

BEFORE THE INDIAN CLAIMS COMMISSION

THE CREEK NATION,	)	
	)	
Plaintiff,	)	
	)	Docket No. 167
v.	)	
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: May 26, 1971

ADDITIONAL FINDINGS OF FACT

On July 6, 1967, the Commission issued findings of fact, opinion and interlocutory order herein, holding that the Creek Nation was entitled to recover under Section 2, Clause (3) of the Indian Claims Commission Act (60 Stat. 1049, 1050), the fair market value of 1,198.99 acres of Creek land ceded as a result of an erroneous land survey made to effect the sale, by treaty, of 175,000 acres of Creek land to the United States. 18 Ind. Cl. Comm. 434. On June 30, 1969, the Commission issued findings of fact, opinion and interlocutory order holding that the Creek Nation was entitled to just compensation under Section 2, Clause (1) of the Indian Claims Commission Act and under the Fifth Amendment for the taking of the land. The Commission also determined the several dates of taking of said Creek lands as of which dates they were to be valued, and from which dates interest was to be paid as a part of just compensation. 21 Ind. Cl. Comm. 278. Both these decisions were rendered following an earlier decision of the Court of Claims, 168 Ct. Cl. 483 (1964), remanding the case to the Commission for

the determination of plaintiff's rights under Section 2, Clauses (3) and (5) of the Indian Claims Commission Act.

On June 12, 1970, the Court of Claims, at 192 Ct. Cl. 425, 427 F.2d 743, affirmed the dates the Commission had determined as the dates of valuation of the Creek lands, but reversed that part of the Commission's decision holding that plaintiff was entitled to just compensation under the Fifth Amendment, and remanded the case to the Commission for determination, in accordance with the court's opinion, of the amount of recovery to which plaintiff was entitled.

The Commission now makes the following findings of fact supplemental and additional to the Finding Nos. 1 through 17 herein.

18. After the extensive litigation set forth above, counsel for the parties began negotiations which led to a tentative agreement that \$50,000.00 would be a fair compromise settlement for the 1,198.99 acres of Creek land here involved as of the several dates of valuation determined in the above litigation.

19. On January 26, 1971, counsel for plaintiff transmitted said tentative agreement to the Principal Chief of the Creek Nation, recommending acceptance by the Creek Nation of the settlement of this Creek claim for \$50,000.00, and suggesting that this proposed compromise settlement be submitted to the Creek Tribal Council for its consideration.

20. At its regularly called meeting on Saturday, January 30, 1971, at Okmulgee, Oklahoma, the proposed settlement was submitted to the Creek Tribal Council, and by unanimous vote of the Council the following

resolution was adopted:

RESOLUTION OF THE CREEK TRIBAL COUNCIL

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BE IT HEREBY RESOLVED by the Creek Tribal Council, acting for and on behalf of the Creek Nation of Indians of the State of Oklahoma, at its regular meeting held on Saturday, January 30, 1971, at Okmulgee, Oklahoma, that Paul M. Niebell, claims attorney for the Creek Nation be and hereby is authorized to settle by agreement of the parties, and by way of compromise settlement, the claim of the Creek Nation for the value of 1198.99 acres of Creek tribal lands erroneously excluded from the Creek domain in Oklahoma, and included in the Seminole domain by an erroneous survey of the Creek-Seminole boundary line made by the United States Surveyor in 1888, for the net amount of \$50,000.00, said claim for 1198.99 acres being the subject matter of the case of the Creek Nation v. United States, Docket No. 167, before the Indian Claims Commission.

BE IT FURTHER RESOLVED, That said Paul M. Niebell, as attorney of said Creek Nation, be and hereby is authorized to sign a stipulation for the entry of a final judgment in favor of the Creek Nation in the net amount of \$50,000.00 in settlement of said claim for 1198.99 acres of Creek land in Docket No. 167, and to do any and all further acts on behalf of the Creek Nation necessary to consummate said settlement as soon as possible.

Passed and approved this 30th day of January, 1971.

/s/ Tom Bear  
Chairman

/s/ Hattie S. Jessee  
Secretary

Approved /s/ W. E. McIntosh  
Principal Chief, Creek Nation

21. Pursuant to said resolution, counsel for the plaintiff sent the following letter, dated February 3, 1971, to the defendant:

Honorable Shiro Kashiwa,  
Assistant Attorney General,  
Land and Natural Resources Division,  
U. S. Department of Justice,  
Washington, D. C. 20530.

Dear Sir:

The Creek Nation of Indians of the State of Oklahoma has by Resolution of the Creek Tribal Council, dated January 30, 1971, approved by the Principal Chief, authorized me, as its attorney, to settle by agreement of the parties, and by way of compromise settlement, the claim of the Creek Nation in Docket No. 167, The Creek Nation v. United States, before the Indian Claims Commission, for the net amount of \$50,000.00. A copy of the Resolution of the Creek Tribal Council is submitted herewith.

Therefore, I submit herewith a formal offer of the Creek Nation to settle the above mentioned claim for the net sum of \$50,000.00.

Sincerely yours,

/s/ Paul M. Niebell  
Paul M. Niebell.

22. On February 24, 1971, the Assistant Attorney General on behalf of the defendant, accepted the settlement offer subject to certain conditions. The acceptance letter addressed to Paul M. Niebell, Esquire, Room 600, 1026 17th Street, N. W., Washington, D. C. 20036, states as follows:

Dear Mr. Niebell:

The offer contained in your letter of February 3, 1971, to settle the claim in Creek Nation v. United States, Docket No. 167, before the Indian Claims Commission, for \$50,000 is accepted subject to the following conditions:

1. That the proposed settlement be approved by appropriate resolution of the governing body of the Creek Nation. This requirement appears to have been met by the Resolution of the Creek Tribal Council of January 30, 1971, a copy of which was submitted with your letter of February 3, 1971.

2. That approval of the settlement, as well as the Resolution of the Creek Tribal Council, be secured from the Secretary of the Interior, or his authorized representative.

The Department of Justice will be happy to work out with you the terms of the stipulation and the appropriate motion and order necessary to carry into effect the offer of settlement subject to the conditions specified herein.

In drawing the Joint Motion for entry of judgment, please list the documents which will be introduced in support of the settlement, such as (1) the stipulation, (2) the tribal resolution or resolutions, (3) the letter of approval of the settlement by the Department of the Interior, and (4) such other papers as will be offered in evidence at the hearing on the settlement. Copies of these papers should also be furnished to the defendant, xeroxed if you so desire.

Sincerely,

/s/ Shiro Kashiwa  
Shiro Kashiwa  
Assistant Attorney General

A copy of this letter was forwarded to The Honorable Louis R. Bruce, Commissioner of Indian Affairs.

23. On March 8, 1971, counsel for plaintiff addressed a letter to the Commissioner of Indian Affairs requesting his approval of the proposed compromise settlement of this claim of the Creek Nation for the net amount of \$50,000.00.

24. The compromise settlement was approved in a letter dated March 19, 1971, from Anthony P. Lincoln, Acting Commissioner of Indian Affairs, the duly authorized representative of the Secretary of the

Interior. The letter reads as follows:

Dear Mr. Niebell:

You requested our approval of a proposed compromise to settle Indian Claims Commission Docket No. 167 with the entry of a final judgment in the net amount of \$50,000.00 in favor of the Creek Nation of Indians of the State of Oklahoma.

The claims in the case have been prosecuted by you under two contracts. Contract No. I-1-ind. 18361, dated August 28, 1946, between the Creek Nation of Indians of the State of Oklahoma and Attorney Paul M. Niebell, was approved on November 12, 1947, for a period of 10 years beginning with the date of approval. Contract 14-20-0650 No. 529, dated October 30, 1957, between the same parties, was approved on January 6, 1958, for a period of 10 years beginning on November 12, 1957. An extension of this contract for a period of 5 years beginning on November 12, 1967, was approved on August 2, 1967. The 1957 contract provides that the attorney shall not make any compromise of the matters in controversy unless with the approval of the Commissioner of Indian Affairs.

You advised the Creek Tribal Council, by a letter addressed to the Principal Chief of the Creek Nation on January 26, 1971, that you had a tentative agreement to settle Docket No. 167 for \$50,000.00. You explained the history of the claims in the case, including the appeal decided by the Court of Claims on [June] 12, 1970, and recommended consideration of the proposed settlement by the Creek Tribal Council. The Creek Tribal Council responded by adopting a resolution on January 30, 1971, authorizing you to settle the case for \$50,000.00 and to sign a stipulation for the entry of a final judgment in that amount.

You then made a formal offer to the Assistant Attorney General on February 3, 1971, to settle Docket No. 167 for \$50,000.00. The offer was accepted on February 24, 1971, with a statement that the resolution of January 30,

1971, appeared to satisfy the requirement that the proposed settlement be approved by the governing body of the Creek Nation. However, the acceptance was made with the condition that approval of the settlement, as well as the resolution, be secured from the Secretary of the Interior or his authorized representative.

We are satisfied that the Creek Tribal Council was properly convened and that the resolution was duly adopted. The calling of the Creek Indians of the Creek Nation of Oklahoma to a general meeting to consider and pass on the proposed settlement, in light of the relatively small amount of the net recovery from the case, would place undue hardship on them. It is our opinion that the resolution adopted on January 30, 1971, should be accepted as representative of and expressing the views of the Creek Nation of Indians of the State of Oklahoma. The resolution is hereby approved.

In light of the information that you have submitted to us and that obtained from other sources, the proposed settlement of Docket No. 167 as set out in the "Stipulation For Entry Of Final Judgment" is hereby approved.

Sincerely yours,

/s/ A. P. Lincoln  
A. P. Lincoln  
Acting Commissioner

25. After approval of the proposed settlement by the Secretary of the Interior, counsel for defendant in compliance with its conditional acceptance of the terms of the compromised offer executed a Stipulation for Entry of Final Judgment. It was filed with the Commission on April 5, 1971. The Stipulation reads as follows:

It is hereby stipulated and agreed between counsel for the parties that the above-entitled case shall be settled and disposed of by the entry of a final judgment by the Indian Claims Commission in favor of the Creek Nation of Indians of the State of Oklahoma and against the United States in the total net sum of Fifty

Thousand Dollars (\$50,000.00), and that no review therefrom is to be sought by either party.

That no offset claims are to be asserted against said judgment so entered. But the United States does not waive its right to assert offset claims arising after June 30, 1956, in any other Creek case.

Nothing connected with this compromise may be construed as an admission of either party as to any issues for purposes of precedent in any other case.

/s/ Paul M. Niebell  
Paul M. Niebell  
Attorney for Plaintiff

/s/ Shiro Kashiwa  
Shiro Kashiwa  
Assistant Attorney General

/s/ Ralph A. Barney  
Ralph A. Barney  
Attorney, Department of  
Justice

/s/ Craig A. Decker  
Craig A. Decker  
Attorney, Department of  
Justice

Attorneys for Defendant.

26. On May 12, 1971, the Commission held a hearing on the proposed settlement and compromise of plaintiff's claim. Counsel for the plaintiff made a full statement regarding the Creek Tribal Council. He explained that the Creek Tribal Council is a representative body of the Creek Nation of Indians of the State of Oklahoma, recognized as such by the Commissioner of Indian Affairs, and has been functioning as such and as an advisory body to the Principal Chief of the Creek Nation since before 1930. The Council is presently composed of 57 regular members who represent the



former 44 Creek tribal towns, and meets regularly every three months, or four times a year, at the Creek Council House, Okmulgee, Oklahoma, pursuant to call by the Principal Chief of the Creek Nation. The members are paid their expenses from Creek tribal funds when in attendance at Council meetings. The Council has a permanent Chairman and a Secretary, and the minutes of the proceedings are properly recorded and approved by the Chairman, attested by the Secretary, and approved by the Principal Chief. The Resolutions of the Council are subscribed to in the same manner, and contain the official seal of the Creek Nation. The Council deliberates and passes upon Creek tribal matters, passes resolutions relative to such matters, selects attorneys to represent the Creek Nation in its tribal claims cases, and as its general counsel. The Council has heretofore authorized its tribal claims counsel to settle by compromise settlement for \$90,000.00 the Government's claim of offsets in Creek case Docket No. 21 before the Commission.

Mr. Guy W. Lovell, Chief, Tribal Claims Section, Bureau of Indian Affairs, testified as to the opinion of the Bureau, expressed in the letter dated March 19, 1971, to Mr. Niebell (Finding of Fact No. 24, supra), that the Bureau did not consider a referendum of Creek citizens necessary to settle this case. He reiterated the statements contained in said letter and further indicated that the Bureau's opinion was based upon the status of the Creek Tribal Council and the sophistication in business affairs of the Creek leaders.

27. The Commission finds, in view of the small amount of the settlement herein, the large membership of the Creek Nation who are widely scattered throughout the country, and the attendant expense, that a referendum to determine the views of the individual Creek Indians would be impracticable, and accepts, as did the Acting Commissioner of Indian Affairs, the Resolution of the Creek Tribal Council, dated January 30, 1971, approved by the Principal Chief of the Creek Nation, as expressing the desire of the Creek Nation to consummate this compromise settlement.

28. Based upon the entire record in these proceedings, including the approval of the settlement by counsel for both parties, the duly authorized representative of the Secretary of the Interior, and the Creek Tribal Council by its resolution of January 30, 1971, the Commission finds that approval of the settlement as set forth in the Stipulation for Entry of Final Judgment, filed on April 5, 1971, is fair and just to both parties and will eliminate considerable additional litigation expenses as well as delay in payment of the final award, and that said stipulation should be approved.

Judgment should therefore be entered for plaintiff against defendant for \$50,000.00, subject to the terms and provisions set

forth in the stipulation. The Commission therefore finds that the Joint Motion for the Entry of Final Judgment filed April 5, 1971, should be granted.

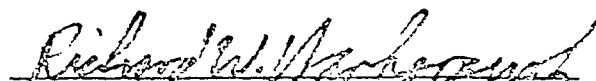
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Jerome K. Kuykendall, Chairman

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John T. Vance, Commissioner

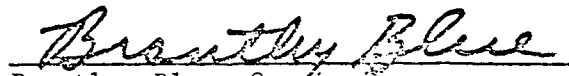
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Richard W. Yarborough, Commissioner

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Margaret H. Pierce, Commissioner

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Brantley Blue, Commissioner