

BEFORE THE INDIAN CLAIMS COMMISSION

THE SENECA-CAYUGA TRIBE OF OKLAHOMA,)	
AND PETER BUCK, STEWART JAMISON,)	
RUBY CHARLOE, DAVID CHARLOE AND)	
LEWIS WHITEWING, MEMBERS AND)	
REPRESENTATIVES THEREOF,)	
)	
Plaintiffs,)	
)	
v.)	Docket Nos. 341-A and 341-B
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: June 11, 1975

FINDINGS OF FACT ON FINAL AWARD

The above-captioned dockets are now before the Indian Claims Commission for entry of final judgment in the amount of \$42,021.12, plus interest at the rate of 5% on \$6,013.49 from January 1, 1972, until paid, conditional upon a withdrawal by defendant of its Amended Answer claiming offsets of \$24,720.61, and a waiver by both parties of the right to appeal all claims in both dockets.

A meeting having been held with Commissioner Blue and Chief Counsel Harry Webb of the Indian Claims Commission and counsel for plaintiffs and defendant on February 14, 1975, to make final the agreement by the parties to stipulate to final judgment in these dockets, the Commission makes the following findings of fact:

1. The original petition in these cases was filed on August 11, 1951, under the heading of Docket 341. On January 15, 1958, the

Commission ordered that Docket 341 be divided into several subdockets. Plaintiffs filed petitions in Dockets 341-A and 341-B on July 15, 1958. The petition in Docket 341-A contained a land claim and an accounting claim under the Treaty of February 28, 1831 (7 Stat. 348). The petition in Docket 341-B contained a land claim and an accounting claim under the Treaty of July 20, 1831 (7 Stat. 351). The two dockets were consolidated for trial purposes only.

2. As to the accounting claims, a trial was held on the accounting of monies due and owing plaintiffs pursuant to the Treaty of February 28, 1831 (7 Stat. 348), and the Treaty of July 20, 1831 (7 Stat. 351). The Commission decided these claims on December 7, 1972, 29 Ind. Cl. Comm. 262, entering an interlocutory judgment for the plaintiffs in the amount of \$42,021.12, less offsets allowable under the Indian Claims Commission Act, plus interest at the rate of 5 percent per annum on the total unpaid principal in the amount of \$6,013.49 from January 1, 1972, until paid.

Defendant filed its Amended Answer on September 5, 1974, claiming offsets of \$24,720.61.

3. As to the land claims, a trial was held concerning the fair market value of lands in Ohio, subjects of the Treaty of February 28, 1831 (7 Stat. 348), and the Treaty of July 20, 1831 (7 Stat. 351), and the damages sustained as a result of defendant's breach of said treaties. The Commission decided these claims on April 4, 1974, 33 Ind. Cl. Comm. 436, concluding:

(a) That plaintiffs have failed to establish a fair market value for the valuation lands in excess of the amount they received therefor under the Treaties of February 28, 1831, 7 Stat. 348, and July 20, 1831, 7 Stat. 351;

(b) That plaintiffs have failed to establish that they sustained any damages as a result of the defendant's breach of the treaties of February 28, 1831, supra, and July 30, 1831, supra, and therefore;

(c) That plaintiffs were not entitled to recovery in this phase of these claims. . . . [Id. at 468.]

Plaintiffs in a letter to the Commission dated July 3, 1974, indicated that they did not intend to appeal this interlocutory order but would await a final order in the accounting claim after the offset phase.

4. During the month of December 1974 various discussions took place between opposing counsel on the subject of agreement to final judgment in Dockets 341-A and 341-B.

On December 20, 1974, plaintiffs wrote defendant the following offer of agreement:

December 20, 1974

Assistant Attorney General
Attention Mr. Pires
Lands Division
Indian Claims Section
Department of Justice
Washington, D. C.

Dear Mr. Pires:

Agreeable with our conversations, we are prepared to enter into the following agreement with you in respect to the final disposition of Docket Nos. 341-A and 341-B now pending in the Indian Claims Commission on the following terms and conditions:

1. The defendant will withdraw its Amended Answer and waive the claims asserted therein for all purposes against the plaintiffs.

2. The present Interlocutory Judgment shall be made final.

3. The plaintiffs waive any and all right to appeal from the final judgment.

Upon approval of this arrangement we possibly can arrange for a conference with the Commissioner before whom the matter is pending, and make the necessary record stipulation so as to have the matter proceed to final judgment.

Please accept my thanks for your every courtesy.

Cordially yours,

/s/ Paul G. Reilly

5. Plaintiffs' counsel discussed this arrangement with tribal officials of the Seneca-Cayuga Tribe of Oklahoma. By letter of December 23, 1974, the Business Committee of the Seneca-Cayuga Tribe of Oklahoma indicated its approval of the proposal, as follows:

SENECA-CAYUGA TRIBAL OFFICE
1421 1/2 East Steve Owens Blvd.
Miami, Oklahoma 74354

December 23, 1974

Mr. Paul G. Reilly
1414 Avenue of the Americas
New York, New York 10019

Dear Mr. Reilly:

Sir; Please be informed that the Business Committee of the Seneca-Cayuga Tribe of Oklahoma, has decided to accept the interlocutory judgment of \$42,021.12, \$6,013.49 of which is entitled to interest at 5% from January 1, 1972.

We support your recommendation for entering into an agreement, whereby the Government would waive its claim for offsets.

Sincerely,

/s/ James H. Allen

/s/ Mayo S. Whitecrow

James H. Allen
Chief,
Seneca-Cayuga Tribe of Oklahoma

Mayo S. Whitecrow
Business Manager
Seneca-Cayuga Tribe

. . .
cc: Mr. Jake Ahtone
Muskogee Area Office

Mr. T. J. Perry
Miami Agency

6. On February 14, 1975, opposing counsel met with Commissioner Blue and Chief Counsel Harry Webb of the Indian Claims Commission to discuss final judgment in these dockets.

It was agreed by Government counsel that final judgment could be made upon the conditions set out in plaintiffs' letter to defendant of December 20, 1974, if (1) the Department of Interior was advised of and approved the conditions of final judgment as set out by plaintiffs and concurred in by the Business Committee of the Seneca-Cayuga Tribe of Oklahoma in its letter to plaintiffs' counsel of December 23, 1974, (2) plaintiffs waived their right to appeal in both dockets accepting final judgment for all claims in both dockets in the total amount of \$42,021.12, plus interest at the rate of 5% on the total unpaid principal in the amount of \$6,013.49 from January 1, 1972, until paid.

7. By the following letter of February 18, 1975, to the Commission, counsel for plaintiffs, Paul G. Reilly, advised the Commission of plaintiffs' waiver of rights to appeal from any final judgments that may be entered for all claims in both Dockets 341-A and 341-B, and inserted for the record copies of the approval of the proposal by the Business Committee of the Seneca-Cayuga Tribe of Oklahoma:

February 18, 1975

Honorable Brantley Blue
Indian Claims Commission
1730 K Street
Washington, D. C.

In re: Seneca-Cayuga Tribe of Oklahoma,
Docket Nos. 341-A and 341-B

Dear Commissioner Blue:

In conformity with our conference of February 14th, it has been agreed that the Government will withdraw its amended answers in the above captioned dockets and we advise you that plaintiffs hereby waive all rights of appeal from any final judgments which may be entered therein in respect to all of the claims pleaded and decided in the respective dockets. For the record in the cases we enclose herewith the original and ten copies of a letter from the Seneca-Cayuga Tribal Office signed by the Chief of the Tribe and the Business Manager advising that the Business Committee of the Seneca-Cayuga Tribe of Oklahoma has agreed to the foregoing.

We believe that Government Counsel will file with you an appropriate instrument withdrawing the amended answers condition upon the plaintiffs waiver of appeal hereinabove given.

Please accept our thanks for your consideration and helpfulness in moving toward the final disposition of this matter.

Sincerely yours,

/s/ Paul G. Reilly

Enc.

cc: Mr. Alexander Pires

8. The Government officially accepted plaintiffs' offer by letter of Assistant Attorney General, Wallace H. Johnson, dated March 11, 1975. which read:

March 11, 1975

Paul G. Reilly, Sr., Esquire
Reilly, Fleming and Reilly
1414 Avenue of the Americas
New York, New York 10019

Dear Mr. Reilly:

Your written offer dated December 20, 1974, to settle the claims in Seneca-Cayuga Tribe of Oklahoma v. United States, Docket Nos. 341-A and 341-B, before the Indian Claims Commission, is accepted subject to the following conditions:

1. That the proposed settlement be approved by appropriate resolution of the governing bodies of the Seneca-Cayuga Tribe of Oklahoma.
2. That the approval of the settlement, as well as the resolution of the tribe, be secured from the Secretary of the Interior, or his authorized representative.
3. That a copy of such resolutions 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 Nos. 341-A and 341-B.
5. That the United States will withdraw its Amended Answer of September 5, 1974, claiming offsets and gratuities up until June 31, 1951, as to the plaintiffs' claims asserted in Docket Nos. 341-A and 341-B upon completion of condition Nos. 1-3 above, and waive all offsets and gratuities arising prior to June 31, 1951, which were or could have been asserted in this case.

The Department of Justice will be happy to work out with you the terms of the stipulation and the appropriate motions

and orders 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 a hearing on the settlement. Copies of these papers shall also be furnished to the defendant.

Sincerely,

Wallace H. Johnson
Assistant Attorney General

9. By the following letter of April 7, 1975, from plaintiffs' counsel to the Commissioner of Indian Affairs of the Department of Interior, approval was sought of the arrangement for entry of final judgment in Dockets 341-A and 341-B in the amount of \$42,021.12, plus interest at the rate of 5% on the total unpaid principal in the amount of \$6,013.49 from January 1, 1972, until paid:

April 7, 1975

Mr. Morris Thompson, Commissioner
Bureau of Indian Affairs
Department of Interior
Washington, D. C. 20245

Attention: Mr. Guy Lovell

In re: Seneca-Cayuga Tribe - against - I.C.C.
Docket Nos. 341A and B

Honorable and Dear Sir:

The two above cases have proceeded to the point where an interlocutory judgment for \$42,021.12 had been entered. On the trial of the value of the acreage, the Commission determined that the fair value of the lands in the two reservations

did not exceed the amount received from the sales. Thereafter, the defendant interposed an amended answer claiming offsets in an amount of approximately \$26,000.00. Subsequently, in discussions between the Government Counsel and myself it was agreed that the cases could be disposed of in the following manner. The Government will withdraw its answer claiming offsets and the plaintiffs agree not to appeal and the Commission can then enter an order making the interlocutory judgment final. This proposal has been submitted to the Seneca-Cayuga Business Committee and under date of December 23, 1974, it advised me that the arrangement was acceptable and I enclose herewith a copy of that letter. It appears that copies were forwarded to the Muskogee Area Office and the Miami Agency. Subsequently, a conference was held with Commissioner Blue, in which it was indicated that this arrangement would be agreeable to the Commission. After that time we received advise from the Government Counsel that it required some evidence that the Department of the Interior either approved or had no objection to the arrangement.

It would be appreciated if you would undertake to advise the Department of Justice, attention: Mr. Mileur [sic] that the foregoing arrangement meets with your approval or at least that the Department has no objection thereto.

Please accept my thanks for your every courtesy.

Cordially,

/s/ Paul G. Reilly

10. By the following letter, dated April 22, 1975, from the Commissioner of Indian Affairs to the Department of Justice, the proposed procedure for entry of final judgment in Dockets 341-A and 341-B was approved:

April 22, 1975

Mr. Donald A. Mileur, Esq.
Chief, Indian Claims Section
Department of Justice
9th St. and Constitution Ave., N.W.
Washington, D. C., 20530

Dear Mr. Mileur:

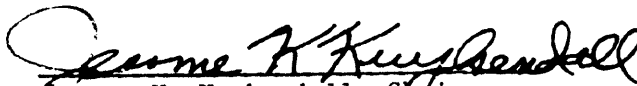
Mr. Paul G. Reilly, Jr., claims counsel for the Seneca-Cayuga Tribe of Oklahoma, advised us by letter dated April 7, 1975, of a proposed procedure for completing Indian Claims Commission Docket Nos. 341-A and 341-B. A copy of the letter is enclosed. In response to the request of Mr. Reilly, we advise that the proposed procedure is hereby approved.

Sincerely yours,


/s/ Morris Thompson
Commissioner of Indian Affairs

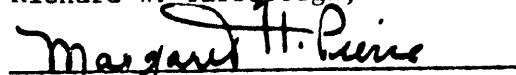
11. On May 28, 1975, defendant withdrew its Amended Answer claiming offsets in the amount of \$24,720.61, and waived its rights to appeal any final award made by the Indian Claims Commission in these dockets.


12. The Commission finds that the defendant has withdrawn its amended answer, and is therefore no longer claiming offsets against the Interlocutory Order entered herein December 7, 1972, 29 Ind. Cl. Comm. 262, 287. The Commission will therefore enter a final award in these dockets in favor of plaintiffs, Seneca-Cayuga Tribe of Oklahoma, in the amount of \$42,021.12 plus interest at the rate of 5% on the total unpaid principal in the amount of \$6,013.49 from January 1, 1972, until paid.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner