

Sept. 13, 1949

BEFORE THE INDIAN CLAIMS COMMISSION

THE EASTERN (EMIGRANT) CHEROKEE INDIANS,)
 on the relation of Jesse B. Milam,)
 James Pickup, John M. Adair, Henry C. Walkley,)
 Daniel Coody, Charles H. Harnage, Amanda Morgan-)
 Bell, and Eldee Starr,)
)
 Plaintiffs,)
)
 v.)
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Docket No. 42

Appearances: Woodson E. Norvell with whom was
 George E. Norvell and Wilfred A. Hearn,
 Attorneys for Plaintiffs

Ralph A. Barney and Jules H. Sigel,
 with whom was Mr. Assistant Attorney
 General, A. Devitt Vanech,
 Attorneys for Defendant

OPINION OF THE COMMISSION

PER CURIAM: The claim here presented, is by "The Eastern (Emigrant) Cherokee Indians, on the relation of Jesse B. Milam," and seven other individual parties, to recover a sum alleged to be due the plaintiffs because of wrongful acts of the defendant which made it necessary for plaintiffs to expend large sums of money for attorneys fees in order to enforce their rights against the United States.

The allegations of the petition show that the named individual plaintiffs are suing as representatives of a group known as the Eastern Cherokee Indians.

To the petition the defendant interposed a motion to dismiss on the ground that the Eastern Cherokees is not an identifiable group as is contemplated by Section 10 of the Indian Claims Commission Act. (25 U.S. C. A. 70).

This case and the Western Cherokee cases, Dockets 24, 41 and 43, were argued together because the same questions as to the right to bring a representative suit, the character of the claim and the construction of said Section 10 are involved in those cases as in this.

We believe the plaintiffs are here asserting a common claim of the Eastern Cherokees, which is a part of the Cherokee Nation of Indians described or referred to in the following treaties:

In the treaty of July 8, 1817 (7 Stat. 156) they are referred to as the "Cherokee Nation, East of the Mississippi River;"

In the treaty of February 27, 1819 (7 Stat. 195), they are likewise referred to in Art. 7 as "the Cherokees east of the Mississippi;"

And in the treaty of August 6, 1846 (9 Stat. 871) there is a clear recognition of the Eastern Cherokees, as well as the Western Cherokees, each being considered a "different portion" of the Cherokee Nation of Indians.

At the oral argument it was tacitly understood by the parties that a ruling upon the questions submitted would apply to this and the Western Cherokee cases mentioned above, so on the authority of the opinion this day filed in Docket No. 24 we must overrule the motion.