

BEFORE THE INDIAN CLAIMS COMMISSION

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| THE MIAMI TRIBE OF OKLAHOMA, also known) | |
| as THE MIAMI TRIBE, et al.,) | |
|) | |
| Petitioners,) | |
|) | |
| v.) | Docket No. 76 |
|) | |
| THE UNITED STATES OF AMERICA,) | |
|) | |
| Defendant.) | |

Decided: November 21, 1961

Appearances:

Louis L. Rochmes and
Edwin A. Rothschild of
Sonnenschein, Lautmann,
Levinson, Rieser, Carlin
and Nath, Attorneys for
Petitioners

Francis J. Clary, with whom
was Mr. Assistant Attorney
General, Ramsey Clark

OPINION OF THE COMMISSION

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

The petition in this proceeding requests a general accounting stated in two counts. In Count I petitioner prays that defendant be required to make a complete accounting of all amounts received and expended for petitioners from the date of the first treaty, August 3, 1795, between the Miami Tribe and the defendant, and through nine additional treaties subsequently entered into by the parties hereto. Our findings this day

entered show conclusively that the defendant has made such an accounting which shows that the treaty and statutory provisions for payments and services have been complied with. Eleven General Accounting Office reports, which were received in evidence, supply the facts on which the findings were based. It is not necessary to detail them here. Petitioners do not dispute this evidence and have not offered any evidence on their own behalf.

Count II is based on the alleged duty of the defendant, by reason of said treaty and sundry statutory obligations as described in Count I, to disclose any and all facts on which claims may be asserted by petitioners under the Indian Claims Commission Act. It is asserted in the petition that no such disclosures have been made by the defendant and that said failure has hampered the petitioners in making an investigation which they have diligently tried to accomplish, so that they could obtain pertinent information on which they might base claims against the defendant. Petitioners then alleged that they are informed and believe that, in addition to the claims asserted in Count I of this petition and in other separate petitions filed by the petitioners herein, the facts in the possession of the United States, if revealed, would disclose,

(a) That the United States improperly patented allotments from petitioners' tribal lands.

(b) That the United States improperly disposed of petitioners' lands and property to individuals and groups not entitled thereto.

(c) That, through allotments of petitioners' lands and through failure or refusal to protect the rights and

interests of the allottees of said lands, the United States in effect deprived petitioners of tribal property without the payment of fair consideration or just compensation.

(d) That the United States, through the allotment program and otherwise, caused, suffered and permitted the lands of petitioners and the lands allotted to members and families of members of the Miami Tribe to be taken, ceded, leased, conveyed or otherwise disposed of, or injured or damaged, without payment of fair consideration or just compensation.

(e) That treaty obligations on the part of the United States to furnish goods and perform services for the Miami Tribe were not fulfilled.

(f) That Miami tribal funds and property were improperly diverted for the use and benefit of persons other than members of the Miami Tribe and were improvidently expended and administered. For example: Miami school funds, appropriated for the ostensible use of the Miami Tribe, were not used to educate the Miami Tribe; mills built with Miami funds were located at points inaccessible to the Miami Tribe.

(g) That trespasses against the persons and property of the Miami Tribe and of its members were caused, suffered and permitted by the United States.

(h) That agents of the United States converted funds and other property of the Miami Tribe and of its members.

(i) That lands held in trust by the United States for the use and benefit of the Miami Tribe and its members were sold or disposed of by the United States at less than the fair and reasonable value of said lands; that such lands were sold without competitive bidding and in violation of the treaty and statutory obligations of the United States; that petitioners were charged with unauthorized or excessive expenses of sale; that petitioners were otherwise deprived of the proceeds of sale to which petitioners were entitled.

(j) That the United States failed and refused to administer the property and affairs of the Miami Tribe in the interest of the tribe and the members thereof.

It should be noted that these allegations do not directly state that the defendant is guilty of said charges, but in effect it is asserted that if the defendant will affirmatively reveal facts in its possession

that such disclosures will furnish evidence which will establish the items named. In other words, the petitioners are really demanding that the defendant, in addition to making an accounting of all financial or monetary transactions connected with, or growing out of said treaties and statutes, search its files and records and furnish to the petitioners factual evidence which will enable them to state causes of action against it and prosecute them to a successful conclusion.

Petitioners concede as stated in Finding No. 5, that all records in which petitioners have an interest, have been made available to them for examination; that the defendant has not withheld any documents from the files of the government, which under the statutes are open for investigation; but on the other hand it has not done anything affirmative, so that it has become the task of the petitioners to find the documents, what they are, and so on.

In effect, petitioners are demanding that the defendant go far beyond the requirements of an ordinary accounting under treaties and statutes, and that it supply evidence on which petitioners can plead and sustain claims for breaches of said treaties and statutes, and for torts alleged to have been committed by it against them. At the same time they admittedly have no idea whether there has been a single breach or tort which they have not already incorporated into separate causes of action and previously filed and which are now pending with this Commission in other docket numbers.

Petitioners' rights under the statutory requirement that the United States give to the attorneys for all tribes or groups of Indians full and

free access to such records or documents as may be useful to said attorneys in the preparation of claims for filing with this Commission (60 Stat. 1049, Sec. 14), may be likened to those exercised in the courts through a bill of discovery. However, those bills are available only where the evidence sought is not otherwise available to petitioners, and even then they are granted only if the petitioners have so sufficiently described the material they seek that it can be identified and extracted from the records and depositories of defendant by officials in whose charge it may be, or by their employees. In the present instance any evidence possessed or controlled by defendant has been and is available to petitioners; nor can they describe any particular evidence they now seek sufficiently to permit its identification and extraction from defendant's records.

The selection of proper evidence to establish a breach of treaty or contract, to prove a tort, or possibly even to recognize a tort under some of the involved circumstances encountered in these Indian cases, calls for the exercise of legal training. Certainly specialized researchers would be necessary to go from department to department to follow the history of a possible tort, to assemble and synchronize the material. We do not find in Section 14 or in any other Section of the Indian Claims Commission Act a directive that Government furnish such services to the petitioners. On the contrary, Section 14 lends itself to the opposite construction. The Act declares there must be made available to petitioners' attorneys "full and free access to such letters, papers, documents, maps, or records as may be useful to said

attorneys in the preparation of any claim instituted hereunder, * * *." The selection and assembling of such materials is, we think, clearly in the nature of preparatory work. Petitioners are not to be hampered in their search. Admittedly, in the instant case they have not been.

That the work before this Commission is adversary in nature to a large extent and was so intended by Congress, is evidenced by the legislative history of the Act. General principles of law apply as is shown by the refusal of Congress to incorporate into the Indian Claims Commission Act a provision holding the Government to the strictest of fiduciary standards in every instance coming before us. Only where such standards are applicable under the general law and in a case where the facts justify it do they apply. Except to the express extent of making all records and data available to petitioners, we think the defendant owes the petitioners no greater duty in the preparation and presentation of their case than it would if the parties were ordinary litigants in any court of law.

To hold otherwise would place upon the defendant an additional and an unprecedented burden to the heavy one it now bears. We take judicial notice of the fact that at the present time, and for many years in the past, a whole section of the General Accounting Office staff consisting of approximately 80 persons has been and is now working on Indian Claims accounting made necessary by the Indian Claims Commission Act and previous jurisdictional acts authorizing the Court of Claims to adjudicate certain specific Indian claims against the United States. This work is necessarily confined to financial and

monetary matters growing out of the treaty and statutory relations between the United States and American Indian tribes from the early days of the republic down to the year 1946.

An additional ground upon which this petition should be dismissed has been set forth in our findings this day entered. It is based on the fact that the petitioners have numerous actions pending before this Commission which cover, among other things, the matters which are the subject of the instant petition, Docket No. 76. It is elementary in a situation such as this, that a judicial tribunal is justified in dismissing a case on the ground of multiplicity of actions covering the same subject matter.

An Order will be entered dismissing both counts of the petition.

Arthur V. Watkins
Chief Commissioner

We concur:

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner