

No. 79733-6

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

SAMISH INDIAN NATION, Appellant,

v.

WASHINGTON DEPARTMENT OF LICENSING;
TERESA BERNTSEN, Director, Department of Licensing, Respondent.

APPELLANT RESPONSE TO AMICUS BRIEF OF THE
STILLAGUAMISH TRIBE OF INDIANS

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TABLE OF AUTHORITIES

Statutes

25 U.S.C. §467 (renumbered as 25 U.S.C. §5110)..... 2

RCW 82.38.310 3

Pursuant to Commissioner Neel's Notation Ruling dated October 29, 2019, Appellant Samish Indian Nation ("Samish Tribe") submits the following Response to the Stillaguamish Tribe of Indian's "Stillaguamish Tribe") Amicus Brief.

As the Court will readily understand, the Samish Tribe supports the Stillaguamish Tribe's Amicus Brief. The Samish Tribe has struggled with the Department of Licensing's ("DOL") repeated mischaracterizations of the Stillaguamish Tribe's 2011 Fuel Tax Compact with DOL. DOL has made factual assertions in this appeal about Stillaguamish's fuel tax compact that are not part of the administrative record and are false.

The Samish Tribe could live with DOL's initial characterization of Stillaguamish's 2011 Fuel Tax Agreement as an "outlier" agreement, DOL Motion for Summary Judgment, January 23, 2019, p. 5, CP 557, because in some ways it was. Most of the tribal fuel tax agreements in Washington are with tribes that have formal reservations with defined exterior boundaries; only a few tribes in Washington, including Stillaguamish and Samish, had "reservations" consisting of scattered parcels of trust land.

The bottom line, however, and the only relevant fact in this appeal, is the fact that DOL entered into a fuel tax compact in 2011 with the Stillaguamish Tribe with the exact same factual situation under which DOL refused to enter into a fuel tax compact with the Samish Tribe. As

Stillaguamish points out in its amicus brief, DOL has never notified the Stillaguamish Tribe in the last eight years that it has any legal concerns with its compact.

DOL upped the ante on its factual assertions about the Stillaguamish fuel tax compact in this appeal. Not satisfied any longer with characterizing the Stillaguamish fuel tax compact as an outlier (but still legal) agreement, DOL has now resorted to calling that agreement illegal. DOL Amended Response Brief, Sept. 11, 2019, p. 4 (DOL concedes “it lacked legal authority” to enter into Stillaguamish fuel tax agreement). In addition, DOL claims this illegal agreement was “cured” when Stillaguamish obtained a Reservation Proclamation from the Secretary of Interior in 2014 under 25 U.S.C. §467 (renumbered as 25 U.S.C. §5110) to “proclaim” the trust land where Stillaguamish’s fuel station is located as a reservation. *Id.* DOL provided no documentation to support these factual assertions, in the administrative record or otherwise.

Stillaguamish’s amicus brief is relevant and critical to this appeal because it directly demonstrates that sometimes when you make up facts, you get caught. Stillaguamish’s brief shows that DOL has never informed the Stillaguamish Tribe that its fuel tax compact was illegal or had legal issues. Stillaguamish’s amicus brief and the Declaration of its Chairman, Shawn Yanity also document beyond any dispute that the Stillaguamish

Tribe's 2014 Reservation Proclamation had absolutely no connection to "curing" its allegedly illegal fuel tax compact. DOL made this factual assertion up. This conclusion is also obvious on its own since Stillaguamish had no idea that DOL considered its fuel tax compact illegal at the time the Stillaguamish Tribe requested and obtained its Reservation Proclamation; there could have been no intent to "cure" an illegal agreement when Stillaguamish did not know there was any legal issue.

DOL's asserted facts appear nowhere in the administrative record; they are false. Samish appreciates the Stillaguamish Tribe providing the actual facts to the Court. DOL's false factual assertions should be stricken from the record or ignored by the Court.

The only relevant fact in this appeal is that fact that DOL entered into a fuel tax compact with the Stillaguamish Tribe in 2011 under RCW 82.38.310 in the exact same factual situation – trust land without a formal reservation, but a reservation under the definition of Indian country – that it cited as refusal to enter into a fuel tax compact with the Samish Indian Nation. DOL's refusal to enter into a fuel tax compact with the Samish Tribe was discriminatory and a violation of state and federal law.

Submitted this 21st day of November 2019.

A handwritten signature in blue ink that reads "Craig J. Dorsay". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

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PROOF OF SERVICE

I, Craig J. Dorsay, declare under penalty of perjury under the laws of the state of Oregon that the following is true and correct:

On November 21, 2019, I caused a true and correct copy of APPELLANT'S RESPONSE TO AMICUS BRIEF OF THE STILLAGUAMISH TRIBE OF INDIANS to be filed electronically with the Washington Court of Appeals, Division I, and to be served via email through the Court's electronic filing system to:

Michelle A. Carr, Attorney for Respondent
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MaryT@atg.wa.gov

I also directed my assistant to email a true and correct copy to:
LALolyEF@atg.wa.gov

SIGNED in Portland, Oregon, this 21st day of November 2019.



Craig J. Dorsay, WSBA# 9245

DORSAY & EASTON LLP

November 21, 2019 - 3:16 PM

Transmittal Information

Filed with Court: Court of Appeals Division I
Appellate Court Case Number: 79733-6
Appellate Court Case Title: Samish Indian Nation, Appellant v. Department of Licensing, Respondent
Superior Court Case Number: 18-2-00876-2

The following documents have been uploaded:

- 797336_Answer_Reply_to_Motion_20191121151502D1941377_1428.pdf
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Comments:

Response to Amicus Brief of Stillaguamish Tribe of Indians

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