present townsite of Davenport, Washington; thence northwest along a straight line to the southwest corner of the present townsite of Peach Washington, thence northward to the Columbia River; thence northerly up said Columbia River to the place of beginning at the mouth of Hunters Creek.

32. The original Indian title of the Spokane Tribe of Indians to the tract of country above bounded was extinguished by the United States on July 13, 1892.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner

Syllabus

THE SPOKANE TRIBE OF INDIANS, SUING ON ITS OWN BEHALF AND ON BEHALF OF THE UPPER, MIDDLE AND LOWER BANDS OF SPOKANE INDIANS OR THE UPPER SPOKANE, MIDDLE SPOKANE, OR LOWER SPOKANE BAND OF INDIANS, OR ANY ONE OR TWO OF THEM ALTERNATIVELY v. THE UNITED STATES

[Appeal No. 5-62. Decided October 11, 1963]

ON APPEAL FROM THE INDIAN CLAIMS COMMISSION

Indian claims; appeal from Indian Claims Commission; findings of Commission; substantial evidence.—The appellant Indians brought suit under the Indian Claims Commission Act on the ground that unconscionably low consideration had been paid for land which was ceded to the United States by the Agreement of March 18, 1887, ratified by Congress on July 13, 1892, 27 Stat. 120, 139. The appellant challenges the Commission's ruling in its interlocutory opinion, 9 Ind. Cl. Comm. 236 (Docket 331), regarding the extent of the land aboriginally used and occupied (held by so-called Indian title) by appellant and ceded to the United States, contending that the findings of the Commission are not supported by substantial evidence. It is *held* (1) that the Commission's northeastern boundary and southeastern boundary, and a portion of the western boundary, must be set aside as unsupported by substantial evidence in the record as a whole; (2) that the Commission's findings regarding the southern boundary are sufficiently supported by evidence to be binding on the court and parties; (3) that the case will be remanded to the Commission to reconsider its too restricted definition of the northeastern and southeastern boundaries; and (4) that, as to the western boundary, the appellant's area must be defined to reach westward at least as far as the line from Peach to Ritzville and the Commission is to consider whether the boundary may not go even beyond that line, and, if so, to what extent. The findings and order of the Commission are affirmed in part and reversed in part.

Indian claims; appeal from Indian Claims Commission; appellate review; substantial evidence; findings of the Commission; record as a whole.—Congress intended that the court should consider the record before the Indian Claims Commission as a whole in determining whether a finding of the Commission was supported by substantial evidence. Where the Commission has based its findings on the testimony of a single witness, whereas a number of other credible witnesses have testified to the contrary, and where the single witness' understanding of the legal issue involved in his testimony is defective, the court is justi-

APPENDIX B

Syllabus

fied in concluding that the Commission's findings based on this testimony are not supported by substantial evidence in the record as a whole. *Osage Nation of Indians* v. *United States*, 119 Ct. Cl. 592, cert. denied, 342 U.S. 896.

United States ⇐ 113

Indian claims; appeal from Indian Claims Commission; Indian title—what constitutes; in general.—Indian title includes not only areas in which the tribe has permanent villages or habitations, but also seasonal or hunting areas over which they have control even though those areas are used intermittently or seasonally. *Delaware Tribe of Indians* v. *United States*, 130 Ct. Cl. 782.

Indians ⇐ 10

Indian claims; appeal from Indian Claims Commission; appellate review; findings of the Commission; substantial evidence; in general.—Where the record as a whole before the Indian Claims Commission contains a good body of materials both for and against the findings under attack, the court will not upset the ruling of the Commission. Under such circumstances the court will not evaluate the competing arguments and evidence.

United States ⇐ 113

Indian claims; appeal from Indian Claims Commission; appellate review; remand—when justified.—When the reviewing court concludes that the Indian Claims Commission has committed error in setting boundary lines to an area claimed by the Indian appellant to have been held by Indian title and ceded to the United States, the court will remand the case to the Commission to reconsider the boundary issue unless there is only one answer to such issue. This procedure comports with Congress' direction that the Commission "hear and determine" the claims and the court review such determinations as the Commission may make.

United States ⇐ 113

Indian claims; appeal from Indian Claims Commission; parties; individual descendants of tribal members; rights in award.—The Commission's declaration or order that the appellant Indian tribe is entitled to institute the action in a representative capacity on behalf of all survivors or descendants of the membership of the tribe as it existed on the date of congressional ratification of the cession agreement (July 13, 1892), and the order stating that the appellant is entitled to prosecute the action on behalf of all members of the tribe as it existed in 1892 or the descendants of the members, are in error. The appellant must sue on behalf of an entity or entities and not on behalf of individual survivors and descendants of a tribal entity. [25 U.S.C. § 70a.] *Minnesota Chippewa Tribe* v. *United States*, 161 Ct. Cl. 258.

United States ⇐ 113

Glen A. Wilkinson for the appellant. *Wilkinson, Cragun & Barker* and *Angelo A. Iadarola* of counsel.

John D. Sullivan, with whom was *Assistant Attorney General Ramsey Clark*, for the appellee. *Ralph A. Barney* of counsel.

Before JONES, *Chief Judge*, LARAMORE, DURFEE and DAVIS, *Judges*.

DAVIS, *Judge*, delivered the opinion of the court:

The Spokane Tribe challenges a ruling of the Indian Claims Commission that the Tribe held Indian title in the 19th century to a lesser area than it claims in this proceeding. 9 Ind. Cl. Comm. 236 (Docket No. 331) (1961). The appeal is interlocutory, before any determination of value has been made. The United States did not cross-appeal. Under 25 U.S.C. § 70s(b), it would be free at a later time to contest the Commission's determination on any ground, but its brief in this court declares unequivocally that the findings of the Commission determining the extent of the area exclusively used and occupied by the appellant "are well supported by the evidence." We take this to be appellee's deliberate acceptance of the evidentiary basis of the Commission's specification of appellant's area. Those limits mark, therefore, the minimum boundaries of any area for which appellant may be entitled to compensation.[1]

The territory claimed by the Spokane Tribe lies in northeastern Washington, near the Idaho border. It came under acknowledged United States dominion by the Treaty With Great Britain, June 15, 1846, 9 Stat. 869, and was first included within the Oregon Territory established on August 14, 1848, 9 Stat. 323, and then within Washington Territory when it was constituted on March 2, 1853, 10 Stat. 172. In 1855 Congress authorized the extinguishment of Indian title in Washington Territory east of the Cascade Mountains. Pacts were soon made with many of appellant's neighbors but, despite a series of councils, discussions, and abortive

[1] In the Commission below, appellee contended (in addition to its argument on the extent of the area) that the appellant lacked standing to bring this action under the Indian Claims Commission Act and also that the date of taking by the United States should be earlier than that fixed by the Commission. These issues are not now before us.

agreements, no final understanding with appellant was consummated until the Agreement of March 18, 1887, by which the Spokane Indians ceded all the "right, title and claim which they now have, or ever had, to any and all lands lying outside of the Indian reservations in Washington and Idaho Territories"—and agreed to take out individual land patents, or to remove to and settle upon the Coeur d'Alene Reservation in Idaho, the Colville Reservation in Washington, or the Jocko Reservation in Montana.[2] This Agreement became binding upon its ratification by Congress on July 13, 1892, 27 Stat. 120, 139. The Indian Claims Commission set that as the date of the taking of the lands on which the present action is based. The appellant's claim is that the terms of the Agreement should be revised, under Section 2(3) of the Indian Claims Commission Act, 25 U.S.C. § 70a(3), on the ground that an unconscionably low consideration was paid and the Tribe was entitled to more.

I

The Spokane Indians were a land-using and fishing group, numbering between 500 and 900 individuals during the last half of the 19th century.[3] They were divided into three connected bands or groups—the Upper, the Middle, and the Lower Spokanes—on whose behalf appellant sues (as well as on its own behalf). They were surrounded by other Indian groups and tribes with most of whom they were friendly. Particularly after 1877, white settlers crowded the Spokanes away from their fisheries and settled upon their hunting and food-gathering grounds outside the Spokane Reservation (see footnote 1, *supra*). Once the missionaries had introduced farming, during the earlier parts of the 19th century, many Spokanes developed small cultivated areas, but these were often lost because the Indian owners failed to

[2] In 1872, an Executive Order reservation (the present Colville Indian Reservation) was created for the non-treaty Indians of northeastern Washington, including the Spokanes. Most of the Spokanes refused to leave their own lands to reside at Colville. In 1881, an Executive Order set aside another tract for the Spokane Tribe; most of the Lower Spokane Band resided within this area, but few, if any, members of the Upper or Middle Bands of Spokanes moved there prior to 1888. There are Spokane Indians now residing upon the Coeur d'Alene, Spokane, Colville, and Jocko Reservations, as well as elsewhere.

[3] There had been about 1400 souls in 1780.

make proper filings under the land laws and incoming settlers claimed title through a railroad grant or homestead filing. At the time of the 1887 Agreement with the Federal Government, the general condition of the Tribe had seriously deteriorated.

The lands covered by the Agreement, and therefore involved in the present suit, were all those aboriginally owned by the Tribe. Appellant claims approximately 3,140,000 acres, less the 154,898 set aside and reserved for the Spokane Tribe in 1881—a net of some 2,955,102 acres. The Indian Claims Commission determined the aboriginally-owned area to be an irregular oblong region (some 70 miles long and 45 miles wide) of about 1,854,858 acres, including the Spokane Indian Reservation (154,898 acres), a net total of about 1,700,000 acres.[4] (The present city of Spokane is located within the perimeter of this area.) The Commission's decision was based on a record containing the oral testimony of the parties' anthropological witnesses, as well as reports, studies, maps, and findings of prior students, travellers, and officials. Appellant attacks most of the Commission's boundaries as too limited; only the northern and northwestern sides are left unchallenged. We shall consider each of the disputed borders separately.

A. *Northeast boundary:* The Commission places the northeastern line of the Spokanes' area as running from a point a short distance northwest of Milan, Washington, southeasterly

[4] The area found by the Commission is bounded as follows (finding 31): Commencing on the Columbia River at the mouth of Hunters Creek and running thence up Hunters Creek to the fork thereof, thence by a direct line to Bald Mountain immediately north of Deer Lake, thence eastward around Deer Lake and by direct line southeast to the mouth of Beaver Creek on the Little Spokane River a short distance north of the present town of Milan, Washington; thence southeast by a direct line to the fork of Deadman Creek near the present town of Peone, Washington, and thence southeastwardly to the northeast corner of the present townsite of Opportunity, Washington, on the Spokane River; thence southwest to the mouth of Rock Creek on Latah Creek, and continuing in a southwesterly direction to the southwest corner of the present townsite of Spangle, Washington, the southwest corner of the present townsite of Malden, Washington, the southwest corner of the present townsite of Pine City, Washington, and the southwest corner of the present townsite of Ritzville, Washington; thence northeasterly along a straight line to the southwest corner of the present townsite of Davenport, Washington; thence northwest along a straight line to the southwest corner of the present townsite of Peach, Washington, thence northward to the Columbia River; thence northerly up said Columbia River to the place of beginning at the mouth of Hunters Creek.

to Milan and then on to Peone, and from there in a southerly direction to Opportunity. The line cuts off Mt. Spokane and the territory to the east of that spot. Appellant calls this boundary the Commission's most glaring error and argues that it is wholly unsupported by any substantial evidence. We are compelled to agree. Neither of the two expert witnesses and none of the writings of the other main students supports so restricted a line; on the contrary, all the major materials bearing directly on the northeast border of the Spokane land indicate that the Indians' territory extended, on that side, considerably beyond the line fixed below. All or substantial part of the area eliminated by the Commission's line was found to be occupied exclusively by the Spokanes by Dr. Verne F. Ray, appellant's expert witness; by Mr. Stuart Chalfant, appellee's expert; and by independent observers or anthropologists such as James Teit, Edward S. Curtis, James Mooney, John R. Swanton, Leslie Spier, George Gibbs, and Father DeSmet (probably)—whose writings and maps are in evidence.

The only materials cited by appellee in support of the Commission's northeastern line are three maps which do not bear on the point. One is a map made in 1841 by Charles Wilkes, commander of a naval exploring expedition, after a very short visit to the area; this map does not help in placing the northeast boundary since in that region (at least) Wilkes did not distinguish between the Spokanes and other Salish-speaking Indians (such as the Kalispel, Coeur d'Alene, Flathead, etc.), lumping all of them together in a large territory. Appellee also refers to one of several maps prepared from the observations of Father DeSmet, a Jesuit missionary who lived in the area in the 1840's and early 1850's. This particular map covers very large segments of western and midwestern United States and, with respect to the relatively tiny area with which we are now concerned, is far too general and imprecise to be of any aid. Appellant points out that another, more detailed, map by Father DeSmet of the area of our present interest can be read as intimating that the Spokanes extended beyond the northeastern line drawn by the Commission. The third map on which appellee relies is one by Dr. Ray (appellant's

expert) included in an ethnological article in 1936. This is a small-scale, diagrammatic sketch depicting the areas of over twenty Indian groups; it must necessarily be taken together with a more-detailed map in the same article showing that, in Dr. Ray's view, the Spokanes' territory went beyond the Commission's northeastern line.

Thus, appellee cannot properly rest on the maps it cites as providing any substantial foundation for the Commission's determination of this sector of Spokane land. The other pertinent evidence, as we have said, supports appellant. From the Commission's opinion (see 9 Ind. Cl. Comm. at 264) one can infer that it denied the Tribe's claim to the area west of (and adjacent to) Mt. Spokane because it attributed significance to the absence of references in the early accounts of the region to this outstanding topographical feature; the Commission apparently felt that the mountain would have been mentioned if it had been an identification point in the boundary between the Spokanes and other friendly tribes (as appellant contends that it was). In our view this thin speculation could not be substantial evidence outweighing the strong, cumulative, and uncontradicted testimony and materials on which appellant can count.[5] The Commission's northeastern boundary must be set aside as unsupported by substantial evidence in the record as a whole.

B. *Southeast boundary:* The Commission's southeast line runs from Opportunity (near the junction of the Spokane River) in a southwesterly straight line to Spangle, to Malden, and then to Pine City. Appellant accepts Opportunity as the starting point but attacks the boundary itself as too retracted. For this sector the state of the record is that appellant's protest against the Commission's line is supported by its expert, Dr. Ray, and by the views of a number of earlier students and officials (including Spier and Mooney, whom

[5] In the face of these materials (including systematic anthropological studies), scattered observations that other Indians were at one or another time found at one or another spot east of the Commission's northeastern line cannot be given any substantial weight. These casual observations do not indicate whether the alien Indians were there as visitors, on a temporary basis, etc.

appellee incorrectly cites as sustaining the ruling below),[6] while the Commission finds almost all its corroboration in the evidence of appellee's expert, Mr. Chalfant. The difference in the two positions is that Chalfant believes the line adopted by the Commission to represent the farthest extent of the Spokane's *exclusive* occupancy, the lands to the east being used in common with other tribes; the rest of the observers think that these more easterly lands were *occupied* solely by the Spokane Indians (in the sense in which "exclusive occupancy" is employed in cases under the Indian Claims Commission Act) although other groups may have visited there.

The mere counting of witnesses' heads is not the office of a reviewing court, but where a single witness is arrayed against a number of others it is a prime part of the judicial function to examine his testimony with care to see whether in itself it affords substantial support to the determination made by the fact-finders. That is one of the meanings of the Congressional directive that we consider the record *as a whole*, and not only a particular piece of evidence in isolation. *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474, 487–488 (1951); *Osage Nation of Indians* v. *United States*, 119 Ct. Cl. 592, 606, 608–611, 612–613, 615, 672, 97 F. Supp. 381, 388, 389–391, 391–392, 393, 425 (1951), *cert. denied*, 342 U.S. 896 (1951).

In this light, we have reviewed Mr. Chalfant's evidence on the southeastern boundary.[7] His whole presentation on this part of the case is tied to his conception that, though Spokanes were often found east of the restricted line he advocated, their only areas of "exclusive occupancy" were west of that line. In the excluded territory, he says, they commingled with other groups in a common area owned by none, or they were guests on lands belonging to others, or they had only seasonal habitation. He explains the maps or writings of earlier observers—most of whom had affirma-

[6] The following would give the Spokanes a more extended southeast boundary than the Commission drew: Teit; Spier; Curtis; Mooney; Swanton; Oregon Hist. Soc.; Gibbs; Wilkes (semble); Ray.

[7] Chalfant submitted a written report and also testified. One factor to be considered in evaluating his evidence, though it is not decisive, is his relative inexperience both in ethnological studies generally and in studying the Indians of this area.

tively placed the Spokanes east of his line, and none of whom had denied that the Spokanes lived there—as expansively representing all the areas used or roamed by the Spokanes and not merely their areas of true exclusive occupancy.

We find three crucial defects in this general position. The first is that there is no adequate basis for assuming that the prior students included in their delineations of Spokane territory (in this section) any land which was not aboriginally owned by this Tribe according to the standards necessary for recognition under the Indian Claims Commission Act (see *The Sac and Fox Tribe* v. *United States*, 161 Ct. Cl. 189, 201–02, 315 F. 2d 896, 903 (1963), *cert. denied*, 375 U.S. 921. The main indications in their maps and writings are contrary to Mr. Chalfant's hypothesis and he has only unpersuasive bits and pieces out of which to build his supposition that the other observers and ethnographers included commonly-used lands. Second, Chalfant's view of Indian occupancy is too narrow; he includes only areas in which there were permanent villages or habitations and excludes seasonal or hunting areas, even though intermittent or seasonal use has been accepted as showing Indian title. *Delaware Tribe of Indians* v. *United States*, 130 Ct. Cl. 782, 789, 128 F. Supp. 391, 395 (1955); *Iowa Tribe* v. *United States*, 6 Ind. Cl. Comm. (Docket No. 135) 464, 478 (1958); *Pawnee Indian Tribe* v. *United States*, 5 Ind. Cl. Comm. (Docket No. 10) 224, 291–292 (1957); *Omaha Tribe* v. *United States*, 4 Ind. Cl. Comm. (Docket No. 225–A) 627, 637, 664, 667 (1957); cf. *Mitchel* v. *United States*, 9 Pet. 711, 746 (1835). His depiction of the areas of exclusive Spokane occupancy must therefore be suspect as founded on an erroneous postulate. Third, when we measure Mr. Chalfant's unelaborated and unproved statements that the Spokanes used all of the land east of his southeastern line in common with the other Indians of this region (or as mere visitors) against the mass of other evidence on this point, we cannot accept his solitary opinion as a substantial enough foundation upon which the Commission could rest its southeastern line. Both the nature of his statements and the significant contradictory materials detract seriously from the weight which can be given his views. For these

reasons, we must overturn the Commission's determination of the southeast boundary as supported by insufficient evidence in the record as a whole.

C. *Southern boundary:* The Commission placed the southern boundary of the Spokane country along a straight line running slightly southwest from Pine City to Ritzville. We think that this sector is adequately supported by substantial evidence. It accords, in general, with the southern boundary estimated by several observers,[8] although it is more restricted than that espoused by others.[9] We do not have in this instance the overwhelming weight of the evidence massed strongly against the Commission's line, as we have found to be the case for the northeastern and southeastern boundaries. We have, instead, a good body of materials both for and against the decision below. With the scales so balanced, we cannot upset the ruling.

In an effort to undermine that finding, appellant attacks, on the one hand, the Commission's reliance on Wilkes' map of 1841 as well as its reference to the Spokanes' limited claim at the Grande Ronde meeting of the area Indians in 1854; on the other, appellant challenges the Commission's refusal to accept Governor Stevens' more southerly line of 1857. Whatever their merit, these and like arguments fall into the class of contentions properly addressed to a fact-finder; they do not rise to the level of demonstration that the Commission's boundary is bereft of any substantial support in the record. In the presence of such substantial support, we cannot evaluate for ourselves the competing arguments.

D. *Western boundary:* For the western edge of the Spokanes' land, the Commission drew straight lines slightly northeast from Ritzville (the southwestern point of its boundary) to Davenport and then somewhat sharply north-

[8] Leslie Spier (whose line is not straight but in its curvature includes slightly less territory than the Commission's); Edward Curtis (whose southern line seems somewhat less favorable to appellant); James Mooney; John R. Swanton; Charles Wilkes; Stuart Chalfant.

We are indebted to appellant for including in the appendix of its reply brief a series of 13 maps showing the various borders given for the Spokanes' territory by different observers (including the two live expert witnesses, Dr. Ray and Mr. Chalfant). These maps have been very helpful.

[9] James A. Teit; Governor Isaac I. Stevens; Oregon Historical Society; George Gibbs (semble); Verne F. Ray; Winans.

west from Davenport to Peach. This cuts off a substantial wedge of territory which would be included if the line ran straight north from Ritzville to Peach (as well as any territory to the west). The Commission's reason for excluding this wedge was that it believed the area not to be occupied exclusively by the Spokanes but to be jointly used together with other natives of the region (the Nespelem and Sanpoil Indians). Not inconsistently, the Commission had found, in an earlier case, that the eastern end of the Sanpoil area of exclusive occupancy extended from a point about 15 miles west of Davenport (the central point of the wedge) to just west of Peach (the northern point of the wedge). *Confederated Tribes of the Colville Reservation* v. *United States*, 4 Ind. Cl. Comm. (Docket No. 181) 151, 162 (Fdg. 15) (1956). Appellant disputes this finding that the land between the Sanpoil line and the Commission's western Spokane line was used in common and was therefore not held by the Spokanes under Indian title.

The Government's brief supports this finding on two pieces of evidence—(a) a statement of Dr. Edward Curtis in a 1911 study of the Spokanes, and (b) the testimony and report of appellee's expert, Stuart Chalfant. The Curtis statement, as appellant points out, is not at all relevant to our question since it deals only with the common use of certain territory by the different groups of Spokanes, not with a common use by the Spokanes and alien tribes. Chalfant, however, does say that the Spokanes used the omitted area (or part of it) in common with other tribes, but his evidence demands rigorous analysis since there is very little other material in the record supporting this contention. See *supra*. The Commission's western line, we find on examination, cannot be rested on Chalfant's view. He relied almost wholly on information supplied by members of neighboring tribes (Nespelem, Sanpoil, Colville) that in the 19th century they had seasonally used land in the direction of the disputed area to get food. He was quite unsure, however, of the limits of this use. Nor does his evidence adequately consider whether this use by other Indians was by permission and at the sufferance of the Spokanes, or as a matter of right; if the former, the alien visits would not diminish

the appellant's Indian title. Though Chalfant's report declares that there was no such host-visitor relationship, that summary statement is obviously infected by his erroneous assumption (mentioned previously) that true Indian occupancy could not exist without more-or-less permanent sites or villages. The essence of his position seems to be simply that there were other Indians in the area at some times of the year, but he did not show what lands they used or under what conditions they happened to be there. This is too slim a base for the affirmative finding that the other natives joined the Spokanes in common, equal, use of the entire wedge excluded by the Commission. To this defect must be added the significant fact that, to a substantial extent, the ruling below cuts off parts of the wedge which Chalfant, even with his too-narrow position on Indian occupancy, was still willing to assign to the appellant as its own. The Commission, in sum, had no substantial evidence leading it to find that all the excluded area—the omitted wedge of territory, as well as the land further west—was jointly occupied together with other Indians. Chalfant's material is gravely insufficient, and there is nothing else of telling significance.

This does not dispose of the point. The particular western boundary chosen by the Commission may fall for lack of a substantial grounding, but since appellant has the burden it cannot prevail unless there is adequate evidence that it occupied some lands to the west of that boundary. This record does contain solid material to that effect. Several students or observers have given substantially all the excluded wedge or still greater territory to the Spokanes.[10] These separate items link to form a strong chain of evidence. In this connection, we note that we do not value the testimony of appellant's expert, Dr. Ray, as highly as appellant would have us, since his general theory of Indian title seems inadmissibly broad as Mr. Chalfant's appears too narrow.[11]

[10] Teit; Spier; Curtis; Mooney; Swanton; Gibbs; Oregon Hist. Society; Ray.

[11] Dr. Ray apparently believes that Indian title could be obtained by mutual recognition between neighboring tribes that a certain area "belonged" to one or another of them—even though that "owner" did not use or occupy the land assigned to it. This does not accord with the type of Indian title which the Indian Claims Commission Act takes into account. See *supra*.

But the combined impact of the evidence as a whole forces the conclusion that some area beyond the Commission's western line should have been included.

II

We have found that the Commission erred in setting the northeastern and southeastern line, as well as the southern and central portions of the western boundary, of the Spokane country. To this extent the Commission's border is not supported by substantial evidence and must therefore be set aside. The next problem which immediately emerges is whether this court should establish the correct lines or should remand the case to the Commission to perform that function.

In the federal system it has been the usual rule that, where the reviewing court exposes the legal error in the decision of an administrative agency, it should not decide for itself those remaining issues within the agency's special competence, unless there could be only one answer; if the agency would have room to choose, the court should remit the case to allow that discretion to be exercised. Cf., *e.g.*, *Federal Power Commission* v. *Idaho Power Co.*, 344 U.S. 17, 20–21 (1952); *Securities & Exchange Commission* v. *Chenery Corp.*, 332 U.S. 194, 199–201 (1947); *Jacob Siegel Co.* v. *Federal Trade Commission*, 327 U.S. 608, 613–614 (1946); *Ford Motor Co.* v. *National Labor Relations Board*, 305 U.S. 364, 372–374 (1939); *Crolley* v. *Tatton*, 249 F. 2d 908, 911–912 (C.A. 5, 1957); *Public Utility Dist. No. 1* v. *Federal Power Commission*, 242 F. 2d 672, 683, (C.A. 9, 1957); *Local 1229, Int'l Bhd. Elec. Workers* v. *National Labor Relations Board*, 202 F. 2d 186, 189 (C.A.D.C., 1952), *rev'd on other grounds*, 346 U.S. 464 (1953).

This court has followed that standard on factual or discretionary questions brought here from the Indian Claims Commission. See *Osage Nation of Indians* v. *United States*, 119 Ct. Cl. 592, 667, 672, 97 F. Supp. 381, 422, 425 (1951), *cert. denied*, 342 U.S. 896 (1951); *Pawnee Indian Tribe of Oklahoma* v. *United States*, 124 Ct. Cl. 324, 373–374, 386, 401, 404, 412–413, 109 F. Supp. 860, 889, 896, 904, 906, 911 (1953);

Snake or Piute Indians v. *United States*, 125 Ct. Cl. 241, 255, 269–270, 286–287, 112 F. Supp. 543, 552, 560, 569 (1953); *Miami Tribe of Oklahoma* v. *United States*, 146 Ct. Cl. 421, 469, 175 F. Supp. 926, 953–954 (1959); *Yakima Tribe* v. *United States*, 158 Ct. Cl. 672, 682–83 (1962). Congress has designated the Commission to "hear and determine" the claims (25 U.S.C. § 70a); this court's function is that of review (25 U.S.C. § 70s).[12]

In this case, a remand is plainly in order for the northeast and southeast boundaries. Although the Commission has been too restricted in drawing these lines, the record does not constrain any particular degree of expansion or require us to decide that the eastern borders must be placed at this or that precise point or region. All we hold is that the Commission's present lines are unsupported. Further proceedings will be needed to determine how far eastward those lines should be pushed.

In the west, the situation is somewhat but not altogether different. As we have indicated, all the substantial evidence points to coverage of at least the entire wedge bounded by lines running from Peach to Davenport to Ritzville and back to Peach. The unresolved problem is whether the boundary should be placed west of the straight line running south from Peach to Ritzville. Some of the materials indicate that the Spokanes held Indian title for various distances beyond that line, while other evidence suggests that the line is itself the proper western edge. On that issue the record before us does not coerce a particular answer. We hold, therefore, that the appellant's area must be defined to reach westward at least as far as the line from Peach to Ritzville, but at the same time we leave to the Commission the question of whether it went beyond that line and, if so, to what extent.

[12] It is only where the court believes that a particular finding or disposition is compelled by the record that it decides the case on the basis of that finding or disposition, or orders the Commission to so find. *E.g.*, *Chitto* v. *United States*, 133 Ct. Cl. 643, 659–661, 138 F. Supp. 253, 263–265 (1956), *cert. denied*, 352 U.S. 841 (1956); *Quapaw Tribe of Indians* v. *United States*, 128 Ct. Cl. 45, 55–70, 120 F. Supp. 283 (1954); *Miami Tribe of Oklahoma* v. *United States*, 150 Ct. Cl. 725, 281 F. 2d 202 (1960), *cert. denied*, 366 U.S. 924 (1961).

III

The Commission's findings, as amended, declare that appellant "is entitled to institute this action in a representative capacity on behalf of all such survivors or descendants of the membership of the Spokane Tribe as it existed July 13, 1892." The Commission's order (also as amended) states that appellant "is entitled to prosecute this action before the Commission on behalf of all the members of the Spokane Tribe as it existed July 13, 1892, or the descendants of said members." Both parties attack these references to survivors and descendants of the tribal members of 1892. Recently, in *Minnesota Chippewa Tribe* v. *United States*, 161 Ct. Cl. 258, 270–72, 315 F. 2d 906, 913–914 (1963), we held a similar declaration by the Commission erroneous as a matter of law. The appellant does not sue on behalf of the individual survivors and descendants of the Spokane Tribe as it was constituted in 1892, but on behalf of an entity or entities. To reflect this principle, the parties are now agreed that the pertinent parts of the Commission's finding and order should be modified to read: "The petitioner, the Spokane Tribe, has the right and is entitled to institute this action." We adopt this proposal and so order. The references to individual survivors and descendants will be excised.

The findings and order of the Indian Claims Commission are affirmed in part and reversed in part, as indicated in this opinion, and the case is remanded to the Commission for further proceedings consistent with this opinion.

Affirmed in part; reversed in part.

CORNELIUS J. GREENWAY v. THE UNITED STATES

[No. 182–60. Decided October 11, 1963]

ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Civilian pay; dismissal; probationary employee in excepted position; departmental regulations.—Plaintiff, a law clerk interpreter employed by the Air Force at its base in Madrid, Spain, sues to recover the pay of his position from which he claims he was dismissed in a manner which was both procedurally defective

BEFORE THE INDIAN CLAIMS COMMISSION

THE SPOKANE TRIBE OF INDIANS, suing on its own behalf and on behalf of THE UPPER, MIDDLE AND LOWER BANDS OF THE SPOKANE INDIANS or THE UPPER SPOKANE, MIDDLE SPOKANE, or LOWER SPOKANE BAND OF INDIANS, or any one or two of them alternatively,	)	
Petitioner,	)	
v.	)	Docket No. 331 Docket No. 331-A
THE UNITED STATES OF AMERICA,	)	
Defendant.	)	

Decided: Feb. 21, 1967

FINDINGS OF FACT ON COMPROMISE SETTLEMENT

1. On August 10, 1951, petitioner, the Spokane Tribe of Indians, filed a petition alleging two claims. The petition was designated Docket No. 331. One claim alleged a cession of land to the United States for an unconscionable consideration under the Agreement of March 18, 1887, ratified July 13, 1892 (27 Stat. 120, 139, II Kapp. 446, 449, 453-4). The second claim was for a general accounting. The two claims filed in the original Docket No. 331 were subsequently segregated by amended petitions. The accounting claim was designated as Docket No. 331-A by an amended petition filed on February 6, 1956, and the claim under the Agreement of March 18, 1887, remained designated as Docket No. 331 by an amended petition filed February 21, 1956. Leave to separate the two claims was granted by order of the Commission dated February 29, 1956.

APPENDIX C

2. The Commission has heretofore made findings in 9 Ind. Cl. Comm. 236 (1961) on the issue of original Indian title claimed by petitioner in Docket No. 331. A determination was made by the Commission concerning the right of representation, identity of the land-owning entity, the boundaries of the area held by aboriginal title, and the date of taking of petitioner's lands. By the interlocutory order of April 17, 1961, this Commission ordered the case to proceed to a determination of the consideration paid to petitioner, the acreage of the land ceded and its fair market value as of July 13, 1892, the effective date of the treaty and whether the consideration paid was unconscionable together with the amount of offsets or credits on the claim, if any, which the defendant may be entitled to claim.

3. Subsequently, petitioner filed a motion for rehearing in Docket No. 331 claiming that the Commission erred as a matter of law in making the judgment run to the descendants of the Spokane Tribe as it existed on July 13, 1892, and contending that the substantial evidence contained in the record compelled a finding that the Spokane Tribe had "Indian title" to a larger area than that determined by the Commission. That motion was denied by the Commission on April 5, 1962. Petitioner then appealed to the United States Court of Claims and that Court remanded to the Commission on October 11, 1963 (163 Ct. Cl. 58), concluding that the petitioner had the exclusive right to maintain the action on its own behalf and that the substantial evidence contained in the record as a whole compelled the Commission to make a finding that the Spokane Tribe aboriginally owned a larger area than that determined by the Commission.

4. Docket No. 331-A has not been tried. This is an accounting claim in which petitioner alleges that the defendant has been under a duty as guardian and trustee of petitioner and, as such, has held certain monies and properties of petitioner in trust and has failed to account for its management, handling and disposition of said monies and properties.

5. On February 3, 1967, the petitioner and defendant filed a joint motion with the Commission requesting that the two dockets (331 and 331-A) be consolidated and that the Commission approve the proposed settlement of $6,700,000.00 for both claims, Docket Nos. 331 and 331-A. The joint motion was based upon a stipulation made and executed by Glen A. Wilkinson, attorney of record for the Spokane Tribe, Messrs. Alex Sherwood and Alfred McCoy, Chairman and Secretary of the Spokane Business Council, respectively, and William Lowley, member of the Spokane Business Council, for petitioner, and Edwin L. Weisl, Jr., Assistant Attorney General, and John D. Sullivan, attorneys for defendant. Said stipulation, which is Petitioner's Exhibit No. 183 to the Joint Motion, reads as follows:

"STIPULATION FOR ENTRY OF FINAL JUDGMENT

IT IS HEREBY STIPULATED by the parties through their counsel, as follows:

(1) The Indian Claims Commission shall be asked to approve this stipulation of settlement on the terms herein provided, and upon such approval by the Commission an entry of final judgment shall be entered in Docket Nos. 331 and 331-A consistant with said stipulation.

(2) The cases designated as Indian Claims Commission Docket Nos. 331 and 331-A shall be consolidated for all purposes, including entry of a single judgment, as herein provided.

(3) Said cases designated as Docket Nos. 331 and 331-A shall be compromised and settled by this stipulation and entry of final judgment in the Indian Claims Commission in favor of the Spokane Tribe of Indians, petitioner, and against the United States of America, defendant, no review to be sought or appeal to be taken by either party.

(4) The judgment against defendant, after all allowable deductions, credits and offsets, shall be in the amount of $6,700,000.00.

(5) This stipulation and entry of final judgment shall finally dispose of all claims or demands which the Spokane Tribe of Indians has asserted or could have asserted against the defendant in either or both of Docket Nos. 331 and 331-A under the provisions of Section 2 of the Indian Claims Commission Act (60 Stat. 1049). This stipulation and entry of final judgment shall also finally dispose of all claims, demands, payments on the claims, counterclaims or offsets which the defendant has asserted or could have asserted against petitioner in either or both of Docket Nos. 331 or 331-A under the provisions of Section 2 of the Indian Claims Commission Act (60 Stat. 1049), for all disbursements, transactions and occurrences from July 13, 1892, up to and including June 30, 1957. The defendant shall be barred from asserting all such offsets, claims or demands against the petitioner in any future actions. Offsets, claims or demands accruing to the defendant prior to July 13, 1892 and subsequent to June 30, 1957, shall not be affected by this settlement.

(6) This settlement shall not affect, in any way, such right as the United States may have to collect reasonable fees from proceeds of timber for expenses of management, protection or sale thereof, nor shall it affect, in any way, any claim of the Spokane Tribe to credit its trust funds with all or a portion of such administrative deductions by reason of such trust funds having borne expenses of management, protection or sale of timber--all to the extent provided by 25 U.S.C.§ 413, or other applicable law.

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

(Signed) Glen A. Wilkinson — Jan. 30, 1967

Glen A. Wilkinson
Attorney of Record for Petitioner

Date

(Signed) Edwin L. Weisl, Jr. February 2, 1967
Edwin L. Weisl, Jr. Date
Assistant Attorney General
of the United States

(Signed) John D. Sullivan Feb. 1, 1967
John D. Sullivan Date
Attorney for Defendant

"APPROVAL BY PETITIONER, SPOKANE TRIBE OF INDIANS

The foregoing stipulation for entry of final judgment in Docket Nos. 331 and 331-A, is hereby approved by the undersigned, members of the Spokane Business Council.

(Signed) Alex Sherwood
Alex Sherwood, Chairman
Spokane Business Council

(Signed) Alfred W. McCoy
Alfred McCoy, Secretary
Spokane Business Council

(Signed) William Lowley,
William Lowley, Member
Spokane Business Council

Attest:

(Signed) Dave Wynecoop
Dave Wynecoop, Executive Secretary"

6. The filing of the above-mentioned joint motion and stipulation was preceded by more than two years of negotiations between counsel which led to a formal offer in writing to the Acting Attorney General of the United States for settlement on the terms described in the stipulation (Pet. Ex. 186). The offer was formally accepted subject to the approval by petitioner by appropriate resolutions and by the Secretary of the Interior or his authorized representative (Pet. Ex. 187).

7. Following said formal acceptance by defendant, the reports by counsel to petitioner included reports at the following meetings:

(1) Meeting of the Spokane Business Council on December 16, 1966, held at the Davenport Hotel, Spokane, Washington;

(2) Meeting of the Spokane General Council on December 17, 1966, held at the Wellpinit School Multipurpose Room, Wellpinit, Washington.

The Spokane Business Council is the governing body of petitioner and the Spokane General Council consists of all enrolled adult members of petitioner--those 21 years of age or older being eligible to vote. The minutes of each of said meetings are included in the record (Pet. Exs. 189 and 191) received by the Commission on this proposed settlement. At the Spokane General Council meeting held on December 17, 1966, Mr. Elmo Miller, Superintendent, Colville Agency, Bureau of Indian Affairs, was present along with other representatives of the Secretary of the Interior.

8. Included in the evidence received by the Commission in this proposed settlement are the notices of the General Council meeting (Pet. Exs. 184 and 185). The notice, which is Attachment #1 to Petitioner's Exhibit 184, reads as follows:

"NOTICE OF MEETING ON SETTLEMENT OF
SPOKANE 1892 TREATY CLAIM (DK. NO. 331)
AND SPOKANE ACCOUNTING CLAIM (DK. NO. 331-A)

"TO ALL MEMBERS OF THE SPOKANE TRIBE

"You are hereby notified that there will be a General Council Meeting of the membership of the Spokane Tribe of Indians at the Wellpinit School Multipurpose Room, Wellpinit,

Washington, on December 17, 1966, at 10:00 a.m., to consider a proposed settlement of the two Spokane claims now before the Indian Claims Commission--Spokane Tribe v. United States, Docket Nos. 331 and 331-A.

"All members are urged to attend.

(Signed) Alex Sherwood
Alex Sherwood, Chairman
Spokane Business Council

ATTEST:

(Signed) David Wynecoop
David Wynecoop, Executive Secretary
Spokane Business Council"

The certification to the notice states:

"CERTIFICATION OF NOTICE

"I, Dave C. Wynecoop, Executive Secretary, Spokane Indian Tribe, hereby certifies that I mailed or caused to have mailed, a notice to adult members of the Spokane Tribe as shown attached hereto on the 1st day of December, 1966. 755 notices were mailed from Wellpinit, Washington on this date, first class; there are 837 adult members in the Spokane Tribe and all but 25 members received a copy of the attached notice. I did not have a current address for these members and therefore could not mail said notice to them. Only one notice was returned unclaimed by the postal service.

"I further certify that the attached notice was mailed the following places for posting:

U.S. Post Office -- Airway Heights, Washington
U.S. Post Office -- Hillyard Station, Spokane, Washington
U.S. Post Office -- Reardan, Washington
U.S. Post Office -- Deer Park, Washington
U.S. Post Office -- Colville, Washington
U.S. Post Office -- Davenport, Washington
U.S. Post Office -- Hunter, Washington
U.S. Post Office -- Fruitland, Washington
U.S. Post Office -- Ford, Washington
U.S. Post Office -- Springdale, Washington
U.S. Post Office -- Wellpinit, Washington

Galbraith's Store, Wellpinit, Washington
Kieffer's 66, Star Route, Davenport, Washington
Harry's Service Station, Fruitland, Washington
Bea's Drive In, Airway Heights, Washington

ATTEST:

(Signed) Dave C. Wynecoop
Dave C. Wynecoop
Executive Secretary

Subscribed and sworn to before me this 21st day of December, 1966

(Signed) Reginald W. Tulee
Reginald W. Tulee
Notary Public
Residing at Wellpinit, Wash."

The following notice, which is Attachment #1 to Petitioner's Exhibit 185, was also released to news media:

"FOR IMMEDIATE NEWS RELEASE:

SETTLEMENT OF SPOKANE
CLAIMS TO BE CONSIDERED
BY TRIBAL MEMBERS

The Spokane Indian Tribe will hold a general meeting of its membership at Wellpinit, Washington, at 10:00 a.m., on December 17, 1966, to consider the settlement of two Spokane Claims pending against the United States. Both are presently pending before the Indian Claims Commission. The tribal attorneys, Glen A. Wilkinson and Angelo A. Iadarola of the law firm of Wilkinson, Cragun & Barker, Washington, D C., will be present at the meeting to explain the offer of settlement which is now being considered by the Acting Attorney General of the United States. It is expected that the settlement will be approved soon by the government.

If the Tribe approves the proposed settlement, it must then be submitted to the Secretary of the Interior and the Indian Claims Commission for approval before the settlement is final.

If the settlement is approved, the claims filed before the Indian Claims Commission will be concluded. One claim, identified as Docket No. 331, involves the lands the tribe ceded to the United States under the 1887 Agreement for which the Tribe claims it was fairly compensated. The second claim is based on an accounting of the tribal trust funds which the United States has managed over the years--the Tribe contending that its funds have been mismanaged.

All tribal members are urged to attend this important meeting."

The certificate to this notice sets out the newspapers, television and radio stations which received the above-quoted release:

"CERTIFICATION OF NOTICES MAILED
TO NEWS MEDIA

I, Dave C. Wynecoop, Executive Secretary, Spokane Indian Tribe, hereby certifies that attachment #1 was released on December 5, 1965, to the following news media:

NEWSPAPERS:

(Weekly)	The Times	Davenport, Wash,
(Weekly)	Chewelah Independent	Chewelah, Wash.
(Weekly)	Statesman Examiner	Colville, Wash.
(Daily)	Spokesman Review	Spokane, Wash.
(Daily)	Spokane Daily Chronicle	Spokane, Wash.

TELEVISION:

Station	Location
KXLY	Spokane, Wash.
KHQ	Spokane, Wash.
KREM	Spokane, Wash.

RADIO:

Station	
KXLY	Spokane, Wash.
KHQ	Spokane, Wash.
KREM	Spokane, Wash.
KJRB	Spokane, Wash.
KPEG	Spokane, Wash.
KSPO	Spokane, Wash.

I further certify that attachments 2 through 6 were published in the newspapers on the date indicated and are authentic copies. The date and newspapers in which the publication appeared are as follows:

Date	Newspaper	Location
December 8, 1966	Chewelah Independent	Chewelah, Washington
December 8, 1966	Spokesman Review	Spokane, Washington
December 9, 1966	Statesman Examiner	Colville, Washington
December 16, 1966	Spokesman Review	Spokane, Washington
December 16, 1966	Spokane Daily Chronicle	Spokane, Washington

ATTEST:

(Signed) Dave C. Wynecoop
Dave C. Wynecoop,
Executive Secretary

Subscribed and sworn to before me this 21st day of December 1966.

(Signed) Reginold W. Tulee
Reginald W. Tulee
Notary Public
Residing at Wellpinit, Wash."

9. As a result of the meetings, the Spokane Business Council and the Spokane General Council each adopted a resolution approving the proposed settlement on the terms set forth in the above-mentioned stipulation. The evidence received by the Commission at the hearing includes each resolution (Pet. Exs. 188 and 190). The resolution of the Spokane General Council (Pet. Ex. 190) is as follows:

"RESOLUTION OF SPOKANE GENERAL COUNCIL

WHEREAS, the Spokane Business Council at a special meeting held on December 16, 1966, at Spokane, Washington, passed the following resolution:

"WHEREAS, the Spokane Tribe of Indians filed two claims with the indian claims commission, identified as Docket No. 331 (claim for additional compensation for lands ceded to the United States under its 1887 Agreement) and Docket No. 331-A (accounting claim); and

"WHEREAS, Docket No. 331 has been tried on the issue of title and the Indian Claims Commission decided on April 17, 1961, that the Spokane Tribe of Indians owned certain described lands, and determined the date for valuation of such lands; and

"WHEREAS, after motion for rehearing before the Indian Claims Commission was denied on April 5, 1962, the Spokane Tribe appealed the Commission's determination to the United States Court of Claims, Appeal No. 5-62; and

"WHEREAS, on October 11, 1963, the United States Court of Claims reversed and remanded the decision of the Indian Claims Commission and decided that the Spokane Tribe used and occupied and had aboriginal title to a greater area than the Commission had determined; and

"WHEREAS, following extensive investigation on all phases of the two claims, after obtaining reports from the General Services Administration concerning the Tribe's disbursements and receipts, including offsets and consideration promised pursuant to the Agreement of 1887, and after obtaining the advice of an expert appraiser including a preliminary appraisal of the lands involved in Docket No. 331, attorneys for both parties have discussed settlement possibilities and the claims attorneys for the Spokane Tribe have proposed that both claims (Docket 331 and 331-A) be compromised and settled for a net judgment of $6,700,000.00 on the terms and conditions hereinafter set forth, which settlement has been accepted by the United States Department of Justice; and

"WHEREAS, the Spokane Business Council has had a complete report from the claims attorneys concerning all the facts relevant to the litigation and the proposed compromise, and members of the Spokane Business Council discussed fully with the claims attorneys all aspects of said compromise and have given careful consideration to the possible gains to be realized from rejecting or accepting the proposed compromise, and it is the opinion of the Spokane Business Council that the proposed settlement should be accepted;

"NOW, THEREFORE, BE IT RESOLVED, by the Spokane Business Council of the Spokane Tribe that the compromise and settlement of the two claims (Docket Nos. 331 and 331-A) is hereby approved and the claims attorneys are authorized to enter into such stipulations as may be necessary to accomplish the same on the following terms and conditions:

"1. The cases designated as Indian Claims Commission Docket Nos. 331 and 331-A shall be compromised and settled by stipulation and entry of Final Judgment in the Indian Claims Commission in favor of the Spokane Tribe of Indians, petitioner, and against the United States of America, defendant, no review to be sought or appeal to be taken by either party.

"2. The amount of the net judgment against defendant shall be $6,700,000.00

"3. The Indian Claims Commission shall be asked to approve the stipulation for entry of final judgment and other documents necessary to effectuate the settlement in Docket Nos. 331 and 331-A

"4. The stipulation and entry of Final Judgment shall finally dispose of all claims or demands which the Spokane Tribe of Indians has asserted or could have asserted against the defendant in either or both cases (Docket Nos. 331 and 331-A) under the provisions of Section 2 of the Indian Claims Commission Act (60 Stat. 1049). Said stipulation and entry of Final Judgment shall also finally dispose of all claims, demands, payments on the claim, counterclaims, offsets or demands which the defendant has asserted or could have asserted against said petitioner under the provisions of Section 2 of said Act for all disbursements, transactions and occurrences from July 13, 1892, to and including June 30 1957. Offsets, claims or demands accruing to the defendant prior to July 13, 1892, and subsequent to June 30, 1957, shall not be affected by this settlement.

"5. The final judgment shall not affect one way or the other such right as the United States may have to collect reasonable fees from proceeds of timber for expenses of management, protection and sale thereof, nor shall it affect one way or the other any claim of the Spokane Tribe to credit their trust funds with all or a portion of such administrative deductions by reason of such trust funds having borne expenses of management, protection and sale of timber - all to the extent provided by 25 U.S.C. § 413.

"6. The stipulation and entry of Final Judgment shall not be construed as an admission of either party as to any issue for purposes of precedent in any other case or otherwise.

"BE IT FURTHER RESOLVED, that the said compromise and settlement on the foregoing terms and conditions shall be subject to the prior approval of the Spokane Tribe and of the Secretary of the Interior or his authorized representative."

WHEREAS, the above-quoted resolution, consisting of approval of the Spokane Business Council of a proposed compromise and settlement of the Tribe's claim in Docket Nos. 331 and 331-A, before the Indian Claims Commission, for the amount of $6,700,000.00, has been presented to the Spokane General Council setting in a special session at Wellpinit, Washington, this 17th day of December, 1966, and said resolution has been read to the Spokane General Council and fully discussed and explained by the tribal claims attorneys, Glen A. Wilkinson and Angelo A. Iadarola of Wilkinson, Cragun & Barker, Washington, D. C., together with all facts relating to the proposed settlement; and the tribal members present at the Spokane General Council have been given full opportunity for discussion and questions; and

WHEREAS, representatives of the Bureau of Indian Affairs, Department of the Interior, have been present at this meeting of the Spokane General Council at the request of the tribe and the tribal claims attorneys, and have observed the discussion and presentation by the tribal claims attorneys, and questions and answers thereto; and

WHEREAS, full discussion has been had with respect to the possible advantages and disadvantages in further prosecuting the case or accepting the propcsed settlement; and

WHEREAS, the Spokane General Council believes that it is fully informed in the premises, and that a settlement of the claims, Docket Nos. 331 and 331-A, for the final amount of $6,700,000.00 is advisable under all the circumstances, and that it is a fair and reasonable settlement of said claims;

NOW, THEREFORE, BE IT RESOLVED, that the above-quoted resolution of the Spokane Business Council is hereby ratified, approved and adopted by the Spokane General Council.

CERTIFICATION

We certify that the foregoing resolution was duly adopted at a meeting of the Spokane General Council on this 17th day of December, 1966, by a vote of 155 for and 2 against, a quorum being present.

(Signed) Alex Sherwood,
Alex Sherwood, Chairman
Spokane Business Council

(Signed) Alfred E. McCoy
Spokane Business Council

(Signed) David C. Wynecoop
Dave C. Wynecoop, Executive Secretary
Spokane Tribe of Indians

AUTHENTICATION OF SIGNATURES

I certify that the Chairman and Secretary of the Spokane Business Council and the Executive Secretary of the Spokane Tribe, all who are personally known to me, subscribed their names to the foregoing resolution in my presence, on this 17th day of December, 1966.

(Signed) Elmo Miller
Superintendent, Colville Agency
Bureau of Indian Affairs
Department of the Interior"

10. Mr. Glen A. Wilkinson, attorney of record for petitioner, advised the Commission at the hearing of February 3, 1967, of the manner in which the proposed settlement was presented at the two meetings. In substance, he explained that Mr. Angelo A. Iadarola, of counsel for the petitioner, appeared at the Spokane Business Council meeting of December 16, 1966, in Spokane, Washington (Mr. Wilkinson was unable to attend due to bad flight connections). Mr. Iadarola utilized maps outlining the estimated area petitioner would be entitled to on remand to the Commission. He reviewed past precedents of this Commission and the Court of Claims as to value and analyzed what might be the maximum, minimum and probable amounts which might be recovered if the litigation were pursued through the Commission and the courts. Mr. Iadarola reviewed the history of Docket No. 331, explained Docket 331-A and reviewed the arguments for and against accepting or rejecting the proposed settlement. Mr. Wilkinson appeared at the Spokane General Council meeting of December 17, 1966, assisted by Mr. Iadarola, and made a complete presentation to the tribal members explaining in great detail the two claims and the proposed settlement--also reviewing, as Mr. Iadarola did at the earlier meeting, all arguments for and against accepting or rejecting the proposed settlement. Mr. Wilkinson also utilized maps to explain the proposed settlement. Members present at the meetings were given an opportunity to ask questions and the attorneys made an effort to answer all questions. Voting at the Spokane General Council meeting was by secret ballot. Each member was required to sign his name before receiving a ballot to insure he or she was an adult member of the Spokane Tribe. A committee was appointed to handle the voting and count the ballots.

11. Eight witnesses were called on behalf of the petitioner at the hearing before the Commission on February 3, 1967. Six of the witnesses were members of the Spokane Tribe, one was the general counsel for petitioner and one was an employee of the Bureau of Indian Affairs.

12. Mr. David C. Wynecoop, age 28, residing at Wellpinit, Washington, is a member of the Spokane Indian Tribe and presently Executive Secretary of the Tribe, a full-time position which he has held for seven years. Mr. Wynecoop is comparatively well-educated, having graduated from high school and Kinman Business University. He has resided on the Spokane Reservation all his life. As Executive Secretary he manages the tribal business office and carries out various orders of the Spokane Business Council. Among his various duties, Mr. Wynecoop is responsible for sending out notices of the Spokane General Council meetings.

Mr. Wynecoop testified that there are 873 adult members of the Tribe and all but 25 were notified by mail of the General Council meeting concerning the proposed settlement, no current addresses being available for the 25. Of all notices mailed only one was returned as "undelivered". Mr. Wynecoop's "Certification of Notice" was received in evidence as Petitioner's Exhibit 184 and attached to this exhibit is a copy of the notice of the General Council meeting on the compromised settlement scheduled for December 17, 1966. In addition, Mr. Wynecoop testified that the notice was posted at various establishments and post offices known to be patronized by tribal members. He also testified that the meeting was further publicized by sending a news release (Pet. Ex. 185, Attachment #1) to five newspapers, three television stations and six radio

stations. Mr. Wynecoop's "Certification of Notices mailed to News Media" was received in evidence as Petitioner's Exhibit 185 and attached to this exhibit are copies of newspaper clippings announcing the meeting. He testified that the meeting also received good radio and television publicity. Mr. Wynecoop testified that approximately 180 adult members of the Tribe eligible to vote attended the General Council meeting of December 17, 1966; that this was an "excelent" attendance; and that a quorum of the General Council consists of 25 adult members.

Mr. Wynecoop testified that the Spokane Business Council held a meeting on December 16, 1966, at Spokane, Washington; that present were the three members of the Business Council, Mr. Glenn Galbraith, Chief Judge of the Spokane Tribal Court, Mr. Robert Dellwo, general counsel for the Tribe, Mr. Wynecoop, himself, and Mr. Angelo A. Iadarola of the Wilkinson, Cragun & Barker law firm, claims attorneys for the Tribe; that Mr. Iadarola made a complete and thorough explanation of the proposed settlement; that all present at the meeting asked questions which were answered and understood the terms of the settlement; that the Business Council unanimously voted to approve the settlement. Mr. Wynecoop further testified that in addition to the tribal members attending the General Council meeting on December 17, 1966, the tribal attorneys, Messrs. Glen A. Wilkinson and Angelo A. Iadarola of the Wilkinson, Cragun and Barker law firm, Mr. Robert Dellwo, General Counsel of the Tribe and Mr. Elmo Miller, Superintendent of the Colville Agency, Bureau of Indian Affairs as well as other Bureau officials, were also present, that all members of the Business Council were present; that the meeting was held at Wellpinit, Washington; that the tribal attorneys made a

complete and thorough explanation of the proposed settlement to the Council members; that all the members present at the General Council meeting understood the terms of the settlement and that it was final settlement of the two Spokane claims then pending before the Indian Claims Commission against the United States; that no attempt was made to direct any of the tribal members as to how they should vote; that a secret ballot was taken; that 155 members voted for accepting the settlement, 2 voted against the settlement and one member abstained. Mr. Wynecoop also testified that he, as Executive Secretary of the Tribe, prepared the minutes of the two meetings of December 16 and 17, 1961, which were received in evidence as Petitioner's Exhibits 189 and 191 respectively.

13. Mr. Alex Sherwood, age 65, residing at Wellpinit, Washington, is a member of the Spokane Tribe and presently the Chairman of the Business Council, a position he has held for about twenty-four years. Mr. Sherwood also works on his own property cutting and selling wood; he has resided on the tribal reservation for about 37 years and is large self educated.

Mr. Sherwood testified that as Chairman of the Business Council, he presided at both the Business Council meeting in Spokane, Washington, on December 16, 1966, and the general Council meeting at Wellpinit, Washington, on December 17, 1966; that at both meetings the tribal claims attorneys made a complete and thorough explanation of the proposed settlement to the Council members; that all the members present understood the terms of the settlement of the two Spokane claims then pending before the Commission against the United States; that no attempt was made

to coerce any of the tribal members to vote in any particular manner; that the tribal members at the General Council meeting of December 16, 1966, voted 155 to 2 in favor of accepting the proposed offer. Mr. Sherwood further examined the resolutions of both meetings introduced into evidence as Petitioner's Exhibits 188 and 190 and testified that these were the resolutions adopted at those meetings. He also examined the minutes of both meetings (Pet. Exs. 189 and 191) and testified that he had examined those minutes and that they accurately reflected what transpired at the Business Council meeting of December 16, 1966, and the General Council meeting of December 17, 1966.

14. Mr. Alfred McCoy, age 47, residing at Fruitland, Washington, is a member of the Spokane Tribe and presently the Secretary of the Business Council, a position he has held over ten years. Mr. McCoy is also a rancher and works for Suntex Veneer which is a lumber processing company located on the Spokane Reservation. He has resided on the tribal reservation all his life and is a high school graduate.

Mr. McCoy testified that he attended both meetings; that is, the Spokane Business Council meeting of December 16, 1966, and the General Council meeting of December 17, 1966. He testified that he heard the testimony of both Mr. Wynecoop and Mr. Sherwood and agreed with their accounts of these two meetings; that the tribal claims attorneys made a complete and thorough presentation of the proposed settlement at both meetings and explained all the arguments for and against accepting or rejecting the settlement; that all the members at both meetings had the opportunity to ask questions and that the questions were adequately answered. Mr. McCoy examined the two resolutions (Petitioner's Exhibits

188 and 189) and testified that these were the resolutions adopted at those meetings. He also examined the minutes of both meetings (Pet. Exs. 189 and 191) and testified that he had reviewed these minutes and that they accurately reflected what transpired at the Business Council meeting of December 16, 1966, and the General Council meeting of December 17, 1966. He testified that he felt all the tribal members understood that the settlement of $6,700,000.00 was a final settlement for both claims before the Commission and that he felt that the settlement was a fair one for the petitioner. He also testified that no attempt was made to coerce any of the tribal members as to how they should vote.

15. Mr. William Lowley, age 61, residing at Wellpinit, Washington, is a member of the Spokane Tribe and is presently a member of the Business Council, a position he has held for about five years. In addition to his duties as a member of the Business Council, Mr. Lowley testified that he is also a truck farmer. He has lived on the Spokane Indian Reservation all his life and has educated himself, receiving no formal schooling.

Mr. Lowley testified that as a member of the Business Council he was present at both the Business Council meeting held on December 16, 1966, in Spokane, Washington, and at the General Council meeting held on December 17, 1966, at Wellpinit, Washington. He testified that Mr. Iadarola, the claims attorney with the Wilkinson, Cragun & Barker law firm, made a full and complete explanation of the proposed settlement of the two Spokane claims and that he agreed with the testimony of Messrs. David Wynecoop, Alex Sherwood and Alfred McCoy as to their accounts of the December 16, 1966 meeting. He testified that he received notice of the December 17, 1966 General Council meeting, by letter and

that the testimonies of the three prior witnesses given as to the December 17, 1966 meeting were accurate and in accord with his recollection. He testified that he believed all the Spokane tribal members at the December 17, 1966 meeting understood what was involved in the proposed settlement and that all had an opportunity to ask questions which were completely answered by the tribal attorneys. He also testified that no attempt was made to coerce any of the tribal members to vote in any particular manner on the proposed settlement.

16. Mr. Glenn Galbraith, age 47, residing at Wellpinit, Washington, is a member of the Spokane Tribe and presently the Chief Judge of the Spokane Tribal Court. Mr. Galbraith also served approximately seven years as a member of the Business Council and testified that he holds a Bachelor of Arts Degree from the University of Idaho and did some graduate work at Eastern-Washington College of Education and the University of Washington. In addition to his tribal duties, Mr. Galbraith testified that he also runs a general store on the Spokane Indian Reservation.

Mr. Galbraith testified that as a tribal official he has followed the progress of the Spokane claims throughout the years; that he was also present at the meeting of the Spokane Business Council held in Spokane, Washington, on December 16, 1966, and at the General Council meeting held in Wellpinit, Washington, on December 17, 1966; that he was satisfied that an adequate explanation concerning the proposed settlement of the two Spokane claims was given at both meetings; that

the members were given full opportunity to ask questions concerning the proposed settlement and that the questions were very satisfactorily answered. Mr. Galbraith also testified that no attempt was made to coerce any of the tribal members to vote in any particular manner on the proposed settlement.

17. Mr. Clair Wynecoop, age 58, residing at Wellpinit, Washington, is a member of the Spokane Tribe and presently an Associate Judge of the Tribal Court. Mr. Wynecoop is the father of Dave Wynecoop, the Executive Secretary of the Tribe. Mr. Wynecoop testified that he was a member of the delegation in 1949 through 1950 that employed the Wilkinson, Cragun & Barker law firm and that he has followed the progress of the Spokane claims, especially Docket No. 331, throughout the course of litigation. He testified that he has lived on the Spokane Reservation all his life, is engaged in his own business-mining and cattle-raising--and attended high school, but did not graduate.

Mr. Wynecoop testified that he received notice of the General Council meeting of December 17, 1966, by mail but that he did not attend that meeting because of business commitments. However, he testified that he familiarized himself with the arguments for and against the proposed settlement and has discussed the proposed compromise with other members of the Tribe. He stated that from his discussions with other members of the Tribe, he knew of no one who opposed the settlement and that he felt it was a fair settlement for petitioner; that he understood that this was a final settlement for both claims before the Commission.

18. Robert Dellwo, an attorney and member of the bar of the State of Washington, is the general counsel for the Spokane Tribe. He testified

that he has been practicing law in Spokane, Washington, since 1948 and that he was present at both the Spokane Business Council meeting in Spokane, Washington, held on December 16, 1966, and the General Council meeting of December 17, 1966, held in Wellpinit, Washington. Mr. Dellwo testified that in his opinion he felt there was an adequate explanation given of the arguments for and against the proposed settlement and an opportunity afforded all members at both meetings to ask questions. He testified that many Spokane members had either called him or personally called upon him at his office in Spokane, Washington, to express their views about the proposed settlement and that from his discussions with these members he felt that the tribal members were satisfied that the settlement was a fair one for the Tribe.

19. Elmo Miller, age 52, residing at Coulee Dam, Washington, is the Superintendent of the Colville Indian Agency, Bureau of Indian Affairs, which also serves the Spokane Reservation. Mr. Miller testified that as part of his official duty he was also present at the General Council meeting of the Spokane Tribe held at Wellpinit, Washington, on December 17, 1966. He testified that he felt that an adequate explanation was given by the tribal attorneys concerning the proposed settlement of the two claims before the Commission and that all the tribal members had an opportunity to ask questions concerning the proposed settlement. Mr. Miller examined Petitioner's Exhibits 188 and 190, the resolutions of the meetings of December 16 and 17, 1966, respectively, and identified his certification of the signatures of the tribal members who signed those resolutions. He also testified that he had an opportunity to study

the minutes of the General Council meeting of December 17, 1966 (Pet. Ex. 191), and that those minutes accurately reflect what transpired at that meeting. He further testified that he is personally acquainted with many of the Spokane adult Indians and that he felt that these members are capable of understanding the proposed settlement and the explanations given at the General Council meeting.

20. The proposed settlement was approved by the authorized representative of the Secretary of the Interior by letter dated January 17, 1967, that reads as follows (Pet. Ex. 192):

"UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20242

JAN 17 1967

In reply refer to:

Tribal Operations
98-67
99-67

Wilkinson, Cragun and Barker
Attorneys at Law
1616 H Street, N.W.
Washington, D. C. 20006

Gentlemen:

You submitted to this Bureau for approval a proposed compromise settlement of the cases of the petitioner Spokane Tribe, Indian Claims Commission Dockets Nos. 331 and 331-A, for a net final judgment of $6,700,000.00.

The claims of the Spokane Tribe have been prosecuted under one contract. Claims contract No. I-1-ind. 42444, dated March 9, 1951, between the Spokane Tribe and Attorney Ernest L. Wilkinson was approved April 13, 1951, for a period of ten years beginning with the date of approval. It was extended several times, the last being for a period of two years beginning April 13, 1965.

Association of Attorneys John W. Cragun, Glen A. Wilkinson, Robert W. Barker, Carl S. Hawkins, Francis M. Goodwin, Donald C. Gormley, and John W. Murray with Attorney Ernest L. Wilkinson was approved April 8, 1954. Association of Attorneys Lawrence Garrett, Jr. and Frances L. Horn with Attorney Ernest L. Wilkinson was approved April 16, 1957. An assignment by Attorney Ernest L. Wilkinson of his obligations to perform duties, as provided by the contract, to the law firm of Wilkinson, Cragun and Barker was approved March 5, 1963.

The contract provides that the attorneys shall not make any compromise, settlement, or other adjustment of the matters in controversy except with the approval of the Commissioner of Indian Affairs and the Spokane Indian Business Council.

You sent an offer to the Acting Attorney General on November 28, 1966, to have Dockets Nos. 331 and 331-A consolidated and to settle them with one net final judgment of $6,700,000.00. Your offer, in part, provides that no appeal be taken by either party, that the settlement will dispose of all claims which the Spokane Tribe has or could have asserted against the United States in the two cases, that it will dispose of all claims and counterclaims which the United States has or could have asserted against the Spokane Tribe in the two cases, and that it will dispose of gratuitous offsets for the period July 13, 1892, to June 30, 1957, under the Indian Claims Commission Act.

Your offer was accepted on December 15, 1966, with conditions. The acceptance contained the conditions that the proposed settlement be approved by the governing body of the Spokane Tribe and by the Secretary of the Interior or his authorized representative.

You presented the proposed settlement to the Spokane Indians. Wide publicity was given that a meeting of the members of the tribe in general council was to be held December 17, 1966, for the purpose of accepting or rejecting the proposed compromise. Notices of the meeting were sent by the Executive Secretary of the Spokane Tribe, from December 1 to 5, 1966, to ten newspapers, three television stations, six radio stations, eleven post offices, and four stores. Notices of the meeting were also sent to members of the tribe. The Executive Secretary certified that only 25 of the 837 members did not receive notices. We are satisfied that the meeting was well publicized throughout the area where most of the tribal members live and that they were given the opportunity to attend the meeting.

Prior to the general council meeting, the Spokane Tribal Business Council met in Spokane, Washington, on December 16, 1966, with a quorum present. An attorney from your law firm was present. He made a full presentation of the claims and discussed the advantages and disadvantages involved in either rejecting or approving the proposed settlement. The Business Council then adopted Resolution No. 1966-85 accepting the proposed settlement by a vote of 3 for and 0 opposed. The Superintendent of our Colville Agency certified that he knew the Chairman and Secretary of the Business Council and that they subscribed their signatures to the resolution in his presence.

Members of the Spokane Tribe met in general council on December 17, 1966, in Wellpinit, Washington. The Superintendent of our Colville Agency was present. He later reported that the meeting was well attended by 180 persons, including some off-reservation members who rarely attended general council meetings. Some members travelled great distances to attend the meeting. The Executive Secretary of the Spokane Tribe had prepared an excellent brief history of the claims of the tribe. Copies of the history were distributed to the members so that they could review the claims prior to the opening of the meeting.

Two attorneys from your law firm attended the meeting. They gave a comprehensive review of the claims and explained the proposed settlement. Questions asked by the Indians were answered in detail.

The Superintendent reported that the tribal members who attended the meeting were, in his opinion, well informed on the issues being discussed and were aware of the circumstances concerning the proposed settlement, and that it had been explained to the satisfaction of the Indians. The General Council of the Spokane Tribe then accepted the proposed settlement when, by a vote of 155 for and 2 opposed, they adopted a resolution ratifying, approving, and adopting the resolution of the Business Council. The Superintendent certified that he knew the Chairman, Secretary, and Executive Secretary and that they subscribed their signatures to the resolution in his presence.

We are satisfied that the number of members who attended the general council meeting on December 17, 1966, were representative of the Spokane Tribe, that they understood the proposed settlement, and that views expressed by adoption of the resolution reasonably expressed the views of the membership of the tribe.

The resolution adopted by the Business Council on December 16, 1966, and the resolution adopted by the General Council on December 17, 1966, are hereby approved.

In light of the information which you have sent to us, that submitted by our field offices, and that obtained from other sources, we believe that the proposed settlement is fair to the Indians. The proposed settlement of the cases of the petitioner Spokane Tribe, Indian Claims Commission Dockets Nos. 331 and 331-A, for a net final judgment of $5,700,000.00 is hereby approved under authority of Section 11, Secretarial Order 2508 (27 F.R. 11560)

Sincerely yours,

(Sgd) William E. Finale
Deputy Assistant
Commissioner"

21. Counsel for the Government, Mr. John D. Sullivan, at the hearing held on February 3, 1967, advised the Commission that the Department of Justice gave very careful consideration to the proposed settlement and that he believed that the settlement was fair and reasonable to the United States as well as to the Indians. Settlement negotiations proceeded over a period of more than two years. Both parties relied on precedents of this Commission and other valuation cases and on the advice of their own appraisers, who did preliminary investigations as to the valuation of the lands, before reaching the compromise. The attorney of record for the Spokane Tribe, Mr. Glen A. Wilkinson, advised the Commission, as he had the Tribe, and the officials of the Department of the Interior, that he felt the settlement was fair to the Indians.

22. Counsel for both parties are experienced in the complicated field of Indian litigation. Both have been parties to settlement of other cases before this Commission. The Commission believes that their

joint opinion--that this is a fair settlement for both sides--is entitled to great weight.

23. Based on the record in the case, the testimony of the witnesses, the approval of the proposed compromise settlement by Deputy Assistant Commissioner William E. Finale of the Bureau of Indian Affairs, the Spokane Business Council and the Spokane General Council, and representations by counsel that the settlement is fair to the Tribe and to the Government, the Commission finds that the settlement is fair to both parties and grants the joint motion of the parties to consolidate Docket Nos. 331 and 331-A and for the entry of Final Judgment in both dockets.

(Signed) Arthur V. Watkins
Arthur V. Watkins
Chief Commissioner

(Signed) Wm. M. Holt
Wm. M Holt
Associate Commissioner

(Signed) T. Harold Scott
T. Harold Scott
Associate Commissioner

BEFORE THE INDIAN CLAIMS COMMISSION

THE SPOKANE TRIBE OF INDIANS, suing on its own behalf and on behalf of THE UPPER, MIDDLE AND LOWER BANDS OF THE SPOKANE INDIANS or THE UPPER SPOKANE, MIDDLE SPOKANE, or LOWER SPOKANE BAND OF INDIANS, or any one or two of them alternatively,	)	
Petitioner,	)	
v.	)	Docket No. 331 Docket No. 331-A
THE UNITED STATES OF AMERICA,	)	
Defendant.	)	

Decided: FEB. 21, 1967

Appearances:
Glen A. Wilkinson and Angelo A. Iadarola, Attorneys for Petitioners.

John D. Sullivan with whom was Mr. Assistant Attorney General, Edwin L. Weisl, Jr., Attorneys for Defendant

OPINION OF THE COMMISSION

Commissioner Watkins rendered the decision for the Commission.

Two claims against the United States are involved in the motion for approval in the compromise settlement which was heard by the Commission on February 3, 1967. Docket No. 331 was a claim for additional compensation based on an unconscionable consideration provided in an agreement of March 18, 1887, and ratified by Congress July 13, 1892. The second claim, Docket No. 331-A, was for a general accounting by the United States covering its financial dealings with the petitioning Indians. The findings entered in this proceeding set forth in sufficient detail the above mentioned claims.

Docket No. 331 was tried in its title stage and an interlocutory judgment was entered. An appeal was taken from the judgment. The points raised are set forth in the findings. One question presented for

review had to do with the question of whether the petitioner had the exclusive right to maintain the action on its own behalf or whether it should be in behalf of the descendants of the Spokane Tribe as it existed on July 13, 1892. The Commission, following McGhee v. United States, 122 C. Cls. 380 (1952) had ordered that the judgment should run in favor of the descendants of the Spokane Tribe as it existed on July 13, 1892. This order was reversed by the Court of Claims in holding that the judgment should run to the Spokane Tribe instead of the descendants of the tribe.

Soon after the opinion of the Court of Claims was entered on the questions raised by the petitioner in Docket 331, the parties advised the Commission informally that they had begun negotiations for the settlement by compromise of the claims set forth in subdocket No. 331-A.

Even though these negotiations have extended, it appears, over a longer time than is usually customary, it is believed that no time was actually lost when compared with the time it would have taken in proceedings before the Commission to a final judgment.

The settlement arrived at is fair to the Indians and to the defendant and the proceedings laid down by the Commission in matters of compromise settlements have been substantially complied with, so an order of final judgment in favor of the petitioners will be entered in the sum of $6,700,000.00.

(Signed) Arthur V. Watkins
Arthur V. Watkins
Chief Commissioner

(Signed) Wm. M. Holt
Wm. M. Holt
Associate Commissioner

(Signed) T. Harold Scott
T. Harold Scott
Associate Commissioner

BEFORE THE INDIAN CLAIMS COMMISSION

THE SPOKANE TRIBE OF INDIANS, suing on its own behalf and on behalf of THE UPPER, MIDDLE AND LOWER BANDS OF THE SPOKANE INDIANS or THE UPPER SPOKANE, MIDDLE SPOKANE, or LOWER SPOKANE BAND OF INDIANS, or any one or two of them alternatively,	)	
Petitioner,	)	
v.	)	Docket No. 331 Docket No. 331-A
THE UNITED STATES OF AMERICA,	)	
Defendant.	)	

FINAL JUDGMENT

Upon motion filed, pursuant to a stipulation of compromise settlement, and incorporated by reference in this determination or judgment; evidence both oral and written having been received and considered; Findings of Fact and Opinion having been made and entered in said matter; and it appearing that said compromise and settlement was held to be fair and just to the parties named in said Docket Nos. 331 and 331-A, and to the defendant,

IT IS THEREFORE ORDERED that the motion filed herein be, and the same is, hereby granted, that the petitioner shall have and recover from the defendant the sum of $6,700,000.00.

Dated at Washington, D. C. this 21st day of February, 1967.

(Signed) Arthur V. Watkins
Arthur V. Watkins
Chief Commissioner

(Signed) Wm. M. Holt
Wm. M. Holt
Associate Commissioner

(Signed) T. Harold Scott
T. Harold Scott
Associate Commissioner