





Albert C. Harker, Attorney for  
Plaintiffs in Docket No. 124-H.

Edwin A. Rothschild, Attorney  
for Plaintiffs in Docket No. 254.

Louis L. Rochmes and Giddings  
Howd, Attorneys for Plaintiffs  
in Docket Nos. 306, 309, and 311.

Jack Joseph, Attorney for Plaintiffs  
in Docket Nos. 313 and 314-A.

Allan Hull, Attorney for Plaintiffs  
in Docket No. 315.

Bernard M. Newburg, William H.  
Lundin, and Milton Edward Bander,  
with whom were Assistant Attorneys  
General Clyde O. Martz and Shiro  
Kashiwa, Attorneys for Defendant.

OPINION OF THE COMMISSION ON DENYING DEFENDANT'S  
MOTION TO CONTINUE CONSOLIDATION OR TO RECONSOLIDATE

Pierce, Commissioner, delivered the opinion of the Commission.

On April 4, 1973, we issued our decision on title in this proceeding. We explained therein at 30 Ind. Cl. Comm. 45, that because the claims involve overlapping cessions, Dockets 15-D, 15-P, 29-N, 99, 306, 311, 313, 314-A, and 315 were consolidated by Commission order of March 11, 1958, for the purpose of trial to determine the respective interests of the plaintiffs in the lands claimed therein. Dockets 15-Q, 29-O, 254, and 309 were consolidated with the above dockets by the same order, and for the same purpose, but only insofar as their claims overlap the lands claimed in Dockets 314-A and 315. By our order of January 5, 1959,

Docket 124-H, relating to claims for Royce Area 98, was consolidated with the above dockets.

The maps at 30 Ind. Cl. Comm. 79, 80 depict the areas involved and the interests therein, which we credited to the various plaintiffs. In the case of overlapping cessions, we held that several of the plaintiffs have undivided one-half or one-third recognized title interests in various tracts of land.

On October 24, 1973, the defendant moved for an order continuing the consolidation, or to re-consolidate all of the above dockets except Dockets 15-P and 306. \* The requested order would continue the consolidation for the duration of any appeals or cross appeals, or in the absence thereof, until November 29, 1973, when the time for filing appeals expires, or alternatively until such earlier time as all parties might file statements of intent not to appeal.

As grounds for the motion, the defendant stated that continued consolidation of the dockets, so as to bring all interested parties before the Court of Claims in the case of an appeal of the title decision, is the only protection it has against multiple liability.

The Peoria plaintiffs in Docket Nos. 313 and 314-A, responded on November 1, 1973. They opposed the motion on the grounds, inter alia, that:

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\* Dockets 15-P and 306 appear to have been omitted from the motion because they are already on appeal on the limited question of the Potawatomi political structure. The notice of that appeal states that it is not intended to affect the determination of title of any of the claimants to Royce Area 177.

1. The Commission is without jurisdiction or authority to bind the parties and the Court of Claims with respect to appeal of dockets consolidated for trial before the Commission;
2. The defendant's allegations of multiple liability are mistaken; and
3. The procedure suggested by the defendant is cumbersome and prejudicial to the plaintiffs, and would discourage or make review by the Court of Claims more difficult, and might place before the court matters which it would not otherwise have to be concerned with.

The Potawatomi plaintiffs in Dockets 15-D, 15-Q, 309, and 311 responded on November 2, 1973. They opposed the motion for the same reasons stated by the Peoria plaintiffs. In addition they stated that they would be prejudiced by having their "relatively small claims" tried as to value in consolidation with claims of other tribes for larger areas ceded at different times.

On November 13, 1973, the defendant replied to the plaintiffs' responses, stating that its motion does not seek or contemplate consolidation of the valuation phases, but seeks continued consolidation for the duration of any appeals relating to title questions. The defendant acknowledged that a consolidated appeal of the title decision could delay the valuation phases.

By the order accompanying this opinion, we deny the defendant's motion.

We do not agree that continued consolidation of the dockets listed in the motion is the defendant's only protection against the possibility of multiple liability. In the event that any of the parties appeal,

notice of the appeal would be given to all other parties, who more than likely would protect their interests by cross appeal. All parties, including the defendant, would have ample opportunity to designate that the entire record, or such portions thereof as they choose, be sent forward on appeal. All parties would have an opportunity to brief their positions. In this manner the Court of Claims would be fully apprised and the possibility of multiple liability would be as remote as if the dockets were re consolidated in accordance with the defendant's motion.

The wording of our consolidation orders of March 11, 1958, and January 5, 1959, is broad enough to cover consolidation through the value and offset phases of this proceeding. However, the intent of the orders was to consolidate the dockets only through trial of the title phase, and we hold that the consolidation terminated therewith. Our title decision on April 4, 1973, in effect was a separate decision as to each docket involved.

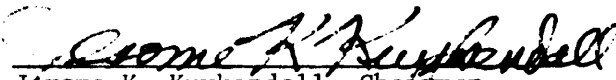
We agree with the plaintiffs that the procedure suggested by the defendant might be prejudicial to the plaintiffs. Even though most of the plaintiffs might have no interest in the particular tract of land involved in an appeal, their claims would be tied up in the appeal which would prevent them from proceeding with other phases of their claims before the Commission. The possibility that the Court of Claims might dismiss the appeal as to the unaffected dockets, is an inadequate safeguard against such prejudice.

The exigency of expediting these dockets to final determination in the limited time allotted to the Commission outweighs any advantages to be derived from continued consolidation or re consolidation for appeal..

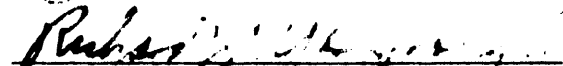
For these reasons the defendant's motion is denied by the accompanying order, and we find it unnecessary to discuss the Commission's jurisdiction and authority to order continued consolidation or reconsolidation.

  
Margaret H. Pierce, Commissioner

We concur:

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarborough, Commissioner

  
Brantley Blue, Commissioner