BEFORE THE INDIAN CLAIMS COMMISSION

THE SEMINOLE INDIANS OF THE STATE OF FLORIDA, Plaintiffs, v. THE UNITED STATES, Defendant. THE MICCOSUKEE TRIBE OF INDIANS OF FLORIDA, ET AL., Intervenors.	)	Docket No. 73, 73-A
THE SEMINOLE NATION OF OKLAHOMA, Plaintiff, v. THE UNITED STATES, Defendant. THE MICCOSUKEE TRIBE OF INDIANS OF FLORIDA, ET AL., Intervenors.	)	Docket No. 151

Decided: September 17, 1968

Appearances:

Roy L. Struble, 1100 Kane Concourse, Miami Beach, Florida 33154; Effie Knowles, 4508 N.W. 1st Avenue, Miami, Florida 33127; Charles Bragman, National Press Building, Washington, D.C. 20004: Counsel for Plaintiff in Docket No. 73

Roy St. Lewis, National Press Building, Washington, D.C. 20004; Paul M. Niebell, 1201 19th Street, N.W., Washington, D. C. 20036: Counsel for Plaintiff in Docket No. 151.

Arthur Lazarus, Jr., of Strasser, Speigelberg, Fried, Frank & Kampelman, 1600 K Street, N.W., Washington, D. C. 20036: Counsel for the Intervenors.

Craig A. Decker, with whom was Mr. Assistant Attorney General Clyde O. Martz: Counsel for Defendant.

DECISION ON MOTION TO INTERVENE

Kuykendall, Commissioner, delivered the Opinion of the Commission.

As a consequence of the Opinion and Findings delivered on May 8, 1964 (Seminole Nation, et al., v. United States, 13 Ind. Cl. Comm. 326, et seq.), this Commission concluded:

> 1. That the plaintiffs herein, The Seminole Indians of Florida and The Seminole Nation of Oklahoma, are entitled to prosecute this action for and on behalf of the Seminole Nation as it existed in Florida at all material times.

The Court of Claims affirmed (Seminole Nation, et al., v. United States, 180 Ct. Cls. 375 (1967)), summarizing that:

> "The appellees in this action comprehend both groups of Seminoles -- those Indians who removed to Oklahoma and those Indians who remained in Florida -- each group having been recognized as a successor in interest to the Seminole Nation as it existed in Florida in 1823."

The consolidated claims were remanded for further proceedings.

On January 29, 1968, "The Miccosukee Tribe of Indians of Florida and Buffalo Tiger and Sonny Billie, in a representative capacity on behalf of all descendants of the Miccosukee Indians who resided in Florida in 1823 and 1832. . ." filed a Motion for Leave to Intervene in the

consolidated cases known as Dockets 73 and 151. The merits of this Motion have been developed through the briefing process, the Defendant not being in opposition thereto, and the legal question of whether leave to intervene should be granted is now ripe for decision.

The Miccosukee Tribe of Indians of Florida, sometimes known as The Everglades Miccosukee Tribe of Seminole Indians [hereinafter "Intervenor"], contends that intervention is its right as a matter of law, providing;

a. That it has a common and undivided interest in the claims (or either of them);

b. That it is not already represented in these claims (or either of them);and

c. That its interests could be adversely affected by denial of intervention.

It may be emphasized that all of the above elements must be demonstrated as conditions precedent to the allowance of intervention. McGhee, et al., v. Creek Nation, et al., 122 C. Cls. 380 (1952), Cert. den. 344 U.S. 856 (1952); Yuchi Tribe of Indians, et al., v. United States, et al., 136 C. Cls. 433 (1956), cert. den. 352 U.S. 1016 (1957).

That the Intervenor has a common and undivided interest in the claim denoted Docket No. 73 [and also in Docket No. 73-A, for that matter] seems indisputable, since the Miccosukees constituted a portion of "the Seminole Nation as it existed in Florida at all material times." (Seminole Nation, supra). It is too well established to admit of dispute that an action brought before the Indian Claims Commission is to right a wrong

committed against the Indian entity as it existed at the time of the wrong, not as it exists when the action is brought. Minnesota Chippewa, et al., v. United States, 161 C. Cls. 258 (1963).

When the causes of action which were subsequently to be identified as Docket Nos. 73 and 73-A were brought in 1950, there were no organized groups of Seminole Indians in Florida. Consequently, the party plaintiff in each of those dockets was identified, and correctly identified, as "The Seminole Indians of the State of Florida", a distinguishing designation based not on ethnology, not on linguistics, but wholly on geography, distinguishing Seminoles who were in Florida from Seminoles who were elsewhere (Oklahoma, for instance). Since no ethnic or linguistic distinction between various individual Floridian Seminoles was intended by those who filed Dockets 73 and 73-A, nor was such distinction accepted or wrought by the Indian Claims Commission, the only possible factual conclusion is that the identifying phrase "The Seminole Indians of the State of Florida", unqualified, included all individuals who in 1950 could be legitimately categorized as Seminoles in Florida.

It may be accepted as true that the Miccosukee Tribe and its members are not now part of, enrolled with, or associated with the group which, under the name of The Seminole Indians of the State of Florida, adopted its own constitution in 1957 under the Indian Reorganization Act. Conversely, it may also be accepted as true that there is no existing member of that group which is also a member of the organized Miccosukee Tribe of Indians of Florida, a group which adopted its own constitution

in 1962 under the Indian Reorganization Act (25 U.S.C. 476). Therefore, to this limited extent, Seminoles in Florida and Miccosukees in Florida may be said to be distinguishable. But again, the distinguishing element is not ethnological [there are individuals of Miccosukee ancestry in Oklahoma, throughout Florida, and in the Miccosukee Tribe] or geographical, or linguistic. In this instance, the distinguishing factor is wholly political. The Commission must conclude that to distinguish between Miccosukees and other Seminoles today is nowise an aid to determining the merits of their collective claim of yesteryear. The Commission must further conclude that the Intervenor has a common and undivided interest in the claims now identified by the Docket numbers 73 and 73-A.

The question of existing representation may be resolved by examination of the successive attorney contracts and the views of the Associate Solicitor, Indian Affairs, Department of the Interior, concerning those contracts. The starting point for that examination is 1950 when the original petition setting out the four claims which eventually became Docket Nos. 73 and 73-A was filed. As noted above, in 1950 the various Seminoles in Florida had not become partially segregated under the Indian Reorganization Act of 1934. The Commission does not have the details of their councils and negotiations at hand, but the record does reveal that the original attorney contract numbered I-1-ind-42239 was entered into by an "amorphous group of Seminole leaders who executed it originally on behalf of the Indians", and that some of those Seminole leaders were identified as representatives of the Miccosukees and were later active in the affairs of the Intervenor.

When "The Seminole Indians of the State of Florida" came into being in 1957 under the Indian Reorganization Act of 1934, it "took over" the representation of the Indians under Contract I-1-Ind-42239 and, as late as 1961, the Deputy Solicitor of the Department was of the opinion that the Miccosukees, not yet a separate, organized group, were then "presently represented" under Attorney Contract I-1-Ind-42239. That attorney contract was succeeded by contract 14-20-0650-1292 with the attorneys identified on the first page of this Opinion as counsel in Docket No. 73. Since those attorneys represent the entire claims under Docket Nos. 73 and 73-A, and since the Intervenor shares a community of claims with the organized Seminole Indians of the State of Florida, both being components of "The Seminole Nation as it existed in Florida at all material times", the Commission concludes that the Intervenor is represented in Dockets 73 and 73-A.

The third point is the possibility of the Intervenor being adversely affected if intervention is not allowed. The Associate Solicitor, Indian Affairs, Department of the Interior, is of the opinion that,

> ". . . The persons who are members of the group now organized as the Miccosukee Tribe of Indians of Florida are such successors and would be admitted to the benefits of any judgment rendered in the case."

This, of course, presupposes that a money judgment will in fact be entered at a future date, and that supposition underlies this entire Opinion. It may be understood that this supposition does not amount to prejudgment of the case.

In a rather similar case, Yuchi Tribe (supra), the Court of Claims seemed to regard it as obvious that where an identifiable group today was a component yesterday, the group would share in any award to the organization, or successors of the organization, which sustained the harm while the group was a component.

In summary then, the Commission concludes that the Intervenor has the requisite common and undivided interest in the claims denoted Docket Nos. 73 and 73-A; that no corresponding finding respecting Docket No. 151 is appropriate; that the Intervenor is already represented in the claims denoted Docket Nos. 73 and 73-A; and that whether intervention or denial of intervention would or would not adversely affect the Intervenor's interest is too speculative to be susceptible of determination.

In view of the above discussion, it is apparent that the Intervenor's case does not meet the criteria propounded by counsel for the Intervenor. Accordingly, the Motion for Leave to Intervene is denied. The proffered exhibits, identified as Nos. 1 through 3, 4a and 4b, and 5 through 10 will be accepted for record purposes only. The original of this Opinion will be placed in Docket No. 73; a certified copy will be placed in Docket No. 73-A.

Jerome K. Kuykendall, Commissioner

Concurring:

John T. Vance, Chairman

Richard W. Yarborough, Commissioner