

BEFORE THE INDIAN CLAIMS COMMISSION

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

FINDINGS OF FACT ON COMPROMISE SETTLEMENT
OF OFFSETS AND COUNTERCLAIMS DUE DEFENDANT

The Commission makes the following findings of fact:

1. On April 3, 1961, the Commission entered its Findings of Fact (Findings Nos. 1 through 46), Opinion and Interlocutory Order in Docket No. 173 (9 Ind. Cl. Comm. 162) in which the Cherokee Nation or Tribe of Indians was the petitioner. The interlocutory order provided in pertinent part as follows:

IT IS THEREFORE ORDERED AND ADJUDGED:

(a) That the parties may submit evidence of the value of the 2,121,928.74 acres of outlet lands in the reservations of other Indian tribes on the dates of taking thereof, or, if the petitioner so elects, its claim for additional compensation for aforesaid lands may be severed and filed in a separate petition to be described as Docket No. 173-A.

(b) That the petitioner Cherokee Nation shall have and recover of and from the defendant the sum of \$14,789,476.15, less such offsets, if any, as may be allowable under the Indian Claims Commission Act.

Pursuant to aforesaid order, the claim of petitioner referred to in section (a) thereof was presented in a petition filed on February 15, 1962, and assigned Docket number 173-A.

2. On September 6, 1961, a stipulation executed by the parties on that date was filed in Docket No. 173, agreeing that final judgment be entered on behalf of the Cherokee Nation in the sum of \$14,789,476.15, and providing that \$1,432,084.17 of said judgment should not be subject to distribution 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 in Docket No. 173-A. The stipulation was approved by the duly authorized officers of the Department of the Interior on September 7, 1961.

3. On September 14, 1961, the Commission entered its Findings of Fact (Findings Nos. 47 through 63) and Opinion in Docket No. 173 (9 Ind. Cl. Comm. 435) wherein the aforesaid stipulation was approved and a Final Judgment was entered for the Cherokee Tribe against the defendant in the sum of \$14,789,476.15 in accordance with the terms of said stipulation.

4. On May 22, 1963, the Cherokee Nation, petitioner, and the defendant filed a joint motion with the Commission in Docket No. 173-A for approval of the proposed settlement of offsets claimed by the United States, based upon a Stipulation attached to said motion and made and executed by Paul M. Niebell, Attorney of Record for the Cherokee Nation, petitioner, and Ramsey Clark, Assistant Attorney General and Ralph A. Barney and Clifford R. Stearns, Attorneys for defendant; that said Stipulation is set forth in words and figures as follows:

STIPULATION SETTLING THE AMOUNT OF OFFSETS
AND COUNTERCLAIMS DUE DEFENDANT.

A stipulation, executed by the parties on September 6, 1961, duly approved by the duly authorized officers of the

Department of the Interior on September 7, 1961, was filed in Cherokee Nation v. United States, Docket No. 173, and approved by the Indian Claims Commission in its Additional Findings of Fact and Opinion and Final Order of September 14, 1961, which provided in part as follows:

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.

After further negotiations the parties do hereby agree by way of compromise that the sum of \$425,000.00 shall represent

the total amount of offsets and counterclaims of whatsoever nature the United States has asserted or could have asserted against the Cherokee Nation, or the members thereof, for any and all items of offset and counterclaim set forth in the report of the General Accounting Office, dated October 26, 1961, in Re Cherokee Nation v. United States, Docket No. 173, before the Indian Claims Commission, which said sum of \$425,000.00, and the accrued interest thereon, in accordance with the terms of said stipulation of September 6, 1961, "shall be returned to the credit of the United States immediately upon final determination of the amount or amounts of said offsets," and the balance of said \$1,432,084.17 plus interest thereon not 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 shall thereafter be subject to disbursement by the Cherokee Nation and free from the restriction against such disbursement contained in said stipulation of September 6, 1961.

It is further stipulated and agreed that said \$425,000.00 shall include and represent any and all offsets and counterclaims of whatsoever nature for any and all items included in the report of the General Accounting Office of October 26, 1961, which the defendant, the United States, has asserted or could have asserted against the Cherokee Nation, and the members thereof, during the period March 3, 1893 to and through June 30, 1956; and the defendant agrees hereby that none of said offsets or counterclaims included in said General Accounting Office report shall ever be again asserted against the Cherokee Nation or any member thereof in any further litigation between them, and the United States does hereby expressly waive any rights hereafter to assert any of said offsets or counterclaims.

It is also stipulated that nothing contained herein shall bar the defendant from asserting in this or any future case offsets or counterclaims for items not appearing in the report of the General Accounting Office of October 26, 1961, including offsets or counterclaims arising out of expenditures or transactions occurring prior to March 3, 1893 or subsequent to June 30, 1956.

It is agreed that this stipulation shall be subject to the approval of the Commissioner of Indian Affairs and that counsel for the parties will execute and file with the Indian Claims Commission a joint motion for entry of an order pursuant to this stipulation allowing the United

States as offsets applicable to Docket No. 173 the sum of \$425,000 with accrued interest, which sum shall be returned to the credit of the United States as aforesaid immediately upon entry of said order.

THE CHEROKEE NATION, Plaintiff,

By Paul M. Niebell
Its Attorney of Record

THE UNITED STATES, Defendant,

By Ramsey Clark
RAMSEY CLARK
Assistant Attorney General

R. A. Barney
RALPH A. BARNEY
Attorney

Clifford R. Stearns
CLIFFORD R. STEARNS
Attorney

The execution of the aforesaid stipulation by Paul M. Niebell, Attorney of Record, has been approved by all the other contract attorneys representing the Cherokee Nation in a signed statement filed with the Commission on May 29, 1963.

5. The attorneys' contract of employment provides in pertinent part that the attorneys "shall not make any compromise, settlement or other adjustment of the matters in controversy, unless with the approval of the Commissioner of Indian Affairs and the Principal Chief and the Principal Chief and the Executive Committee of said nation and tribe."

6. That, as set forth in Findings 51 through 53, made in Docket No. 173 (9 Ind. Cl. Comm. 435, 438-442) which are adopted herein by reference, a Standing Executive Committee to assist the tribal officials in all Cherokee Nation matters was created and its members selected at a

general meeting or convention of the Cherokee Indians held on July 30, 1948. This committee, among other things, was empowered to authorize the attorneys for the Cherokees to accept or reject any offer of compromise and settlement of any claim pending or to be filed on behalf of the Cherokees.

That attached to the joint motion to settle offsets and marked "Petitioner's Compromise Exhibit A" and received in evidence, is a Resolution of the Executive Committee and the Principal Chief of the Cherokee Nation approving the said stipulation which provides as follows:

RESOLUTION OF THE EXECUTIVE COMMITTEE OF THE CHEROKEE NATION

BE IT HEREBY RESOLVED by the Executive Committee of the Cherokee Nation of Indians of the State of Oklahoma, at its regularly called meeting pursuant to notice, held at Muskogee, Oklahoma, on this 26 day of January, 1963,

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 \$1,432,084.17, set forth in a stipulation, dated September 6, 1961, entered into between its attorneys and the attorneys for the United States, and approved on September 7, 1961, by John A. Carver, Jr., Assistant Secretary of the Interior, and by Frank J. Barry, Solicitor, United States Department of the Interior, and filed in Cherokee Nation v. United States, Docket No. 173 before the Indian Claims Commission, for the total sum of \$425,000.00, which amount, together with interest accrued thereon, shall be deducted from the judgment funds in said case now on deposit in the Treasury of the United States, in accordance with the terms of said stipulation; said offsets thus claimed by the United States and to be thus settled for the amount of \$425,000.00, cover all items disbursed by the United States which in any way relate to the Cherokee Nation, or its members, during the period from March 3, 1893 to June 30, 1956, and includes the amounts 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.

/s/ C. C. Victory
Chairman

/s/ Marie L. Wadley
Secretary

/s/ W. W. Keeler
Principal Chief of the Cherokee Nation

7. Also attached to the joint motion to settle offsets, marked as "Petitioner's Compromise Exhibit B" and received in evidence, is a letter approving the stipulation settling offsets from John Crow, Acting Commissioner of Indian Affairs addressed to petitioner's attorney under date of March 4, 1963. The letter is as follows:

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
Washington 25, D. C.

Tribal Operations

March 4, 1963

Mr. Paul M. Niebell
Attorney and Counsellor at Law
1201 Nineteenth Street, N. W.
Washington 6, D. C.

Dear Mr. Niebell:

This is in response to your letter of February 28, 1963, transmitting to us a stipulation for settlement in the case of the Cherokee Nation, Indian Claims Commission Docket No. 173-A, together with a letter from the Department of Justice dated February 27, 1963, a copy of a resolution adopted by the Executive Committee of the Cherokee Nation on January 26, 1963, approving and the approval of the Principal Chief.

Claims in original Docket No. 173 were prosecuted under contract 14-20-650 No. 582, dated July 7, 1958, between the Cherokee Nation and Messrs. Dennis W. Bushyhead, George E. Norvell, Paul M. Niebell, and Earl Boyd Pierce which was approved by the Assistant Commissioner on October 30, 1958, for a period of five years beginning on December 31, 1958.

That contract provides in pertinent part that the attorneys "shall not make any compromise, settlement or other adjustment of the matters in controversy, unless with the approval of the Commissioner of Indian Affairs and the Principal Chief and the Executive Committee of said nation or tribe."

The letter of the Department of Justice dated February 27, 1963, states that if you execute the original and two copies of the stipulation and return them to the Department of Justice together with a written approval of the compromise settlement of the offsets by the Secretary of the Interior or his authorized representative the stipulation will then be presented to the Attorney General for approval.

The Indian Claims Commission issued an order on September 14, 1961, approving a compromise settlement in Docket No. 173 at \$14,789,476.15 subject to offsets as may be determined in Docket No. 173 within 90 days or as may be determined in Docket No. 173-A thereafter. The sum of \$1,432,084.17 of the settlement was not subject to disbursement until the amount of the offsets was deducted from it. As the funds covering the award began to accrue simple interest at the rate of 4% per annum from the time of deposit in the United States Treasury, it is agreed in the present stipulation that the amount of interest which would have accrued on the amount of the offsets from the same time will also be deducted. The present stipulation will release for disbursement the amount remaining from the \$1,432,084.17 plus interest, after deduction of the \$425,000.00 plus interest.

It is agreed in the stipulation also that the \$425,000.00 represents the total amount of offsets and counterclaims of whatever nature the United States had or could have asserted against the Cherokee Nation as set out in the report of the General Accounting Office dated October 26, 1961, covering the period March 3, 1893, to and including June 30, 1956.

In light of the terms of the stipulation, the statements in the letter of the Department of Justice dated February 27, 1963, the resolution of the Executive Committee adopted on January 26, 1963, approval by the Principal Chief, and the report of the General Accounting Office dated October 26, 1961, the stipulation of offsets as presented is believed

to be fair and just to the Cherokee Nation of Indians. Under authority delegated to me by Secretarial Order 2508, Amendment 52, dated November 16, 1962 (27 Fed. Reg. 11560), pursuant to 25 USC 81, the stipulation of offsets at \$425,000.00 in Indian Claims Commission Docket No. 173-A, is hereby approved.

In order that you may have the original of the letter of the Department of Justice dated February 27, 1963, for future use in the case, it is returned, copies having been made for our records.

Sincerely yours,

/s/ John O. Crow

Acting Commissioner

Enclosure

8. The attorneys for petitioner and the defendant state in their joint motion that they have been negotiating with a view of settling the defendant's claimed offsets since the interlocutory order was entered in Docket No. 173 on April 3, 1961, which, under the stipulation approved by the Commission on September 14, 1961, was deferred until settled by agreement or by litigation in this Docket No. 173-A. The attorneys further state they have finally agreed that \$425,000.00 is a fair and reasonable amount for settlement of offsets due the government and such settlement is fair and reasonable to both parties and recommend that the stipulation be approved by the Commission.

9. The amount of \$425,000.00 agreed upon by the parties is a compromise settlement of any and all offsets or counterclaims which the United States has asserted or could have asserted against the Cherokee Nation, and the members thereof, during the period March 3, 1893 to and through June 30, 1956. The \$425,000.00 and the accrued interest

thereon at 4 per cent per annum, in accordance with the stipulation of September 6, 1961, is to be deducted from the \$1,432,084.17 of the Cherokee Nation judgment fund withheld in the Treasury of the United States, and said sum returned to the credit of the United States immediately upon entry of the order approving the compromise settlement.

10. The Commission finds that the terms of the proposed compromise settlement of defendant's claimed offsets and counterclaims were fully understood, considered and approved by the Standing Executive Committee who held the delegated authority to approve such a compromise settlement on behalf of the Cherokee Nation.

We further find and conclude that the stipulation to compromise and settle offsets and counterclaims is fair and just to the Cherokee Nation of Indians and to the United States and said stipulation should be approved.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner