# Tlingit-Haida Settlement--

## Intensive Look at History of T-H Award

*(EDITOR'S NOTE: Gordon Harrison is a professor of political science at the University of Alaska at College. This past semester he organized and taught the Native Politics course offered at the University. Due to the lack of published materials in this area, he began extensive research into native history and politics in the 20th century. His present research project is an intensive look at the history of the Tlingit-Haida land settlement.)*

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When Congress passes a Native land claims settlement act, it will be the largest settlement in Alaska's history. But it will not be the first settlement. The Tlingit and Haida Indians of southeast Alaska have already been awarded $7.5 million as a partial settlement of their land claims.

The Tlingit and Haida land settlement came from the Court of Claims, not from Congress. By the Tlingit-Haida Jurisdictional Act of 1935 the Court was authorized to hear these claims.

Inaction by the Indians and disputes with the Office of Indian Affairs over proper procedures to follow and proper forms of attorney contracts caused the filing of a suit to be delayed past the 7-year deadline set by the jurisdictional act

It was necessary for Congress to amend the act twice, once in 1942 and again in 1945, to allow the Indians more time to select an attorney who would present and prosecute the case.

In 1947 an attorney was finally employed who was approved by the Interior Department (as required by the jurisdictional act). He pooled all the tribal claims in a single suit titled THE TLINGIT AND HAIDA INDIANS OF ALASKA vs. THE UNITED STATES (no. 47900).

The suit now appeared to be underway. But new delays occured. It turned out that the Indians' attorney, James Curry, did not believe that a settlement in the Court of Claims would net the Indians their best terms, so he worked for an "out of court" settlement in Washington. He hoped to secure a settlement that included land, as well as, or in lieu of money. This land would be in the form of large reservations that included rich stands of timber and also offshore fishing grounds.

By 1953 no substantive action had been taken on the claims case filed in 1947, and the Court threatened to dismiss the case for want of prosecution.

Also by that time the plan for Indian reservations in Alaska had run into effective opposition from non-Native Alaskans, including the fishing and mining interests, politicians and the courts. Attention once again focused on the Court of Claims case.

Curry was not interested in prosecuting the case. In fact, as early as 1950 he had subcontracted the legal work to several other lawyers. To get action resumed on their case, the Indians in 1954 approved the assignment of the case to these lawyers, headed by I.S. Weissbrodt.

Weissbrodt obligated himself to bring the case to trial as quickly as possible. It was at that point, 19 years after the suit was authorized and 7 years after it was filed, that serious work was begun on the Tlingit-Haida case.

In 1956 the Court ordered that the case should be heard in two parts. It was to be decided first if the Indians did, in fact, own the land in question by virtue of their aboriginal use and occupancy.

Then, if that question was answered in the affirmative, the Court would decide how much money should be given the Indians as fair and just compensation for the land.

On October 7, 1858, the Court answered the first question in the favor of the Indians. It held that they proved ownership through their historic use of some 18 million acres of southeast Alaska.

The Court declared that the land had been taken from the Indians by the U.S. Government when it created the Tongass National Forest, the Glacier Bay National Monument, and the Metlakatla Indian reservation Also the court found the government guilty of failing to protect the rights of the Indians from white settlers, miners and developers.

In what became a separate issue, the Court ruled that Indian title survived to about two and a half million acres of land (mostly rugged mountainous country in the Skagway-Haines area).

Now the Court turned to the matter of the land's worth at the time of its taking from the Indians. The Indians claimed a value of $80 million; the government admitted a value of no more than $3 million.

The Court had to decide if the value was to be based on a a fair market or on the amount of money the land was worth to the Indians. Also, the Court had to decide whether to include the value of the salmon fishery.

Few people had confidence that the Court would give a judgement of $80 million, but everyone expected a settlement in the neighborhood of $30 million (that would have been the largest Indian settlements on record).

In 1967 a commissioner appointed by the Court suggested a value of $16 million. This suggestion was subject to review by the Court, and the Indians argued that it was much too low a figure.

The Court did overrule the recommendation of the commissioner, but the wrong way: striking the value of the fishery which the commissioner included, the Court cut the judgement to $7.5 million.

This final judgement was entered in 1968. In the meantime, Congress had passed a third amendment to the original jurisdictional act. This amendment of 1965, which had been requested by the Indians, allowed the judgement to be distributed to all the Tlingit and Haida Indians, not just those living in the 17 communities of southeast Alaska as originally provided.

The 1965 amendment also gave statutory authority to the Tlingit and Haida Central Council. A Central Council had been mentioned in the original jurisdictional act, but its structure and functions were ill-defined.

For years an organization of Tlingit and Haida Indians had been calling itself the central council (before that the Tlingit-Haida Indians of Alaska, and before that the Tlingit-Haida Land Association), but the legal authority of this body was open to considerable question.

Thus, by the act of 1965 the Tlingit-Haida Central Council officially came into existence and was given the responsibility for planning the use of the judgement money.

Finally, the Act of 1965 stipulated that the judgement money could not be released to the Central Council (except for administrative purposes) without special legislation setting forth the purposes for which the money would be spent.

Thus, two pieces of legislation were required from Congress after the $7.5 million was awarded: a congressional appropriation of the amount of money, and a special act releasing the money.

Congress routinely appropriated the judgement money in 1968. But it did not release the money until 1970, when the Tlingit and Haida Central Council had prepared a spending and investment plan.

In summary, we see that the Tlingit and Haida settlement involved six acts of Congress despite the fact that it was a judicial settlement. Further, we see that the settlement had three main characteristics that distinguish it from the pending Congressional settlement of the AFN claims:

–it was very lengthy: the actual litigation didn't last from 1935 to 1970 as some people say, but it did last over 14 years.

–it was very small: the settlement of $7.5 million represented only about $.43 an acre. Had the same terms been applied to the AFN claims, a settlement in the neighborhood of $180 million would have been forthcoming.

–it did not involve land: the settlement was for money only. No land was granted for development or subsistence purposes.