

## BEFORE THE INDIAN CLAIMS COMMISSION

THE CHOCTAW NATION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Docket No. 249
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: July 15, 1976

FINDINGS OF FACT ON COMPROMISE SETTLEMENT

This docket is now before the Commission for approval of a compromise settlement and entry of final award in the amount of \$250,000, with a waiver of review or appeal by either party, said award to dispose of all claims and offsets which either party has asserted or could have asserted in this docket under the provisions of the Indian Claims Commission Act, 60 Stat. 1049 (1946). A hearing was held before the Commission on June 28, 1976, on the proposed compromise settlement, and, considering the record as a whole, the Commission makes the following findings of fact:

1. History of the Litigation. On August 9, 1951, the Choctaw Nation, a recognized Indian tribe, or nation, authorized to prosecute claims in its own behalf before this Commission under the Indian Claims Commission Act, supra, filed a petition designated by the Commission as Docket 249 consisting of four specific accounting claims and a demand for a general accounting.

The first of these claims, contained in allegations 9 through 11 of the petition, related to tribal funds paid out by defendant for expenses

incident to carrying out the provisions of the Atoka Agreement, 30 Stat. 495 (1898), and the Supplemental Agreement, 32 Stat. 641 (1902). This claim was dismissed by order of this Commission on December 6, 1973, for the reasons given in our opinion, 32 Ind. Cl. Comm. 286 (1973).

The second claim, in allegation 12 of the petition, dealt with a refund of attorney fees, and was dismissed by this Commission by consent order of September 25, 1963. The third claim, in allegation 13 of the petition, related to educational funds. The fourth claim, in allegation 14, relating to a division of tribal funds with the Chickasaw Nation of Indians, was dismissed in our 1973 decision, supra, 301. The third claim and the demand for a general accounting were pending before the Commission at the time the parties negotiated settlement of this docket.

Defendant filed its General Accounting Office report in this docket October 21, 1964. On March 6, 1974, plaintiff filed three exceptions to this report. All three of the exceptions were pending before this Commission at the time the parties reached a settlement in this docket.

2. Offer to Compromise. On June 9, 1975, counsel for the plaintiff wrote to the Assistant Attorney General, Land and Natural Resources Division, United States Department of Justice, formally offering to compromise the claims pending in this docket. The body of the letter reads as follows:

Reference is made to my letter of April 10, [1975] addressed to Mr. Mileur, and your letter dated May 8 [1975] in reply thereto, as well as our telephone conversations regarding a settlement of the above action.

We have approached our basis of settlement by taking into consideration our allegations set forth in some detail under paragraph 13 of our original Petition and in sub-paragraphs (c) and (e) of the Prayer as set forth therein.

As will be noted from our Exceptions to the Accounting Reports, the accounting by the Government did not address itself in detail to the accounting requirements under paragraph 13 of our Petition. Hence, we have asked for a further accounting.

Over the period of time that I have been involved in this matter, along with my associate Urban Lester, Esq., we have been unable to find any records that would spell out in clear and concise form the amount of monies which the Department of Interior expended from Choctaw Tribal funds for the education of non-Choctaw students. We do, however, have from the files of The Choctaw Nation v. United States, File No. K-187, referred to in our reply to your latest motion, a document entitled "Second Supplemental Report of the Department of Interior" which was transmitted to the Attorney General by the First Assistant Secretary of Interior and dated April 24, 1936. This report is broken down into enrolled and non-enrolled students at the contract academies and colleges, a xerox copy of which is attached hereto.

You will note that the summary breakdown contained in this letter is preceded by an explanation of the time periods covered. These time periods all fall within the time covered by our Petition but do not include the gaps that are apparent in the report and obviously do not bring the information up to the date required under our Petition. On page two of the letter, where the compilation is set forth, you will note that under the second column it is indicated that there was expended from Choctaw Tribal funds the sum of \$569,477.13 for the education of "Non-enrolled" students. It is our position of course that all of the expenditures, both for enrolled and non-enrolled students, were made contrary to and in violation of the specific provisions of the Agreements entered into between the United States and the Choctaw Nation ending their tribal government status.

You will note that at the top of page three of this letter of transmittal, the Department of Interior admits that there was expended for the education of enrolled Choctaws the sum of \$251,996.29 and "\$569,477.13 was expended for the education of Non-enrolled pupils." (underscoring provided). We have arrived at our figure of \$250,000.00 as a "ball park" figure which we and the Tribe think would be fair

by splitting in half (approximately) the sum thus expended. Nowhere are these students identified as Choctaws, but only as "Non-enrolled pupils." Assuming that one-half of them were non-Choctaws, it is our contention that the settlement would be reasonably equitable from the standpoint of the Indians and more than equitable from the standpoint of the Government.

I again call your attention to our Petition which does not confine our claim to only contract schools such as those covered by the enclosed letter. The three Choctaw Tribal Schools, viz., Jones Academy, Tuskahoma Academy and Wheelock Academy are not included herein. Old members of the Tribe and some of the present Council appear to have definite recollection that non-Choctaw pupils, both enrolled and non-enrolled, from other tribes were educated at these academies as well as at the contract schools covered in the compilation enclosed. We emphasize that this compilation does not cover the entire period set forth in our Petition.

In any event, a considerable amount of accounting over and above what has heretofore taken place will have to be accomplished if these figures are all to be broken down. We repeat, on the basis of our diligent search, we have been unable to find a basis for breaking this down. We assume that your researchers are having the same problem since it is your responsibility, under the Orders issued by the Commission, to provide such information.

We feel this is more than sufficient justification for our modest offer of settlement. In this regard, we would observe that our settlement approach has not included any specific consideration of interest or damages for the period 1934 forward. (You have indicated that further information for the period 1929 forward will be available shortly.) Thus, the recommended offer of compromise and settlement has been designed to give the defendant the maximum advantage of the contingencies of ultimate litigation of this case. You will recall that I have previously stated to you, in response to your inquiry, that the suggested figure does include all pending claims in Docket No. 249.

We will expect to hear from you at your earliest possible convenience for either face-to-face discussions (which we would prefer) or for such other communications as you see fit to follow.

3. Resolutions Approving Compromise Settlement Proposal. The offer of the compromise settlement was formally approved by a resolution of the Principal Chief of the Choctaw Nation and his advisory council on the 30th day of June 1975. The resolution reads as follows:

Whereas, the Principal Chief of the Choctaw Nation is the only elected official of the Choctaw Nation and as such is recognized by the Secretary of the Interior as the spokesman of the Choctaw Nation, and

Whereas, the Choctaws in each county within the tribal area are formed into clubs which annually elect their officers, and

Whereas, the undersigned Principal Chief of the Choctaw Nation has formed an Advisory Council composed of the elected presidents of each of the county clubs within the tribal area with whom he can consult, exchange ideas and seek advice on tribal matters, and

Whereas, the undersigned Principal Chief of the Choctaw Nation has convened his Advisory Council at Talihina, Oklahoma on this the 30th day of June, 1975, to consult and advise him on the proposal to settle all of the claims of the Choctaw Nation in Docket 249 before the Indian Claims Commission, styled "The Choctaw Nation vs. The United States of America" for the sum of \$250,000.00, now

Therefore, be it resolved by Harry J. W. Belvin, Principal Chief of the Choctaw Nation, and the members of his Advisory Council that the Choctaw Nation accept the sum of \$250,000.00 in full settlement of all of its claims in Docket 249 in the Indian Claims Commission, styled "The Choctaw Nation vs. The United States of America."

/s/ Harry J. W. Belvin

/s/ Lillian Sullivan

/s/ J. S. Campbell, Jr.

/s/ J. Early Dandridge

/s/ Lewis Carr

/s/ Robert Austin

/s/ Bennett Veach

/s/ Bertram E. Bobb

/s/ Suzanne Heard

/s/ Abe Neck

Subsequent to the adoption of the foregoing resolution, C. David Gardner replaced Harry J. W. Belvin as the Principal Chief of the Choctaw Nation, and at a meeting held February 14, 1976, the new Principal Chief and his advisory council formally approved and ratified the proposed compromise

settlement. The resolution reads as follows:

WHEREAS, the Principal Chief of the Choctaw Nation is the only elected official of the Choctaw Nation and as such is recognized by the Secretary of the Interior as the spokesman of the Choctaw Nation, and

WHEREAS, the Choctaws in each county within the tribal area are formed into clubs which annually elect their officers, and

WHEREAS, the undersigned Principal Chief of the Choctaw Nation has formed an Advisory Council composed of the elected presidents of each of the county clubs within the tribal area with whom he can consult, exchange ideas and seek advice on tribal matters, and

WHEREAS, under the authority of a Resolution passed by Harry J. W. Belvin, the then Principal Chief of the Choctaw Nation, and his Advisory Council, at a meeting in Talihina, Oklahoma on the 30th day of June, 1975, a copy of which is attached hereto, an offer was made to settle all of the claims of the Choctaw Nation in Docket 249 before the Indian Claims Commission for the sum of \$250,000.00 and does authorize its attorneys of record to proceed with the processing of this settlement before the Indian Claims Commission and the Department of Interior to collect and pay to the Tribe all monies so received.

IN WITNESS WHEREOF, we hereby place our signatures on this 14 day of February, 1976.

/s/ C. David Gardner, Principal  
Chief of the Choctaw Nation

/s/ Betty L. Spencer  
Council Secretary

4. Defendant's Conditional Acceptance. By letter of August 28, 1975, the Hon. Wallace H. Johnson, Assistant Attorney General, Land and Natural Resources Division, accepted the offer of settlement subject to the following conditions:

1. That the proposed settlement be approved by appropriate resolution of the governing body of the Choctaw Nation.
2. That the approval of the settlement and resolution of the governing body of the Choctaw Nation, be secured from the Secretary of the Interior, or his authorized representative.
3. That a copy of such resolution and the approval of the terms of the settlement by the Department of the Interior be furnished to this Department.
4. That the judgment shall finally dispose of all claims or demands which the plaintiffs have asserted or could have asserted in Docket No. 249.
5. That the United States will waive any and all claims for offsets or gratuities up to June 30, 1951, as to the plaintiff's claims asserted in Docket No. 249.

5. Approval of the Secretary of the Interior. By letter dated

March 24, 1976, to the attorney of record for the plaintiff, the Commissioner of Indian Affairs, an authorized representative of the Secretary of Interior, approved the proposed settlement. The Commissioner's letter states:

You have requested our approval of an offer to settle the claims in Choctaw Nation v. United States, docket 249, before the Indian Claims Commission for the sum of \$250,000. Docket 249 was filed on August 9, 1951 asserting, among other things, that beginning in 1906 the Defendant paid money from tribal funds for the education in contract institutions, schools, academies, seminaries, etc., and that the Defendant's program excluded Choctaw children of less than one-fourth Choctaw Indian blood and further that tribal funds were expended for the education of non-Choctaws. This was alleged to be contrary to Plaintiff's understanding that the funds derived pursuant to the Atoka Agreement and the Supplemental Agreement were to be disbursed per capita among the tribal members and that no money was to be spent for education after the Choctaw allotments became subject to State taxation for the support of State schools.

The Defendant has offered to pay the Choctaw Nation \$250,000 in settlement of the docket 249 claim. The Defendant's offer to settle the claim is contingent upon the Choctaw Nation's acceptance of the offer of settlement.

Authority to prosecute the claims before the Indian Claims Commission identified as docket No. 249 is governed by the following contracts, extensions and amendments:

On March 5, 1948, a contract was entered into between the Choctaw Nation of Indians and W. F. Semple, Tulsa, Oklahoma, and Grady Lewis, Washington, D. C., Attorneys at Law, to prosecute the claims of the Choctaw Nation against the United States, with the exception of the so-called Lease District Claim. This contract was approved on July 27, 1948, by the Acting Commissioner of Indian Affairs. The term of the contract was fixed at five years from the date of its approval with the proviso that at the expiration of that period the contract may be extended for an additional period of five years. We find no record of an extension of Contract No. 42066 which expired July 26, 1953.

On February 25, 1971, a contract (Symbol GOOC14201725) was entered into between the Choctaw Tribe of Indians and Lon Kile, Attorney at Law, Hugo, Oklahoma, for the prosecution of remaining several causes of action set out in docket 249 that were still untried. The contract was approved on May 4, 1971, by Deputy Area Director C. C. Carshall of the Bureau's Muskogee Area Office. The term of the contract is for a period of five years, or until completion of the litigation in docket 249, and it may be renewed with the consent of the parties and the approval of the Secretary of the Interior or his authorized representative.

On December 20, 1971, Attorney Kile as assignor entered into an agreement with Attorney Jess Larson as assignee for diligent prosecution of the several causes of action in docket 249. The agreement was approved on January 4, 1972, by Harry J. W. Belvin, Principal Chief of the Choctaw Tribe of Indians, and on January 7, 1972, by Roscoe V. Winburn, Acting Area Director of the Muskogee Area Office. Both of these contracts expired on February 25, 1976. There is now pending before the Area Director of the Muskogee Area Office a request for a six-month extension, to August 25, 1976, of these contracts in order to complete the processing of this claim. The Muskogee Area Director has indicated early review and approval of the request.



On June 9, 1975, you sent a letter to the Assistant Attorney General of the United States in which you outlined the basis of your offer to settle the claims in docket 249 for the sum of \$250,000. This offer of settlement was accepted by Assistant Attorney General Wallace H. Johnson on August 28, 1975, subject to certain conditions, namely, that the proposed settlement be approved by appropriate resolution of the governing body of the Choctaw Nation; that approval of the settlement be secured from the Secretary of the Interior or his authorized representative, and that a copy of such resolution and the approval of the terms of the settlement by the Department of the Interior be furnished to the Department of Justice.

The authority for the existence of the office of the Principal Chiefs of the five Civilized Tribes, of which the Choctaw Tribe is one, is found in Section 6 of the Act of April 26, 1906 (34 Stat. 137). The Act of October 22, 1970 (84 Stat. 1091) authorizes each of the Five Civilized Tribes to popularly select their principal officer in accordance with procedures established by the officially recognized tribal spokesman and approved by the Secretary of the Interior. Mr. Clark David Gardner was selected as Principal Chief, of the Choctaw Tribe in a run-off election held on August 23, 1975. Mr. C. David Gardner was sworn into office as Principal Chief of the Choctaw Tribe of Oklahoma on August 26, 1975, and will serve as the tribal spokesman for a term of four years.

As you appropriately point out in your letter of February 24, 1976, the Principal Chief has customarily established his advisory council to assist him in the administration of tribal matters. The Choctaw people are widely scattered throughout the United States and it is not feasible to hold a general tribal meeting to discuss tribal business. A considerable number of Choctaws residing in ten counties within the general tribal area established a number of years ago county organizations which annually elect their officers. The Principal Chief forms his advisory council composed of four officers from the eleven county councils with whom he consults and discusses tribal affairs.

The record shows that on June 30, 1975, Harry J. W. Belvin, then Principal Chief, of the Choctaw Tribe, convened his advisory council at Talihina, Oklahoma, to discuss the proposal to settle the claims in docket 249 for the sum of \$250,000. Principal Chief Belvin and his advisory council by formal resolution adopted at

that meeting accepted the settlement of the claims for the sum of \$250,000. The resolution is hereby approved.

On October 2, 1975, you directed a memorandum to Principal Chief, Gardner in which you outline the history and merits of the claims in docket 249 and the pros and cons of the case. You also furnished us with a copy of the clipping from the Hugo Daily News, Hugo, Oklahoma, for February 19, 1976, in which the tribal meeting of February 13, 1976, when the proposed settlement was discussed is summarized.

We are informed by the Muskogee Area Director that the proposed settlement has also been reported in the tribal newspaper Hello Choctaw.

On February 14, 1976, Principal Chief, Gardner and his advisory council by resolution affirmed the action taken by Principal Chief Belvin with regard to the proposed settlement and authorized the claims counsel to proceed with the processing of the settlement before the Indian Claims Commission and the Department of Justice. This resolution is likewise hereby approved.

In light of the information on file in this office and that obtained from other sources, we are satisfied that the proposed settlement of docket 249 has been adequately presented to the tribal members and that acceptance of the settlement at the respective meetings represents the consensus of the Choctaw Tribe. Therefore, as our information indicates that the proposed settlement is fair and just, the settlement is hereby approved.

Sincerely yours,

/s/ Morris Thompson  
Commissioner of Indian Affairs

6. Stipulation. On June 1, 1976, the parties filed a joint motion for entry of final judgment, and a joint stipulation of settlement and for entry of final judgment approved by C. David Gardner as Principal Chief of the Choctaw Nation on March 9, 1976. The stipulation reads as follows:

STIPULATION OF SETTLEMENT  
AND FOR ENTRY OF FINAL JUDGMENT

It is hereby stipulated between counsel for the parties in the above-captioned docket as follows:

1. That there shall be entered in Docket No. 249 after all allowable deductions and credits, a final judgment in the net amount of \$250,000 in favor of the Choctaw Nation of Indians.

2. Entry of final judgment on said basis in Docket No. 249 shall finally dispose of all rights, claims or demands which plaintiffs asserted or could have asserted in this docket.

3. The United States on its part agrees that it waives any and all claims for offsets, gratuities, consideration paid or, payments on the claims, arising prior to June 30, 1951, under the Indian Claims Commission Act, as amended, 60 Stat. 1049, 25 U.S.C., Section 70a, as to the plaintiff's claims asserted in Docket No. 249.

4. The final judgment of the Indian Claims Commission in Docket No. 249, pursuant to this stipulation, shall constitute a final determination of the claims of the plaintiff in said docket, and shall become final on the day it is entered, the parties to the stipulation waiving any right to appeal from, or otherwise seek review of such determination.

5. The final judgment in Docket No. 249, entered pursuant to this stipulation of settlement, shall be by way of compromise and settlement and shall not be construed as an admission for the purposes of precedent or argument in this or any other case.

/s/ Peter R. Taft  
Assistant Attorney General

/s/ A. Donald Mileur  
Chief, Indian Claims Section

/s/ Bernard M. Sisson  
Attorney for Defendant

/s/ Jess Larson, Esquire  
Counsel for the Plaintiff

/s/ Urban Lester, Esquire  
Of Counsel

/s/ Lon Kile, Esquire  
Counsel for Choctaw Nation  
Docket No. 249

The foregoing Stipulation of Settlement and For Entry of Final Judgment in Docket No. 249 is hereby approved by the undersigned, pursuant to a resolution duly adopted by the Principal Chief of the Choctaw Nation and his Advisory Council at a meeting held on the 14th day of February, 1976, a copy of which is attached hereto.

Dated this 9th day of March, 1976.

/s/ C. David Gardner  
Principal Chief

ATTEST:

/s/ Betty L. Spencer  
Council Secretary

7. Settlement Hearing. A hearing was held by the Commission on Monday, June 28, 1976, with regard to the proposed settlement. At the hearing the attorney for the plaintiff gave his opinion that the settlement was just, fair, and beneficial to the Choctaw Nation. He recommended its approval. Counsel for the defendant gave his opinion that the settlement was fair to both plaintiff and defendant and recommended its approval.

The sole witness at the hearing was C. David Gardner, Principal Chief of the Choctaw Nation. Chief Gardner testified as to the background and authority of the office of the Principal Chief of the Choctaw Nation. He stated that the Choctaw Principal Chief is elected in accordance with procedures established by the officially recognized tribal spokesman and approved by the Secretary of the Interior. He testified that a considerable number of Choctaws reside in ten counties within the general tribal area and that a number of years ago county organizations were established which

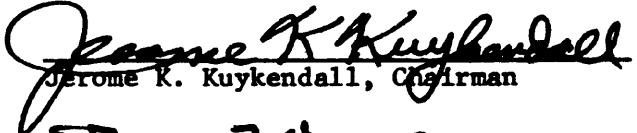
annually elect their officers. He testified as to the practice and custom of the Principal Chief selecting an Advisory Council composed of a number of officers duly elected by these county organizations and further that the Principal Chief discusses tribal affairs and the administration of tribal matters with his Advisory Council.

The Chief testified that the Choctaw people are widely scattered and it is not feasible to hold a general tribal meeting to discuss tribal business. He further testified that prior to his becoming Chief it was his opinion that the tribal members of the Choctaw Nation were generally aware of the proposed settlement. He further testified that when he became Chief he made an independent investigation and review of the proposed compromise and settlement and subsequent thereto he and his Advisory Council fully considered the compromise and settlement at a meeting on February 13, 1976. His Advisory Council was unanimous in its advice to him to approve and accept the settlement. He testified that information concerning the settlement was published in the Hugo Daily News, Hugo, Oklahoma, and the official tribal newspaper, Hello Choctaw. Chief Gardner further testified that it was his opinion that based upon all of the foregoing that the approval of the settlement was fair and equitable and in the best interests of the Choctaw Nation.

8. Conclusion. Based on the record in this docket and the testimony of Principal Chief Gardner; the approval of the proposed compromise settlement by Commissioner of Indian Affairs; the approval of the settlement by the Choctaw Nation Advisory Council at two separate meetings; the

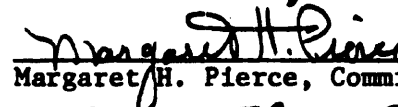
fulfillment of the conditions imposed upon the settlement by the defendant; and the representations made by the attorneys of record for both parties, the Commission finds that the settlement is fair and equitable to all parties, and was freely entered into by them.

The Commission hereby approves the proposed compromise settlement and will enter a final award in favor of the plaintiff in the amount of \$250,000.00, subject to the terms and provisions all as provided for in the stipulation of settlement and for entry of final judgment set forth in finding 6.

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarborough, Commissioner

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner