

BEFORE THE INDIAN CLAIMS COMMISSION

THE EASTERN BAND OF CHEROKEE INDIANS,)	
)	
Plaintiff,)	
)	
v.)	Docket Nos. 282-A
)	through 282-L, inclusive
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: September 11, 1972

FINDINGS OF FACT ON COMPROMISE SETTLEMENT

These cases are now before the Commission for approval of a final compromise settlement in the amount of \$1,855,254.50, with a waiver of review or appeal. Final judgment will settle and dispose of the above-entitled claims and all counterclaims or offsets which the defendant has asserted or could have asserted in these dockets under the provisions of Section 2 of the Indian Claims Commission Act, 25 U.S.C. §70a (1970).

In its original petition the plaintiff claimed a 1/15th interest in compensation due under revisions of several treaties entered into by the United States and the Cherokee Nation East of the Mississippi between the years 1785 and 1835. The Commission ordered the matter severed into twelve separate dockets, 7 Ind. Cl. Comm. 140 (1959). After appropriate pleadings were filed, the Commission ordered all dockets, 282-A through 282-L, to trial on the issue of liability. The parties compromised this issue by joint stipulation filed in each docket on February 27, 1970. The matter was then ordered to trial on value. Before trial could take place the parties reached the present agreement proposing a compromise settlement of the entire case.

The Commission held a hearing on September 1, 1972, on this proposed compromise settlement and makes the following findings of fact:

1. Counsel for the plaintiff personally appeared before the Tribal Council of the plaintiff, its governing body, on April 6 and May 17, 1972, and before a General Council of the plaintiff band on June 5, 1972, to explain the proposed settlement to those present. (Ex. S-4) On June 5, 1972, the General Council approved the settlement by an overwhelming voice vote. (Ex. S-3, with its attachments of minutes of the General Council meeting.) After the acceptance of the proposed settlement by the General Council, the Tribal Council of the plaintiff met on June 15, 1972, and unanimously passed the following resolution:

Cherokee Council House
Cherokee, North Carolina
June 15, 1972

RESOLUTION NO. 172 (1972)

Whereas, the Eastern Band of Cherokee Indians has employed Paul M. Niebell as claims attorney for the purpose of representing the Band in its pending cases before the Indian Claims Commission, such cases being Docket Nos. 282-A through 282-L, inclusive, and

Whereas, Mr. Niebell has now negotiated a proposed settlement of the Eastern Band's claims and recommended acceptance of such settlement in a letter to Principal Chief Noah Powell dated May 10, 1972, and in a personal appearance before the Tribal Council on May 17, 1972, and

Whereas, the Tribal Council directed Mr. Niebell to prepare a written report to be distributed to members of the Eastern Band of Cherokee Indians and also called for a General Council meeting of all Cherokee Tribal members to receive a report on the matter and give it their consideration, and

Whereas, a General Council meeting was held on June 5, 1972, in which Mr. Niebell verbally presented his report and recommendations, and in which, following interpretation in the Cherokee language, there was a thorough discussion of all aspects of the Cherokee claims, and

Whereas, the General Council voted by a large margin to approve Mr. Niebell's recommendation to accept the compromise proposal of the United States for settlement of the claims,

Now, therefore, be it resolved by the Tribal Council of the Eastern Band of Cherokee Indians in annual council assembled that Paul M. Niebell, claims attorney for the Eastern Band of Cherokee Indians, be and is hereby authorized to settle by agreement of the parties, and by way of compromise settlement, the claims of the Eastern Band of Cherokee Indians in the pending cases, Docket Nos. 282-A through 282-L, inclusive, before the Indian Claims Commission for their interest in the areas ceded to the United States under the various Cherokee treaties therein involved, covering the period 1785-1835, inclusive, for the net amount of \$1,855,254.50 as set forth in the letter dated May 10, 1972, of said Paul M. Niebell to Honorable Noah Powell, Principal Chief of said Eastern Band of Cherokee Indians.

Be it further resolved, that said Paul M. Niebell, as attorney for said Eastern Band of Cherokee Indians, be and hereby is authorized to sign a stipulation for the entry of a final judgment in favor of the said Eastern Band of Cherokee Indians in the net amount of \$1,855,254.50 in full settlement of said claims, and to do any and all further acts on behalf of the said Eastern Cherokee Band necessary to consummate said settlement as soon as possible.

The attached Resolution No. 172, dated June 15, 1972, was passed and ratified in open Council on June 15, 1972, by 11 members voting for the act, and 0 voting against it as follows:

	For	Against	Absent	Abstain
Roy Blankenship				
John Henry Maney	x			
Lawrence Thompson	x			
Myrtle Jenkins	x			
Bertha Saunooke	x			
Jesse Littlejohn	x			
Jonathan Taylor	x			
McKinley Swimmer	x			
Tom Bradley	x			
Ned Long	x			
Gerard Parker	x			
Mose Wachacha	x			

SIGNED ON BEHALF OF THE COUNCIL BY:

/s/ Roy Blankenship
Chairman

/s/ Wenonah W. Digh
Clerk

APPROVED:

/s/ Noah Powell
Principal Chief

I, Mark Reed, Interpreter for the Council, hereby certify that the foregoing act of the Council was duly passed and ratified in open Council after the same has been interpreted by me and has been fully and freely discussed.

/s/ Mark Reed
Interpreter

I hereby certify that the foregoing act of the Council was duly passed and ratified in open Council after the same had been interpreted by the Official Interpreter and had been fully and freely discussed.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Band of Indians.

/s/ Theodore C. Krenzke
Supt. Ex. Officio Sec.

[Ex. S-3]

2. On June 12, 1972, counsel for the plaintiff wrote to the defendant, addressing Honorable Kent Frizzell, Assistant Attorney General, U. S. Department of Justice, to make a formal offer of compromise and settlement of all claims, which letter reads as follows:

June 12, 1972.

Honorable Kent Frizzell,
Assistant Attorney General,
U. S. Department of Justice,
Washington, D. C. 20530.

Re: Eastern Cherokee Band v.
United States, Docs. 282-A
through 282-L, Before the
Indian Claims Commission.

Dear Sir:

After long negotiations counsel for the United States and I, as counsel for the Eastern Cherokee Band of Indians, have reached an agreement to settle by way of compromise settlement the value of the interest of the Eastern Cherokee Band in the areas ceded to the United States under the various Cherokee treaties involved, covering the period 1785-1835. We have agreed that the interest of said Eastern Cherokee Band in the total areas ceded is represented as 1,686,595 acres, and that the fair market value of said 1,686,595 acres is \$1.10 an acre, or a total of \$1,855,254.50. Acceptance of this offer will result in the entry of a final net judgment in favor of the Eastern Cherokee Band in the sum of \$1,855,254.50. This offer is limited to the settlement of the Eastern Cherokee Band's claims, and will be withdrawn if any other party were to intervene in the above cases.

This offer was submitted to a general council of the Eastern Cherokee Band held on June 5, 1972, and was accepted by an overwhelming voice vote of the members of the Band present, as per letter of June 6, 1972 of Mr. Theodore C. Krenzke, Superintendent of the Cherokee Indian Agency, Cherokee, North Carolina.

I would appreciate your consideration of the above agreement, so that we can proceed promptly to settle finally the cases of the Eastern Cherokee Band.

Sincerely yours,

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

[Ex. S-1]

3. By letter dated August 14, 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 the plaintiff, states as follows:

August 14, 1972

Paul M. Niebell, Esquire
1026 17th Street, N. W.
Room 600
Washington, D. C. 20036

Dear Mr. Niebell:

The offer contained in your letter of June 10, 1972 to settle the claims in Eastern Band of Cherokee Indians v. United States, Docket Nos. 282-A through L, inclusive, before the Indian Claims Commission, for \$1,855,254.50 is accepted subject to the following conditions:

1. That the proposed settlement is limited to the claims of the Eastern Band of Cherokee Indians, the plaintiff, described in the said Dockets 282-A through L, inclusive, and in the event any other party or parties should attempt to intervene in either or any of these 12 cases before the entry of a final judgment by the Commission in accordance with the terms of the agreed settlement, and the reporting of the judgment to Congress as provided in Section 22 of the Indian Claims Commission Act, the offer of settlement will be withdrawn by you and this acceptance shall be considered null and void.

2. That the proposed settlement be approved by appropriate resolution of the governing body of the Eastern Band of Cherokee Indians, plaintiff therein.

3. That the approval of the settlement, as well as the resolution of the Tribal Council and the General Council of the Eastern Band of Cherokee Indians, be secured from the Secretary of the Interior, or his authorized representatives.

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 limitations and 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

cc: Honorable Louis R. Bruce
Commissioner of Indian Affairs
Department of the Interior
1951 Constitution Avenue, N. W.
Washington, D. C. 20242

[Ex. S-2]

A copy of this letter was forwarded to Louis R. Bruce, Commissioner of Indian Affairs, Department of the Interior. (Attached to Ex. S-4)

4. On August 17, 1972, counsel for the plaintiff wrote the Commissioner of Indian Affairs requesting his approval of the proposed settlement. (Ex. S-4) The compromise settlement was approved by letter to the plaintiff's counsel dated August 21, 1972, from Ernest Stevens, Acting Commissioner of Indian Affairs, the duly authorized representative of the Secretary of the Interior. This letter reads as follows:

August 21, 1972

Mr. Paul M. Niebell
Attorney at Law
1026 17th Street, N. W.
Suite 600-601
Washington, D. C. 20036

Dear Mr. Niebell:

You submitted for our approval a proposal to settle the claims of the Eastern Band of Cherokee Indians in Indian Claims Commission Docket Nos. 282-A through 282-L for net final judgment of \$1,855,254.50.

You are prosecuting the claims in those dockets under Contract No. K51C1420068, dated February 1, 1968, between you and the Eastern Band of Cherokee Indians of the State of North Carolina. The contract was approved on May 14, 1968, for a period of ten years beginning with the date of approval. It provides that you shall not make any compromise of the matters in litigation unless with the approval of the band and the Secretary of the Interior or his authorized representative.

You submitted a proposal on June 12, 1972, to the Assistant Attorney General to settle the claims for \$1,855,254.50. He accepted your offer on August 14, 1972, with the conditions that the proposed settlement be approved by appropriate resolution of the governing body of the Eastern Band of Cherokee Indians and also that the approval of the settlement, as well as the resolution of the Tribal Council and the General Council of the band, be secured from the Secretary of the Interior or his authorized representative.

Entry of final judgment by the Indian Claims Commission in favor of the Eastern Band of Cherokee Indians of the State of North Carolina in the net sum of \$1,855,254.50 shall settle and dispose of Docket Nos. 282-A through 282-L. No offset claims are to be asserted against the judgment and no review from the final judgment is to be sought by either party.

Prior to submitting a formal offer to settle to the Assistant Attorney General you met with the Tribal Council on April 6, 1972. You explained the proposed settlement and answered questions that the members had about it. At the request of the Tribal Council, you prepared a report on the claims and the proposed settlement in preparation for presenting it to the members of the band to obtain their views. You prepared the report and on May 25, 1972, copies were given to the members of the Tribal Council who used them to advise the members of the band.

Wide publicity was given to notify the members of the band of a general council or meeting to be held in the Mountainside Theatre, Cherokee, North Carolina, on June 5, 1972, for the purpose of expressing their views to accept or reject the proposed settlement. Notices appeared for two consecutive weeks prior to the meeting in the Cherokee One Feather. Notices

of the meeting also appeared in other newspapers, including the daily Asheville Citizen. We are satisfied that the meeting was satisfactorily noticed and that the members had the opportunity to attend the meeting.

The meeting was held on June 5, 1972 as scheduled. A representative of this Bureau attended and reported on it. The meeting was well attended. The number of members of the band who were present was conservatively estimated to be 500.

You gave the history of the claims and explained the proposed settlement in detail. You also presented copies of the report previously furnished the members of the Tribal Council. The report was interpreted in the Cherokee language. Many remarks and comments made at the meeting were also interpreted. A question and answer period was then had during which you answered the questions asked by the Cherokee Indians.

Following the question and answer period, a move was made and seconded to take a vote on acceptance or rejection of the proposed settlement. A voice vote was taken and the proposed settlement was accepted almost unanimously. We are satisfied that the meeting was well attended, that the members present and voting understood the terms of the proposed settlement, and that their views reflected those of the membership of the band. The general council did not adopt a resolution. The views of the members expressed at the general meeting of June 5 were formalized by the Tribal Council of the Eastern Band of Cherokee Indians with adoption on June 15, 1972, of Resolution No. 172 (1972), by a vote of 11 for and 0 against, authorizing you to settle the band's claims for the net amount of \$1,855,254.50. The resolution is hereby approved.

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 Nos. 282-A through 282-L for a net final judgment of \$1,855,254.50 is fair. The proposed settlement is hereby approved.

Sincerely yours,

/s/ Ernest Stevens
Acting Commissioner

[Ex. S-5]

5. 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 28, 1972. The stipulation reads as follows:

It is hereby stipulated and agreed between counsel for the parties that the above-entitled cases, Docket Nos. 282-A through 282-L, inclusive, shall be settled and disposed of by the entry of a final judgment by the Indian Claims Commission in favor of The Eastern Band of Cherokee Indians of the State of North Carolina, and against the United States in the total net sum of One Million Eight Hundred and Fifty Five Thousand Two Hundred and Fifty Four Dollars and Fifty Cents (\$1,855,254.50), 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.

It is further agreed that this offer of settlement is limited to the settlement of the Eastern Cherokee Band claims advanced in the above dockets, and will be withdrawn by plaintiff if any other party were to intervene in said cases, and this stipulation shall be considered null and void.

Nothing connected with this compromise settlement may be construed as an admission of either party as to any issues for the 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/ Ralph A. Barney
Ralph A. Barney
Attorney, Department of Justice

/s/ Lester Reynolds
Lester Reynolds
Attorney, Department of Justice

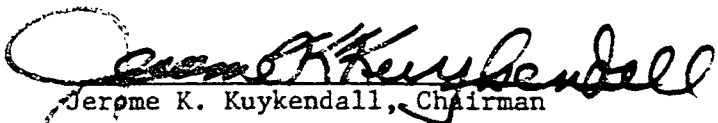
6. At the hearing before the Commission on September 1, 1972, Mr. Theodore C. Krenzke, Superintendent of the Eastern Cherokee Agency, Bureau of Indian Affairs, Cherokee, North Carolina, testified in favor of the proposed settlement, as did the following members of the Eastern Cherokee Band: Frell M. Owl, who acted as Chairman of the General Council meeting of the Eastern Cherokee Band held at Cherokee, North Carolina, after due notice (Ex. S-6), on June 5, 1972; John A. Crowe, Vice Chief of the Eastern Cherokee Band; Jonathan Taylor, member of the Eastern Cherokee Tribal Council; and Mark Reed, Interpreter of the Eastern Cherokee Band. These witnesses testified in substance that they were present when counsel for plaintiff personally appeared before both the Tribal Council and the General Council of the Eastern Cherokee Band, verbally explained the terms of the proposed settlement, and also presented a written report (copy attached to Ex. S-3) relative to the proposed settlement; that his statements were interpreted in the Cherokee language; that after a full discussion and a question and answer period, said proposed settlement was approved by said General Council on June 5, 1972, by an overwhelming voice vote, and on June 15, 1972, by a unanimous vote of the Eastern Cherokee Band's Tribal Council, the governing body of the Eastern Cherokee Band.

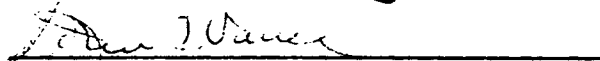
7. Members of plaintiff had adequate notice and opportunity to attend the General Council meeting of June 5, 1972. Formal notices were published (Ex. S-6), major articles published, notices posted (Tr. 8-9), and notices appeared in the daily Asheville Citizen (Ex. S-5). Further, bus transportation


was provided and all normal activities scheduled for the reservation for that evening were cancelled so that members might attend. (Tr. 10)

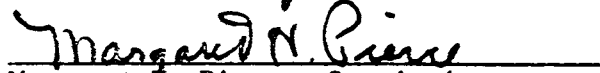
8. Based upon the testimony of the witnesses, the record, representations of counsel, and all other pertinent factors before us, the proposed compromise settlement is fair to all parties and is fully understood by them and was freely entered into.

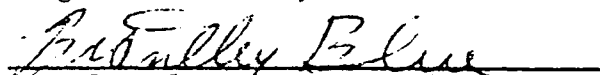
The Commission approves the proposed compromise and settlement and will enter a final judgment in favor of the plaintiff in the amount of \$1,855,254.50 in settlement of all the claims of the plaintiff and all claimed offsets of the defendant, subject to the terms and provisions set forth in the stipulation.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret M. Pierce, Commissioner


Brantley Blue, Commissioner