BEFORE THE INDIAN CLAIMS COMMISSION

THE MIAMI TRIBE OF OKLAHOMA, also known as THE MIAMI TRIBE, ET AL., Plaintiffs,	Docket No. 253
IRA SYLVESTER GODFROY, WILLIAM ALLOLLA GODFROY, JOHN A. OWENS, on relation of THE MIAMI INDIAN TRIBE and MIAMI TRIBE OF INDIANA, and each on behalf of others similarly situated and on behalf of THE MIAMI INDIAN TRIBE and various bands and groups of each of them, comprising the MIAMI TRIBE AND NATION, Plaintiffs,	Docket No. 131
THE PEORIA TRIBE OF INDIANS OF OKLAHOMA and AMOS ROBINSON SKYE on behalf of the WEA NATION, Plaintiffs,	Docket No. 314-D
v.	
THE UNITED STATES OF AMERICA, Defendant.	

Decided: March 18, 1970

Appearances:

Edwin A. Rothschild, Louis L. Rochmes, Attorneys for Plaintiffs in Docket No. 253

Jack Joseph, Attorney for Plaintiffs in Docket No. 314-D

Walter H. Maloney, David L. Kiley, Albert C. Harker and Robert C. Bell, Jr., Attorneys for Plaintiffs in Docket No. 131

David M. Marshall with whom was Mr. Assistant Attorney General, Clyde O. Martz, Attorneys for Defendant.

ON MOTION FOR SEVERANCE AND RECONSIDERATION

OPINION OF THE COMMISSION

Commissioner Pierce delivered the Opinion of the Commission.

On December 30, 1969, the Miami Tribe of Oklahoma, plaintiff in Docket No. 253, and the Miami Tribe of Indiana, plaintiff in Docket No. 131, moved for a separation or severance of the award for Royce Area 56 to the Peoria Tribe on behalf of the Wea Nation, plaintiff in Docket No. 314-D, and moved also for a reconsideration of the award for Area 56 in the Commission's decision of November 26, 1969, in the above-captioned proceeding. Plaintiff in Docket No. 314-D opposes the motions for severance and reconsideration and the defendant opposes the motion for severance. There was oral argument on the motions on February 27, 1970.

We note at the outset that the amount of the award for Area 56 was amended by order of the Commission of January 8, 1970, making the award to the plaintiff in Docket 314-D $531,000 for its interest in the area.

In substance, plaintiffs in Dockets 253 and 131 contend that they are entitled to the whole award for Area 56, that the plaintiff in 314-D either has no interest in Area 56, or, alternatively, a lesser interest than the Commission has determined.

The decision of November 26, 1969, in this case included in Finding 14 the determination that the Miami, Eel River, and Wea Tribes owned Area 56 at the time of its cession to the United States in 1805.

The Finding was based on the 1805 Treaty of Grouseland (7 Stat. 91) ceding Area 56 and on related Findings in the title decision in this case (Miami Tribe of Oklahoma, et al. v. United States of America, 5 Ind. Cl. Comm. 180 (1957)). The title proceeding involved no proof of actual use and occupancy but depended on recognized title through a determination that by the Treaty of Grouseland, the United States confirmed the boundaries of land (including Area 56), the title to which had been recognized as belonging to the Miami, Eel River, and Wea Tribes by the Treaty of Greeneville (7 Stat. 49; 5 Ind. Cl. Comm. 195, 197).

Findings in the title decision herein upon which our conclusions as to the distribution of the award for Area 56 were based, were cited and used in our November 26 decision (22 Ind. Cl. Comm. 93-97 (1969)). These included the portion of Finding 1 in the title decision that the Wea Tribe was originally a part of the Miami Tribe but after 1805 separated from the Miami (5 Ind. Cl. Comm. 180, 181). This conclusion is based in part on the express recitation in Article IV of the 1805 Treaty of Grouseland that "the tribes which are now called the Miamis, Eel River, and Weas, were formerly and still consider themselves one nation," and partially on evidentiary material of the relationship between the Weas and the Miamis in support of Finding No. 2 in Docket No. 67 (Consolidated), The Miami Tribe of Oklahoma v. The United States of America, 2 Ind. Cl. Comm. 617, 618-628 (1954). 1/

1/ In Miami Tribe of Oklahoma, et al. v. The United States, 146 Ct. Cl. 421 (1959), the Commission's decision in 2 Ind. Cl. Comm. 617 (1954) was affirmed in part here relevant but was remanded on the question of value.

The Commission there concluded that the separation of the Weas from the Miami Nation occurred after 1805 and before 1818.

Finding 9 in the title decision in this case incorporates the portion of Article II of the Treaty of Grouseland under which the Miami, Eel River, and Wea tribes cede and relinquish to the United States forever all of the tract depicted on Royce's map of Indiana as Area 56. The cession and relinquishment of Area 56 required of the Weas along with the Miami and Eel River Tribes by the Treaty of Grouseland is evidence that all three were then considered owners of the area by the United States (5 Ind. Cl. Comm. 193, 194).

Further, in connection with the motion for reconsideration, Article IV of the Treaty of Grouseland is important. In Article IV, the United States agreed to consider the Miami, Eel River, and Wea Tribes as joint owners of all the country on the Wabash and its waters above the Vincennes tract, not ceded to the United States by this or any former treaty. The United States agreed also that it would not purchase any of this country without the consent of each of the said tribes, indicating that the lands were held in common and not divided among the three tribes.

A proposed stipulation, urged in support of the motion for reconsideration by plaintiffs in Docket No. 131, apparently agreed to by attorneys for the plaintiffs in July 1955, was filed in this proceeding in 1966. It includes a disclaimer by attorney for plaintiff

in Docket 314 (not 314-D) as against plaintiffs in Dockets 131 and 253 to any right of recovery by reason of the cessions of Area 56 or the eastern portion of Area 71. We found no evidence in support of the apparent disclaimer in 1955 of a Wea claim to Area 56. The disclaimer as to Area 56 was completely inconsistent with the filing on March 10, 1958, of the petition in this proceeding by plaintiff in 314-D which reasserted the claim to Area 56 on behalf of the Weas. Moreover, the Weas' claim to Area 56 had been asserted consistently by plaintiff in 314 in the title proceeding in this case. This was tantamount to a retraction by counsel in 314 of the proposed stipulation. The 1955 stipulation is not in accord with the Treaty of Grouseland or with the above-discussed Findings or with the pleadings in the title phase of this proceeding. It was not adopted by the Commission after considering pleadings and oral argument on November 7, 1968. Although the Commission incorporated in Finding 12 of the title decision the location and quantity of Wea lands in Area 71 as agreed to by attorneys for all of the parties in a stipulation of November 17, 1954, the Finding refers only to Area 71, and contains nothing regarding the interests of the respective parties in Area 56 (5 Ind. Cl. Comm. 196, 197). That stipulation, unlike the one here contended for, was supported by evidence in the record other than the agreement of counsel for the parties.

In further support of the motions for severance and reconsideration, the plaintiffs in Dockets 253 and 131 assert that the Weas' interest in

Area 56 should not be a one-third interest which the Commission used in the award of November 26, 1969, as amended, because the annuity to the Weas for Area 56 under Article III of the Treaty of Grouseland was less than that to the Miamis. It is noted that the annuity to the Eel River Tribe for its interest in Area 56 under the Treaty of Grouseland was also less than that to the Miamis. For the reasons discussed below we do not consider the difference in annuity alone a persuasive basis for holding that in 1805 the Weas did not have the same interest in Area 56 as did the Miami and Eel River Tribes.

The Findings and evidence in the title decision in this case, in the related decision by the Commission in Miami Tribe of Oklahoma v. The United States, Docket 67, supra, and the provisions of the Treaty of Grouseland in Article IV which refer to the plaintiffs' property holding as joint must be considered in addition to and together with the treaty provision on consideration in determining the ownership interests of the plaintiffs herein.

In the title decision in this proceeding and the related proceeding in Docket 67, we find reports to the Secretary of War defining the interests of plaintiffs in the subject area and adjacent lands made by William Henry Harrison, Governor of Indiana Territory and Commissioner for the United States in treaty negotiations with northwestern Indian tribes, which explain Harrison's determination in the negotiations

that one or more of several claimants for compensation for a given area should be included as a party to a treaty ceding the area. (See 5 Ind. Cl. Comm. 215-218, 219; 2 Ind. Cl. Comm. 618-626, indicating, among other things, that sometimes tribes without legitimate claims were paid compensation to facilitate settlements.)

Harrison's report to the Secretary of War on the Treaty of Grouseland, in evidence in both this proceeding and Docket 67, states, in effect, that the Miami, Eel River, and Wea Tribes had, at the time of the treaty, an undivided interest in their land in common, that in the course of a few years it might not be difficult to persuade them to make a division of it (2 Ind. Cl. Comm. 622, 627-628; cf. 22 Ind. Cl. Comm. 97-98 indicating that Area 71 was later apportioned between the Weas and the other two Miami Tribes). Harrison's description of the ownership interest of the Miami, Eel River, and Wea Tribes in his report to the Secretary of War on the 1805 Treaty of Grouseland is in accord with Article IV of the Treaty which refers to lands other than Area 56 owned by the three tribes as "country which they hold in common" and recites, as was mentioned above, that the United States would consider the three as joint owners of all the country on the Wabash and its waters, above the Vincennes tract, not ceded to the United States by this or any former treaty, and that the United States would not purchase any of this country without the consent of each of the tribes.

The fact that the Miami, Eel River, and Wea Tribes were not awarded equal annuities under Article III of the Treaty of Grouseland

for their interest in Area 56 is not sufficient to overcome the effect of the provisions and official reports of treaty proceedings referred to above indicating that the three tribes held their lands jointly in undivided common ownership, meaning an undivided one-third interest in each unless circumstances to the contrary appear.[2/]

In Red Lake, Pembina and White Earth Bands v. The United States, 164 Ct. Cl. 389 (1964), a case in which the only language in the treaty there involved (13 Stat. 689) regarding the distribution of consideration between two bands was a provision that two-thirds of the consideration be awarded one band and one-third be awarded the other, the Court held that the same division must be followed in an award under the Indian Claims Commission Act (60 Stat. 1049) remedying the insufficiency of the original consideration. The Red Lake case is clearly distinguishable from the instant case. Here, provisions in Article IV of the Grouseland Treaty describing the property ownership of the three tribes as a joint ownership were substantiated by a report to the Secretary of War from the treaty commissioner and by similar material referred to in a related decision. These indicate that the three plaintiffs had undivided interests in their lands which they held jointly. Though the consideration awarded by Article III of the Treaty of Grouseland to the respective plaintiffs did not conform to the characterization in Article IV of their

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2/ Ordinarily, property which is held jointly by more than one owner, each having an undivided interest in the whole is owned equally by each (II Tiffany, The Law of Real Property, 3d. ed. 1939, secs. 418-419).

ownership interest as a joint ownership, this can be explained on grounds other than differences in their interests in Area 56. The title decision in this case indicates that consideration was paid not only on the basis of ownership interests but also to facilitate cession agreements with the Indians, that is, as a matter of expediency. Consequently, the parties entitled to compensation under the Indian Claims Commission Act are not necessarily the same as those who received consideration under cession treaties because matters other than ownership affected the granting of consideration under treaty provisions (5 Ind. Cl. Comm. 191, 218-219).

Moreover, Indian ownership in the Red Lake case depended upon use and occupancy of the area involved. Thus, the factors determining title differed from those involved in the ownership of Area 56 by the Miami, Wea, and Eel River Indians which was based upon recognized title (5 Ind. Cl. Comm. 195). While population differences may have been considered in the annuity provisions of Article III of the Treaty of Grouseland, such differences did not have any bearing on the ownership interests of the plaintiffs in Area 56. This is so because Article IV provisions of the Treaty of Grouseland and an official report of the treaty proceedings specifically described that ownership interest otherwise. Such express descriptions of the interests of the separate plaintiffs herein distinguish this case from the Red Lake case.

We conclude, accordingly, that this case is not governed by the decision on distribution of the award in the Red Lake case.

Plaintiff in Docket No. 253 suggests that occupancy or control of Area 56 at the time of cession is relevant in determining the meaning of the treaty provision which describes the plaintiffs' ownership of lands held in common as joint ownership. This record contains no evidence of actual occupancy and control of Area 56 as between the Miami, Wea, and Eel River Tribes. Recognized title refers to the Indians' right to permanently occupy and use land as a result of Congressional action (5 Ind. Cl. Comm. 204). The characterization in the Treaty of Grouseland of plaintiffs' ownership of land held in common as joint, substantiated and defined more exactly by Harrison's reports of the treaty proceedings in 1805, has been discussed already. That characterization, not contradicted by anything in the record, is forceful evidence that in 1805 each of the plaintiffs had an undivided interest in the whole tract. Changes in the relationships between the plaintiffs after 1805 do not affect the conclusion as to Area 56 which was ceded in 1805.

The question raised on the motion for reconsideration, of which of the constituent groups of the Peoria Tribe should participate in an award in this proceeding, is not here in issue. We note that in The Peoria Tribe of Indians of Oklahoma v. United States, 4 Ind. Cl. Comm. 223 (1956), reversed on other grounds, Peoria Tribe of Indians of Oklahoma v. United States, 390 U.S. 468 (1968), the Commission held inter alia, that the Peoria Tribe is the successor to the Weas.

The caption of Docket 314-D indicates that the Peoria Tribe of Indians of Oklahoma and Amos Robinson Skye are plaintiffs on behalf of the Wea Nation. Nothing in the decision in Docket 18-B, Minnesota Chippewa Tribe v. United States, (13 Ind. Cl. Comm. 77 (1964), 14 Ind. Cl. Comm. 226 (1964)) referred to by counsel for plaintiffs in Docket 131 at the oral argument on these motions would support a different handling of the question.

Upon consideration of all the evidence available in this record and in related Commission proceedings bearing on the question of the Wea interest in Area 56, we find no basis for modifying our conclusions supporting the award in the decision of November 26, 1969, as amended, that the interest of the Miami, Eel River, and Wea Tribes was undivided in their lands which they held in common in 1805 when Area 56 was ceded and that the three tribes may be described as joint owners of the whole tract at that time.

For the reasons discussed herein we conclude that there is no basis for modifying our decision of November 26, 1969, as amended. Therefore, the motions for severance and reconsideration are denied. An order so providing will be entered herein.

Concurring:

Jerome K. Kuykendall, Chairman

Margaret H. Pierce, Commissioner

John T. Vance, Commissioner

Richard W. Yarborough, Commissioner

Brantley Blue, Commissioner