

BEFORE THE INDIAN CLAIMS COMMISSION

THE MIAMI TRIBE OF OKLAHOMA, et al.;)	
IRA S. GODFROY, et al.; THE MIAMI)	
INDIANS OF INDIANA,)	
)	
Petitioners,)	
)	Docket No. 255
v.)	Consolidated with
)	Docket No. 124-C
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: December 3, 1968

FINDINGS OF FACT ON COMPROMISE SETTLEMENT

1. The Miami Tribe of Oklahoma, et al., petitioner in Docket No. 255, and Ira S. Godfroy, et al., Miami Indians of Indiana, petitioner in Docket No. 124-C, filed timely claims for additional compensation under the Indian Claims Commission Act for the cession of a reservation in Indiana (known as the Thorntown Reservation), made under the Miami Treaty of February 11, 1828. The two dockets were consolidated for trial.

2. The Thorntown Reservation, described in the treaty as ten miles square, contained 64,037.87 acres. It was one of the reservations carved out of Area 99 ceded in 1818. The treaty consideration for the cession amounted to \$19,485.00. This small claim has not been tried and, in the opinion of counsel for petitioners, should not be tried if it can be settled, since the cost of a trial would be disproportionate to the maximum recovery possible.

3. Tribal counsel for the Miami Tribe of Oklahoma negotiated a settlement with defendant, based on a valuation of \$1.35 per acre. This valuation would produce a total land value of \$86,451.12 from which the treaty consideration of \$19,485.00 should be deducted, leaving a net amount of \$66,966.27, rounded out to \$66,966.00.

4. On November 29, 1966 counsel for the Miami Tribe of Oklahoma incorporated this settlement proposal in a letter to the Department of Justice and requested the Indiana Miami counsel to join in the settlement.

5. More than ten days prior to April 15, 1967 Mrs. Helen L. Efird, Secretary-Treasurer of the Miami Tribe of Oklahoma, issued a notice of meeting to all members of the Tribe to be held Saturday, April 15, 1967 at 1:00 p.m. in the Community Room, Ottawa County Courthouse, Miami, Oklahoma, for the purpose of considering and voting upon acceptance or rejection of the proposed settlement. Written notice of the meeting was mailed to all members of the Tribe with express reference to the proposed settlement more than ten days prior to the meeting. Notice of the meeting was also published in various daily newspapers, including those of Miami and Tulsa, Oklahoma, and Joplin, Missouri.

6. On April 15, 1967 at 1:00 p.m. the scheduled meeting took place in the Community Room, Ottawa County Courthouse, Miami, Oklahoma. Sixty-four members of the Tribe were present. A quorum is twenty-five under the bylaws of the Miami Tribe of Oklahoma.

7. The Bureau of Indian Affairs was represented by Irma Walls, Tribal Operations Office, Washington, D. C.; Frank Sokolik, Assistant Tribal Operations Officer, Muskogee Area Office; Marcel McDaniel, Operations Assistant, Muskogee Area Office; and T. J. Perry, Miami Indian Agency, Miami, Oklahoma.

8. Edwin A. Rothschild, attorney of record for the Miami Tribe of Oklahoma and partner of the claims attorneys of said Tribe, reported to the Tribe on the proposed settlement. After the basis of the proposed settlement was explained, the meeting was opened for questions from the floor. Many questions were asked, all were fully answered and full opportunity for discussion and questioning was given to all.

9. All of the proceedings were conducted in English. All members of the Miami Tribe of Oklahoma are fully conversant with English and no interpreters were necessary. Moreover, in many preceding meetings with the Tribe, the attorney of record had discussed the progress of the respective claims, including the claim in Docket No. 255, and most of the members of the Tribe were familiar with them.

10. After full discussion, on motion duly made and seconded, the following resolution was adopted:

"WHEREAS, the Miami Tribe of Oklahoma as petitioner is prosecuting a claim before the Indian Claims Commission, known as Docket 255, for additional compensation for a tribal reservation ceded to the United States by a treaty of 1828 (7 Stat. 309); and

"WHEREAS, said claim has been consolidated with the claim of certain Indiana Miami, petitioners in Docket 124-C before said Commission; and

"WHEREAS, a settlement has been negotiated with the United States Department of Justice for the settlement of said claim, after allowance for consideration and offsets, of \$66,966, subject to approval by the respective Indian petitioners and the Secretary of the Interior or his authorized representative; and

"WHEREAS, the tribal claims attorneys for the Miami Tribe of Oklahoma believe that the proposed settlement is fair and equitable and have recommended that it be approved; and

"WHEREAS, said proposed settlement has been explained to the members of the tribe and all interested persons have been given full opportunity to ask questions concerning the same;

"NOW, THEREFORE, BE IT RESOLVED, that the Miami Tribe of Oklahoma hereby accepts and approves the proposed settlement and, if and when said settlement is joined in by the Indiana Miami claimants and formally accepted by the government, the tribal claims attorneys are hereby authorized to execute an appropriate stipulation and to take all necessary action to accomplish the entering of a final judgment in Docket 255, consolidated with Docket 124-C, in the amount of \$66,966."

The votes cast were counted by the Chairman and Mr. Perry of the Miami agency. The Chairman announced that there were 51 votes in favor of the resolution and no votes against it.

11. On May 31, 1967 counsel for the Indiana Miami joined in the settlement proposal. On June 22, 1967 the Assistant Attorney General accepted the proposal, subject to the approval of the Indians and the Secretary of the Interior or his authorized representative.

12. Fourteen days prior to March 30, 1968 Albert C. Harker, law partner of the attorney of record for petitioners in Docket No. 124-C, issued a notice of meeting of the Miami Indians of Indiana to be held at the Bennett High School gymnasium in Marion, Indiana, on March 30, 1968 at 1:00 p.m. for the purpose of approving the proposed settlement

of said dockets. Notice of the meeting was also advertised in the area by newspaper, radio and television prior to the meeting. Notices were mailed to more than 750 persons at their last known addresses taken from three lists compiled by individuals in the three main areas of the State where Miami Indians live. Attached to the notice was an explanation of the proposed settlement. About 180 notices were returned by the post office.

13. On March 30, 1968 at 1:00 p.m. the scheduled meeting took place in the Bennett High School gymnasium in Marion, Indiana, with 353 persons being present. As the Miamis of Indiana are not organized and do not have a satisfactory list or membership roll, the question was raised how to determine whether any person participating was of Miami Indian blood. The question was resolved by requesting that anyone present could challenge any individual who participated as a Miami Indian. No challenges were made. The Indians present were requested to register and the register showed a total of 218 individuals. The difference in the number of those present and those registered was largely due to non-Indian husbands or wives who were present. The Bureau of Indian Affairs was represented by Guy W. Lovell, Tribal Operations Officer, Washington, D. C.

14. David L. Kiley, attorney of record for petitioners in Docket No. 124-C, acted as chairman of the meeting. Mr. Kiley was assisted in conducting the meeting by attorneys Albert C. Harker and Robert C. Bell, Jr. After Mr. Kiley explained the basis of the proposed settlement,

using charts and maps as visual aids, the meeting was opened for questions. Several questions were asked and all were answered. A full opportunity for discussion and questioning was given. All proceedings were conducted in English, no interpreters being necessary. The meeting was advised that the Miami Tribe of Oklahoma had accepted the proposed settlement.

15. After full discussion the following resolution was presented for consideration:

"WHEREAS, the Miami Tribe of Indiana as petitioner is prosecuting a claim before the Indian Claims Commission, known as Docket 124-C, for additional compensation for a tribal reservation ceded to the United States by a treaty of 1828 (7 Stat. 309); and

"WHEREAS, said claim has been consolidated with the claim of certain Oklahoma Miami petitioners in Docket 255 before said Commission; and

"WHEREAS, a settlement has been negotiated with the United States Department of Justice for the settlement of said claim, after allowance for consideration and offsets, of \$66,966, subject to approval by the respective Indian petitioners and the Secretary of the Interior or his authorized representative; and

"WHEREAS, the tribal claims attorneys for the Miami Tribe of Indiana believe that the proposed settlement is fair and equitable and have recommended that it be approved, and said proposed settlement has been accepted by the petitioners in Docket 255; and

"WHEREAS, said proposed settlement has been explained to the members of the tribe and all interested persons have been given full opportunity to ask questions concerning the same;

"NOW, THEREFORE, BE IT RESOLVED, that the Miami Tribe of Indiana hereby accepts and approves the proposed settlement and, if and when said settlement is formally accepted by the government, the tribal claims attorneys are hereby authorized to execute an appropriate stipulation and to take all necessary action to accomplish the entering of a final judgment in Docket 255, consolidated with Docket 124-C, in the amount of \$66,966."

The resolution was adopted by affirmative voice vote of a vast majority of the Indians. Only one vote was cast to reject the resolution.

16. By letters dated May 7, 1968, addressed respectively to the claims attorneys for the Miami Tribe of Oklahoma, petitioner in Docket No. 255, and to the claims attorneys for the Miami Indians of Indiana, petitioners in Docket No. 124-C, the Deputy Commissioner of Indian Affairs, as representative of the Secretary of the Interior, approved the proposed settlement and the respective resolutions. Each letter stated:

"According to the offer and proposed stipulation for entry of final judgment, there shall be entered in Dockets numbered 255 and 124-C (consolidated) a net final judgment in the sum of \$66,966.00. The entry of final judgment will dispose of all claims or demands which the petitioners have asserted or could have asserted with respect to the subject matter of the claims in the two dockets. The entry of final judgment shall also dispose of credits, payments on the claims, counterclaims, offsets and gratuities which the defendant asserted or could have asserted in the four dockets. Specifically, defendant is barred from claiming in other actions only offsets and gratuities which occurred subsequent to May 7, 1828 and prior to June 30, 1964. No appeal or procedure for review will be taken by any party.

* * *

"Based on the information which you have furnished us, that submitted by our field office, and that obtained from other sources, the proposed settlement of claims of the petitioners in Dockets numbered 255 and 124-C (consolidated) for a net final judgment of \$66,966.00. . .[is] hereby approved."

17. The letter to the attorneys for the Miami Tribe of Oklahoma noted that the meeting was called in accordance with the Tribe's constitution and bylaws and that there was a quorum present. With reference to the conduct of the meeting, the Deputy Commissioner stated:

"You took the proposed settlements to the Miami Tribe of Oklahoma at a special meeting on April 15, 1967. The special meeting was called in accordance with Article III of the Tribe's constitution and bylaws. A notice of the meeting appeared in the Tulsa Daily World on April 5, 1967, and individual notices were mailed to all adult tribal members at their last known addresses by the tribal secretary-treasurer ten days in advance of the meeting. The notices stated that the purpose of the special meeting was to consider the two proposed settlements* as well as other tribal business.

"The Miami council met in general session on April 15 with a quorum present. Our Tribal Operations Officer from the Muskogee Area Office attended the meeting. He reported that it was well attended by more than 65 members.

"Claims attorney Edwin A. Rothschild attended the meeting and gave a comprehensive review of the claims and explained the two* proposed settlements. The tribal members were given the opportunity to ask questions and a full and free discussion of the proposed settlements ensued. The attorney gave detailed and adequate answers to the questions asked by the Indians.

"Our Tribal Operations Officer reported that the tribal members who attended the meeting, in his opinion, understood the proposed settlements. The Indians then accepted the two settlements by adopting separate resolutions. The resolution accepting the proposed \$66,966.00 settlement was adopted by a vote of 51 for and none against. . .

"Minutes of the meeting were taken. The resolutions adopted were incorporated as a part of the minutes. Our Tribal Operations Officer certified that the signatures of the tribal officials affixed to the minutes are genuine."

18. With reference to the Miami Indians of Indiana, the Deputy Commissioner noted that three individuals had compiled lists with respect to the three main areas in Indiana in which Miami Indians live, and that notices were mailed to all persons on such lists at their last known addresses. The Bureau representatives believed that the Indians

*The other proposed settlement, also approved, involved Miami Docket No. 256, consolidated with Docket Nos. 124-D, 124-E and 124-F.

who attended the meeting appeared to be representative of the Miami Indians of Indiana. With respect to the conduct of the meeting, the Deputy Commissioner stated:

"Each proposed settlement was fully explained by Attorney Kiley. He used charts and maps as visual aids and the Indians could see the various tracts of land involved, the value of the tracts upon which the settlements are based, the amounts of considerations already paid for the tracts, the offsets compromised, and the resulting net amounts of recovery provided by the proposed settlements.

"There was a question and answer period for each proposed settlement. Several questions were asked and the attorney answered all of them. One of the questions was how to determine whether any person participating was of Miami blood. This question was relevant as the Miami of Indiana are not organized and do not have a satisfactory list or membership roll. The question was resolved by requesting that anyone present could challenge any individual who participated as a Miami. No person was challenged.

"After explanation by the attorney of each proposed settlement, he read a resolution stating that the Miamis of Indiana accepted the proposed settlement. Both resolutions were adopted by an affirmative voice vote of the vast majority of the Indians. Only one vote was cast to reject each resolution.

"Our representative at the meeting reports that, in his opinion, the Indians reasonably understood each proposed settlement before voting to accept it. He further reports that he did not notice any undue influence present to influence the voting. The number of Indians who attended the meeting appeared to be representative of the Miami Indians of Indiana.

"The Chairman and Secretary of the Miamis affixed their signatures to both resolutions adopted and to minutes of the meeting in the presence of our representative. Our representative certified that the signatures of the Chairman and Secretary are genuine. After appropriate changes were made in the first draft of the minutes of the meeting, our representative certified to their accuracy."

19. On May 27, 1968 a hearing was held before the Commission. Documentary evidence was introduced of the approval of the settlements by the respective Miami groups and by the Bureau of Indian Affairs.

20. Forest D. Olds, Chief of the Miami Tribe of Oklahoma, testified with respect to the approval of the Miami Tribe of Oklahoma. He confirmed that a quorum was present, that there was a thorough discussion in which all questions were answered, and that the matter was fully understood by the members of the Tribe. He also testified that there was widespread publicity for the meeting. David Olds, a member of the Tribe, confirmed Chief Old's testimony.

21. Charles Robert Peconga testified that he is a Miami Indian residing in Marion, Indiana. He had been to various Miami Indian meetings. The last chief of the Miamis of Indiana was his great-great-great-grandfather. He testified with respect to the meeting that questions were asked and answered, that he felt he understood the substance of what he was voting on and those to whom he spoke after the meeting also seemed to understand.

22. Mrs. Carmen Mary Ryan appeared and testified on her own motion that she was a Miami Indian and a member of one of the Indiana groups. This group became incorporated in Indiana as the "Miami Nation of Indiana". Mrs. Ryan had previously submitted one of the three lists of names and addresses used to give notice of the Indiana meeting. She had learned through Chief Olds of the proposed settlement and its approval by the Oklahoma Tribe. She favored the settlement. She attended the

Indiana meeting and voted for the resolution approving the settlement. She stated that while she did not consider herself to be a direct client of either of the attorneys of record, she nevertheless considers all the Miami Indians to be one tribe, irrespective of residence, and considers Chief Olds, like herself, to be a tribal member of the total Tribe.

23. The parties have entered into a stipulation which has been made a part of the record herein, which reads as follows:

"BEFORE THE INDIAN CLAIMS COMMISSION

THE MIAMI TRIBE OF OKLAHOMA, et al.;)	
IRA S. GODFROY, et al., THE MIAMI)	
INDIANS OF INDIANA,)	
)	
Petitioners,)	Docket No. 255
v.)	Consolidated with
)	Docket No. 124-C
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

"STIPULATION FOR ENTRY OF FINAL JUDGMENT.

"The parties by their respective attorneys of record hereby stipulate that the above entitled cases shall be consolidated and the consolidated case shall be settled and finally disposed of by entry of final judgment from which no appeal or procedure for review will be taken by any party as follows:

"1. There shall be entered in said consolidated case after all allowable deductions, credits and offsets, a net final judgment in the sum of \$66,966.

"2. The entry of said final judgment in the consolidated case shall finally dispose of all claims or demands whatsoever which the petitioners have asserted or could have asserted with respect to the subject matter of the claims in this consolidated case (Docket Nos. 255 and 124-C), and petitioners shall be barred from asserting any such claims or demands in any other action.

"3. The entry of said final judgment shall finally dispose of all credits, payments on the claim, counter-claims, offsets and gratuities which defendant asserted or could have asserted in the consolidated case (Docket Nos. 255, 124-C) and defendant is barred from asserting the same in any other action. Specifically, defendant is hereby barred from claiming in other actions only offsets and gratuities which occurred subsequent to May 7, 1828 and prior to June 30, 1964.

"4. This stipulation and the final judgment to be entered pursuant hereto are by way of compromise and settlement and shall not be construed as an admission by any party for the purpose of precedent or argument in any case.

/s/ Edwin A. Rothschild
Attorney of Record for Petitioners
in Docket No. 255

/s/ David L. Kiley
Attorney of Record for Petitioners
in Docket No. 124-C

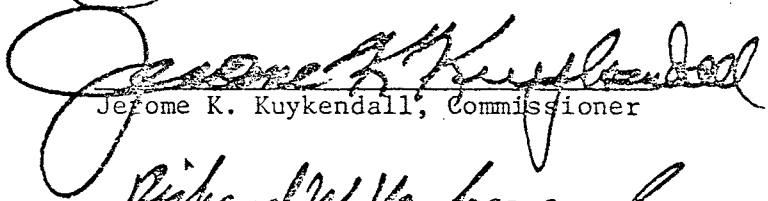
/s/ Clyde O. Martz
Assistant Attorney General

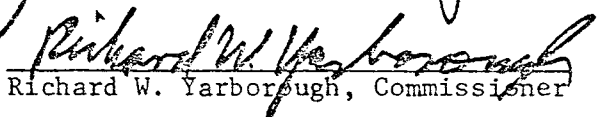
/s/ W. Braxton Miller
Attorney"

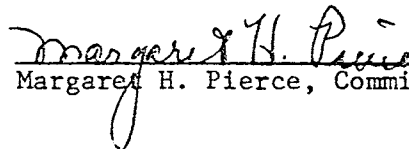
24. From the entire record the Commission finds that the compromise agreement as set forth in the Stipulation for Entry of a Final Judgment has been carefully and fully presented to the Indians who are petitioners in said Docket Nos. 255 and 124-C and has been freely and voluntarily approved by them and that the said compromise agreement under all the circumstances is fair and just to petitioners and defendant.

25. The Commission, therefore, approves and adopts the terms of a Stipulation for Entry of a Final Judgment in accordance with the Joint Motion for Entry of Final Judgment filed herein on August 2, 1968.


John T. Vance, Chairman


Jerome K. Kuykendall, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner