

BEFORE THE INDIAN CLAIMS COMMISSION

THE CHEROKEE NATION OR TRIBE OF INDIANS,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 173
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Dated September 14, 1961

ADDITIONAL FINDINGS OF FACT

The Commission having heretofore made and entered its Findings of Fact, Opinion, and Interlocutory Order, in the above entitled docket, number 173, now makes these additional findings of fact:

47. Petitioner filed with the Commission on September 6, 1961, a motion for Final Judgment in the above entitled case, based upon a stipulation of the parties hereto agreeing that final judgment should be entered in behalf of the petitioners in the sum of \$14,789,476.15. The said stipulation also provided that the amount of \$1,432,084.17 of said judgment should not be subject to distribution from the Treasury of the United States until such time as the amount of offsets due the United States should be determined either by stipulation of the parties or through further litigation as the stipulation provides.

48. That said stipulation was made and entered into between the parties in this action on the 6th day of September, 1961, by and through Paul M. Niebell, Attorney of Record, for the Cherokee Nation or tribe of Indians in Oklahoma, petitioners, and for the United States by and through

Ramsey Clark, Assistant Attorney General, and Ralph A. Barney, an attorney in the Department of Justice in charge of the defense of this claim, and Clifford R. Stearns, also an attorney for the United States.

The stipulation reads in words and figures as follows to wit:

#### STIPULATION

Counsel for the parties agree that final judgment shall be entered by the Indian Claims Commission in the above entitled cause in favor of the Cherokee Nation of Indians of the State of Oklahoma, petitioner, in the total amount of \$14,789,476.15, in accordance with the Interlocutory Decree of the Commission entered on April 3, 1961, and that neither party will appeal from said judgment.

It is further agreed that counsel for the Cherokee Nation shall sever its claim for additional compensation for the 2,121,928.74 acres from Docket No. 173, and present said claim in a separate petition to be filed in the Indian Claims Commission and to be described as Docket No. 173-A.

It is further agreed that the amount of \$1,432,084.17 of the \$14,789,476.15 judgment shall not be subject to disbursement from the Treasury of the United States until such time as the amount of offsets due the United States shall be determined either by stipulation of the parties or through further litigation, as herein provided.

It is further agreed that in the event the amount of offsets due the United States in Docket No. 173 are not settled by agreement and stipulation between the parties within 90 days from the date hereof, then the amount of such offsets properly due to the United States in Docket No. 173 shall be determined by the Indian Claims Commission (or on appeal as provided by law) in Docket No. 173-A, as herein provided.

It is further agreed that offsets may be considered from the date they would have been allowable to the United States if case No. 173-A had not been severed from Docket No. 173, and without regard to whether there is or is not a recovery by the Cherokee Nation in Docket No. 173-A. The purpose of this provision is to retain to the United States all rights to offsets which it would have had if Docket No. 173-A had not been severed.

The amount of offsets in Dockets numbered 173 and 173-A, whether determined by stipulation or by litigation, together with the accrued interest thereon during the time said sum or sums were on deposit in the Treasury of the United States,

shall be deducted from the \$1,432,084.17 withheld as aforesaid, and the amount or amounts of said offsets together with the interest accrued thereon at 4 percent per annum shall be returned to the credit of the United States immediately upon final determination of the amount or amounts of said offsets.

Dated this 6th day of September 1961.

THE CHEROKEE NATION OR TRIBE OF INDIANS  
Petitioners,

Approved: September 7, 1961

John A. Carver, Jr.  
Assistant Secretary of  
the Interior

Approved:

Frank J. Barry  
Solicitor, United States  
Department of the Interior

By: Paul M. Niebell  
Attorney of Record

THE UNITED STATES, defendant

By: Ramsey Clark  
Assistant Attorney General

Ralph A. Barney  
Attorney

Clifford R. Stearns,  
Attorney

49. That the said stipulation was approved for the Secretary of the Interior on September 7, 1961, by his duly authorized representative, John A. Carver, Jr., Assistant Secretary of the Interior, and Frank J. Barry, Solicitor of the Department of the Interior. That said approval was manifested by said officials through an endorsement of their names and signatures on the second page of said stipulation under the words "Approved September 7, 1961." That said approval by said Secretary of Interior was required by the terms of the contract of employment of the attorneys representing said petitioner (see Exhibit 2 herein), that said contract of employment was made and executed on the 7th day of July, 1958, with an expiration date five years thereafter; that on the date said stipulation was entered into said contract with said attorneys and said petitioner was in full force and effect.

50. That all the other contract attorneys to wit: Earl Boyd Pierce,

Dennis W. Bushyhead, and George E. Norvell (stipulation signed by Paul M. Niebell) approved of said stipulation (see Exhibit 7 herein).

51. That on July 1, 1948, a public notice was given to all duly enrolled Cherokee Indians by blood in Oklahoma of a meeting to be held to consider Cherokee Indian problems and their relations with the United States. That said public notice was in words and figures as follows to wit:

PUBLIC NOTICE

July 1, 1948

To All Duly Enrolled Cherokee Indians by Blood in Oklahoma.

Notice is hereby given to all duly enrolled Cherokee Indians by blood in Oklahoma that pursuant to authority and direction of the Commissioner of Indian Affairs, Washington, D. C., a meeting of all duly enrolled Cherokees by blood in Oklahoma will be held at the Auditorium, Northeastern State College, in the city of Tahlequah, Oklahoma on Friday, the 30th day of July, 1948, at 10:00 A.M.

The purposes of this meeting of the Cherokees will be:

1. TO DISCUSS, CONSIDER AND UNDERTAKE proper action to promote the general welfare of all Cherokees in Oklahoma; and, to discuss such other matters deemed appropriate by the convention.
2. To select a Standing Executive Committee to assist the tribal officials in all Cherokee matters.
3. To select an appropriate Attorney or Attorneys with whom the Cherokees by blood in Oklahoma will negotiate a contract to be approved by the Commissioner of Indian Affairs authorizing said Attorney or Attorneys to prepare, file and prosecute to a conclusion before the Indian Claims Commission, or other forum established by law, all legal claims of every kind, and character which the Cherokees by blood in Oklahoma have or claim to have against the Government of the United States.

J. B. Milam  
Principal Chief  
Of the Cherokee Nation

W. O. Roberts  
Superintendent  
Five Civilized Tribes

That the said W. O. Roberts, designated as Superintendent of the Five Civilized Tribes, was at that time Superintendent of the United States Indian Agency in the territory of Oklahoma, and the said W. O. Roberts had been duly authorized by his superiors in Washington to issue said call in conjunction with the representatives of the Cherokee Nation; that J. B. Milam was the duly and legally constituted principal chief of the Cherokee Nation at the time his signature was attached to said public notice and call for a meeting of the Cherokee Nation. That said notice was published in the county newspapers in each county represented in the old Cherokee Nation. Among these counties were Sequoyah, Adair, Mayes, Nowata, Rogers and Washington. News stories of the meeting were also carried in the papers of these counties as well as in the leading newspapers in the State of Oklahoma. These stories were published weeks before the meeting was to be held. In addition the meeting was also published by word of mouth from one Indian to another. The call of this meeting created great interest among the members of the Cherokee Nation. That pursuant to said call and notice a mass meeting or convention of said Cherokee Indians by blood in Oklahoma was held in the auditorium of the Northeastern State College in the city of Tahlequah, Oklahoma, on July 30, 1948, at 10:00 A.M. and continued thereafter until the business of said meeting or convention was completed. A large attendance of Cherokee Indians was reported to have been present at the meeting. At the said meeting a resolution was presented and duly adopted selecting a Standing Executive Committee to assist the Tribal Officials in all Cherokee matters. Members of the Executive Committee selected were: W. W. Keeler, Committeeman at large; C. C. Victory, Committeeman at large; Ben Smith representative

of the Delaware District; Miss Eldee Starr, representative of the Tahlequah District; J. B. Sixkiller, representative of the Flint District; Hill Stansill, representative of the Goingsnake District; William H. Peak, representative of the Sequoyah District; C. D. Harnage, representative of the Canadian District; Mrs. Amanda Bell, representative of the Saline District; Daniel Ross Coody, representative of the Illinois District; W. E. Sunday, representative of the Coo-wee-scoowee District, and O. H. P. Brewer, Vice Chairman. That each of the above named parties accepted said appointment and immediately began work as members of the said Committee. That said Committee reported its action with respect to selecting appropriate attorneys to prepare, file, and prosecute to a conclusion before the Indian Claims Commission or other forum established by law, all legal claims of any kind or character which the Cherokees by blood of Oklahoma have or claim to have against the Government of the United States. The attorneys named were: Earl B. Pierce, Dennis W. Bushyhead and George E. Norvell. A third resolution was presented to said meeting or convention and adopted, providing the powers of the Executive Committee for its future activities. The matter pertinent to the proceedings in behalf of said Indian tribe before this Commission is as follows:

"Further, the said Executive Committee shall be and is hereby empowered to exercise during recess any and all powers that this or any other assembly of the duly-enrolled Cherokee Indians by blood in Oklahoma, could rightfully do in regular convention assembled. Such Committee is hereby directed to adopt necessary by-laws, rules, and regulations which shall provide for the filling of vacancies thereon by the remaining members thereof, as such vacancies may, from time to time occur.

It shall advise with the Principal Chief of the Cherokee Nation, prepare and present suitable memorials and resolutions

to the Congress of the United States and to the President. It shall receive reports from the attorneys for the Cherokee people, and in the event of an offer of compromise and settlement of any claim now pending or hereafter to be filed on behalf of the Cherokees, it shall have the power to authorize such attorneys to accept or reject such offer or offers as the case may be."

52. That the said Executive Committee has continued in existence since its appointment in 1948 until the present time, and during said interim it has continued to carry out the duties and functions which were given it by said meeting or convention. That some of its members died during said period and others resigned, and the vacancies thus caused have been duly filled so that at all times there has been a majority of said committee available to carry out its duties and functions. That the members of said Executive Committee after said vacancies were filled consisted of the following named persons; Washie Mayes, Jesse Ballard, Andrew Wilcoxon, W. W. Keeler, Dr. Orange Starr, Mrs. T. L. Ballenger, Jesse Wofford, John Masters, Richard Chuculate, Judge J. B. Johnson, and C. C. Victory, Chairman. That said Executive Committee as named above was in existence and functioning at all times mentioned herein when negotiations were under way for the settlement by stipulation of the claims set forth in Docket No. 173, beginning immediately after this Commission made and entered its Order in said Docket No. 173, on April 3, 1961.

53. That Principal Chief J. B. Milam of the Cherokee Nation died prior to December 1, 1949, and that on December 1, William W. Keeler, sometimes known as W. W. Keeler, was appointed by President Truman to

served for a period of 4 years. That at the end of said period the Secretary of the Interior, acting under authority designated to him by the President, reappointed, on June 30, 1954, the said William W. Keeler to an indefinite term as Principal Chief of the said Cherokee Nation. That said William W. Keeler is now, and at all times mentioned since said date of December 1, 1949, has been the duly acting and qualified Principal Chief of the Cherokee Nation, and that the said William W. Keeler, sometimes known as W. W. Keeler, has been duly qualified and acting as a member of the Executive Committee of the Cherokee Nation at all times since his appointment in 1948.

54. That on the 22nd of July, 1961, the Executive Committee of the Cherokee Nation adopted the following resolution:

**RESOLUTION OF THE EXECUTIVE COMMITTEE OF THE CHEROKEE NATION**

BE IT HEREBY RESOLVED by the Executive Committee of the Cherokee Nation of Indians of Oklahoma, at its regularly called meeting pursuant to notice, held at Tahlequah, Oklahoma, on this 22nd day of July, 1961,

That the Cherokee Nation, acting through its duly authorized Executive Committee, hereby authorizes and directs its attorneys to accept on its behalf an offer in compromise to settle the matter of gratuity offsets claimed by the United States in the total amount of \$1,938,026.99 against the Cherokee Nation, as set forth in the summary report of the General Accounting Office, in Cherokee Nation v. United States, Docket No. 173, before the Indian Claims Commission, for the total sum of \$350,000.00 which amount shall be deducted from the judgment in that case in the amount of \$14,789,476.15; said offsets thus claimed by the United States and to be thus settled for the amount of \$350,000.00, cover all items disbursed by the United States which in anyway relate to the Cherokee Indians during the period from March 3, 1893 to June 30, 1956, and includes the amount of \$296,632.72 disbursed by the United States under the Oklahoma Indian Welfare Act of



June 26, 1936 (49 Stat. 1967), for the purchase of lands for rehabilitation purposes in the Cherokee Nation, and also includes all amounts disbursed under the soil and moisture conservation program of the United States.

Charles C. Victory  
Chairman

Marie L. Wadley  
Secretary

Dated: July 22, 1961

Approved:  
W. W. Keeler  
Principal Chief of the Cherokee Nation

That the Department of Justice, representing the defendant, refused to stipulate settlement as set forth in said resolution.

55. Principal Chief William W. Keeler of the Cherokee Nation called a mass meeting of the members of the Cherokee Nation to be held on July 22, 1961, at the Cherokee Baptist Assembly Grounds on Highway 62, six miles east of Tahlequah, Oklahoma. The said meeting was called for the purpose of discussing the Interlocutory Order of the Indian Claims Commission in Docket No. 173, dated April 3, 1961, and the efforts of the Executive Committee and the attorneys for said Cherokee Nation to settle said case by compromise. That there was a full discussion of the judgment or Order of the Indian Claims Commission and of the possibility of a compromise, and also as to whether or not there should be an appeal from said decision. It was announced at this meeting that the Executive Committee was against appeal from the said decision of the Indian Claims Commission, and wanted the attorneys to settle the matter of offsets and other related matters by compromise. All those who spoke at this meeting, including one of their attorneys and their Principal Chief urged that no appeal be taken from

the decision of the Indian Claims Commission but the case be settled by stipulation. It was estimated that approximately 1500 Cherokee Indians, approximately all full bloods, attended this mass meeting.

56. That another mass meeting of the members of the Cherokee Nation was held on September 2, 1961, at Tahlequah, Oklahoma. It was estimated that the attendance of the members of the Cherokee Nation at this meeting was about 3500. Again the matter of compromising the Cherokee claim as set forth in Docket No. 173, was fully discussed by several speakers, including their attorney, their Principal Chief, Governor Edmonson of Oklahoma, and Senator Mike Monroney of the same state. Again there was no objection to the proposal that the Cherokee Nation would not appeal from the decision of said Commission but were interested in having the matter settled by compromise.

57. That on the 6th day of September 1961, at a properly called meeting of the Executive Committee of the Cherokee Nation of Indians, a resolution was adopted by the Executive Committee with respect to a stipulation entered into on the 6th of September, 1961, in said Docket No. 173, which stipulation is now on file with said Commission and is being considered for approval at this time. The said resolution is as follows:

#### RESOLUTION

BE IT RESOLVED, that the Executive Committee of the Cherokee Nation or Tribe of Indians in Oklahoma, meeting in special session at Muskogee, Oklahoma, approve the terms of the stipulation entered into on the 6th day of September, 1961, in the Cherokee Outlet Case, Docket 173, pending before the Indian Claims Commission in Washington, D. C., which said stipulation was entered into by Paul M. Niebell, Attorney of Record for the Cherokee Nation or Tribe of Indians, petitioner, and the United States, Defendant, by Ramsey Clark, Assistant Attorney General, Ralph Barney, Attorney, and Clifford Stearns, Attorney, wherein the right of appeal was waived by both parties in said Docket 173.



















