BEFORE THE INDIAN CLAIMS COMMISSION

THE MIAMI TRIBE OF OKLAHOMA	)	Docket No. 256
	)	consolidated with
THE MIAMI INDIANS OF INDIANA	)	Docket Nos. 124-D, E, and F
	)	
Petitioners,	)	
	)	
v.	)	
	)	
THE UNITED STATES OF AMERICA	)	
	)	
Defendant.	)	

Decided: Nov 29 1966

Appearances:
Edwin A. Rothschild and Louis L. Rochmes, Attorneys for Petitioners in Docket 256.
Albert C. Harker, Robert C. Bell, Jr., and Walter H. Maloney, Attorneys for Petitioners in Docket Nos. 124-D, E, and F.

W. Braxton Miller, with whom was Mr. Assistant Attorney General Edwin L. Weisl, Jr., Attorneys for Defendant.

OPINION OF THE COMMISSION

Chief Commissioner Watkins delivered the opinion of the Commission.

The Miami Indians of Indiana, petitioner in Dockets 124-D, E, and F, and the Miami Tribe of Oklahoma, petitioner in Docket 256, brought timely actions under the Indian Claims Commission Act, against the defendant, the United States, for compensation under the treaties of 1834, 1838, and 1840 wherein the Miami Tribe ceded several tracts of land to the United States. The Commission consolidated the two causes for trial by order dated December 19, 1958. The Commission decreed in its Interlocutory Order of December 18, 1964, that the petitioners jointly as representatives of the Miami Tribe as the same existed as of the effective dates of the treaties in issues, recover the sum of $773,131.25, less offsets, if any, allowable under the Indian Claims Commission Act. However, this decision

did not include any recovery under the 1840 treaty. Respecting the 1840 treaty, the Commission found that the Miami Tribe received consideration of $478,027.83 in cash and 324,796.88 acres of land in Kansas. Inasmuch as the issue as to whether the consideration was unconscionable could not be determined until the Kansas lands were valued, the Commission ordered that the case proceed with the presentation of evidence in relation to the fair market value of the 324,796.88 acres of Kansas land received by the Miami Tribe as consideration under the 1840 treaty and the proper date of evaluation of said lands.

Subsequently, the two petitioners herein entered into negotiations with the defendant, the United States of America, to compromise and settle this case. Both petitioners agreed to accept $1,373,000.00 as a net final award for recovery under the three treaties mentioned above. All parties concurred in the valuation of the Kansas lands at $162,398.44 which sum was one of the factors in the compromise negotiations resulting in the agreement on a final net award of $1,373,000.00 in favor of both petitioners herein as representatives of the Miami Tribe as the same existed as of the effective dates of the 1834, 1838 and 1840 treaties.

During the settlement negotiations petitioner in Dockets 124-D, E, and F asserted that the value of the Kansas land should not be in any way chargeable to them in arriving at the award which they would receive. The reason for this being that since this Commission and the Court of Claims had ruled in a previous case that the Miami Indians of Indiana had no interest in the Kansas land in 1854, any award received by them under the 1840 treaty should exclude the Indiana Miami from being charged with this Kansas land as consideration. Miami Tribe of Oklahoma v. United States, 150 Ct. Cl. 725. Petitioner in Docket No. 256 claimed that the

full value of the Kansas land be included in arriving at a final net award to both petitioners as representatives of the Miami Tribe as the same existed at the effective date of the 1840 treaty.

A hearing was held before the Commission July 6, 1966, wherein the above settlement negotiations were discussed. It was determined at that hearing that,

> By agreement of the parties, counsel for Petitioners in Dockets 124-D, E, and F will file on or before July 15, 1966, their motion with respect to apportionment of any final award entered in the consolidated dockets as between the petitioners in Dockets 124-D, E, and F and the Petitioner in Docket 256. (Tr. p. 3)

Accordingly, on July 15, 1966, petitioners in Dockets 124-D, E, and F, filed a motion "That consideration for Kansas lands be charged solely against the recovery of the Miami Tribe of Oklahoma." Briefs and Reply Briefs were filed thereafter by both petitioners. The interests of the defendant are not herein involved.

The substance of the arguments of petitioner in Dockets 124-D, E, and F in support of the above motion as set forth in their brief is that the Miami Indians of Indiana had no interest in the Kansas land which this Commission has ruled was part of the consideration for the 1840 treaty, and that since the Miamis of Indiana received no benefit from this consideration, a denial of this motion "*** will create a gross inequity in that it will take some of the money that belongs to the Miami Indians of Indiana and give it without consideration to the Miami Tribe of Oklahoma." (Supplement to Reply Brief, p. 2) Petitioner in Dockets 124-D, E, and F further requests in its "Supplement to Reply Brief" that the Commission find that the 1854 Treaty amended the 1840 Treaty.

The argument of petitioner in Docket 256 in opposing the granting of the motion is that,

> "*** Unless the Commission changes its views, there will be no separate 'recovery' by 'the Miami Tribe of Oklahoma.' The Oklahoma Tribe, like the Indiana Miami, merely represent the real beneficiary of the judgment: the Miami Tribe as it existed in 1840. Participation in that judgment will presumably be determined by Congress and, if pending legislation is any criterion, it will be shared equally by qualified descendants of the original Miami Tribe without regard to their present residence or organizational affiliation." (Brief, p. 2)

Petitioner in Docket 256 also challenges the claim that a denial of the above motion will be inequitable to the Indiana Miamis. On page 9 of the brief, petitioner in Docket 256 says:

> "*** many of the ancestors of the Indian/a/ Miami received private and personal grants of land and money for every tribal cession from 1818 to 1840 ***. If distinctions are to be made between descendants of the 1840 Miami tribal members, it would be more appropriate to charge the Indiana Miami with the value of these private grants."

In its brief, Petitioner in Docket No. 256 has implied that it is the duty of Congress rather than the Commission to determine how the award in the present case is to be shared by the two petitioners herein. We think this view is correct.

It has long been recognized in Indian Claims litigation that,

> The Government's jurisdiction over Indian Tribal affairs, including their landed and monetary estate, is plenary and exclusive. It is for Congress and Congress alone to determine how their lands shall be held or divided, and how their tribal Indian funds shall be apportioned among them. (McCalib v. United States, 83 C. Cls. 79, 85)

In The Peoria Tribe of Indians of Oklahoma v. The United States, 169 C. Cls. 1009 (1965), a case similar to the present one, a petition was filed on behalf of the Wea Nation by the Peoria Tribe of Indians of

Oklahoma. The Court of Claims denied the request of the appellant that the award be made "simply to the Peoria Tribe of Indians of Oklahoma, without more", rather than to the Peoria Tribe of Indians of Oklahoma on behalf of the Wea Nation as held by the Commission. The Court went on to say:

> How the award is to be paid and precisely who can participate in an award to the Peoria Tribe on behalf of the Wea Nation are questions for Congressional and administrative determination. *** We do not decide whether or not the Treaty of May 30, 1854, supra, made the consolidated Peoria Tribe the full and only successor to claims of the Wea Nation arising out of events prior to that treaty; nor do we decide, on the other hand, that only descendants of Weas can benefit from the award in this case. These and like issues we leave open for decision by the legislative and executive branches. (Emphasis supplied)

The Court of Claims most recent pronouncement on this point was in The Confederated Tribes of the Warm Springs Reservation of Oregon v. The United States, Appeal No. 2-64, decided October 14, 1966 (slip opinion, p. 22), wherein "The Commission allowed the appellant to recover not as the successor in interest to, but on behalf of, the tribal entities signatory to the treaty of 1855." The Court said:

> *** To whose benefit any award might inure is not decided by any phrasing of the capacity to sue. How the award is to be paid and precisely who can participate in the award are questions, not for this court or the Commission, but for Congressional and administrative determination. (Emphasis supplied)

The Court then lists the Peoria and McCalib cases as authority for this statement.

We believe that the granting of the motion before us would be usurping the Congressional prerogative. For all we know, there may be

other descendants of the original Miami Tribe who are not numbered among either the Miamis of Oklahoma or the Miamis of Indiana who could benefit from the award if Congress determined to make a per capita distribution of the award. Nor do we know whether or not every member of the Indiana or Oklahoma Miami groups are descendants of the Miami Tribe as it existed in 1840.

The motion of Petitioners in Docket Nos. 124-D, E, and F seems to presuppose that the two petitioners herein have separate causes of action under the 1840 Treaty. This is not true. There was only one Miami Tribe with whom the United States negotiated the 1840 Treaty. Hence, the cause of action arising because of that treaty accrued to the benefit of the Miami Tribe as the same existed as of the effective date of the 1840 Treaty. However, this original Miami Tribe does not exist today and the Commission having determined that neither of the two petitioners herein is the full successor in interest to the original Miami Tribe insofar as the 1840 Treaty is concerned, the two petitioners herein, both having descendants of the original Miami Tribe in their respective groups, appear before the Commission in a representative capacity on behalf of the original Miami Tribe which made the 1840 Treaty with the United States. For this reason the Commission, in its Interlocutory Order of December 18, 1964, made the award under the 1834 and 1838 treaties to:

> ***the Miami Tribes of Oklahoma, petitioner in Docket No. 256 and the Miami Indians of Indiana, petitioner in Dockets 124-D, 124-E and 124-F, jointly as representatives of the Miami Tribe as the same existed as of the effective dates of the above treaties, ***

A recovery under the 1840 Treaty or a net recovery under all three treaties should be awarded in the same manner with the real beneficiary being the original Miami Tribe. This does not allow a separate recovery for either of the two petitioners herein which, in essence, would be the practical effect of granting the present motion. Following the rule in Minnesota Chippewa Tribe, et al., v. United States, 161 Ct. Cls. 258, 271, we believe requires a single award to the present day entity or entities on behalf of the original tribe.

Counsel for Petitioner in Dockets 124-D, E, and F suggests that the 1854 Treaty was part of the 1840 Treaty, and thus has requested that the Commission find that the 1840 Treaty was amended by the 1854 Treaty. It may be true, as has been suggested, that the seeds of division in the Miami Tribe were sown by the 1840 Treaty and matured under the 1854 Treaty. However, the fact remains that under the 1840 Treaty the United States negotiated with only one entity, the Miami Tribe, and that the 1840 Treaty itself was indivisible. In rejecting the argument that the Kansas land was not part of the consideration for the 1840 cession, we said:

> *** The 1840 land cession, the removal west, and the lands granted the Miamis in Kansas were all part of the same transaction and cannot be separated as petitioners have tried to do. *** (Miami Tribe of Oklahoma v. United States, 14 Ind. Cl. Comm. 375, 466)

The subsequent division of the Miami Tribe does not change the present suit from a representative one into one where both groups can sue in their own behalf, insofar as the 1840 Treaty is concerned.

Petitioners in Dockets 124-D, E, and F contend that equity demands a granting of this motion. We do not agree.

Under the 1840 Treaty, the Miami Tribe ceded their remaining lands in Indiana to the United States and received in return consideration in the form of money and a tract of land in Kansas. In addition to ceding the lands, the Miami Tribe agreed "*** that the Miami Tribe of Indians shall remove to the country assigned them west of the Mississippi, within five years from this date: ***." (7 Stat. 583) The background of the 1840 treaty negotiations, as well as earlier treaties, makes it clear that having the Miami tribe move west was as important to the United States as the land cession. For this reason we said, in rejecting the arguments that the 1840 treaty was divisible and that the Kansas land was not part of the consideration for the 1840 Miami cession but was rather consideration for the move west, that:

> "*** The 1840 land cession, the removal west, and the lands granted the Miamis in Kansas were all part of the same transaction and cannot be separated as petitioners have tried to do." (Miami Tribe of Oklahoma v. United States, 14 Ind. Cl. Comm. 375, 466)

However, the treaty also provided grants of land to certain individuals and their families with the understanding that they were not required under the treaty to move west with the tribe. Pursuant to the 1840 treaty, the Miami Tribe moved to Kansas in 1846. By the time of the 1854 treaty there were two groups of Miami Indians, the Miami Tribe which had moved to Kansas and the Miami who remained in Indiana, or who went to Kansas and later returned to Indiana. Petitioners in Dockets 124-D, E, and F are descendants of this latter group. The Kansas land, which was part of the consideration the Miami tribe received for the 1840 cession, was later ceded to the United States by both groups of Miamis under the 1854

treaty. In a previous case before this Commission, both petitioners herein had tried to recover additional compensation from the United States under the 1854 Treaty on the ground that the consideration received for the Kansas land was unconscionable. This claim was denied by the Commission but reversed by the Court of Claims which awarded the Miami Tribe of Oklahoma $195,723.70 as additional compensation for the Kansas land on the ground that the original consideration paid by the United States was unconscionable. The Miami Indians of Indiana had also appealed the Commission's decision denying them any interest in this Kansas land. On this issue, the Court of Claims said:

> "The Indian Claims Commission found that the Indiana Miami who had remained in or who returned to Indiana without tribal consent had separated themselves from the tribe, severed their tribal relationship, and lost all right to participate in the tribal assets, funds or property. This conclusion is correct." (Emphasis supplied).

The Court went on to say:

> "The Commission further found that these Miami united with the Miami who had tribal permission to remain in Indiana, and that this united group, by participating in and approving the Treaty of 1854, recognized and agreed to a division of the tribal assets in which they accepted certain money, benefits and consideration and waived their claims to other tribal assets, including the Kansas lands. The appellant Indiana Miami dispute this conclusion, on the grounds that the representatives of the Indiana Miami who participated in making the treaty were not authorized to cede the Kansas land. * * * The entire treaty, including the provision that the Indiana Miami were to have no share in the payments for the Kansas land, implying that they had no interest therein, was before the Indiana Miami council at that time, and they made no objection to the land cession or to the implication of their lack of any interest in those lands. We conclude therefore that the Commission was correct in its conclusion that the Indiana Miami are not entitled to share in the recovery for the Kansas lands." (Emphasis supplied.) (Miami Tribe of Oklahoma v. United States, 150 C. Cls. 725, 744, 745)

According to this ruling the Miamis who were required to remove west under the 1840 treaty, who either did not move to Kansas, or who moved there and later returned to Indiana, "*** lost all right to participate in the tribal assets, funds or property" which included the Kansas land. In this way their claims for participation were denied because they had not fulfilled the tribal obligation under the 1840 treaty. Furthermore, those Miamis who had tribal permission to remain in Indiana and were not under the 1840 treaty obligation to remove to Kansas, under the 1854 treaty,

> "*** recognized and agreed to a division of the tribal assets in which they accepted certain money, benefits and consideration and waived their claims to other tribal assets, including the Kansas lands." (Ibid)

Thus, either by agreement or a failure to observe their 1840 treaty obligation, the Miami Indians of Indiana gave up their right to the Kansas land which formed part of the consideration for the 1840 cession. On the other hand, the Miamis who removed to Kansas and suffered many disadvantages and hardships in so doing, reaped the benefits of the move in the form of the Kansas land.

With the above background in mind, how would the granting of the motion before the Commission affect the equities as between the two petitioners herein? In the earlier case before the Commission involving the 1854 treaty, the Miami Tribe of Oklahoma was given additional compensation of about $196,000 for the Kansas lands ceded in 1854 to the United States by the Miami Tribe. (Miami Tribe of Oklahoma, v. United States, supra, p. 745) The Indiana Miamis were not allowed to participate

in that award because they had received other benefits in lieu thereof, or had failed to fulfill their treaty obligation to move to Kansas. The failure to move itself, was a direct benefit to these Indians, because they did not have to suffer the burdens of moving or staying on the Kansas land. The effect of granting the motion before us, we believe, would nullify, to a great extent, the benefits rightfully belonging to the Miamis who moved to Kansas and remained there. It would make their compliance with the 1840 treaty obligation to move west and the undertaking of the burdens thereof, of no additional benefit as compared with the Indiana Miamis. For example, let us assume that the compromise award under the 1840 treaty amounts to about $600,000 ($1,373,000 net award for the 1834, 1838, and 1840 treaties less the $773,000 awarded under the 1834 and 1838 treaties). However, this $600,000 net figure takes into account the $162,000 agreed value of the Kansas land which was part of the consideration for the 1840 cession. Therefore, the amount receivable under the 1840 treaty before the $162,000 consideration was subtracted to arrive at a net figure of $600,000 should have been about $762,000. In order to give effect to petitioner's motion, and assuming that the award under the 1840 treaty would be divided equally between the two petitioners herein, it would mean that the $762,000 would be divided in half, giving approximately $381,000 to each group. Then, the $162,000 would be subtracted from the share of the Miami Tribe of Oklahoma leaving them with approximately $219,000. The practical effect of granting this motion, as we have illustrated above would be to allow the Indiana

Miami to recover $162,000 more than the Oklahoma Miami under the 1840 Treaty. This would nullify to a great extent the benefits which in all justice and equity should accrue to the Oklahoma Miamis whose ancestors went to Kansas and endured many hardships in so doing to comply with the requirements of the 1840 Treaty. On the other hand, the Indiana Miami, whose ancestors either did not fulfill this obligation of the 1840 Treaty or who received other benefits in lieu of the Kansas lands, would stand practically in the same position as if they had complied with their treaty obligations or had received no additional benefits.

For all of the above reasons, the Motion of Petitioner in Dockets 124-D, E, and F is hereby denied.

Arthur V. Watkins
Chief Commissioner

I concur:

Wm. M. Holt
Associate Commissioner

Associate Commissioner Scott did not participate.

BEFORE THE INDIAN CLAIMS COMMISSION

THE MIAMI TRIBE OF OKLAHOMA	)	Docket No. 256
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THE MIAMI INDIANS OF INDIANA	)	Docket Nos. 124-D, E, and F
	)	
Petitioners,	)	
	)	
v.	)	
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

ORDER DENYING MOTION OF PETITIONER IN DOCKET NOS. 124-D, E, AND F, THAT CONSIDERATION FOR THE KANSAS LANDS BE CHARGED SOLELY AGAINST THE RECOVERY OF THE MIAMI TRIBE OF OKLAHOMA, PETITIONER IN DOCKET NO. 256

Petitioner in Docket Nos. 124-D, E, and F, The Miami Indians of Indiana, filed a motion before the Commission on the 15th day of July, 1966, requesting "That consideration for Kansas lands be charged solely against the recovery of the Miami Tribe of Oklahoma." The parties having filed their briefs and orally argued the matter before the Commission, the same was taken under advisement, and the Commission being fully advised in the premises, finds for the reasons stated in the opinion this day filed herein, that said motion should be denied.

IT IS THEREFORE ORDERED AND ADJUDGED that said motion of the petitioner in Docket Nos. 124-D, E, and F, The Miami Indians of Indiana, be, and the same is hereby denied.

Dated at Washington, D. C., this 29th day of November, 1966.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

Associate Commissioner Scott did not participate.