

## BEFORE THE INDIAN CLAIMS COMMISSION

SHAWNEE TRIBE OF INDIANS OF	)	
OKLAHOMA, <u>et al.</u> ,	)	Docket No. 64
	)	
EASTERN SHAWNEE TRIBE OF	)	
OKLAHOMA, <u>et al.</u> ,	)	
ABSENTEE SHAWNEE TRIBE OF	)	Docket Nos. 335 and 338
OKLAHOMA, <u>et al.</u> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: June 3, 1977

FINDINGS OF FACT ON COMPROMISE SETTLEMENT

This matter is now before the Commission on a joint motion for entry of final judgment in the above-captioned Docket Nos. 64 and 335 and in the claims of the above-captioned Shawnee plaintiffs in Docket No. 338 in the total amount of \$1,745,146.86.

On August 9, 1973, the Indian Claims Commission rendered its title decision with respect to the lands ceded under the Treaty of Greeneville, 7 Stat. 49, 31 Ind. Cl. Comm. 89. In its decision the Commission determined, inter alia, that on August 3, 1795 (the date of the cession) the Shawnee Tribe of Indians were the owners of a specifically described 1,667,496 acres of land lying within the boundaries of the ceded area (Royce Area 11) in the present State of Ohio. The tract was within a line beginning at the town of Highland in present-day northern Highland County, Ohio; thence easterly in a straight line to the city of Athens

in Athens County, Ohio; thence in a northwesterly direction up the Hocking River to the town of Lancaster; thence northeasterly in a straight line to a point on the South Fork of the Licking River, 4 1/2 miles southwest of the city of Newark in Licking County, Ohio; thence west on the 40th degree north latitude to a point one mile east of the town of Catawba in northeast Clark County, Ohio; thence in a straight line south to the place of beginning. The Court of Claims affirmed this decision (207 Ct. Cl. 254, cert. denied, 423 U.S. 1015 (1975)).

The Commission has heretofore found that the Shawnee Tribe of Indians of Oklahoma, plaintiffs in Docket No. 64, and the Eastern Shawnee Tribe of Oklahoma and the Absentee Shawnee Tribe of Oklahoma, plaintiffs in Docket Nos. 335 and 338, are successors to the Shawnee Tribe which ceded the aforesaid lands at the Treaty of Greeneville and that said tribes are entitled to maintain the claims arising under said Treaty. 31 Ind. Cl. Comm. 89, at 145. Plaintiffs in Docket No. 64 are presently represented by James R. Fitzharris and Rodney J. Edwards. The plaintiffs in Docket No. 335 and Shawnee plaintiffs in Docket No. 338 are presently represented by Jack Joseph.

Agreement was subsequently reached among the parties on a compromise settlement of the Shawnee claims in these cases. A hearing having been held before the Commission on May 6, 1977, on the proposed settlement, the Commission makes the following findings of fact which are supplemental to the previous findings numbered 1 through 34.

35. On May 6, 1977, the plaintiffs in Docket Nos. 64 and 355 and the Shawnee plaintiffs in Docket No. 338 (hereinafter referred to as plaintiffs) and the defendant, pursuant to stipulation, filed in these

cases a joint motion for approval of settlement and for entry of a final judgment in favor of the plaintiffs for and on behalf of the Shawnee Tribe in the amount of \$1,745,146.86.

36. The parties also filed 11 exhibits, identified as S-1 through S-11, in support of the proposed settlement. These exhibits are hereby received in evidence.

37. On June 2, 1976, counsel for the plaintiffs submitted a letter to Assistant Attorney General Peter R. Taft, offering to compromise and settle the Shawnee claims in Docket Nos. 64, 335 and 338 for a final judgment in favor of the plaintiffs for and on behalf of the Shawnee Tribe, in the net amount of \$1,745,146.86 (Exhibit S-1).

38. By letter dated August 5, 1976, Assistant Attorney General Peter R. Taft, on behalf of the Department of Justice, accepted the offer of settlement, subject to certain conditions, including (a) that the proposed settlement be approved by appropriate tribal resolutions, and (b) that approval of the settlement, as well as the tribal resolutions, be secured from the Secretary of the Interior or his authorized representative (Exhibit S-2).

39. The terms of the settlement are set forth in the Stipulation for Entry of Final Judgment entered into by counsel for plaintiffs and defendant and filed with the Commission, which reads as follows:

#### STIPULATION FOR ENTRY OF FINAL JUDGMENT

It is hereby stipulated between the attorneys for the parties in the above-captioned dockets, as follows:

1. Above Docket Nos. 64, 335 and the Eastern Shawnee Tribe of Oklahoma, et al., claims in Docket No. 338 shall be consolidated for all purposes.

2. There shall be entered in the said consolidated cases, after all allowable deductions, credits and offsets, a net judgment for plaintiffs in the amount of one million seven hundred forty-five thousand one hundred forty-six dollars and 86 cents (\$1,745,146.86).

3. Entry of final judgment in said amount shall finally dispose of all claims or demands which the plaintiffs have asserted or could have asserted in the above Docket Nos. 64, 335 and 338.

4. Entry of final judgment in the aforesaid amount shall finally dispose of all claims, demands, payments on the claim, counterclaims or offsets which the defendant has asserted or could have asserted against plaintiffs under the provisions of Section 2 of the Indian Claims Commission Act (c. 949, 60 Stat. 1049) accruing before July 1, 1970.

5. The final judgment entered pursuant to this stipulation shall be by way of compromise and settlement and shall not be construed as an admission by either party for the purposes of precedent or argument, in any other case.

6. The final judgment of the Indian Claims Commission pursuant to this stipulation shall constitute a final determination by the Commission of the above-captioned cases, and shall become final on the date it is entered, all parties hereby waiving any and all rights to appeal from or otherwise seek review of such final determination.

7. The parties agree to execute and file with the Commission a joint motion for entry of final judgment pursuant to this stipulation, submitting a proposed form of final order for the approval of the Commission.

8. This stipulation is executed by the attorneys for the parties, subject to final approval of the settlement by the Indian Claims Commission.

Dated this 6th day of May 1977.

/s/  
James R. Fitzharris  
Attorney for Plaintiffs  
Docket No. 64

/s/  
PETER R. TAFT  
Assistant Attorney General

/s/  
 Rodney J. Edwards  
 Attorney for Plaintiffs  
 Docket No. 64

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

/s/  
 Jack Joseph  
 Attorney for Plaintiffs,  
 Eastern Shawnee Tribe of Okla-  
 homa and Absentee Shawnee  
 Tribe of Oklahoma, Docket Nos.  
 335 and 338

/s/  
 D. Lee Stewart  
 Attorney for Defendant

40. On December 5, 1976, a special general council meeting of the Eastern Shawnee Tribe of Oklahoma was held at Miami, Oklahoma, called by the officers of the tribe. The meeting was presided over by James I. Greenfeather, Chief of the Tribe, and Lois Nowlin, the secretary of the tribe, recorded the minutes. The tribe had been supplied copies of a written report recommending the settlement in question which had been prepared by Jack Joseph, counsel for the tribe. Mr. Joseph addressed the meeting, explained the nature and terms of the settlement and recommended its approval. Questions from members of the tribe were posed and answered. Mr. Jesse C. Grissom, Acting Superintendent of the Miami Agency, and a representative of the Commissioner of the Bureau of Indian Affairs, attended the meeting and made a recording of the proceedings. Members having satisfied themselves as to the understanding of the terms and conditions of the settlement, on motion duly made and seconded, a resolution approving the settlement was adopted by a vote of 20 for and 0 against (Exhibit S-3).

41. On January 23, 1977, a special general council meeting of the Absentee Shawnee Tribe of Oklahoma was held in the Municipal Auditorium, Tecumseh, Oklahoma, pursuant to convocation by the officers of the tribe.

The meeting was presided over by Danny Little Axe, the tribal chairman, and the minutes were recorded by Ruth Musick, secretary-treasurer of the tribe. A written report recommending the settlement had been prepared by Jack Joseph, attorney of record for the tribe, and was distributed to the members. Mr. Joseph explained the nature and terms of the settlement and entertained questions from members of the tribe. John Taylor, Superintendent of the Bureau of Indian Affairs, Shawnee Agency, attended the meeting as representative of the Commissioner of Indian Affairs. After discussion and after the members had satisfied themselves of their understanding of the terms and conditions of the settlement, on motion duly made and seconded, a resolution approving the settlement was adopted by a vote of 56 for and 0 against (Exhibit S-4).

42. On February 6, 1977, a special general council meeting of the members of the Cherokee-Shawnee Tribe, consisting of members of the Shawnee Tribe of Indians of Oklahoma and their descendants who were incorporated into the Cherokee Tribe was held at White Oak, Oklahoma, which was called by the officers of the tribe. The meeting was presided over by Jerome Shawnee, Chairman of the Cherokee-Shawnee Business Committee, and Elaine Chibitty, Secretary of the Committee, recorded the minutes. The tribal members present were each given a copy of a written report recommending the settlement in question which was prepared by James R. Fitzharris and Rodney J. Edwards, counsel for the tribe, to assist them in following the claims counsels' explanation of the proposed settlement. James R. Fitzharris and Rodney J. Edwards addressed the meeting, explained the nature and terms of the settlement and recommended its approval. Questions from members of the tribe were posed and answered. Mr. Royal

Thornton, Realty Specialist of the Tahlequah Agency, and as representative of the Commissioner of the Bureau of Indian Affairs, attended the meeting and recorded the proceedings. Members having satisfied themselves as to the understanding of the terms and conditions of the settlement, on motion duly made and seconded a resolution approving the settlement was adopted by a vote of 121 for and 0 against (Exhibit S-5).

43. On the same day, February 6, 1977, prior to the meeting of the members, the Cherokee-Shawnee Business Committee, representing the Shawnee Tribe of Indians of Oklahoma and their descendants who were incorporated into the Cherokee Tribe, adopted a resolution approving the settlement by a vote of 5 for and 1 against (Exhibit S-6).

44. The resolutions of general council meetings of the Eastern Shawnee Tribe of Oklahoma, the Absentee Shawnee Tribe of Oklahoma, and the Cherokee-Shawnee Tribe and the Cherokee-Shawnee Business Committee accepting the proposed settlement were submitted to the Commissioner of the Bureau of Indian Affairs along with reports of the meetings by the attorneys and the field representatives of the Bureau of Indian Affairs who attended the meetings. On April 14, 1977, the Department of the Interior approved the resolutions of the tribes accepting the settlement and approved the settlement by letter from the Acting Commissioner of Indian Affairs to James R. Fitzharris, Attorney of Record for the plaintiffs in Docket No. 64 (Exhibit S-7), and to Jack Joseph, Attorney of Record for the plaintiffs in Docket Nos. 335 and 338 (Exhibit S-8). The pertinent portions of that letter are as follows:

Tribal Consideration of the Proposed SettlementShawnee Tribe of Oklahoma (Cherokee-Shawnee)

Royal Thornton, Realty Specialist, Tahlequah Agency, in the capacity of Bureau observer, attended a general council meeting on February 6, 1977, of the Cherokee-Shawnee Tribe consisting of members of the Shawnee Tribe of Oklahoma and other descendants who were incorporated into the Cherokee Tribe. Jerome Shawnee, Chairman of the Cherokee-Shawnee Business Committee chaired the meeting.

Mr. Thornton reports that Attorneys James R. Fitzharris and Rodney J. Edwards carefully and fully explained the proposed settlement to an assembly of about 250 tribal members. The tribal members present were each given a copy of "Claims Attorneys' Report with respect to Proposed Settlement of Shawnee Tribe Claims in Indian Claims Commission Dockets 64, 335, and 338" to assist them in following the claims counsel's [sic] explanation of the proposed settlement. Mr. Thornton feels that the voting membership was given every opportunity to raise questions and to receive answers and to discuss the proposed settlement in full detail. A copy of the proposed tribal resolution approving the proposed settlement was read to the tribal members. After full discussion of the proposed settlement a vote was taken with a resultant vote of 121 for and none against. Mr. Thornton reports that this is a representative expression of the wishes of the tribal voters and that the tribal members fully understand the proposed settlement.

The Cherokee-Shawnee Business Committee also convened on February 6, 1977, at Vinita, Oklahoma, to consider the proposed settlement, and by a vote of five for and one against, accepted and approved the proposed settlement. The actions taken at this meeting to accept and approve the proposed settlement are hereby approved.

Eastern Shawnee Tribe of Oklahoma

On December 5, 1976, a general council meeting was held to permit the tribal members of the Eastern Shawnee Tribe to consider the proposed settlement of the claims in Indian Claims Commission dockets 335 and 338. The meeting was called by James Greenfeather, Chief of the Eastern Shawnee Tribe, and notice of the meeting was published on November 25, 1976, in the Miami News Record, the only newspaper in Miami, Oklahoma. This is the normal method by which tribal members are given notice of tribal meetings. Ten or more members of the Eastern Shawnee Council constitutes a quorum for the transaction of tribal business. Attorney Joseph handed to



each member present a copy of the "Claims Attorneys' Report with respect to Proposed Settlement of Shawnee Tribal Claims in Indian Claims Commission Dockets 64, 335 and 338" for ready reference as he explained the "pros and cons" of the proposed settlement. Jesse C. Grissom, Acting Superintendent of the Miami Agency in charge of the affairs of Eastern Shawnee Tribe, was the Bureau's observer at the meeting. Mr. Grissom reports the tribal members fully discussed the proposed settlement, raised questions to which Attorney Joseph gave full answers, and a map was shown describing the lands involved in the proposed settlement. A full reading of the proposed resolution dealing with the proposed settlement was made by the tribal secretary-treasurer. After a full explanation was had, a resolution accepting and approving the proposed settlement was adopted by a vote of 20 for and none against.

Acting Superintendent Grissom has certified that the signatures of James I. Greenfeather as Chief and Lois Mowlin [sic] as Secretary appearing on the general council resolution are genuine. The resolution is hereby approved.

#### Absentee Shawnee Tribe of Oklahoma

On January 23, 1977, a special general council meeting of the Absentee Shawnee Tribe was held on January 23, 1977, [sic] for the purpose of hearing and acting on the proposed settlement presented by Attorney Jack Joseph. Although a quorum of only 25 qualified voters is required for a general council meeting, 58 adult tribal members attended the special meeting. Attorney Joseph, who prior to the meeting had submitted his written report outlining the full import of the proposed settlement to the tribal business committee, made copies available to the adult tribal members at the special general council meeting. Superintendent John Taylor of the Shawnee Agency attended the meeting.

Mr. Taylor reports that a special general council meeting had been called for December 11, 1976, but due to bad weather a quorum could not be obtained. Attorney Joseph nonetheless explained the proposed settlement to 20 tribal members who were able to travel to the meeting, and distributed copies of his report to them. Consequently, Mr. Taylor feels that the proposed settlement is well known among the tribal membership.

Superintendent Taylor reports that Attorney Joseph, at the general council meeting of January 23, 1977, fully explained the provisions of the proposed settlement, and the value the Shawnee Nation would receive under the proposal. The tribal

chairman called a recess so that the tribal members might discuss the proposal among themselves. Prior to, and following the recess, the tribal members had ample opportunity to ask questions and to receive answers.

After reconvening the meeting, the tribal members, voting by secret ballot, accepted and approved the proposed settlement by a vote of 56 in favor and none opposed. Superintendent Taylor feels that the claims counsel's explanation of the proposal was full and clear, that the tribe was represented by a good cross-section of its membership, and that the voting was fair. Mr. Taylor has certified that the signatures of Danny Little Axe, tribal chairman, and of Ruth Musick as secretary-treasurer are genuine. The resolution is hereby approved.

We are satisfied that the tribal meetings described above were well publicized and that the tribal members of each of the three tribal groups involved had an opportunity to attend their respective meetings and to express their views. We are satisfied that the meetings of the respective tribal groups were satisfactorily conducted with the voting held after the tribal members had an opportunity to consider the proposed settlement.

In light of the information which you have furnished to us, that which has been submitted by our field offices, and that obtained from other sources, we are satisfied that the proposed settlement of the claims in Dockets 64, 335 and 338 is fair and just. Subject, therefore, to approved extensions of Attorney Jack Joseph's claims attorney contracts with the Eastern Shawnee Tribe and the Absentee Shawnee Tribe being obtained before the settlement is presented to the Indian Claims Commission, the proposed settlement is hereby approved.

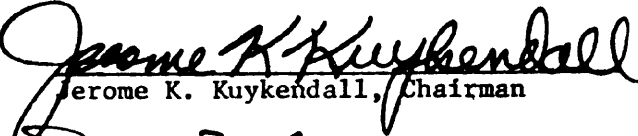
45. In compliance with the condition set forth in the last paragraph of the letter of the Acting Commissioner of Indian Affairs dated April 14, 1977, approved extensions of Attorney Jack Joseph's claims attorney contracts with the Eastern Shawnee Tribe and the Absentee Shawnee Tribe were filed with the Commission (Exhibits S-9 and S-10).

46. At a hearing before the Commission held on May 6, 1977, Elaine Chibitty, Secretary of the Cherokee-Shawnee Tribe; Dorma Hollis, member, and Lois Nowlin, Secretary, of the Eastern Shawnee Tribe; and Danny Little Axe, Chairman of the Absentee Shawnee Tribe testified regarding the

approval of the settlement at the general membership meetings and tribal business committee meetings of their respective tribal groups. The representatives of the Cherokee-Shawnee Tribe and the Absentee Shawnee Tribe testified that there was notice of their respective meetings published in local newspapers and broadcast on area radio stations. The representatives of the Eastern Shawnee Tribe testified that most of their members reside in the same general area as the members of the Cherokee-Shawnee Tribe and that there is overlapping membership between the two tribes. All the witnesses testified that the proposed settlement and Stipulation for Entry of Final Judgment had been fully and clearly explained at the general membership meetings and the tribal business committee meeting, and that the tribal members were given a full opportunity to ask questions concerning the settlement and to comment thereon. They each also expressed the opinion that the tribal members of each of their groups understood the settlement and considered the settlement to be in the best interest of the Indians and that it should be approved.

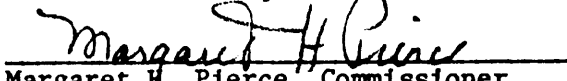
47. The Commission finds, based upon the testimony of the witnesses, the record at all stages of the litigation, the representations of counsel, and all other pertinent factors before us, that the proposed compromise settlement as set forth in the Stipulation for Entry of Final Judgment, filed May 6, 1977, is fair to the parties, will eliminate additional litigation expenses as well as delay in payment of the final award and further, that said proposed compromise settlement has been freely entered into by the members of the plaintiff tribes and duly approved by the Acting Commissioner of Indian Affairs.

The Commission hereby approves the proposed compromise and settlement and will enter an order consolidating Docket Nos. 64 and 335, and the claims of the Shawnee plaintiffs in Docket No. 338, for purposes of entry of final judgment in said dockets, and entering final judgment in said Dockets, in the amount of \$1,745,146.86, in favor of the plaintiffs in Docket No. 64, the Shawnee Tribe of Indians of Oklahoma, and the plaintiffs in Docket Nos. 335 and 338, the Eastern Shawnee Tribe of Oklahoma and the Absentee Shawnee Tribe of Oklahoma, on behalf of the Shawnee Tribe of Indians as it existed in 1795, subject to the terms and provisions of the Stipulation for Entry of Final Judgment.

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarborough, Commissioner

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner