

BEFORE THE INDIAN CLAIMS COMMISSION

THE PEORIA TRIBE OF OKLAHOMA, ET AL.,)
)
 Petitioners,)
)
 v. Docket No. 65
)
THE UNITED STATES OF AMERICA,)
)
 Defendant.)

ORDER SUBSTITUTING FINDING OF FACT,
VACATING FINAL AWARD OF AUGUST 4, 1965, and
FINAL AWARD

On August 4, 1965, the Commission entered a Final Award in favor of the petitioners and against defendant in the sum of \$171,896.90, consisting of an interlocutory judgment of \$172,726.04 less allowable gratuitous offsets in the sum of \$829.14. Thereupon petitioners appealed to the United States Court of Claims on the grounds that the award was insufficient, and upon affirmance by the Court of Claims of the decision of the Commission, petitioned the United States Supreme Court for a writ of certiorari. The United States Supreme Court granted the said writ, 389 U.S. 814, and on April 1, 1968, rendered its opinion finding that the Indian Claims Commission and the Court of Claims had erroneously held that the United States is not liable for its failure to invest the proceeds that would have been received had the United States not violated the treaty of May 30, 1854, 10 Stat. 1082, reversing the Indian Claims Commission and the Court of Claims, and remanding this case to the Court of Claims for further remand to the Indian Claims Commission in order to determine the measure of damages resulting from this liability. On May 6, 1968, the United States Court of Claims vacated and withdrew the judgment theretofore entered as to the issue resulting from the liability of the United States on account of its failure to invest the proceeds that would have been received had the United States not violated the treaty, and the case was remanded to the Indian Claims Commission for further proceedings pursuant to and consistent with the said order and the opinion and remand of the United States Supreme Court.

In compliance with the aforesaid remand and the opinion of the United States Supreme Court, and for the reasons set forth in the opinion this date filed herein,

at \$1,329,235.00, less consideration of \$556,103.75. With respect to the reservation ceded in 1840, the Commission valued the land at \$1,300,750.00, but held that the consideration therefor included \$478,027.83 in cash, annuities, etc., plus the value of 324,796.88 acres of Kansas land reserved to the Miami Tribe in the 1840 treaty.

3. On April 1, 1965 the Commission entered a partial final judgment of \$773,131.25 with respect to the treaties of 1834 and 1838 in favor of the petitioners as joint representatives of the Miami Tribe. Defendant filed a motion to correct said judgment, and petitioners filed responses thereto.

4. Negotiations were thereupon entered into between the attorneys for the Miami Tribe of Oklahoma and the Department of Justice to settle certain additional credits which defendant claimed and to arrive at an agreed valuation of the Kansas land. Defendant had contended that substantially more than \$100,000 in consideration or credits had been erroneously disallowed by the Commission under the three treaties; this claim was compromised at \$60,471.02. It was also agreed that the Kansas reservation as of 1840 should be valued at 50 cents an acre (it was later valued at \$1.25 upon its cession in 1854) so that this reservation added only a consideration of \$162,398.44 to be credited against the 1840 cession. The settlement figure resulting from these negotiations was \$1,372,983.96, rounded out to \$1,373,000.00.

5. On July 8, 1965 this settlement was incorporated in a formal proposal made by tribal counsel to the Department of Justice. On

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. 256
)	Consolidated with
v.)	Docket Nos. 124-D, 124-E
)	and 124-F
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: December 3, 1968

FINDINGS OF FACT ON COMPROMISE SETTLEMENT

1. The Miami Tribe of Oklahoma, et al., petitioners in Docket No. 256, and Ira S. Godfroy, et al., Miami Indians of Indiana, petitioners in Docket Nos. 124-D, 124-E and 124-F, filed timely claims for additional compensation under the Indian Claims Commission Act for cessions made under the Miami treaties of 1834, 1838 and 1840. By these treaties the Miami Tribe ceded all its reservations in Indiana. The 1840 treaty provided for a new Miami reservation in Kansas. The claims of the respective petitioners were consolidated for trial and were thereafter tried, briefed and argued before the Commission.

2. On December 18, 1964 the Commission entered an interlocutory order in favor of the petitioners, jointly as representatives of the Miami Tribe as the same existed on the effective treaty dates. With respect to the cessions of 1834 and 1838, the Commission held that the Miami were entitled to recover \$773,131.25 on the basis of land valued

8. 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.

9. 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 explaining the basis of the proposed settlement, 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.

10. 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. 256, and most of the members of the Tribe were familiar with them.

11. 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 256, for additional compensation for tribal reservations ceded to the United States by the treaties of 1834, 1838 and 1840 (7 Stat. 458, 569, 582); and

"WHEREAS, said claim has been consolidated with the claim of certain Indiana Miami petitioners in Dockets 124-D, E and F before said Indian Claims Commission; and

July 8, 1966 the proposal was renewed. On July 25, 1966 the Indiana Miami joined in the settlement proposal, subject, however, to their claim that the value of the Kansas land should be charged solely to the Oklahoma Tribe. On November 25, 1966 the Assistant Attorney General accepted the proposal, subject to adjudication of the Indiana Miami claim, and also subject to the approval of the Miami Tribe of Oklahoma and the Miami Indians of Indiana, as well as the approval of the Secretary of the Interior or his authorized representative. On November 19, 1966 the Indian Claims Commission rejected the claim of the Indiana Miami and confirmed that the Kansas reservation was chargeable to all Miami Indians.

6. 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.

7. 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.

13. 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.

14. 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.

15. David L. Kiley, attorney of record for petitioners in Docket Nos. 124-D, 124-E and 124-F, 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

"WHEREAS, the United States Department of Justice representing the defendant in said claim has agreed to a settlement of all Miami claims under the said treaties of 1834, 1838 and 1840, after allowance for consideration and offsets, for \$1,373,000, subject to approval by appropriate resolutions of the governing bodies of the Miami Tribe of Oklahoma and of the Indiana Miami and by 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 of \$1,373,000 is a fair and equitable settlement of the claim and have recommended that it be accepted; and

"WHEREAS, said proposed settlement has been explained to the members of the tribe and all interested persons were 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 its said claims attorneys are hereby authorized to execute an appropriate stipulation and to take all necessary action to accomplish the entry of final judgment in Docket 256, consolidated with Dockets 124-D, E and F, in the amount of \$1,373,000."

The votes cast were counted by the Chairman and Mr. Perry of the Miami Indian Agency. The Chairman announced that there were 64 votes in favor of the motion and no votes against it. The meeting lasted three hours.

12. Fourteen days prior to March 30, 1968 Albert C. Harker, law partner of the attorney of record for petitioners in Docket Nos. 124-D, 124-E and 124-F, 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.

to execute an appropriate stipulation and to take all necessary action to accomplish the entry of final judgment in Dockets 124-D, 124-E and 124-F, consolidated with Docket 256, in the amount of \$1,373,000."

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

17. By letters dated May 7, 1968 addressed respectively to the claims attorneys for the Miami Tribe of Oklahoma, petitioner in Docket No. 256, and to the claims attorneys for the Miami Indians of Indiana, petitioners in Docket Nos. 124-D, 124-E and 124-F, 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 256, 124-D, 124-E and 124-F (consolidated) a net final judgment in the sum of \$1,373,000. 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 four 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 November 10, 1837, 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 256, 124-D, 124-E and 124-F (consolidated) for a net final judgment of \$1,373,000 are hereby approved."

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.

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

"WHEREAS, the Miami Tribe of Indiana as petitioner is prosecuting claims before the Indian Claims Commission, known as Dockets 124-D, 124-E and 124-F for additional compensation for tribal reservations ceded to the United States by the treaties of 1834, 1838 and 1840 (7 Stat. 458, 569 and 582); and

"WHEREAS, said claim has been consolidated with the claim of certain Oklahoma Miami petitioners in Docket 256 before the said Indian Claims Commission; and

"WHEREAS, the United States Department of Justice representing the defendant in said claim has agreed to a settlement of all Miami claims under the said treaties of 1834, 1838 and 1840, after allowance for consideration and offsets, for \$1,373,000, subject to approval by appropriate resolutions of the governing bodies of the Miami Tribe of Oklahoma and of the Miami Tribe of Indiana and by 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 of \$1,373,000 is a fair and equitable settlement of the claim and have recommended that it be accepted; and that said proposed settlement has been accepted by the petitioners in Docket 256, and

"WHEREAS, said proposed settlement has been explained to the members of the tribe and all interested persons were 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 its said claims attorneys are hereby authorized

19. 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 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 Miamis 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.

18. 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 \$1,373,000.00 settlement was adopted by a vote of 64 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."

*The other proposed settlement, also approved, involved Miami Docket No. 255, consolidated with Docket No. 124-C.

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.

24. 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. 256
)	Consolidated with
v.)	Dockets 124-D, E and F
)	
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 case, heretofore consolidated, 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. The partial final judgment entered herein on April 1, 1965, shall be vacated and defendant's motion to correct said judgment and petitioners' responses to said motion shall be considered as withdrawn.

"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."

20. 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.

21. 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.

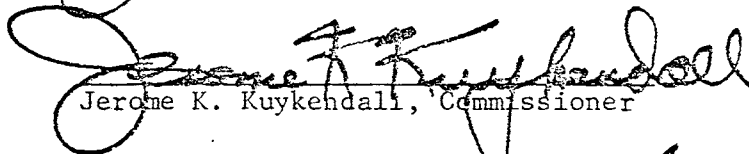
22. Charles Robert Peconga testified that he is a Miami Indian residing in Marion, Indiana. He had been to various Miami Indian meetings. The last chief of the Miamis of Indiana was his great-great-great-grandfather. He testified with respect to the meeting that questions were asked and answered, that 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.

23. 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

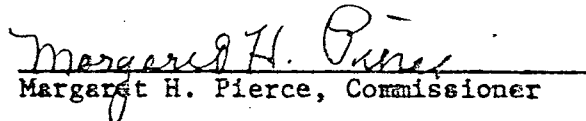
in said Docket Nos. 256, 124-D, 124-E and 124-F and has been freely and voluntarily approved by them and that the said compromise agreement under all the circumstances is fair and just to petitioners and defendant.

26. The Commission, therefor, 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 entered herein on August 2, 1968.


John T. Vance, Chairman


Jerome K. Kuykendall, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner

