James M. Danielson
Jeffers, Danielson, Sonn & Aylward, P.S.
P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

THE HONORABLE JUSTIN L. QUACKENBUSH

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

PAUL GRONDAL, et al.,

Plaintiffs,

vs.

UNITED STATES OF AMERICA; ET Al.,

Defendants.

NO. 09-CV-00018-JLQ

MEMORANDUM IN SUPPORT OF PLAINTIFFS' **SECOND** MOTION FOR SUMMARY JUDGMENT RE: SETTLEMENT AGREEMENT

I. BACKGROUND FACTS

The background facts supporting this Motion by Plaintiffs' Regarding Settlement Agreement are set forth in the Memorandum in Support of Plaintiffs' First Motion for Summary Judgment.

II. ARGUMENT

A. Washington Law Applies to any Claims or Contracts Related to the Mill Bay Recreation Vehicle Resort.

Washington State maintains civil jurisdiction over Indian allotments outside an

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

established Indian reservation. RCW 37.12.010 states:

> The state of Washington hereby obligates and binds itself to assume criminal and civil jurisdiction over Indians and Indian territory, reservations, country, and lands within this state in accordance with the consent of the United States given by the act of August 15, 1953 (Public Law 280, 83rd Congress, 1st Session), but such assumption of jurisdiction shall not apply to Indians when on their tribal lands or allotted lands within an established Indian reservation and held in trust by the United States or subject to a restriction against alienation imposed by the United States…

MA-8 is outside of the boundaries of the Colville reservation. RCW 37.12.010 thereby requires application of Washington State law in determining the Plaintiffs' rights to use and occupy the RV Resort located within the boundaries of MA-8.

Furthermore, Chelan County Superior Court Judge John Bridges ruled that, by virtue of the Mill Bay Membership agreements sold to the Plaintiffs, MA-8 Allottee William ("Bill") Evans bound his allottee co-owners to Washington law. In so concluding, Judge Bridges reasoned in part as follows:

> As sublessee, Evans registered Mill Bay Resort with the State of Washington pursuant to the Camping Resorts Act, R.C.W. 19.105. The Camping Resorts Act declares it "unlawful" for any person to offer or sell a camping resort contract in the State unless the contract is registered and the resort operator has obtained a permit to market the contracts

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

> pursuant to R.C.W. 19.105.310....A violation of the Camping Resort Act is also deemed an unfair and deceptive act or practice or unfair method of competition. R.C.W. 19.105.500. It is undisputed that the contracts drafted by Evans and marketed to Plaintiffs specifically provided that the contracts "shall be interpreted and enforced in accordance with the laws of the State of Washington."
>
> Based on the record before the court, Evans, an allottee of MA-8, subjected the beneficial owners to the jurisdiction of the State of Washington. A decision was made by the beneficial owners and the United States that MA-8 was to be used for recreational camping purposes and that memberships would be marketed in compliance with the Camping Resorts Act, no doubt to make the offers more attractive to the buying public. The Public Offering filed July 19, 1994 provided in part that "one purpose for registration is to provide prospective purchasers with certain disclosures about the operator, its properties, facilities and recreational program." (Page 2). The Prospectus filed with the State references that the registration is being filed on a voluntary basis without admitting that the State had jurisdiction. This reference must be tempered however by the affirmation in the camping club sale contracts that the contracts "shall be" enforced in accordance with the laws of the State of Washington.

(*See* Judge Bridges' Decision, pgs 19-21; Danielson Declaration Exhibit 65)

In addition to the above analysis, Judge Bridges based his decision upon State v. Cooper, 130 Wn.2d 770 (1996) (which cited RCW 37.12.010) and held that allotted

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

land outside the boundaries of an established Indian reservation is subject to Washington State jurisdiction. Judge Bridges further determined that Washington has jurisdiction because the Camping Resorts Act was a criminal/prohibitory act rather than a civil/regulatory act.[1] Judge Bridges' ruling is in accord with Washington law relating to tenancies in common. Bill Evans bound his allottee/co-owners to Washington law as a tenant-in-common. Tenants-in-common can bind their co-owners if the other co-owners ratify the act or otherwise accept the benefits of one co-owners' contract. *See* McGill v. Shugarts, 58 Wn.2d 203, 204, 361 P.2d 645, 646 (1961). There can be no dispute that all Defendant Allottees reaped monetary benefit from the sale of lots within the Mill Bay Resort, therefore ratifying the membership agreements.

B. The 2004 Settlement Agreement binds the Defendants to the Tenancy through 2034.

1. All Defendants ratified, and thereby made binding, the 2004 Settlement Agreement.

Wapato Heritage, LLC (as a Landowner of MA-8), as Lessee under the Master Lease, entered into the Settlement Agreement on behalf of the other Landowners. The

[1] Citing Confederated Tribes of the Colville Reservation, 938 F.2d 146 99th Cir. 1991); California v. Cabazon Band of Mission Indians, 480 U.S. 202 (1987); and United States v. Marcyes, 557 F.2d 1361, 1364 (9th Cir. 1977).

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

1 Landowners, in turn, ratified this agreement by accepting the settlement money
2
3 resulting from that agreement. (Plaintiffs' Fact #181, 184) The BIA accepted the first
4 installment of the Plaintiffs' settlement money and the BIA cashed that check in
5
6 February 2005. (Plaintiffs' Fact #181) The BIA's Colville Agency sent a letter with
7 checks to the Allottees explaining that the check represented the settlement money as a
8
9 result of the RV Park's settlement with Wapato Heritage LLC which enabled the RV
10 Park to stay on the property until 2034. (Plaintiffs' Fact #182)
11
12 Persons not party to a settlement agreement can ratify that agreement by
13 accepting the settlement money pursuant to that agreement. If the nonparty accepts the
14
15 settlement money, it cannot later refute the validity of that agreement. *See i.e.*
16 National American Corp. v. Federal Republic of Nigeria, 597 F.2d 314,
17
18 323 (C.A.N.Y., 1979). As the court in Rayonier, Inc. v. Polson, 400 F.2d 909,
19 915 (W.D.Wash. 1968) succinctly stated:
20

> Ratification is the affirmance by a person of a prior unauthorized act, whereby the act is given effect as if originally authorized by him. Such affirmance can be established by any conduct manifesting an election to treat an unauthorized act as authorized or conduct justifiable only if there were such an election. Conduct which may be held to manifest an election to affirm an unauthorized contract

21
22
23
24

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

1
2
3

> includes the failure to repudiate the contract, as well as affirmative acts which can be justified only if there were an election to authorize the contract. (citations omitted)

4
5
6
7

Washington courts hold that public policy requires a party be held to a contract if he has affirmed that agreement through his actions and received the benefits of the contract:

8
9
10
11
12
13
14
15
16
17
18
19
20
21

> When a party, with knowledge of facts entitling him to rescission of a contract or conveyance, afterward, without fraud or duress, ratifies the same, he has no claim to the relief of cancellation. An express ratification is not required in order thus to defeat his remedy; any acts of recognition of the contract as subsisting or any conduct inconsistent with an intention of avoiding it have the effect of an election to affirm. This doctrine seems to rest, not upon the principle of a new contract between the parties, nor yet upon the ordinary principle of estoppel in pais, **but rather upon a distinct principle of public policy, that all that justice or equity requires for the relief of a party having such cause to impeach a contract is that he should have but one fair opportunity, after full knowledge of the rights, to decide whether he will affirm and take the benefits of the contract or disaffirm it and demand the consequent redress**. Any other rule would be regarded as unjust, even toward the party guilty of the wrong out of which grows the right to rescind.

22
23

> 6 Cyc. 2978. (emphasis added)

24

Whitcomb v. Sager, 82 Wash. 572, 579, 144 P. 922, 925 (1914).

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

Equity and justice preclude the Landowners and the BIA from disaffirming their agreements after they repeatedly affirmed the acts of their tenant-in-common, Wapato Heritage, LLC.

2. Washington's Trust and Estate Dispute Resolution Act renders the 2004 Settlement Agreement binding on all Defendants.

The 2004 Settlement Agreement was part of a global settlement of the claims that arose out of Bill Evans' state and federal estates. Washington's Trust and Estate Dispute Resolution Act ("TEDRA"), RCW 11.96A, binds parties to a settlement agreement regarding a trust or estate, even if the case is not adjudicated on the merits. The effect of such an agreement constitutes collateral estoppel or res judicata. Thus, regardless of any of the Defendants' current claims or assertions, they all had the opportunity to object to the 2004 Settlement Agreement, which clearly affected their interests in MA-8. TEDRA binds the Landowners and the BIA to the terms of the 2004 Settlement Agreement, and forecloses the Defendants' attempt to preclude the Plaintiffs' right to use and occupy the Mill Bay Resort through 2034.

Courts consistently hold that the public policy behind a special statutory scheme can bind nonparties to a previous judgment. The United States Supreme Court in

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

1 Taylor v. Sturgell, ---U.S. ---, 128 S.Ct. 2161, 171 L.Ed.2d 15 (2008) recently stated:

> [In] certain circumstances a special statutory scheme may "expressly foreclos[e] successive litigation by nonlitigants ... if the scheme is otherwise consistent with due process." *Martin,* 490 U.S., at 762, n. 2, 109 S.Ct. 2180. Examples of such schemes include bankruptcy ***and probate proceedings***, see *ibid.,* … *Richards,* 517 U.S., at 804, 116 S.Ct. 1761. *[Emphasis added]*

The Washington State Legislature specifically stated that TEDRA is such a special statutory scheme:

> The legislature hereby confirms the long standing public policy of promoting the prompt and efficient resolution of matters involving trusts and estates. To further implement this policy, the legislature adopts the following statutory provisions in order to: (a) Encourage and facilitate the participation of qualified individuals as special representatives; (b) serve the public's interest in having a prompt and efficient resolution of matters involving trusts or estates; and (c) promote complete and final resolution of proceedings involving trusts and estates.

RCW 11.96A.070(3). TEDRA adopted the common law doctrine of virtual representation, and creates a special statutory scheme to allow final resolution of proceedings involving trusts and estates:

> An action taken by the court is conclusive and binding upon each person receiving actual or constructive notice or who is otherwise virtually represented.

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

RCW 11.96A.120(4).

Additionally, under RCW 11.96A.220, a written agreement between the parties interested in an estate is binding and conclusive on all persons interested in the estate. Once the agreement is entered by the court, it is deemed approved by the court and is "equivalent to a final court order binding on all persons interested in the estate or trust." RCW 11.96A.230(2).

In Martin v. Welks, 490 U.S. 755, 762, 109 S.Ct. 2180, 104 L.Ed.2d 835 (FN 2) (1989), (*reversed in part on other grounds*), the United States Supreme Court recognized the propriety of a statutory scheme that serves to bar subsequent claims that were previously settled in an estate proceeding:

> …Additionally, ***where a special remedial scheme exists expressly foreclosing successive litigation by nonlitigants***, as for example in bankruptcy ***or probate, legal proceedings may terminate preexisting rights if the scheme is otherwise consistent with due process.***

In Pitzer v. Union Bank of California, 141 Wn.2d 539, 550-551, 9 P.3d 805, 811 (2000), the Washington Supreme Court recognized the strong public interest in barring actions settled in a closed probate:

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

1
2
3
4
5
6
7

> We preliminarily note the strong interest, grounded in considerations of finality, in not disturbing the sanctity of a closed estate. *See Little v. Smith,* 943 S.W.2d 414, 417 (Tex.1997) ("The need for finality of probate proceedings is well recognized by this and other courts"); *In re Williamson's Estate,* 95 So.2d 244, 246, 65 A.L.R.2d 1195 (Fla.1956) (It is "public policy ... that the estates of decedents shall be speedily and finally determined with dispatch").

8
9
10
11
12
13
14

Under RCW 11.96A.040, Chelan County Superior Court had jurisdiction over the probate of Bill Evans' estate. It is also undisputed that the federal and state probates were to be finally settled and determined by Chelan County Superior Court. (Plaintiffs' Fact #158) Judge Bridges approved the final settlement of Evans' federal estate. (Plaintiffs' Fact #173)

15
16
17
18
19
20
21
22
23
24

The MA-8 landowners were interested parties to the Evans' estate. (Plaintiffs' Fact #171) The BIA, as the legal representative of the landowners, received notice of the Settlement Agreement as required by Washington law. (Plaintiffs' Fact #171, 172) The BIA received proper notice under RCW 11.96A of the Associations' claim against Chief Evans, Inc., the Associations' creditor's claim against Evans' estate, the time and date of the settlement negotiations for that creditors' claim, the proposed settlement agreement resulting from that mediation, notice of the second mediation

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

meant to finalize the Settlement Agreement, notice of the final Settlement Agreement, notice of the hearing to enter an order approving the Settlement Agreement, as well as notice that the Settlement Agreement had been approved. (Plaintiffs' Facts #174, 175) By providing actual notice of these proceedings to the BIA, as an agent of the MA-8 landowners, the signatories to that Settlement Agreement provided constructive notice to the landowners. Under TEDRA, such actual and constructive notice of an approved Settlement Agreement, along with notice of the opportunity to object to that settlement agreement, binds the landowners and the BIA to that Settlement Agreement as a final court order regarding the issues settled in the Settlement Agreement. That Settlement Agreement specifically settled the controversy regarding the Members' rights to use and occupy the Mill Bay Resort until 2034.

3. All Defendants are collaterally estopped by the 2004 Settlement Agreement from denying the Members' rights to use and occupy the Mill Bay Resort until the year 2034.

Under the related doctrines of collateral estoppel and res judicata, a "right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction…cannot be disputed in a subsequent suit between the same parties or their

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

privies." Montana v. U.S., 440 U.S. 147, 153, 99 S.Ct. 970, 973-74 (1979).

> These interests are similarly implicated when non-parties assume control over litigation in which they have a direct financial or proprietary interest and then seek to redetermine issues previously resolved.

Montana, 440 U.S. at 154.

The United States Supreme Court in Taylor v. Sturgell, *supra* (2008) held that a nonparty may be precluded from relitigating an issue when (1) a person agrees to be bound by the determination of issues in litigation to which that person is not a party; (2) a legal relationship exists between the nonparty and a party to the judgment (e.g., succeeding owners of property, bailee and bailer, assignee and assignor); (3) the nonparty was "adequately represented by a someone with the same interests who was a party to the suit" (e.g. fiduciaries); (4) if the nonparty "assumed control over the litigation in which the judgment was rendered; (5) a nonparty attempts to relitigate the issue as a representative or agent of a party bound by the prior judgment; and (6) a special statutory scheme expressly precludes successive litigation by nonparties (e.g., bankruptcy and probate proceedings). Taylor, 128 S.Ct. at 2172-3.

A nonparty, who has full knowledge of the prior adjudication, has the

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

opportunity to intervene in that action, and who acts as a witness in the previous action, is barred by collateral estoppel from relitigating the issue in a subsequent action:

> [The doctrine of virtual representation] allows collateral estoppel to be used against a nonparty when the former adjudication involved a party with substantial identity of interests with the nonparty.
>
> ***
>
> The primary factor to be considered is whether the nonparty in some way participated in the former adjudication, for instance as a witness. The issue must have been fully and fairly litigated at the former adjudication.[FN15] That the evidence and testimony will be identical to that presented in the former adjudication is another important factor.[FN16] Finally, there must be some sense that the separation of the suits was the product of some manipulation or tactical maneuvering, such as when the nonparty knowingly declined the opportunity to intervene but presents no valid reason for doing so. (citations omitted)

Garcia v. Wilson, 63 Wn. App. 516, 520-21, 820 P.2d 964, 966-67 (1991).

Similarly, when the United States influences adjudication of a case, but chooses not to intervene, it can be bound by the judgment in that case. The United States Supreme Court in Montana v. U.S. articulates:

> A fundamental precept of common-law adjudication, embodied in the related doctrines of collateral estoppel and

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

> res judicata, is that a "right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction . . . cannot be disputed in a subsequent suit between the same parties or their privies . . .."
> …
> Thus, although not a party, the United States plainly had a sufficient "laboring oar" in the conduct of the state-court litigation to actuate principles of estoppel.

Montana v. U.S., *supra*, at 153-5.

That the BIA acted as a "laboring oar" with regard to the 2004 Settlement Agreement is demonstrated by the court's discussion in U.S. v. LTV Steel Co., Inc., 118 F.Supp.2d 827, 836 (N.D. Ohio 2000) (citing Montana v. U.S.):

> To determine whether the United States has a laboring oar in a controversy, the Court may look to such things as whether the United States orders another party to file a lawsuit or, in this case, issue a notice of violation, pays the attorney's fees, ***reviews the complaint or notice,*** files an amicus brief, directs an appeal or the abandonment of that appeal ***or actually engages in settlement negotiations.*** **(emphasis added)**

Property owners with similar rights can also be bound:

> In the *Society Hill* scenario, however, an intervention motion filed in the consent suit by another group of property owners had been rejected as untimely. Although these people had not joined in the separate suit and were not before the court, our opinion contrasted their status and said: "[A]n unjustified or unreasonable failure to intervene can serve to bar a later

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

> collateral attack.... [T]hese property owners should not be allowed to escape the consequences of their own tardiness by recasting their motion for intervention as a complaint in a suit collaterally attacking the prior judgment." *Id.* at 1052.
> …
> Clearly, plaintiffs were not outsiders unaware of litigation in progress that would ultimately affect their interests. In a deliberate choice of litigation strategy, they chose to stand on the sidelines, wary but not active, deeply interested, but of their own volition not participants. Although plaintiffs may not have had their day in court as litigants, they had the opportunity and for reasons of their own adopted a different approach. Plaintiffs cannot, at this stage, assert persuasively that the interest of finality should not prevail.

Nat'l Wildlife Federation v. Gorsuch, 744 F.2d 963, 969, 971-2 (3rd Cir. 1984) (citing Society Hill Civic Association v. Harris, 632 F.2d 1045 (3d Cir.1980)).

The BIA, as an agent of the Landowners, was consistently apprised of the developments in the RV Park litigation and eventually chose to submit a letter to the court asserting its position regarding the dispute. (Plaintiffs' Fact #151) By submitting this letter, the BIA acted as a witness and provided its legal opinion to the court for consideration. Furthermore, the BIA was repeatedly asked by two heirs of landowner Bill Evans (whom owned nearly 25% beneficial interest in MA-8) to intervene in the case because of the implications this case would have on the

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

encumbrance of trust land. These facts, combined with the facts set forth in section B.3 above regarding the BIA's "laboring oar" involvement, bind the BIA and the landowners to the terms of the 2004 Settlement Agreement.

4. The equitable doctrine of waiver binds the Defendants to the 2004 Settlement Agreement.

Waiver is the intentional abandonment of a legal or contractual right. While modification of a contract requires consideration, waiver of a provision may be unilateral by the party whom the provision was meant to benefit.[2] The Landowners and BIA were aware of the various stages of the estate litigation, but failed to intervene or otherwise object to the assertions made in that case. They had a duty to speak, but remained silent. They had a legal right to intervene or object to the Settlement Agreement, but did not do either and therefore waived any objections to those issues finally decided by the Chelan County Superior Court in 2003 and 2004.

5. *The equitable doctrines of laches and acquiescence bind the Defendants to the 2004 Settlement Agreement.*

Laches is much like waiver and estoppel:

> Laches is an equitable defense based on estoppel. A

[2] Gorge Lumber Co. v. Brazier Lumber Co., 6 Wn. App. 327, 493 P.2d 782 (Div. 2 1972).

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

> defendant asserting the doctrine of laches must affirmatively establish: (1) knowledge by plaintiff of facts constituting a cause of action or a reasonable opportunity to discover such facts; (2) unreasonable delay by plaintiff in commencing an action; and (3) damage to defendant resulting from the delay in bringing the action. (citations omitted) [3]
>
> The principal element in applying laches is not so much the period of delay in bringing the action but the factor of resulting prejudice and damage to others.[4]

"The equitable Doctrine of Laches is the implied waiver arising from knowledge of existing conditions and acquiescence in them."[5] Prejudice to the defendant that creates substantial injustice and hardship is an essential factor in proving laches.[6]

The above delineated facts demonstrate that the doctrines of laches and acquiescence likewise require dismissal of the BIA's trespass action. The BIA and Allottees delayed in objecting to the 2004 Settlement Agreement to the detriment of the Mill Bay Members Association. The Association expended significant amounts of time and money in reliance of the BIA and Allottees acceptance of the settlement money. The Defendants knew of the facts surrounding their legal remedies regarding

---

[3] Davidson v. State, 116 Wn.2d 13, 25, 802 P.2d 1374, 1381 (Wash. 1991).
[4] Pierce v. King County, 62 Wn.2d 324, 332, 382 P.2d 628, 634 (Wash. 1963).
[5] Cotton v. Elma, 100 Wn.App 685, 694, 988 P.2d 339 (2000).

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

the Settlement Agreement and had significant opportunity to discovery those facts, but unreasonably delayed in objecting to the Associations tenancy of the Mill Bay Resort until 2034.

6. Accord and satisfaction binds the Defendants to the 2004 Settlement Agreement.

The elements of accord and satisfaction are (1) a bona fide dispute, (2) an agreement to settle that dispute, and (3) performance of the agreement. [7] Once satisfaction is complete, the parties relinquish all defenses and arguments based on the underlying contract.[8]

Wapato Heritage, as a co-tenant, represented the interests of all the Landowners. The Settlement Agreement settled a contractual dispute regarding the Association's right to use and occupy the Mill Bay Resort until the year 2034. The co-tenants accepted this agreement as satisfaction of the dispute, changing the terms of the Association's tenancy in exchange for settlement money.

7. Defendants are estopped to deny Plaintiffs' rights to use and occupy the Mill Bay Resort until 2034 because the Defendants received the

---

[6] Johnson v. Schultz, 137 Wash. 584, 243 P. 644 (1926).
[7] Perez v. Pappas, 98 Wn.2d 835, 843, 659 P.2d 475, 480 (1983).
[8] Paopao v. DSHS, 185 P.3d 640, 643-644 (Wn. App. Div. 1 2008).

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

benefits of settlement to the Plaintiffs' detriment.

To prevail on an estoppel defense, a party defending a claim must prove the following:

1) An admission, statement, or act inconsistent with the claim afterwards asserted;
2) Action by the other party on the faith of such admission, statement, or act; and
3) Injury to such other party resulting from allowing the first party to contradict or repudiate such admission, statement, or act.[9]

The first factor is proven by the BIA and the landowners' act of accepting the settlement money. Acceptance of that money is inconsistent with the current assertion that the Settlement Agreement is not valid and binding as against the BIA and the Allottees. The second factor is satisfied because the Plaintiffs herein acted in reliance on the Defendants' acceptance of the $48,000 up front settlement payment, as evidence by the Plaintiffs' payment of additional rent to the Allottees from 2004 to 2009, and the Plaintiffs' expending hundreds of thousands of dollars in improvements to their lots at the Resort. (Plaintiffs' Fact #116) The final factor of estoppel is satisfied because the Members will incur substantial injury, both financial and emotional, if the

[9] Board of Regents of U.W. v. City of Seattle, 108 Wn.2d 545, 741 P.2d 11 (1987).

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

1 terms of the Settlement Agreement are not enforced against the Defendant.
2
3 C. Plaintiffs Are Entitled to An Award of their Attorney's Fees and Costs.
4 Upon a ruling in Plaintiffs' favor, the terms of the Master Lease and 2004
5
6 Settlement Agreement entitle Plaintiffs to an award of their attorney's fees and costs.
7 *See* Section C of Plaintiffs' Memorandum in Support of First Motion for Summary
8
9 Judgment Re Contract Terms.
10

CONCLUSION

11 Based upon the foregoing, an order on summary judgment should be entered,
12
13 declaring the Plaintiffs' legal right to use and occupy the Mill Bay Resort through
14 February 1, 2034, and dismissing the trespass action asserted by the BIA.
15
16 DATED this 1st day of September, 2009.
17

18 s/JAMES M. DANIELSON
19 WSBA No. 01629
Attorney for Plaintiffs
20 JEFFERS, DANIELSON, SONN & AYLWARD, P.S.
21 2600 Chester Kimm Road
P.O. Box 1688
22 Wenatchee, WA 98807-1688
23 Telephone: 509-662-3685
Fax: 509-662-2452
24 Email: Jimd@jdsalaw.com

1
2 **CERTIFICATE OF SERVICE**
3 I hereby certify that on September 1, 2009, I electronically filed the foregoing
4
5 with the Clerk of the Court using the CM/ECF System. Notice of this filing will be
6
7 sent to all parties by operation of the Court's electronic filing system, and via U.S.
8 Mail. Parties may access this filing through the Court's system.
9 DATED at Wenatchee, Washington this 1st day of September, 2009.
10
11 s/JAMES M. DANIELSON
WSBA No. 01629
12 Attorney for Plaintiffs
13 JEFFERS, DANIELSON, SONN & AYLWARD, P.S.
14 2600 Chester Kimm Road
P.O. Box 1688
15 Wenatchee, WA 98807-1688
16 Telephone: 509-662-3685
Fax: 509-662-2452
17 Email: Jimd@jdsalaw.com
18
19
20
21
22
23
24

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX