

## BEFORE THE INDIAN CLAIMS COMMISSION

THE CREEK NATION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Docket No. 273
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: March 14, 1973

FINDINGS OF FACT ON COMPROMISE

This suit was brought by the Creek Nation, plaintiff, to recover whatever might be due if Sections 10 through 15 of the Creek Agreement proclaimed on June 28, 1901 (31 Stat. 861), were revised on the ground of unconscionable consideration for the true value of certain Creek lots in the State of Oklahoma, or on other equitable grounds (Clause 3, Section 2 of the Indian Claims Commission Act of 1946, 25 U.S.C. 70a(3)); or, alternatively, to recover any balance to which the plaintiff might be entitled because of the defendant's failure in negotiating the cited Creek Agreement to deal fairly and honorably (Clause 5, Section 2 of the Act); or to recover what might be due under any other provision of the Indian Claims Commission Act with respect to the townlots sold under the Creek Agreement proclaimed June 28, 1901 (31 Stat. 861).

On September 9, 1970, the Commission rendered an "Opinion on Motions to Determine Issues", upholding plaintiff's right to recover, and outlined the issues to be litigated as follows (23 Ind. Cl. Comm. 484, 488):

1. Whether the half-price conditions were imposed by the defendant upon the plaintiff without conscionable consideration, or otherwise inequitably, or without adherence to the principle of fair and honorable dealings.
2. The fair market value of each of the selected townlots appraised by the several appraisal commissions.

The United States appealed the Commission's opinion, limiting its appeal to the second issue. In Appeal No. 5-71, decided December 10, 1971 (196 Ct. Cl. 639), the Court of Claims reversed the Commission's decision, holding that the prior decision of that Court in Creek Nation v. United States, 97 Ct. Cl. 602 (1942), collaterally estopped the Creek Nation from relitigating the issue of the fair market value of the lots. The Creek Nation's petition to the Supreme Court for a writ of certiorari was denied by that Court, 406 U.S. 929 (1972).

After the proceedings set out above, negotiations for the settlement of this case were begun with the consent and agreement of the parties. Agreement on a settlement in the net amount of \$400,000.00, was ultimately reached. The settlement would dispose of all rights or demands which plaintiff asserted or could have asserted with respect to the subject matter of Docket 273, and all claims of offsets by the defendant.

The parties in this case are now before the Commission for approval of the compromise settlement and the entry of final judgment in the amount of \$400,000.00 in favor of the Creek Nation. The stipulation agreement of the parties contains a waiver of review or appeal. The judgment in this case settles and disposes of all claims

of the Creek Nation and all counterclaims or offsets which defendant could have asserted in this case under the provisions of Section 2 of the Indian Claims Commission Act (25 U.S.C. 70a).

The Commission makes the following findings of facts herein:

1. With the authority of the Principal Chief of the Creek Nation, counsel for plaintiff sent the following letter on September 8, 1972, to the Honorable Kent Frizzell, Assistant Attorney General, making a formal offer to settle the remaining issue in this case for the net sum of \$400,000.00 to the Creek Nation:

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

Re: Creek Nation v. United States,  
Docket No. 273, Ind. Cls. Comm.

Dear Sir:

As counsel for the Creek Nation, plaintiff, I hereby submit a formal offer to settle the above entitled case for the net amount to plaintiff of \$400,000.00. There has already been considerable litigation on one phase of this involved case, and there is a possibility of considerable further litigation before the case could be finally settled, unless it is settled by agreement of the parties.

The proposed settlement will avoid further involved litigation and the commensurate expense, and counsel believes that it will achieve a fair result for both parties.

Sincerely yours

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

2. On September 28, 1972, the Assistant Attorney General, Kent Frizzell, on behalf of the defendant, accepted the settlement offer subject to certain conditions. The acceptance letter states as follows:

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

Dear Mr. Niebell:

The offer set out in your letter of September 8, 1972, to settle the claim in Creek Nation v. United States, Docket No. 273, before the Indian Claims Commission, for a net amount of \$400,000, is hereby accepted subject to the following conditions:

1. That the proposed settlement be approved by the appropriate resolution of the governing body of the Creek Nation.

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

The Department of Justice will be pleased to work out with you the terms of the stipulation of settlement and the appropriate motion and order necessary to carry into effect the settlement.

Sincerely,

/s/ Kent Frizzell

Kent Frizzell

Assistant Attorney General  
Land and Natural Resources  
Division

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

3. Upon acceptance by the defendant of the offer of settlement, the proposed settlement was presented to the Creek Tribal Council

for its consideration. The meeting of the Creek Tribal Council was held pursuant to notice on October 28, 1972, at Okmulgee, Oklahoma, a quorum being present, and after full consideration of the proposed compromise settlement the Creek Tribal Council approved the following resolution:

RESOLUTION OF THE CREEK TRIBAL COUNCIL

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 pursuant to notice on October 28, 1972, at Okmulgee, Oklahoma, a quorum being present, 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 which is the subject matter of Docket No. 273, before the Indian Claims Commission, for the net amount of \$400,000.00 to the Creek Nation.

BE IT FURTHER RESOLVED, That said Paul M. Niebell, as attorney for 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 said Docket No. 273 before the Indian Claims Commission in the net amount of \$400,000.00 in full settlement of the claim of the Creek Nation therein asserted, 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 on this 28th day of October, 1972.

/s/ Ed Johnson  
Chairman.

ATTEST:

/s/ Jenene Coker  
Secretary

Approved: /s/ Claude A. Cox  
Claude A. Cox,  
Principal Chief of the Creek Nation.

4. On November 27, 1972, counsel for plaintiff addressed a letter to the Commissioner of Indian Affairs requesting his approval of the proposed settlement of this case of the Creek Nation for the net amount of \$400,000.00.

5. The compromise settlement was approved in a letter dated January 10, 1973, from Richard R. Hite, Deputy Assistant Secretary of the Interior, the duly authorized representative of the Secretary of the Interior. The letter, addressed to counsel for plaintiff, reads as follows:

Dear Mr. Niebell:

You submitted for our approval a proposal to settle the case of the Creek Nation of Indians, Indian Claims Commission Docket No. 273, for a net final judgment of \$400,000.00.

Docket No. 273 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 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. An additional extension of the contract for a period of five years from November 12, 1972, was approved on July 10, 1972.

On September 8, 1972, you submitted an offer to the Assistant Attorney General to settle Docket No. 273 for a net award of \$400,000.00 to the Creek Nation of Oklahoma. He accepted your offer on September 28, 1972, with the conditions that the proposed settlement be approved by a resolution of the governing body of the Creek Nation and that approval of the proposed settlement, as well as the resolution, be obtained from the Secretary of the Interior or his authorized representative.

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 the 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 officers by vote. The nation or tribe is also served by the Creek Tribal Council whose members represent the old Creek tribal towns.

You took the proposed settlement to the Principal Chief and the Tribal Council of the Creek Nation of Indians of Oklahoma at the regular meeting of the Creek Tribal Council held at Okmulgee, Oklahoma, on October 28, 1972. A quorum was present. Entry of a final award of \$400,000.00 in favor of the Creek Nation of Oklahoma will settle Docket No. 273. No review is to be sought therefrom by either party. No offset claims are to be asserted against the judgment so entered; the United States reserving the right to assert offset claims arising after June 30, 1956, in any other Creek case. The Principal Chief and the Tribal Council accepted the proposed settlement and the Tribal Council adopted a resolution on October 28, 1972, authorizing you to sign a stipulation for entry of the final judgment. The Principal Chief approved the resolution.

We are satisfied that the Principal Chief and the members of the Tribal Council understand the proposed settlement and the effects of entry of the final judgment. The meeting was satisfactory and the resolution was duly adopted. 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 No. 273 is fair. The proposed settlement is hereby approved.

Sincerely yours,

/s/ Richard R. Hite  
Deputy Assistant Secretary of the  
Interior

6. Upon conclusion of the above preliminary proceedings, counsel for the parties 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 January 22, 1973,

together with five exhibits attached thereto. A sixth exhibit, Minutes of the Creek Tribal Council held on October 28, 1972, was filed with the Commission on March 1, 1973. 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 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 Four Hundred Thousand Dollars (\$400,000.00), 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/ Ralph A. Barney  
Ralph A. Barney,  
Attorney, Department of Justice

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

Attorneys for Defendant

7. At a hearing before the Commission on March 1, 1973, the Hon. Claude A. Cox, Principal Chief of the Creek Nation, testified that the Creek Tribal Council has the authority to pass upon all Creek Tribal matters, including compromise settlements. Chief Cox



testified that (1) the proposed compromise settlement was presented at a meeting of the Tribal Council at Okmulgee, Oklahoma, on October 28, 1972; (2) members of the Tribal Council received notice of the meeting; (3) a quorum of the Tribal Council was present at the meeting; (4) and after full deliberation said Council unanimously approved the proposed compromise settlement and passed the Resolution of the Creek Tribal Council, dated October 28, 1972. The Resolution was signed by Ed Johnson, Chairman; Jenene Coker, Secretary; and Claude Cox, Principal Chief of the Creek Nation. At the hearing Chief Cox testified to the authenticity of his signature on the Resolution and identified the signatures of the other persons appearing thereon. Chief Cox further testified that he was not aware of any dissatisfaction among members of the Creek Nation about the proposed settlement and that the Tribal Council reflected the desire of the Creek Nation to consummate the settlement.

All documents and correspondence cited or reproduced in these findings were marked for identification as exhibits and were received in evidence.

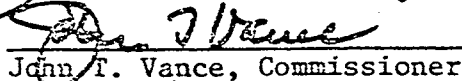
8. The Commission finds, in view of the large membership of the Creek Nation who are widely scattered throughout the country, and the attendant expense, that a referendum to determine the views of the individual Creek Indians would be a hardship and impracticable, and accepts, as did the Deputy Assistant Secretary of the Interior, the Resolution of the Creek Tribal Council, dated October 28, 1972,

approved by the Principal Chief of the Creek Nation, as expressing the desire of the Creek Nation to consummate this compromise settlement.

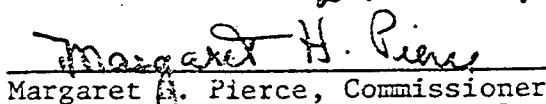
9. Based upon the entire record in these proceedings, including the approval of the settlement by counsel for both parties, the duly authorized representative of the Secretary of the Interior, and the Creek Tribal Council by its resolution of October 28, 1972, the Commission finds that approval of the settlement as set forth in the Stipulation for Entry of Final Judgment, filed on January 22, 1973, is fair and just to both parties and will eliminate considerable additional litigation expenses as well as delay in payment of the final award. We hereby approve the said stipulation.

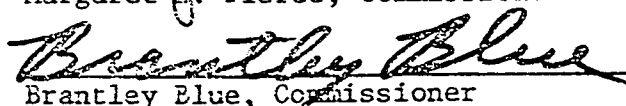
The Commission therefore finds that the Joint Motion for the Entry of Final Judgment filed January 22, 1973, should be granted, and judgment is hereby entered for plaintiff against defendant for \$400,000.00 in settlement of the above case of plaintiff, subject to the terms and provisions set forth in the stipulation.

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarborough, Commissioner

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner