BEFORE THE INDIAN CLAIMS COMMISSION

THE MIAMI TRIBE OF OKLAHOMA, also known as THE MIAMI TRIBE, and HARLEY T. PALMER, FRANK C. POOLER and DAVID LEONARD, as representatives of THE MIAMI TRIBE and all of the members thereof,	)	
Petitioners,	)	Docket No. 67, (Consolidated) and Docket Nos. 124, 314 and 337 consolidated therewith
v.	)	
THE UNITED STATES OF AMERICA,	)	INTERVENORS - Docket Nos. 15-D, 29-B, 89, 311 and 315
Defendant.	)	

Decided: September 17, 1956

Appearances:
Edward P. Morse, with whom were Edwin A. Rothschild and Louis L. Rochmes, Attorneys for Petitioners in Docket No. 67.

Francis J. Clary, with whom was Mr. Assistant Attorney General Perry W. Morton, Attorneys for Defendant.

OPINION OF THE COMMISSION

Witt, Chief Commissioner, delivered the opinion of the Commission.

The issues now before the Commission are the value of the 7,036,000 acres of land known as Area 99, according to Royce's Map, as of October 6, 1818, and the liability, if any, of the defendant to the plaintiff tribes.

The petitioners say that the present measure of value is the fair market value as defined by this Commission in its opinion in the Osage

case (3 I.C.C. 236) which is as follows:

> "Market price is the highest price estimated in terms of money which land will bring if exposed for sale in the open market with a reasonable time allowed to find a purchaser buying with knowledge of all the uses and purposes to which it is best adapted and for which it is capable of being used."

Petitioners contend that there was, in fact, no "open market" for the land and that the value to be found must be by applying to the situation as determined by the facts, established and generally recognized principles of appraisal, and by assuming that buyers and sellers were free to negotiate without compulsion or political restrictions. (See Pet. Brief, pages 2 and 3).

Petitioners present to the Commission voluminous evidence as to the nature of the lands involved; also evidence of the demand therefor and for similar lands immediately prior to the valuation date and continuing immediately thereafter, together with the development of the contiguous territory. Much evidence was introduced showing sales, both large and small, of lands in the vicinity of the land to be valued during the years immediately prior and immediately after the valuation date. Evidence was also introduced as to the population trends of the time and as to the general economic conditions. The viewpoint of contemporaneous public opinion as to the character of the lands, their desirability and value were put in evidence.

Based on the evidence as above outlined, the opinion of Mr. Berkley W. Duck, an expert appraiser, together with the basis of same and the method by which his appraisal was reached was put in evidence. The exhaustive report of Mr. Duck and his appraisal of the fair market

value of the area involved, as of date of October 6, 1818, to be $1.8763 per acre, is in evidence and constitutes the principal basis upon which petitioners ask this Commission to find the land to have the market value of $1.8763 per acre, as of October 6, 1818.

The defendant puts in evidence much historical matter showing the development of the northwest country of which the land involved is a part, together with the history of the settlement of that territory; geological and geographical facts revealing the conditions faced by the first settlers in 1818, together with the economic and financial conditions of the country at that time and for the immediate years thereafter. Defendant also put in evidence voluminous records of the sale of lands in Indiana (in which state the tract involved is located) by the United States Government beginning with the year 1801 through the year 1818, together with records of sale for the same years, of lands located in the various states northwest of the Ohio river. Based on all the evidence thought to have been available and knowledgeable in 1818, the said appraiser, Paul Starrett, evaluated Area 99, as a whole, as of October 6, 1818, at 20¢ per acre or $1,403,000.

The witness, Starrett, explained that in the absence of sales of large tracts, comparable in size, location, character and time, informed purchasers would have made estimates of what the land might be reasonably expected to sell for in the future and at what period of time it would require to sell, in order to determine the 1818 value of the land; defendant's appraiser fixed the value based on the capital cost that he thought could be sustained. He calculated the interest

and other carrying charges and what the surveying, sale and other expenses might be expected to be. (See Def. Brief, p. 41). Based on such matters as indicated, the witness evaluated the land as of 1818 as stated at 20¢ an acre, or a total of $1,400,000.

It will thus be seen that appraisers, both for the petitioners and for the defendant, relied upon what they thought the land involved could be reasonably expected to be resold for to actual settlers in small tracts over a period of approximately twenty years. The appraiser of petitioners is shown (Fdg. 32) to have based his value on October 6, 1818, at $1.8763 per acre, on an expected resale of 90% of the land at $4.00 per acre and 10% of it at $2.00 per acre. The appraiser for the defendant based his valuation of the land at 20¢ an acre as of October 6, 1818, upon the assumption of a resale of three-fourths of the total acreage at $1.10 an acre and one-fourth of same as non-saleable (Fdg. 44).

The purpose of submitting the reports and testimony of real estate appraisers is to aid the Commission in making this determination. The determination itself, however, is to be made by the Commission on the facts established by the evidence. An appraisal by an expert is no more than his opinion. Opinion evidence is received when the person giving the opinion is a qualified expert in his field, however, "opinion evidence is not evidence of fact." The weight to be given to opinion evidence depends upon the qualifications of the witness in the field in which he testifies and whether he takes all relevant facts into account and the correctness of the facts, upon which the opinion evidence is

based; and whether the assumptions made by the witness are proper and supported by facts. The appraisal can only be properly evaluated by giving consideration to the qualifications of the witness and in the light of the true facts upon which based.

The evidence shows that the market for new land in the northwest territory was exceptionally strong on the appraisal date. The vast westward movement, known as the Great Migration, was at its peak. The population of the territory had multiplied many times in the preceding years and was increasing rapidly. The greatest population pressures were in the immediate vicinity of the New Purchase. The population of western Ohio in the Cincinnati Land District had far outstripped the rest of the state. Eastern, southern and southwestern Indiana were growing at a tremendous rate. There was considerable population in Illinois. The sales of land reflected the population increase. In 1818 more than 70% of the lands in the Cincinnati Land District had been sold and settled areas were on the east, south and west of the New Purchase. Ohio had been a state for fifteen years, Indiana for two, and Illinois had been admitted into the union.

More land had been sold by the United States in 1818 than in any prior year, and much of this increase occurred in the northwest territory.

There was no indication at this time that these trends would not continue. They did in fact continue. While there had been cyclical booms and depressions in the past, each temporary setback was followed by a recovery which carried the market to a higher point than had been witnessed before. There had been depressions during the period of the

confederacy and preceding and during the War of 1812. After each depression and particularly after the War of 1812, there was an unprecedented boom. The year 1818 marked the peak of the boom.

In short, no one would have hesitated to predict in 1818 an active land market continuing for many years, and such market did continue. While it might have been anticipated from past experience that this activity would fluctuate, the year 1818 gave little sign of impending depression. It was, as Professor Gronert testified, a period of unprecedented optimism. (Taken from Petitioners' Brief, pages 7 & 8).

As stated, the year 1818 was a year of unprecedented optimism--the western migration was at its peak, heavy sales of public lands were made in that year and even higher sales the following year. The sales of public lands in Ohio, Indiana and Illinois had jumped from 256,345 acres in 1813 to 823,264 acres in 1814; had passed 1,000,000 acres in 1815 and continued to increase annually thereafter through 1819. The sales continued to be heavy for years (see Fdg. 19).

The lands in the vicinity of the lands involved in this law suit include the lands of what is known as the Cincinnati Land District lying immediately east of the lands involved herein. Among these lands of said Cincinnati Land District are what are known as the Twelve-Mile Strip and the Greenville lands. The Greenville lands had been open for settlement in 1800. The Twelve-Mile Strip of the District had been open for settlement in 1811. The total acreage composing the Cincinnati Land District contained 3,709,445 acres and by 1818 almost three-fourths of the Greenville lands and nearly 60% of the lands of the Twelve-Mile

Strip had been sold. In 1818, when the land involved herein was acquired, it was surrounded on the east, south and southwest by areas which had been previously open for settlement; all its north and northwest borders being bounded by Indian land. Both Indiana and Ohio had achieved statehood and were politically organized; the population density on its borders had so increased that when it was open for settlement in 1820, Ohio averaged 14.7 persons per square mile, the Greenville lands averaged 27.7 persons per square mile and Indiana had only 6.4 persons per square mile (see Fdg. 20). The average annual sale of the Greenville Lands had been approximately 4%; the average annual sales of the Twelve-Mile Strip lands had been at the annual rate of 7.3%. According to defendant, Area 56 sold at an average annual rate of 4.5% and the Harrison Purchase at 7.7%--petitioners' figures show annual sales to be at a slightly greater per cent. There are some other variations as to the annual sales of these near-by lands, but both parties agree that the sales of adjacent tracts were sufficient to comprise the whole of said tracts in the neighborhood of 18 or 20 years.

In quality, desirability and accessibility, the lands under consideration were superior to that of adjacent lands and the sale of the lands here involved could well have been anticipated as being as rapid as the sales of adjacent lands to which reference has been made.

Mr. Duck's appraisal, upon which petitioners base their claim of value as of 1818, was based on his conclusion that by reason of the sales of land in the vicinity of the lands involved that had taken place in the years immediately preceding the appraisal date, and the

unquestioned heavy demand in 1818, that there would be a continuing demand at prices in keeping with the prices paid by settlers during these previous years for lands in this section of the country, and, particularly, for the lands under consideration. In view of the character and location of the land under consideration, he was of the opinion that the evidence of these previous sales warranted a conclusion that 90% of the acreage involved could be sold in small tracts over a period of 20 years for the average price of $4.00 per acre and that 10% of the land could be sold at $2.00 per acre; and based on this assumption that the value in 1818 was $1.8763 per acre. We think the assumption of re-sale of 90% at $4.00 per acre is unwarranted.

Mr. Starrett, defendant's appraiser, although having knowledge of the same land sales, considered by plaintiffs' appraiser, and having knowledge of the same conditions, generally, as considered by plaintiffs' appraiser, seemingly gave more consideration to economic conditions generally, including the then available money in circulation and the receipts of the United States Treasurer. He predicted a "slump" in land sales and a resale of only three-fourths of the lands involved over a period of 20 years to actual settlers at only $1.10 per acre with 25% of the lands unsaleable. It is difficult to understand how the defendant's appraiser could have concluded under all the facts in evidence that any great percentage of the land involved would be unsaleable, or that much would not be saleable over a period of years to settlers for homes for a larger price on the average than the $1.10,

which he makes a basis of his 1818 value. The subsequent experience of the Government in the sale of the land involved confirms the viewpoint of petitioners' appraiser, that the entire tract would be in demand at a greater per-acre value than that assumed by defendant's appraiser. The evidence was that more than ninety per cent of the land was sold within a period of twenty years and that less than one-half of one per cent of the land was unsaleable.

Taking into consideration the evidence of sales as shown by the Findings of Fact, the large amount of public lands available for sale, the population of the country as a whole, the economic conditions at the time involved and the large tract involved, it is the opinion of the Commission that the land under consideration at the time in question had a reasonable market value of 75¢ per acre; that is, that the tract of 7,036,000 acres on October 6, 1818 had the value of $5,277,000; and that this was so far in excess of the amount paid the Indians therefor as to make the consideration they received unconscionable.

Area 99 involved herein, was acquired by the United States by treaties made on October 2, October 3, and October 6, 1818, from its recognized Indian owners, the Miamis, the Weas and the Delawares. All parties in these consolidated dockets agreed that the value of said land should be determined as of the date of the Miami Treaty, October 6, 1818, and that this determination would be binding upon the petitioners representing the Weas and the Delawares, that is, the petitioners in Docket Nos. 314 and 337; however, the defendant in its answers in Docket Nos. 314 and 337 have set up the contention that the petitioners

in said docket numbers have not the capacity to make the claims being asserted therein. The issues made by said contention of the defendant were not submitted in this consolidated case, but, that issue as made in Docket 314 is considered in the consolidated hearing of Docket Nos. 65, 66, 99, 289, 313 and 314, and it was held by this Commission that "the claims presented by the Peoria Tribe of Indians of Oklahoma, the corporation, for and on behalf of the Peoria, Wea, Kaskaskia and Piankeshaw" would be within the jurisdiction of the Commission "upon proof that there are existing members, or descendants of members, of the tribes for which claims are so made." There has been no further hearing had on the issue thus presented in Docket Nos. 314, et al., and, therefore, the Commission is not in a position at this time to give consideration to the matter of an award to the petitioners in Docket No. 314.

No consideration of the same issue raised by the defendant in Docket No. 337 has been made and, therefore, this Commission is not in a position at this time to consider the matter of an award to the petitioners in Docket No. 337.

The defendant does not controvert the right of the petitioners in Docket Nos. 67 and 124 to bring the actions they have brought and thus an award can be made in Docket Nos. 67 and 124 and it is made in an Interlocutory Order of even date herewith.

Attention might also be called to the fact that while the petitioners and the defendant in Docket Nos. 67 and 314 agree that the

consideration provided by the Miami Treaty of October 6, 1818 was $280,500, and the parties in said docket numbers agree that this amount was received by the Miamis (Petitioners' proposed finding 38; Defendant's proposed finding 20), the amount received by the Weas and the Delawares is not in evidence.

Edgar E. Witt
Chief Commissioner

We concur in the above:

Louis J. O'Marr
Associate Commissioner

Wm. M. Holt
Associate Commissioner