

BEFORE THE INDIAN CLAIMS COMMISSION

THE KICKAPOO TRIBE OF KANSAS, )  
THE KICKAPOO TRIBE OF OKLAHOMA, )  
THE KICKAPOO NATION, et. al., )

)  
Petitioners,)

v. )

) Docket No. 193

)  
THE UNITED STATES OF AMERICA, )

)  
Defendant. )

Decided: February 29, 1968

FINDINGS OF FACT ON COMPROMISE SETTLEMENT

Having received from the parties a joint motion for the entry of final judgment in compromise and settlement of this claim, and having held a hearing thereon on January 8, 1968, the Commission makes the following Findings of Fact:

1. The petitioners in this case are the Kickapoo Tribe of Kansas and the Kickapoo Tribe of Oklahoma, and the individual members of these tribes appearing on behalf of the "Kickapoo Nation," as stated in the petition. It has already been determined by the Commission that each of these tribes has a tribal organization recognized by the Secretary of the Interior, and that the two named tribal organizations represent the Kickapoo Tribe which made the Treaty of October 24, 1832 (Docket 317, Findings 1 and 2, 10 Ind. Cl. Comm. 271-272; Docket 316, Findings 1 and 2, 10 Ind. Cl. Comm. 320).

2. The petition asserts a claim against the United States by the Kickapoo under the Indian Claims Commission Act (60 Stat. 1049, 25 U.S.C. §70 et. seq.), based on the Kickapoo cession to the United States of a tract of land in Southwest Missouri under the Treaty of October 24, 1832 (7 Stat. 391, 2 Kappler 365) for an allegedly unconscionable consideration. The Missouri tract of 1,868,500 acres was acquired by the Kickapoo under a treaty concluded July 19, 1820 (7 Stat. 208, 2 Kappler 189) supplementing an earlier treaty concluded July 30, 1819 (7 Stat. 200, 2 Kappler 182) whereby certain lands in Illinois were ceded to the United States. For the 1832 cession of the Missouri tract, the Kickapoo received payments and expenditures said to amount to \$143,000 and a new reservation in Northeastern Kansas of 768,000 acres (Supplemental Article, 7 Stat. 393; see also Docket 316, Finding 2, 10 Ind. Cl. Comm. 320).

3. By letter dated January 13, 1967, Allan Hull, Attorney of Record for Petitioners, proposed settlement of Docket No. 193 to Edwin L. Weisl, Jr., Assistant Attorney General (Pet. Ex. 1); by letter of March 10, 1967 from the Assistant Attorney General to Mr. Hull (Pet. Ex. 2) the compromise settlement in the amount of \$540,000 was agreed to, subject to the approval of the two Kickapoo tribes by appropriate resolutions and the approval of the Secretary of the Interior or his authorized representative. The texts of these letters are as follows:

"January 13, 1967

Hon. Edwin L. Weisl, Jr.  
Assistant Attorney General  
U. S. Department of Justice  
Washington, D. C. 20530

Dear Mr. Weisl:

On behalf of the Kickapoo Tribe of Kansas and the Kickapoo Tribe of Oklahoma, and subject to the approval of these two tribal organizations and of the Department of the Interior, I propose that the claim filed with the Indian Claims Commission as Docket No. 193 be settled for the sum of \$540,000. If accepted, the petitioners and the Government will enter into a stipulation agreeing to the entry of a final judgment in the sum of \$540,000, which sum is a net figure after allowance of credit to the Government for the consideration paid pursuant to the treaty of October 24, 1832, 7 Stat. 391.

This offer of settlement may be deemed open to and including February 10, 1967, and is subject to the following conditions:

(1) The proposed settlement makes no allowance for expenditures on account of gratuities which may have been made between the said treaty of October 24, 1832 and the treaty of May 18, 1854, 10 Stat. 1078. It is understood that the Government's claim on account of such gratuities is not waived and such claim may be asserted in either Docket No. 315 or Docket No. 317, which dockets are still pending before the Indian Claims Commission.

(2) Upon approval of the settlement by the two tribal organizations and by the Department of the Interior, the petitioners will furnish the Department of Justice with proof of such approval.

Sincerely yours,

/s/ Allan Hull

AH:ck

cc: Ralph A. Barney, Esq.  
Bernard M. Newburg, Esq."

"March 10, 1967

Allan Hull, Esquire  
Hull and Mishne  
National City Bank Building  
Cleveland, Ohio 44114

Dear Mr. Hull:

The offer of settlement in the case of Kickapoo Tribe v. United States, Docket No. 193, before the Indian Claims Commission, which was made in your letter of January 13, 1967, is accepted subject to the following conditions:

1. That the required approval of the two tribal organizations, the Kickapoo Tribe of Kansas and the Kickapoo Tribe of Oklahoma, be signified by appropriate resolutions;

2. That the approval of the proposed settlement and of the resolutions be secured from the Secretary of the Interior or his authorized representative;

3. That copies of such resolutions and of the approval by the Department of the Interior be furnished to this Department; and

4. That the understanding concerning the Government's assertion of gratuitous expenditures between October 24, 1832, and May 18, 1854, as offsets in Dockets 315 and 317, does not preclude the Government from also asserting in those cases any gratuitous expenditures occurring before October 24, 1832, or not covered by the General Services Administration report which are properly offsettable against petitioners under the Indian Claims Commission Act, 60 Stat. 1049. In this connection, it is understood that all available gratuities between May 18, 1854, and June 30, 1956, have been offset against the award in Kickapoo Tribe v. United States, Docket No. 316, before the Indian Claims Commission.

Very truly yours,

/s/ Edwin L. Weisl, Jr.

cc: Louis L. Rochmes, Esquire  
1300 Connecticut Avenue, N.W.  
Washington, D.C. 20036

4. By notice sent to each member of the Kickapoo Tribe of Kansas by the Bureau of Indian Affairs, a meeting of the Tribal Council was called for June 8, 1967. The text of the notice is as follows:

"May 26, 1967

"Memorandum:

To: Members of the Kickapoo Tribe of Kansas

From: Buford Morrison, Superintendent  
Horton Agency, Horton, Kansas

Subject: Call of Special Tribal Meeting

The Chairman of the Kickapoo Tribal Council has called a special meeting of the tribe to be held at the City Hall Auditorium, Horton, Kansas, commencing at 7:00 P.M., June 8, 1967, and has asked that this office provide assistance in notifying the membership.

The meeting was called at the suggestion of the Anadarko Area Office to meet with Mr. Allan Hull, Kickapoo Claims Attorney of Cleveland, Ohio, to discuss whether or not a recent award made by the Indian Claims Commission in Docket 193 should be accepted. Mr. Hull will also make a report concerning other Kickapoo claims now under consideration by the Indian Claims Commission.

It is hoped that as many of you as can will attend this important meeting.

/s/ Buford Morrison  
Superintendent

WHAT: General Tribal Council  
WHERE: Auditorium, City Hall, Horton, Kansas  
WHEN: 7:00 P.M., June 8, 1967  
WHY: To Accept or Reject Claims Award"

At the June 8 meeting at Horton, Kansas, Mr. Hull, attorney for the Kickapoo, appeared and explained the terms of the settlement to the members

of the tribe, as did a representative of the Bureau of Indian Affairs. After discussion of the proposed settlement, the following resolution was adopted by a vote of 59 in favor and 9 against:

"RESOLUTION

WHEREAS, the Kickapoo Tribe of Kansas, and the Kickapoo Tribe of Oklahoma have a joint claim pursuant to Indian Claims Commission Act, based upon the cession to United States of the Kickapoo Tribal Reservation in the State of Missouri, by the treaty of October 24, 1832, which claim is before the Indian Claims Commission as its Docket 193, and

WHEREAS, a proposed settlement has been negotiated of the claim by duly appointed counsel for the said tribes, and the United States Department of Justice, subject to the approval of the said two tribal organizations and the Secretary of the Interior of the United States.

And whereas, after due negotiation to all of its members, a formal meeting of the Kickapoo Tribe of Kansas was called and held at Horton, Kansas, on June 8, 1967, for the consideration of such proposed settlement, and

WHEREAS, all the considerations affecting such settlement have been fully explained to the members of the tribe, and have been fully discussed, and the said tribe considers that the proposed settlement is entirely fair and approval of the settlement is beneficial to the tribe.

NOW, THEREFORE, BE IT RESOLVED, that the Kickapoo Tribe of Kansas hereby approves and ratifies the settlement of the claim represented by Docket 193 before the Indian Claims Commission for the amount of Five Hundred Forty Thousand Dollars (\$540,000), with the understanding that the Government may still assert, regardless of this settlement, as offsets in still pending Docket 315 and 317 of the Indian Claims Commission all gratuitous

expenditures occurring before May 18, 1954 or not covered in the report of the General Services Administration which are properly offsettable against the petitioners under the Indian Claims Commission Act, 60 Stat. 1049, and with the further understanding all available gratuities between May 18, 1854 and June 30, 1956 have been offset against the award in Kickapoo Tribe v. United States, Docket No. 316, before the Indian Claims Commission.

RESOLVED FURTHER that this approval and ratification of such settlement shall be conditioned upon similar approval of the Kickapoo Tribe of Oklahoma, and subject also to the approval of the Secretary of the Interior of the United States or his authorized representative.

/s/ Tom R. Goslin  
Chairman

/s/ Geraldine M. Schultz  
Secretary

As of the date of the meeting, the Kickapoo Tribe of Kansas recognized 361 qualified tribal voters. The bylaws of the Kickapoo Tribe of Kansas provide that 25 qualified voters of the tribe shall constitute a quorum at any tribal meeting.

5. By notice sent to each member of the Kickapoo Tribe of Oklahoma, a meeting of the Tribal Council was called for June 10, 1967 at the McCloud Community House, Oklahoma. The text of the notice is as follows:

"1 June 1967

Dear Members:

In accordance with Amendment #3, Article VI of the Constitution, the Annual Meeting will be held at the Kickapoo Tribal Community House, located 2 1/4 miles north of McCloud, Oklahoma, on 10 June 1967, at approximately at 12:00 P.M.

This will be the Annual Meeting and the primary purpose of the meeting will be elect new Business Committee Members and to conduct any tribal business that may come up.

The Tribal Attorney will be here to discuss and give a report to the Tribe on any new developments concerning the tribes claims against the government. His main purpose is to inform the people of a settlement awarded to the tribe on the Missouri Claim and to obtain the approval of the settlement by the Tribe by Resolution.

There will be a Pot Luck Lunch served at noon, all tribal members are urged to bring something for lunch. Come early, the Meeting will begin immediately after lunch.

/s/ Gordon Wahpepah  
Secretary  
Kickapoo Tribe of Oklahoma"

In addition, notice of the meeting was given through the Shawnee Agency Newsletter. At the June 10 meeting, Mr. Hull, attorney for the Kickapoo appeared and explained the terms of the settlement to the tribe; also present were representatives of the Bureau of Indian Affairs. After discussion of the proposed settlement, including explanations in the Kickapoo language, and a quorum of the tribe being present, the following resolution was approved by a vote of 27 for and none against:

"MK-67-3

"KICKAPOO TRIBE OF OKLAHOMA  
KICKAPOO COMMUNITY HALL  
ANNUAL MEETING

10 June 1967

A RESOLUTION TO ACCEPT THE SETTLEMENT ON THE MISSOURI  
CLAIM, DOCKET #193

RESOLUTION

WHEREAS, the Kickapoo Tribe of Kansas, and the Kickapoo Tribe of Oklahoma have a joint claim pursuant the United States of the Kickapoo Tribal Reservation in the State of Missouri by the treaty of October 24, 1832, which claim is before the Indian Claims Commission as its Docket 193, and

WHEREAS, a proposed settlement has been negotiated of the claim, by duly appointed counsel for the said tribes, and the United States Department of Justice, subject to the approval of the said two tribal organizations and the Secretary of the Interior of the United States.

And WHEREAS, after due notification to all of its members, a formal meeting of the Kickapoo Tribe of Oklahoma was called and held at McCloud, Oklahoma on June 10, 1967, for the consideration of such proposed settlement, and

WHEREAS, all the considerations affecting such settlement have been fully explained to the members of the tribe, and have been fully discussed, and the said tribe considers that the proposed settlement is entirely fair and approval of the settlement is beneficial to the tribe.

NOW, THEREFORE, BE IT RESOLVED that the Kickapoo Tribe of Oklahoma hereby approves and ratifies the settlement of the claim represented by Docket 193 before the Indian Claims Commission for the amount of Five Hundred Forty Thousand Dollars (\$540,000) with the understanding that the Government may still assert, regardless of this settlement, as offsets in still pending Docket 315 and 317 of the Indian Claims Commission all gratuitous expenditures occurring before May 18, 1954 or not covered in the report of the General Services Administration which are properly offsettable against the petitioners under the Indian Claims Commission Act, 60 Stat. 1049, and with the further understanding all available gratuities between May 18, 1854 and June 30, 1956 have been offset against the award in Kickapoo Tribe v. United States, Docket No. 316, before the Indian Claims Commission.

RESOLVED FURTHER that the approval and ratification of such settlement shall be conditioned upon similar approval of the Kickapoo Tribe of Kansas, and subject also to the approval of the Secretary of the Interior of the United States or his authorized representative.

CERTIFICATION

We, the members of the Kickapoo Tribal Business Committee of the Kickapoo Tribe of Oklahoma, do hereby certify that the attached Resolution, MK-67-3 to be true and exact copy so approved at a Meeting of the Kickapoo Tribe of Oklahoma, held on June 10, 1967, there being a quorum present and by a vote of twenty-seven (27) and non opposed.

IN WITNESS WHEREOF, we have hereunto set our hand this 10th day of June 1967.

James Wahpepah  
JAMES WAHPEPAH, Chairman

Mary White  
MARY WHITE, Member

Stanard Wiles Sr.  
STANARD WILES SR., Treasurer

Gordon Wahpepah, Secretary  
GORDON WAHPEPAH, Secretary"

"AUTHENTICATION OF SIGNATURES

I certify that the foregoing signatures of the Chairman, Treasurer, Secretary and Member of the Tribal Business Committee of the Kickapoo Tribe of Oklahoma are genuine, and that the resolution was approved by the Tribal Council and that said meeting occurred in my presence.

/s/ John E. Taylor  
Superintendent  
Shawnee Agency  
Bureau of Indian Affairs  
Department of the Interior"

- 6. The evidence received by the Commission on the proposed settlement includes the minutes of the two meetings held to consider the settlement.

The minutes show the conduct of the meetings, the discussion of the settlement, and the voting on the resolutions. The minutes are signed by the officers of the respective Kickapoo tribes [Pet. Ex. 9, 12].

7. Three witnesses were called by petitioner at the January 8, 1968 hearing to testify to the approval of the settlement by the Kickapoo Tribes of Kansas and Oklahoma. These witnesses were:

- (a) Ralph E. Simon, Chairman of the Kickapoo Tribal Council of Kansas
- (b) Steve Cadue, Treasurer of the Kickapoo Tribal Council of Kansas
- (c) James Wahpepah, Chairman of the Kickapoo Tribal Council of Oklahoma and Chairman of the Business Committee.

Messrs. Simon and Cadue were present at the June 8 meeting of the Kansas Kickapoo Tribal Council and confirmed the conduct of the meeting and the adoption of the resolution as stated in Finding 4, above. Mr. Wahpepah was present at the June 10 meeting of the Oklahoma Kickapoo Tribal Council and confirmed the conduct of the meeting and the adoption of the resolution as stated in Finding 5, above.

8. The attorneys' contracts provide that the attorneys shall not make any compromise settlement or other adjustment of any claim or matter in controversy unless with the approval of the Secretary of the Interior or his authorized representative.

The proposed settlement of the claims of the petitioners in Docket No. 193 was approved by the Bureau of Indian Affairs, Department of the Interior, in a letter signed by Theodore W. Taylor, Acting Commissioner of Indian Affairs, dated October 25, 1967, addressed to petitioners' Attorney of Record. The letter is as follows:

"Oct. 25, 1967

Mr. Allan Hull  
Hull and Mishne  
National City Bank Building  
Cleveland, Ohio 44114

Dear Mr. Hull:

You submitted to us for approval a proposed compromise to settle Docket No. 193 of the petitioners. the Kickapoo Tribe of Kansas and the Kickapoo Tribe of Oklahoma, with issuance of a net final judgment of \$540,000 by the Indian Claims Commission.

Prosecution of the docket is governed by four contracts. Contract No. I-1-ind. 42141, dated September 4, 1948, between the Kickapoo Tribe of Kansas and the law firm of Pam, Hurd, and Reichman (later Harrison, Thomas, Spangenberg and Hull; now Hull and Mishne), was approved on March 10, 1949, for a period of ten years beginning with the date of approval. An extension of this contract for a period of five years beginning on March 10, 1959, was approved on March 19, 1959. The association of Attorney Louis L. Rochmes was approved on May 7, 1963. This contract was superseded by a new one.

Contract 14-20-0200 No. 1900, dated December 20, 1964, between the law firm of Harrison, Thomas, Spangenberg and Hull and the Kickapoo Tribe of Kansas, was approved on April 9, 1965, for a period of five years beginning March 10, 1964.

Contract No. I-1-ind. 42128, dated August 14, 1948, between the Kickapoo Tribe of Oklahoma and the law firm of Dempsey, Mills and Garrett (now Mills and Garrett), was approved on December 24, 1948, for a period of ten years beginning with the date of approval. An assignment by the law firm of Dempsey,

Mills and Casey of all of its interest in the contract to the law firm of Harrison, Thomas, Spangenberg and Hull was approved on August 14, 1951. The association of Attorney Louis L. Rochmes was approved on May 7, 1963. This contract was superseded by a new one.

Contract 14-20-0200 No. 1899, dated December 20, 1964, between the law firm of Harrison, Thomas, Spangenberg and Hull and the Kickapoo Tribe of Oklahoma, was approved on April 8, 1965, for a period of five years beginning December 27, 1963.

The contracts provide that the attorneys shall not make any compromise of the matters in controversy unless with the approval of the Secretary of the Interior or his authorized representative and the consent of the Tribes.

Your offer of January 13, 1967, to the Assistant Attorney General was accepted by him on March 10, 1967, with conditions. Two of the conditions provide for approval of the proposed settlement by the two Kickapoo Tribes by appropriate resolutions and for approval by the Secretary of the Interior or his authorized representative of the resolutions of the Tribes and the settlement itself. According to your offer, its acceptance, and the proposed stipulation for entry of final judgment, entry of a net final judgment of \$540,000 will finally dispose of all claims or demands which the petitioners have asserted in Docket No. 193. However, it makes no allowance for expenditures on account of gratuities which may have been made between the dates of the Treaty of October 24, 1832, and the Treaty of May 18, 1854, with the understanding that the Government's claim on account of such gratuities is not waived and such claim may be asserted in either Docket No. 315 or Docket No. 317, which dockets are pending before the Indian Claims Commission. No appeal or review from the final judgment will be taken by either party.

You took the proposed settlement to the members of the Kickapoo Tribe of Kansas assembled in general council with quorum present on June 8, 1967, in the City Hall in Horton, Kansas. The meeting was well noticed. In addition to the publicity given by the tribal council, the Superintendent of the Horton Agency sent a notice dated May 26, 1967, to all members of the Tribe at their last known addresses. We are satisfied that the publicity given to the meeting provided the members with the opportunity to attend the meeting.

The Superintendent of the Horton Agency attended the meeting and reported on it. He reported that Attorney Hull attended the meeting and explained the proposed settlement fully and adequately to the Indians. The Indians asked questions and discussed the proposals before voting. A motion was made and passed by the Indians that nonmembers leave the room until the voting was completed. This was done. The Tribe reported that it adopted a resolution by a vote of 59 for and 9 against accepting the proposed settlement. The Superintendent certified that the resolution was duly adopted as reported in the minutes of the meeting and certified that the signatures of the tribal officials affixed to the resolution are true and genuine.

We are satisfied that the Indians attending the meeting understood the proposed settlement before voting on it, that the number present and voting was representative of the Tribe, and that the voting reasonably expressed the views of the members of the Tribe. The resolution, as reported, is hereby approved.

You took the proposed settlement to the members of the Kickapoo Tribe of Oklahoma assembled in their annual general council meeting with a quorum present on June 10, 1967, in the Kickapoo Community Building near McLoud, Oklahoma. The meeting was well publicized. The tribal secretary addressed a notice of the meeting to the members of June 1, 1967. A copy of the notice was posted at the Shawnee Agency and the Kickapoo Community Building. A copy of the Shawnee Newsletter published on June 1 carried an item about the meeting to be held on June 10. We believe that reasonable efforts were made to advise Kickapoo members of the meeting and that the members were given the opportunity to attend.

A representative of the Bureau of Indian Affairs attended the meeting. He reported that Attorney Hull made a complete explanation of the proposed settlement. The members were given the opportunity to ask questions which were satisfactorily answered by the attorney. The Kickapoo Chairman interpreted in the Kickapoo language for the benefit of the non-English speaking members. A general discussion was then had among the Indians themselves. A resolution was adopted by a vote of 27 in favor and none against accepting the proposed settlement. The signatures of the tribal members affixed to the resolution were certified by the Superintendent of the Shawnee Agency as being genuine.

We are satisfied that the Indians attending the meeting understood the proposed settlement before voting on it, that the members present and voting were representative of the Tribe, and that the vote reasonably expressed the views of the members of the Tribe. The resolution adopted is hereby approved.

In light of the information which you have sent to us, that submitted by our field offices, and that obtained from other sources, the proposed settlement of the claims of the petitioners in Indian Claims Commission Docket No. 193 for a net final judgment of \$540,000 is hereby approved.

Sincerely yours,

/s/ T. W. Taylor  
Acting Commissioner"

9. Counsel for both petitioners and the United States are experienced in Indian Claims litigation, and both stated that in their opinion the proposed settlement was one that was fair and just to both the petitioners and the United States.

10. Following the January 8, 1968 hearing, the petitioners and the defendant filed with the Commission on January 20, 1968, a Joint Motion for Entry of Final Judgment based upon a Stipulation for Entry of Final Judgment filed with said motion and made and executed by Allan Hull, Attorney of Record for Petitioners and Clyde O. Martz, Assistant Attorney General and Bernard M. Newburg, Attorneys for Defendant; said Stipulation is set forth as follows:











