

BEFORE THE INDIAN CLAIMS COMMISSION

THE CREEK NATION,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 275
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: August 23, 1972

FINDINGS OF FACT ON COMPROMISE SETTLEMENT

This matter is now before the Commission for approval of a compromise final settlement of this case and entry of a final judgment in the amount of \$1,346,000, with a waiver of review or appeal, said judgment to settle and dispose of the above-entitled claim and all counterclaims or offsets which defendant has asserted or could have asserted in this docket under the provisions of Section 2 of the Indian Claims Commission Act (25 U.S.C. §70a). The government does not waive its right to assert offset claims arising after June 30, 1956, in any other Creek case.

The Commission has heretofore determined herein on April 15, 1970, that the plaintiff held aboriginal title to that portion of the lands in suit described in the Commission's Finding No. 25 until, through a series of acts culminating with the ratification on April 8, 1816, of the treaty with the Cherokees (7 Stat. 139), the United States without compensation, deprived the Creek Nation of its aboriginal title.

23 Ind. Cl. Comm. 1. The Commission ordered that case proceed to a

determination of the acreage contained within the area described in Finding No. 25 and the fair market value of said lands as of April 8, 1816.

Subsequently on March 3, 1971, the Commission issued an opinion denying defendant's motion for rehearing. 24 Ind. Cl. Comm. 473. No appeal having been taken from this decision, the Commission set the case for trial on value. Thereafter negotiations for the settlement of this claim were commenced with the consent and agreement of the parties. Agreement was ultimately reached on a settlement in the net amount of \$1,346,000 which would dispose of all the plaintiff's claims in Docket No. 275 and all claims of offsets by the defendant. The proposed settlement was conditioned upon approval by plaintiff tribe, the Secretary of the Interior or his authorized representative, and this Commission.

A hearing having been held before the Commission on August 15, 1972, on the proposed offer to compromise and settle, the Commission makes the following findings of fact which are supplemental to the previous findings Nos. 1-26, inclusive, made herein:

27. On May 3, 1972, counsel for plaintiff sent a letter to the defendant, addressed to Honorable Kent Frizzell, Assistant Attorney General U. S. Department of Justice, offering to compromise and settle, which letter reads as follows:

On April 15, 1970 the Indian Claims Commission entered its findings of fact and opinion holding that the United States was liable to the Creek Nation for lands in northern Alabama and northwest Georgia south of the Tennessee River, described in its Finding 25 (23 Ind. Cl. Comm. 1, [sic] 15 [35]). The area in question contains 1,346,000 acres, as computed by the Bureau of Land Management. The Commission also fixed the date of valuation of these lands on April 8, 1816. The issue of value alone remains to be litigated.

As counsel for plaintiff, I have investigated the value of said lands, and am ready for trial of this issue, which is set before the Commission on July 31, 1972. With the possibility of settling the value of these lands by agreement of the parties, and by way of compromise settlement, I am willing to suggest to my client, the Creek Nation, settlement on the basis of \$1.00 an acre on the date of valuation, April 8, 1816, which would result in a judgment in favor of the Creek Nation in the net amount of \$1,346,000.

This offer in compromise is made to avoid further litigation on the issue of value, and thus save the commensurate delay and additional expense to both parties in the final settlement of this claim.

Sincerely yours,

/s/ Paul M. Niebell,
Paul M. Niebell,
Attorney for the Creek Nation.

[Ex. S-1]

Copies of this letter were also sent to Hon. Claude A. Cox, Principal Chief of the Creek Nation, and to the Commissioner of Indian Affairs.

28. By letter dated June 19, 1972, the Assistant Attorney General, Kent Frizzell, on behalf of the defendant, accepted the settlement offer subject to certain conditions. The acceptance letter addressed to Paul M. Niebell, counsel for plaintiff, states as follows:

The offer contained in your letter of May 3, 1972, to settle the claim in Creek Nation of Oklahoma v. United States, Docket No. 275, before the Indian Claims Commission, for \$1,346,000 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.
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/ Kent Frizzell
Kent Frizzell
Assistant Attorney General

[Ex. S-2]

A copy of this letter was forwarded to Hon. Louis R. Bruce, Commissioner of Indian Affairs, Department of the Interior.

29. Upon acceptance of the above offer, counsel for plaintiff arranged with the Principal Chief of the Creek Nation for a special

meeting of the Creek Tribal Council. The meeting of the Creek Tribal Council was held on June 24, 1972, at the Creek Council House, Okmulgee, Oklahoma. At that meeting, counsel for plaintiff appeared personally and presented a full and complete explanation of the proposed settlement. The record indicates that a quorum of the Tribal Council was present at said meeting and that a question and answer period ensued whereby the details of the proposed settlement were fully aired. The record shows that 14 councilmen participated in the June 24th meeting as well as about fifty tribal members. The record further shows that a representative of the Bureau of Indian Affairs, Department of the Interior, was present at that meeting.

30. At the conclusion of the Creek Tribal Council meeting of June 24, 1972, the Tribal Council unanimously adopted a resolution authorizing counsel for plaintiff to settle Docket No. 275 for a net recovery in the amount of \$1,346,000.00. The resolution was signed by the Principal Chief and by the Chairman and Secretary of the Creek Tribal Council, all of whose signatures were certified as genuine by the representative of the Bureau of Indian Affairs. The resolution, dated June 24, 1972, reads as follows:

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 a special meeting held on Saturday, June 24, 1972, at Okmulgee, Oklahoma, called pursuant to notice, 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 1,346,000 acres of land awarded to the Creek Nation of Oklahoma in Creek Nation v. United States, Docket No. 275, before the Indian Claims Commission, for \$1.00 an acre, or for a total net amount of \$1,346,000.00.

BE IT FURTHER RESOLVED, That said Paul M. Niebell, as attorney of said Creek Nation of Oklahoma, be and hereby is authorized to sign a stipulation for the entry of a final judgment in favor of the Creek Nation of Oklahoma in the net amount of \$1,346,000.00 in full settlement of said claim for 1,346,000 acres of Creek land involved in Docket No. 275, 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 24th day of June, 1972.

/s/ Hugh C. Johnson
Chairman

/s/ Jorene G. Coker
Secretary

I certify that the Signatures on this page are genuine Approved /s/ Claude Cox

/s/ Frank Sokolik
Tribal Operations Officer
Bureau of Indian Affairs, MAO
Muskogee, Oklahoma

[Ex. S-3]

31. On June 27, 1972, counsel for plaintiff addressed a letter to the Commissioner of Indian Affairs requesting his approval of the proposed settlement of this claim of the Creek Nation for the net amount of \$1,346,000. The compromise settlement was approved in a letter dated July 28, 1972, from Louis R. Bruce, Commissioner of Indian Affairs, the duly authorized representative of the Secretary of the Interior. The letter, addressed to counsel for plaintiff, reads as follows:

You submitted for our approval a proposal to settle the case of the Creek Indians, Indian Claims Commission Docket No. 275, for a net final judgment of \$1,346,000.00.

Docket No. 275 is being prosecuted by you under contract, Symbol 14-20-0650 No. 529, dated October 30, 1957, between you and the Creek Nation or Tribe of Indians of the State of Oklahoma. The contract was approved on January 6, 1958, for a period of ten years beginning on November 12, 1957. An extension of the contract for a period of five years from November 12, 1967, was approved on August 2, 1967. This 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.

On May 3, 1972, you submitted an offer to the Assistant Attorney General to settle Docket No. 275 for \$1,346,000.00. He accepted the offer on June 29, 1972, with the conditions that the proposed settlement be approved by appropriate resolution of the governing body of the Creek Nation and that the 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.

According to the proposed "Stipulation For Entry of Final Judgment," Docket No. 275 will be disposed of with entry of a net final judgment in the sum of \$1,346,000.00 in favor of the Creek Nation of Indians. The right of the United States is reserved to assert offset claims arising after June 30, 1956, in any other Creek case. No review from the entry of final judgment is to be sought by either party. We understand that the "Creek Nation of Indians" as used in the proposed stipulation for entry of final judgment to be the Creek Nation on whose behalf the plaintiff, the Creek Nation of Indians of the State of Oklahoma, brought and maintained the cause of action in a representative capacity as stated by the Indian Claims Commission in its Findings of Fact dated April 15, 1970 (23 Ind. Cl. Comm. 16).

The Creek Nation or Tribe of Oklahoma is loosely organized in a form at variance with the typical tribal governmental structure. Its authority derives from the Act of April 26, 1906 (34 Stat. 137), which, in effect, terminated the authority of the then existing government and authorized the President of the United States to appoint a Principal Chief

who would be able to perform ministerial functions relating to the remaining tribal assets. Later, under established regulations, members of the Creek Nation or Tribe of Oklahoma may now select their principal officer by vote. The nation or tribe is also served by the Creek Tribal Council whose members represent the old Creek tribal towns. The unusual political structure was recognized by the Indian Claims Commission (16 Ind. Cl. Comm. 431).

You took the proposed settlement to the Principal Chief and the Tribal Council of the Creek Nation of Indians of Oklahoma at a special meeting held on June 24, 1972, in the Creek Museum, Okmulgee, Oklahoma. A representative of this Bureau was present and reported on the meeting.

The members of the Tribal Council were advised of the special meeting and its purpose and notice was published in the Okmulgee Daily Times. The Principal Chief and fourteen councilmen were present at the meeting and, as it was open to all interested tribal members, about fifty others also were present. You explained the proposed settlement and all tribal members were given the opportunity to ask questions. You answered the questions addressed to you. The members present appeared to understand the proposed settlement and the Tribal Council then unanimously [sic] adopted a resolution authorizing you to settle Docket No. 275 for a net recovery in the amount of \$1,346,000.00. The resolution also authorized you to sign a stipulation for entry of a final judgment. We understand the authority to sign the stipulation as being on behalf of the petitioner, the Creek Nation or Tribe of Indians of the State of Oklahoma. The resolution was signed by the Principal Chief and by the Chairman and Secretary of the Creek Tribal Council. Their signatures were certified as genuine by the Bureau's representative who attended the meeting. The resolution is hereby approved.

The original of the resolution is enclosed as you may desire to file it as an exhibit with the Indian Claims Commission.

In light of the information that you submitted to us, that supplied by our field office, and that obtained from other sources, we are satisfied that the proposed settlement of Docket No. 275 for a net final judgment of \$1,346,000.00 is fair and the proposed settlement is hereby approved.

Since 1906, the members and descendants of members of the Creek Nation or Tribe of Indians of Oklahoma have become widely scattered. The identity and addresses of all of them are not known or readily available. We believe undue hardship would fall on the petitioner in Docket No. 275 to attempt to identify all of those individuals, to get notice to them, and to obtain their views on the proposed settlement in satisfactory meetings. Under the circumstance which we believe is extraordinary and, if you agree, you may desire to request the Indian Claims Commission to modify its requirement in the "Omaha" decision that the claims counsel for the petitioner obtain the views of the individual Indians involved so as to remove this hardship and accept the resolution adopted by the tribal council on behalf of the Creek Nation or Tribe of Indians of Oklahoma as representative of the Creek Nation that suffered the injustice upon which the cause of action in Docket No. 275 is based.

Sincerely yours,

/s/ Louis R. Bruce
Commissioner

[Ex. S-5]

32. Upon conclusion of the above preliminary proceedings, counsel for the parties jointly prepared and executed a "Stipulation for Entry of Final Judgment" together with a Joint Motion for the Entry of Final Judgment. These documents were filed with the Commission on August 7, 1972. 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 and against the United States in the total net sum of One Million Three Hundred and Forty-Six Thousand Dollars (\$1,346,000.00), 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/ Kent Frizzell
Kent Frizzell,
Assistant Attorney General

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

/s/ Lester Reynolds,
Lester Reynolds,
Attorney, Department of Justice
Attorneys for Defendant

33. At the hearing before the Commission on August 15, 1972, Hon. Claude A. Cox, Principal Chief of the Creek Nation, testified relative to the functions and authority of the Creek Tribal Council and that under the by-laws and regulations of the Creek Nation the Tribal Council has the authority to transact all fiscal business and other matters for the Creek Nation. Mr. Cox also testified as to the nature of the public notice and efforts to inform members of the Creek Nation relative to the June 24, 1972, meeting respecting the proposed settlement. Mr. Cox further testified that he was not aware of any dissatisfaction about the proposed settlement on behalf of the tribal membership and was fully satisfied that the Creek Nation will be

entirely and completely compensated for the claims in this docket under the terms of the proposed settlement. There were present at this hearing former Chief W. E. (Dode) McIntosh of the Creek Nation and Elliot Howell, attorney and member of the tribe. All documents and correspondence cited or reproduced in these findings were marked for identification as exhibits and were received in evidence.

34. The Commission finds, in view of 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 a hardship and impracticable, and accepts, as did the Commissioner of Indian Affairs, the Resolution of the Creek Tribal Council, dated June 24, 1972, approved by the Principal Chief of the Creek Nation, as expressing the desire of the Creek Nation to consummate this compromise settlement.

35. Considering all of the circumstances, the record of litigation to date, the testimony of the witness who appeared before us in this settlement proceeding, and the representations of counsel for the parties, the Commission finds that the members of the plaintiff tribe were given full notice in advance of the meeting of the Creek Tribal Council on June 24, 1972; that the members were given a full opportunity to attend said meeting and express their views on the proposed offer to compromise and settle; that the members present at said meeting approved the settlement; and that the duly authorized governing body of plaintiff, the Creek Tribal

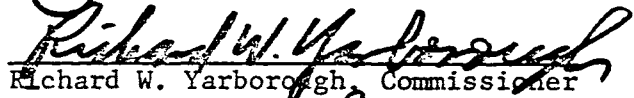
Council has by appropriate resolution voted unanimously to accept the proposed offer to compromise and settle and has approved the Stipulation for Entry of Final Judgment.

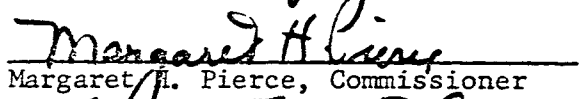
36. The Commission finds, based upon the testimony of the witness, the record at all stages of this litigation, the representations of counsel, and all other pertinent factors before us, that the proposed compromise settlement is fair to the plaintiff and has been freely entered into by it and duly approved by the Commissioner of Indian Affairs.

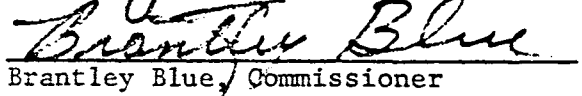
The Commission hereby approves the proposed compromise and settlement and will enter a final judgment in favor of plaintiff in the amount of \$1,346,000.00 in settlement of all the claims of plaintiff and all claimed offsets of defendant, subject to the terms and provisions set forth in the stipulation.


Jerome K. Kuykendall, Chairman


John E. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner