

BEFORE THE INDIAN CLAIMS COMMISSION

THE OMAHA TRIBE OF NEBRASKA, AND AMOS LAMSON,)
CHARLES J. SPRINGER, JOHN F. TURNER AND)
HENRY F. FREEMONT, EX REL. OMAHA TRIBE OF)
NEBRASKA, OMAHA TRIBE AND NATION INCLUDING)
ALL GROUPS, BANDS AND MEMBERS OF SAID OMAHA)
TRIBE AND NATION.)

Plaintiffs,)

v.)

THE UNITED STATES OF AMERICA)

Defendant.)

Dockets No. 225-A
No. 225-B, No. 225-C,
No. 225-D, to be known
as No. 225 Consolidated

Decided: February 11, 1960

FINDINGS OF FACT IN THE MATTER OF THE REQUEST OF THE
PLAINTIFFS AND DEFENDANT IN THE ABOVE ENTITLED DOCKET
NUMBERS 225-A, 225-B, 225-C, and 225-D FOR APPROVAL
OF A PROPOSED COMPROMISE SETTLEMENT HERETOFORE FILED
WITH THE COMMISSION.

1. The Plaintiff, in each of the above entitled docket numbers, the Omaha Tribe of Nebraska, is a recognized Indian Tribe organized under a constitution and by-laws ratified by the tribe on February 15, 1936, and approved by the Secretary of the Interior on March 30, 1936 pursuant to the Indian Reorganization Act. The membership of the Omaha Tribe of Nebraska is prescribed (1) by the official census roll of the Omaha Tribe of Nebraska as of April 1, 1934, with the supplement thereto of January 1, 1935, and (2) by Article II of its Constitution and By Laws, and (3) by such ordinance as shall be hereafter enacted by the Tribal Council, subject to review by the Secretary of the Interior. As of the latest count, completed in July 1955, there were 2,223 enrolled members of the Omaha Tribe of Nebraska. Each of these members is in part

descended from one or more members of the aboriginal Omaha Tribe.

The Plaintiffs, in each of the above entitled Docket numbers, Amos Lamson, Charles J. Springer, John F. Turner, and Henry F. Fremont, are, each of them, Omaha Indians, enrolled members of the Omaha Tribe of Nebraska and former members of the Tribal Council of the Omaha Tribe of Nebraska. Each has brought the claims asserted in the Petition as the representative of all the descendants of members of the aboriginal Omaha Tribe. Some of these descendants of the Omaha Tribe or the Omaha Tribe and Nation are not included among the 2,223 Omaha Indians presently actually enrolled in the records of the Omaha Tribe of Nebraska, but each one of them is entitled to become a member of said Omaha Tribe of Nebraska, and all of them are represented by the Omaha Tribe of Nebraska in these cases and are entitled to share in all the benefits of any judgment or judgments which may be entered in favor of said Plaintiffs, the Omaha Tribe of Nebraska.

That the individual named plaintiffs in their Ex. Relation capacity appeared in the above numbered Dockets as party plaintiffs to make sure that all the descendants of the aboriginal Omaha tribe or Nation, how ever described or named, would be represented in said cases and that their claims would be prosecuted and fully protected.

2. On August 9th, 1951 the Plaintiffs (also known as petitioners) timely filed a complaint, Docket No. 225, with this Commission setting forth in five counts its claims against the defendant. These claims were based on grounds permitted by the Indian Claims Commission Act 1946.

Previous to the filing of the complaint Attorneys James E. Curry, Jay H. Hoag, Clarence G. Lindquist, David Cobb, and I. S. Weissbrodt, were engaged as Counsel by the Plaintiffs to represent them in prosecuting their claims against the Defendant. Contracts of employment of these attorneys were duly approved by the Secretary of the Interior as required by law.

In 1954 the contract of employment was modified among other changes by adding the name of attorney Abe W. Weissbrodt as additional counsel, and the dropping of Attorney James E. Curry as active counsel. Mr. Curry still retained an interest in the contingent attorney fee to be allowed in the matter if the plaintiffs were successful in winning their cases. This modified contract was also duly approved by the Secretary of the Interior and the attorneys approved in that contract entered upon their duties and ever since have been and now are active counsel for said Plaintiffs.

3. In October 1953 the Commission issued an order substituting the petitions in Docket No's. 225-A, 225-F, and 225-C for the petition in Docket Number 225. The same order dismissed the petition in Docket No. 225.

An order entered by the Commission on November 19, 1959 in Docket No. 225-C directed that Plaintiff's claim for an accounting "shall be removed from the petition in said cause of action and shall be set up in a separate amended petition which shall be given Docket No. 225-D * * *".

By this order Docket 225-D was set up as a separate Docket claim.

4. The complaint in Docket No. 225-A states the claim for fair compensation for the aboriginal homelands of the Omaha Tribe of Indians in Northeastern Nebraska. It was claimed these lands were taken by the Defendant without compensation.

The case was fully litigated before the Commission and resulted in a final determination in favor of the Plaintiffs. The Commission awarded plaintiffs the net sum of \$2,760,833.86 less offsets, if any, in favor of the Defendant.

The Defendant appealed from the final decision to the Court of Claims and that appeal was pending on the day of the hearing on the Compromise settlement before this Commission.

The Commission issued a temporary order stating that it would approve the proposed compromise settlement and thereupon the Court of Claims dismissed the appeal in Docket No. 225-A. The files in said matter have been returned to the Commission and it now has jurisdiction to approve a compromise settlement of said Claims.

5. Docket No. 225-B pertains to the claim of Plaintiffs for fair compensation for a portion of the Omaha Tribal reservation which was ceded by the Tribe in 1865 to the defendant to be used as a reservation for Winnebago Tribe of Indians.

The area involved was a little less than 100,000 acres and the compensation paid for the land by the Defendant was \$50,000 in cash and provisions of the estimated value of \$50,000. Thus, compensation for the land taken was roughly \$1.00 per acre.

Plaintiffs claimed the compensation was grossly inadequate. The Defendant denies the basic allegations of the Plaintiffs.

This docket number has not been tried by the Commission.

6. Docket No. 225-C. The claim in essence is a claim that, prior to the time when the Tribe in 1854, ceded its aboriginal lands in Nebraska to the United States, many immigrants, white persons, settlers, coursed and traveled through the land, some settling on the aboriginal homelands of the tribe for periods of time, and caused damage to the land, cutting trees, killing buffalo, et cetera, and the basic claim in that case is a claim for compensation for trespass and wrongs that these white people, the settlers and immigrants, did to the aboriginal homelands and the products thereof, of the Omaha Tribe.

The Plaintiffs alleged that the said damage was done with the knowledge and participation of the Defendant.

The Defendant has not filed an answer to the complaint in this Docket number and hearing on this claim has not been held.

7. Docket 225-D is a claim for a general accounting with reference to the handling and disposition by the Defendant of all the funds and property of the Omaha Tribe from the beginning of claimed guardianship relationship with the Omaha Tribe of Indians down to the date of the filing of this claim with the Commission.

No separate answer has been filed by Defendant to this claim. It remains undisposed of at this time.

8. On the 22nd of December 1959 Plaintiffs and Defendant through their respective counsel filed a "Stipulation of Settlement" of Dockets No. 225-A, 225-B, 225-C, and 225-D with the Commission and requested approval of the proposed compromise settlement. That said "Stipulation

of Settlement" is in the words and figures as follows: to-wit:

BEFORE THE INDIAN CLAIMS COMMISSION

THE OMAHA TRIBE OF NEBRASKA, ET AL.,)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 225-A, No. 225-B,
)	No. 225-C and No. 225-D.
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

STIPULATION OF SETTLEMENT

It is hereby stipulated between counsel for the parties in each and all the above-numbered dockets, that each and all the claims and all the litigation in the above-numbered dockets shall be settled and finally disposed of by entry of final judgment, as follows:

1. The final judgment of the Indians Claims Commission entered in Docket No. 225-A on the 6th day of May, 1959, shall be set aside.

2. Docket Nos. 225-A, 225-B, 225-C, and 225-D shall be consolidated for all purposes including judgment as Docket No. 225 Consolidated.

3. Final judgment shall be entered by the Indian Claims Commission against the United States of America and in favor of the Omaha Tribe of Nebraska in Docket No. 225 Consolidated, in the net amount of \$2,900,000.00.

4. Entry of final judgment on this basis shall finally dispose of all rights, claims or demands which plaintiffs in said four numbered dockets have asserted, or could have asserted, with respect to the subject matters of said cases, and plaintiffs shall be barred thereby from asserting any such rights, claims, or demands against defendant in any other or future action or actions.

5. Entry of final judgment on this basis shall finally dispose of all rights, claims, demands, payments on the claim, counterclaims or offsets which the defendant has asserted or

could have asserted against plaintiffs under the provisions of Section 2 of the Indian Claims Commission Act (c. 515, 60 Stat. 1049) for the period up to and including June 30, 1958, and the defendant shall be barred thereby from asserting any said rights, claims, demands, payments on the claim, counterclaims or offsets against plaintiffs in any other or future action or actions. The bar against other or future claims by the defendant for offsets, gratuities and counterclaims allowable under Section 2 of the Indian Claims Commission Act shall not apply to those which have accrued or may accrue subsequent to June 30, 1958.

6. The final judgment entered by the Indian Claims Commission, and the dismissal of the appeal by the Court of Claims pursuant to this stipulation, shall be by way of compromise and settlement of all the claims and litigation in said four numbered dockets before the Indian Claims Commission and in Appeal Docket No. 6-59 before the United States Court of Claims and shall not be construed as an admission of either party, for the purpose of precedent or argument in any other case.

7. The final judgment entered pursuant to this stipulation shall constitute a final determination by the Commission of all the claims and all the litigation in said four numbered dockets, and shall become final on the day it is entered, the parties hereto waiving any right to appeal from, or otherwise seek review of, such determination.

8. Counsel for the parties shall execute and file with the Commission a joint motion for entry of final judgment.

9. Defendant further agrees that if the Commission accepts this stipulation of settlement in the manner set forth below, it will dismiss the appeal (Appeal Docket No. 6-59) filed by it in the United States Court of Claims, from the final determination entered by the Commission May 6, 1959, in Docket No. 225-A.

10. It is agreed that if the stipulation of settlement is acceptable to the Commission, the Commission may enter an order which accepts this stipulation of settlement; and may set aside the final determination made by the Commission on May 6, 1959, in Docket No. 225-A, and may enter final judgment for the Omaha Tribe of Nebraska in Docket No. 225 Consolidated, in the net sum of \$2,900,000.00 on the basis of this stipulation of settlement, forthwith after the furnishing to the Commission of a certified copy of the order of dismissal of the said appeal (Appeal Docket No. 6-59) in the United States Court of Claims.

Respectfully submitted,

I. S. Weissbrodt
I. S. WEISSBRODT

Attorney of Record for Plaintiffs
in Docket Nos. 225-A, 225-B, 225-C
and 225-D.

Perry W. Morton
PERRY W. MORTON

Assistant Attorney General

Ralph A. Barney
RALPH A. BARNEY

Attorney for the Defendant

That subsequent to the filing of said "Stipulation of Settlement" the tribal chairman of the Omaha Tribe of Nebraska, pursuant to a resolution of the Tribal Council of said Tribe authorizing him to sign said stipulation, has signed a duplicate copy of said stipulation, which has been filed as exhibits No. A-2 and A-5.

The contract attorneys representing said Plaintiffs have either signed the original stipulation or duplicate copies thereof. The signed copies are now on file with the Commission as exhibits No. A-7, A-8, and A-9.

Duplicate copies of said stipulation were signed by the individual Plaintiffs Amos Lawson, Charles J. Springer, John F. Turner, and Henry F. Freemont (Ex. A-6).

All the minutes of Tribal Council meetings, resolutions adopted therein, and necessary signatures to the proper execution of the exhibits were duly authenticated.

9. In response to requests by Counsel for Plaintiffs and this Commission, the Acting Commissioner of the Bureau of Indian Affairs

prepared and delivered a letter to Counsel for the Indians affirmatively approving the proposed compromise settlement with the Omaha Indians.

A copy of the letter follows:

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs
Washington 25, D. C.

Cobb and Weissbrodt
Attorneys at Law
1908 Q Street NW
Washington 9, D. C.

Gentlemen:

After further consideration of your letter of November 19, 1959, and the report to the Omaha Tribe attached thereto, and the additional documents furnished to this office by you, we wish to supplement those statements contained in our letter of December 17, 1959, with further comments on the proposed settlement of the claims of the Omaha Tribe of Indians filed as Dockets Nos. 225-A, B, C, and D in the Indian Claims Commission and Appeal No. 6-59 in the Court of Claims.

The fullness and completeness of the report which you presented to the tribal council on October 30, 1959, and at the general tribal meeting on October 31, 1959, are worthy of our commendation. It is our understanding that during the general tribal meeting lasting some five hours, there was a full and free discussion of the proposed final settlement. We understand, furthermore, that at the conclusion of the meeting a vote was taken, the result of which was unanimous approval of the proposed final settlement and confirmation of the prior affirmative action of the tribal council in approving the settlement.

You have informally advised us that on January 8, 1960, you attended a meeting of the Omaha Tribal Council at which time it reaffirmed and ratified the proposed settlement and also authorized its chairman to sign and execute a copy of the "Stipulation of Settlement" filed with the Indian Claims Commission.

You have furnished this office a certified, executed copy of the minutes of the said meeting of the tribal council and a certified copy of the notice and call of the meeting, along

with a certified, executed copy of Resolution No. 6-60, adopted by the Omaha Tribal Council. You have also furnished us a certified copy of the approval of the "Stipulation of Settlement" which was signed by Alfred W. Gilpin, Chairman of the Omaha Tribal Council, and a certified copy of the approval of the "Stipulation of Settlement" which is signed by Amos Lamson, Charles J. Springer, John F. Turner, and Henry F. Freemont, members of the Omaha Tribe named as plaintiffs in a representative capacity in Dockets No. 225-A, B, C, and D.

We have again reviewed and considered carefully the statements contained in your report to the Omaha Tribal Council and general tribal meeting and the resolution adopted by the Omaha Tribal Council on November 30, 1959, the adoption of which was approved by unanimous vote of the Indians at the general tribal meeting. We have also reviewed the additional certified documents described above. In view of the statements contained in your report to the tribe, the actions of the Indians in approving the proposed settlement, and the record of documents before us, we hereby give approval to your entering into the stipulation of settlement which has been executed by you and the Assistant Attorney General, approved by the Indians, and filed with the Indian Claims Commission for compromise of the tribal claims involved in Dockets Nos. 225-A, B, C, and D before the Commission.

Sincerely yours,

A. Rex Lee
Acting Commissioner

10. A hearing on the proposed compromise settlement was held on the 13th of January, 1960 at which oral and documentary evidence was received. Counsel for the Plaintiffs and Defendant expressed their opinions that the proposed settlement was fair to both the Plaintiffs and Defendant and that it is the best settlement that could be had under the circumstances.

11. I. S. Weissbrodt, one of the attorneys for Plaintiffs, previous to the execution and filing of said "Stipulation of Settlement", met

with the Omaha Tribe and Nation members generally and specifically with members of record of the Omaha Tribe of Nebraska at a largely attended tribal mass meeting where he read to the tribal members the proposed compromise settlement and explained its meaning and how it affected their rights. He also read to them a special report which he had prepared and in which he discussed at length the provisions of the proposed compromise.

The attorney's statements were translated from English into the Omaha tribal tongue for the benefit of tribal members who did not understand the English language. After a full discussion, lasting many hours, a motion approving the compromise settlement was adopted by a unanimous vote.

Mr. Weissbrodt also attended several regularly called meetings of the Omaha Tribe of Nebraska's Tribal Council and at each of these meetings the compromise settlement was thoroughly discussed and analyzed. A written report was also presented to the Council giving a detailed explanation of the Compromise Settlement. A copy of this report was submitted to the Commission for its information but because it contained incidentally, some confidential material relating to Docket No. 138, a case which has not yet been determined, but involving the same plaintiffs as in the instant case, the Commission feels that it should not make this report a part of the files in these compromise proceedings.

12. Alfred W. Gilpin of Macy, Nebraska, testified that he was three-quarters Omaha Indian, 41 years old, and Chairman of the Omaha Tribal Council. He is a graduate of Flandreau Vocational High School, Flandreau, South Dakota, where he had one year of electronics; spent four years doing technical work with the meteorological wing of the Air Force

and had six months at Fort Monmouth studying radio wireless operations and teletype operations and repair. Upon discharge from the service he took a course in general business management in a business college in Omaha. A 50% service-connected permanent disability pension permits him to devote full time to the Omaha Tribal business. He speaks both English and Omaha.

About 35% of the members, which consisted of practically all those living on or near the reservation, and who were a representative group, were present at the council called to discuss settlement of these suits. All of them are familiar with the English language but about 35% do not speak it fluently. Anything discussed before the Tribe is always explained in English and re-emphasized in Omaha language, and at this meeting Mr. Gilpin participated in explaining the settlement terms to those present. Others discussing and explaining the terms in both English and Omaha were Lambert Walker, a full-blood Omaha and former Tribal Council member; Craig Woodhall and Morgan Stabler, full blood Omahas; Charles Wolf; Louis Sansouci, a full blood and present Tribal Council member; Gustavus White; a full blood Omaha and former Chairman of the Tribal Council.

Mr. Gilpin said the members inquired particularly as to how much money they were to receive and how much it amounted to per person; that they understood this was a settlement of all claims but that appearing in Docket No. 138, which involves Iowa claims; that fees and expenses would need be paid and that Congress might not authorize a division of that money. That the tribal Secretary and a few other members have "explained it to the smaller groups, from day to day." Mr. Gilpin is acquainted with all persons signing the documents relating to this settlement, and they participated in the tribal meeting; that he saw all but Charles J. Springer

Amos Lamson, John F. Turner and Henry F. Freemont sign them; that there is a faction group among the Omahas but that the members of that faction are in agreement with the others in respect to this settlement.

13. George Grant, of Macy, Nebraska, testified that he is a full-blood Omaha Indian, 53 years of age, a member of the tribal council since 1953, and is now Vice Chairman of the Council, and that he has an eighth grade education. He is acquainted with the individual petitioners, and knows they are tribal members. He was present at the meeting to discuss settlement; that he understands this settlement covers all but one claim, and is satisfied with the amount of money being paid; that the tribe understands the tribe as a whole will receive the money and that the members are satisfied. Among the Omaha Indians he knows of no one who does not approve the settlement.

He is a corn farmer and understands and speaks the English language.

14. Pauline Tyndall of Macy, Nebraska, testified she is a half-blood Omaha Indian; that she has an 11th grade education and is a graduate of the Omaha Vocational School for practical nursing. She does not speak Omaha but understands the language. She has been a member of the Omaha Tribal Council since 1957, and also presently serves as Secretary to that Council, and is also employed by the Association of American Indians' Affairs in New York, working in the regional office in the development program on the Omaha reservation.

Mrs. Tyndall testified that the Tribal Council and their attorney have been furnishing the tribal members with mimeographed reports at frequent intervals respecting the tribal claims; that the members are very well versed on each move and that the group attending the recent meeting was highly representative of the total people on the reservation

and were very well informed concerning the claims; that as Secretary she has received no protests, oral or written, respecting the settlement and knows of no one who would protest it. Mrs. Tyndall said the names appearing on the documents to which she had made certain certifications were attached in her presence.

15. During the course of the litigation of Docket No. 225-A the Commission heard at length witnesses and counsel for the plaintiffs and defendant who presented the claimed facts and the law respectively relating to the claim set forth in said Docket number. Incidental to those presentations there were references to the claims set forth in Docket numbers 225-B, 225-C, and 225-D. In No. 225-A the Commission found in favor of plaintiffs and entered judgment for \$2,735,833.86. In reaching that judgment the Commission received evidence on, and determined, the matter of offsets.

By reason of the foregoing the Commission became informed with respect to the merits of claims against the defendant set forth in the above entitled docket numbers.

16. The Compromise agreement has been carefully and fully presented to the members of the Omaha Tribe and Nation and the Omaha Tribe of Nebraska.

That the Omaha Tribe of Nebraska legally represents all of the Indians known as Omahas, irrespective of how they are described, and is entitled to have the final determination entered herein in its favor and

in its representation capacity.

That said compromise agreement under all the circumstances is fair and just to the plaintiffs and defendant.

Edgar E. Witt
Chief Commissioner

Wm. M. Holt
Associate Commissioner

Arthur V. Watkins
Associate Commissioner