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No.95-35202 (98 F.3d 1159 (9th Cir. 1996))

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Brief of the Appellee Lummi Indian Nation

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NO. 95-35202

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JUL 19 1995

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA
Plaintiff - Appellee,

v.

DUWAMISH INDIAN TRIBE; SNOHOMISH INDIAN TRIBE,
STEILACOOM INDIAN TRIBE,
Plaintiffs-Intervenors-Appellants,

v.

STATE OF WASHINGTON; NISQUALLY INDIAN TRIBE; HOH INDIAN
TRIBE; LUMMI INDIAN NATION; SKOKOMISH INDIAN TRIBE; JAMESTOWN
BAND OF S'KLALLAMS; LOWER ELWHA S'KLALLAM TRIBE; PORT GAMBLE
BAND OF S'KLALLAM; MUCKLESHOOT INDIAN TRIBE; QUINAULT INDIAN
NATION; QUILEUTE INDIAN TRIBE; TULALIP INDIAN TRIBE; MAKAH
INDIAN TRIBE; SUQUAMISH INDIAN TRIBE; PUYALLUP INDIAN TRIBE;
SWINOMSIH INDIAN TRIBAL COMMUNITY; NOOKSACK INDIAN TRIBE;
UPPER SKAGIT INDIAN TRIBE,
Defendants - Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

BRIEF OF THE APPELLEE LUMMI INDIAN NATION

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I. STATEMENT OF JURISDICTION
(Circuit Rule 20-2.2)

The Lummi Indian Nation agrees with Appellant's Statement of Jurisdiction.

II. ISSUE PRESENTED FOR REVIEW

The Lummi Nation agrees with Appellant's Statement of the Issue presented for review and Appellant's standard of review.

III. STATEMENT OF THE CASE

Three groups of individuals organized as the Duwamish Tribe, the Snohomish Tribe, and the Steilacoom Tribe, appeal from the Order of the District Court for the Western District of Washington denying their motion under Fed. R. Civ. Pro. 60(b)(6) requesting that the district court reopen its judgment entered March 23, 1979, in order to permit (1) discovery into the mental competence of now deceased United States District Court Judge George H. Boldt at the time he entered this judgment and the circumstances surrounding his signature of the Findings of Fact, Conclusions of Law and Judgment on March 23, 1979; and (2) if appropriate, an evidentiary hearing to present evidence obtained in such discovery. The motion was based upon the death certificate of Judge Boldt and upon an article appearing in the Seattle Post-Intelligencer both of which suggested that Judge Boldt had at some time suffered from Alzheimer's Disease.

The appellants seek discovery, and if appropriate, an evidentiary hearing, into Judge Boldt's competence to enter the Findings of Fact, Conclusions of Law, and Judgment on March 23, 1979, and the circumstances surrounding the entry of these documents.

IV. POSITION OF THE LUMMI NATION

The Lummi Nation takes no position on whether the Rule 60(b) motion of the appellants should be granted or denied.

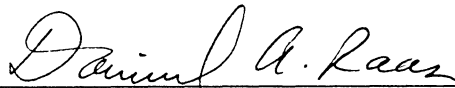
V. STATEMENT OF RELATED CASES

Appellees agree with appellants' statement.

DATED this 17th day of July, 1995.

Respectfully Submitted,

**OFFICE OF THE RESERVATION ATTORNEY
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NO. 95-35202

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CERTIFICATE OF SERVICE

I hereby certify that I served the documents listed below by personal service or by causing to have mailed a copy of same, postage prepaid, on July 17, 1995, to the persons required to be served in this matter whose names appear on the following:

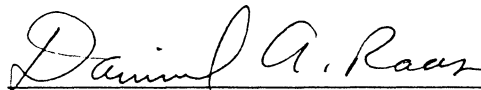
1. Master Service List, revised June 27, 1995;

The documents served are as follows: (i) Certificate of Service, and (ii) Statement of Appellee Lummi Indian Nation.

DATED this 17th day of July, 1995.

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