

## BEFORE THE INDIAN CLAIMS COMMISSION

THE KICKAPOO TRIBE OF OKLAHOMA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Docket No. 318
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: June 11, 1969

FINDINGS OF FACT

1. The plaintiff herein is the Kickapoo Tribe of Oklahoma and as such is authorized by the Indian Claims Commission Act of August 13, 1946 to prosecute the claims set forth in its petition in this case. This claim arises out of the provisions of cession to the defendant of the lands comprising the major portion of the plaintiff's Oklahoma reservation ceded by the agreement of September 9, 1891, ratified by the Act of March 3, 1893 (27 Stat. 557).

2. The plaintiff received title to the ceded reservation as of October 1, 1874 as a gratuity from the United States, and its value was offset against an earlier recovery in Indian Claims Commission Docket No. 316, Kickapoo Tribe of Kansas, Kickapoo Tribe of Oklahoma, et al., v. United States, 15 Ind. Cl. Comm. 628, 632-636; modified, 18 Ind. Cl. Comm. 550.

By the terms of said agreement of September 9, 1891, the petitioning tribe ceded to the United States approximately 184,300 acres

out of the total acreage of the aforesaid Oklahoma reservation of 206,466 acres. The balance of the acreage was disposed of mainly in allotments to individual Indians of the tribe. The ceded reservation, located in Central Oklahoma on the north fork of the Canadian River, is identified as Royce Area 650 and is adjoined on the east by Royce Area 495, a reservation ceded by the Sac and Fox, February 13, 1891 and the subject of the Commission's decision in Docket No. 220, 17 Ind. Cl. Comm. 544, and on the south by the reservation of the Citizens Band of Potawatomis, Royce Area 506 ceded to the United States on March 3, 1891 and which is the subject of the Commission's decision in Docket No. 96.

3. The consideration for the cession by the plaintiff under the agreement of September 9, 1891 was \$64,650.00 in cash. In 1908 upon the petition of the Kickapoos of Oklahoma, \$215,000 was appropriated by Congress as additional consideration to the petitioning tribe, making a total for the ceded reservation of \$279,650, or approximately \$1.50 per acre. It is the claim of the plaintiff in this docket that the total consideration previously received by the plaintiff for the ceded acres of the Oklahoma Reservation as set forth constituted an unconscionable consideration when compared with the value of the land at the time of the cession.

4. By letter dated October 5, 1967 Allan Hull, attorney of record for the petitioning tribe, proposed settlement of Docket No. 318 to Edward L. Weisl, Assistant Attorney General (Plaintiff's Exhibit #1) in accordance with an attached proposed form of stipulation. By letter of March 4, 1968 from the Assistant Attorney General to Mr. Hull (Plaintiff's

Exhibit #2) the compromise settlement in the net amount of \$273,250 was agreed to, subject to the approval of the governing body of the Kickapoo Tribe of Oklahoma by appropriate resolution and the approval of the Secretary of the Interior or his authorized representative.

5. By notice sent to each member of the Kickapoo Tribe of Oklahoma from Mr. Gordon Wahpepah, Secretary of the Kickapoo Tribe of Oklahoma, a special meeting of the General Council of the Kickapoo Tribe of Oklahoma was called for August 3, 1968 (Plaintiff's Exhibit #3, Transcript of Hearing on Compromise, pp. 9-10).

At the August 3, 1968 meeting held at the Kickapoo Community Center, McLoud, Oklahoma, at 1:30 p.m. on August 3, 1968, Mr. Hull, attorney for the Kickapoo Tribe of Oklahoma, appeared and explained the terms of settlement to the members of the tribe, following which the Kickapoo Chairman, James Wahpepah, further explained the proposal to the tribal members in the Kickapoo Indian language. There was a period during which questions were proposed and answered, and after discussion the following resolution (Plaintiff's Exhibit #6) was adopted by a vote of 38 in favor and 7 against:

**"RESOLUTION**

"WHEREAS, the Kickapoo Tribe of Oklahoma has a claim pursuant to the United States of America of the Kickapoo Tribal Reservation in the State of Oklahoma, which claim is before the Indian Claims Commission as its Docket #318, and

"WHEREAS, a proposed settlement has been negotiated of the claim by duly appointed counsel for the said tribe, and the United States Department of Justice, subject to the approval of the said tribal organization 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 McLoud, Oklahoma on August 3, 1968, 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 318 before the Indian Claims Commission for the amount of Two Hundred Seventy Three Thousand and Two Hundred Fifty Dollars (\$273,250.00) subject to the approval of the Secretary of the Interior of the United States or his authorized representatives.

"CERTIFICATION

"We, the members of the Kickapoo Tribal Business Committee of the Kickapoo Tribe of Oklahoma, do hereby certify that the attached Resolution, MK-69-1 to be true and exact copy so approved at a Meeting of Kickapoo Tribe of Oklahoma, held on 3 August 1968, there being a quorum present and by a vote of 38 for and 7 against.

"IN WITNESS WHEREOF, we have hereunto set our hand this 3rd day of August, 1968.

/s/ James Wahpepah  
JAMES WAHPEPAH, Chairman

/s/ Houston Stevens  
HOUSTON STEVENS, Vice Chairman

/s/ Stanard Wiles Sr.  
STANARD WILES SR., Treasurer

/s/ Mary White  
MARY WHITE, Member

/s/ Gordon Wahpepah  
GORDON WAHPEPAH, Secretary

"AUTHENTICATION OF SIGNATURES

"I certify that the foregoing signatures of the Chairman, Vice-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"

Sixty-one eligible voters were present at the meeting, and a quorum under the by-laws of the Kickapoo Tribe of Oklahoma requires the presence of 25 qualified voters at any tribal meeting (Transcript of Hearing on Compromise, p. 8).

6. On December 12, 1968 the Commission held a hearing upon the proposed compromise. Before the Commission were the minutes of Special Meeting of the General Council of the Kickapoo Tribe of Oklahoma, held on August 3, 1968 (Plaintiff's Exhibit #5). The minutes signed by the Tribal Secretary show the conduct of the meeting, the discussion and consideration of the settlement and the vote of the tribe.

7. Two witnesses were called by the plaintiff at the December 12, 1968 hearing to testify to the approval of the settlement by the Kickapoo Tribe of Oklahoma. These witnesses were: James Wahpepah, Chairman of the Kickapoo Tribe of Oklahoma Tribal Council, and Gordon Wahpepah, Secretary of the Kickapoo Tribe of Oklahoma.

These witnesses were present at the meeting and confirmed the conduct of the meeting, the explanation of the proposed settlement and its approval by the tribal vote as set forth in finding 5 above. Each witness also expressed the opinion that the settlement was generally understood by the members of the tribe and that the proposed settlement was fair.

8. The attorneys' contract provides 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 plaintiff in Docket No. 318 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 18, 1968, addressed to plaintiff's attorney of record. The letter (Plaintiff's Exhibit #11) is as follows:

"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 settlement docket numbered 318 of the petitioner, the Kickapoo Tribe of Oklahoma, for a net final judgment of \$273,250.00.

"Prosecution of the docket has been governed by two contracts. 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 (later Dempsey, Mills and Casey and 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 its interests in the contract to the law firm of Harrison, Thomas, Spangenberg and Hull (now Hull and Mishne) was approved on August 14, 1951. The association of Attorney Louis L. Rochmes was approved on May 7, 1963. This contract was superseded by contract 14-20-0200 No. 1899, dated December 20, 1964, between the law firm of Harrison Thomas, Spangenberg and Hull (now Hull and Mishne) and the Kickapoo Tribe of Oklahoma. This contract was approved on April 8, 1965, for a period of five years beginning December 27, 1963.

"Contract No. 1899 provides 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 Tribe.

"Your offer of October 5, 1967, to the Assistant Attorney General to settle docket numbered 318 for the sum of \$273,250.00 was accepted on March 1, 1968, with the conditions that the proposed settlement be approved by the governing body of the Kickapoo Tribe of Oklahoma and that the settlement, as well as the resolution of the tribe, be approved by the Secretary of

the Interior or his authorized representative. Entry of a final judgment shall finally dispose of all claims or demands which the petitioner has asserted or could have asserted in the case and the defendant shall be barred from asserting offsets and counterclaims in other actions only as to those which it asserted or could have asserted in docket numbered 316. No appeal or review will be taken by either party.

"On August 3, 1968, you took the proposed settlement to the members of the Kickapoo Tribe of Oklahoma assembled in a special general council, with 61 eligible voters present, in the Kickapoo Community Center, located about two miles north of McLoud, Oklahoma. The meeting was well noticed. A notice dated July 23, 1968, was addressed by the tribal Secretary to all members in accordance with the tribe's constitution and bylaws stating the time, place, and purpose of the special meeting. We are satisfied that the tribal members were duly advised in advance of the meeting and had the opportunity to attend.

"You, as the tribe's claims attorney, and the Superintendent of the Shawnee Agency, as representative of the Bureau of Indian Affairs, attended. The Superintendent reported on the meeting. After opening the meeting, the tribal chairman introduced you as the tribal claims attorney. You gave a comprehensive report on the claim in docket numbered 318 and explained the proposed settlement in detail. The tribal chairman interpreted in the Kickapoo language for the benefit of the non-English speaking members. A discussion was had among the members and you answered satisfactorily all questions asked by the Indians. The members appeared to be well informed about the proposed settlement and to understand the result of completing the case by the proposed settlement. Then, by a vote of 38 for and 7 against, the general council adopted Resolution No. MK-69-1 accepting the proposed settlement.

"The Superintendent of the Shawnee Agency certified that the meeting was held in his presence and that the signatures of the Chairman, Vice-Chairman, Treasurer, Secretary, and Member of the Tribal Business Committee affixed to the resolution are genuine. The resolution 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 docket numbered 318 with a net final judgment of \$273,250.00 in favor of the Kickapoo Tribe of Oklahoma is hereby approved.

Sincerely yours,  
/s/ T. W. Taylor  
Acting Commissioner"

Contract No. 14-20-0200-1899 was renewed and extended for a period of ten years beginning December 28, 1968. This renewal and extension was approved May 28, 1969.

9. Counsel for both plaintiff 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 plaintiff and the United States.

10. At the December 12, 1968 hearing the plaintiff and the defendant filed with the Commission 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 Petitioner, and Clyde O. Martz, Assistant Attorney General, and W. Braxton Miller, Attorney for Defendant. Said stipulation is set forth as follows:

"STIPULATION FOR ENTRY OF FINAL JUDGMENT

"The parties by and through their respective attorneys of record hereby agree and stipulate that the above-entitled case shall be settled and finally disposed of by entry of final judgment, from which no appeal or review will be taken by either party, as follows:

"1. There shall be entered in the above-entitled case, after all allowable deductions, credits and offsets, a net final judgment of \$273,250.

"2. The entry of said final judgment in the above-entitled case shall finally dispose of all claims or demands whatsoever which the petitioner has asserted or could have asserted with respect to the subject matter of the claims in this case, Docket No. 318, and petitioner shall be barred from asserting all such claims or demands in any other action.



"3. In arriving at the amount of the net final judgment to be entered herein, the parties did not extend or go beyond the offsets and counterclaims which were heretofore adjudicated between the same parties and also the Kickapoo Tribe of Kansas in Docket No. 316, and defendant shall be barred from asserting offsets and counterclaims in other actions only as to those which it asserted or could have asserted in said Docket No. 316.

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

"This stipulation executed as of 2nd day of December, 1968.

/s/ Allan Hull  
Attorney of Record for Petitioner

/s/ Clyde O. Martz  
Assistant Attorney General

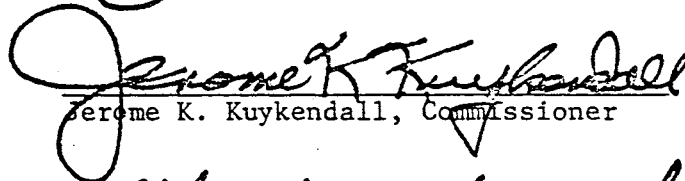
/s/ W. Braxton Miller  
Attorney for Defendant"

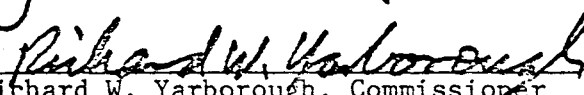
11. The Commission finds that the parties in this case have substantially complied with the basic requirements and steps to be followed in entering into a compromise settlement. We find that the plaintiff tribe has approved said settlement by duly adopted resolution after full notice and opportunity for discussion of the same, and that said compromise settlement has been approved by the Bureau of Indian Affairs and by counsel for both parties.

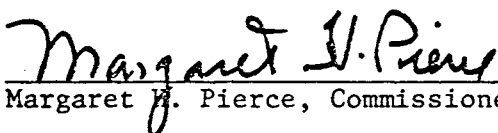
Taking into consideration all the pleadings in this case and the evidence presented at the hearing on the proposed compromise settlement, we find and conclude that the stipulation to compromise and settle the plaintiff's claim is fair and just to plaintiff and the defendant and said stipulation should be, and is hereby, approved.

A final judgment will be entered in accordance with the joint motion of the parties.

  
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John T. Vance, Chairman

  
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Jerome K. Kuykendall, Commissioner

  
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Richard W. Yarborough, Commissioner

  
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Margaret J. Pierce, Commissioner

  
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Brantley Blue, Commissioner