

BEFORE THE INDIAN CLAIMS COMMISSION

THE SEMINOLE NATION,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 247
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	
)	
THE CREEK NATION,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 277
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: June 22, 1977

Appearances:

Paul M. Niebell, Attorney for the Plaintiffs.

M. Edward Bander, with whom was Assistant Attorney General Peter R. Taft, Attorneys for Defendant.

OPINION OF THE COMMISSION

Kuykendall, Chairman, delivered the opinion of the Commission.

Plaintiffs in Docket 247 and Docket 277 have filed identical Offers of Proof. ^{*/} The Offer has two parts: the "Offer of Proof" filed April 6, 1977, and the "Amendments to Offer of Proof" filed May 6, 1977.

^{*/} Although these dockets are not consolidated, the Commission and the parties have treated them as one because the legal issues in the two dockets are identical. In this opinion, we will treat the identical Offers as one.

Plaintiffs include in the Offer: (1) a preamble tracing a portion of the history of this litigation, (2) several paragraphs (numbered 1-8) setting forth legal argument, (3) an exhibit, referred to as Appendix B, which has previously been included in the Commission's Record on Appeal in Docket 247 as Pl. Ex. No. 30, and (4) several paragraphs (numbered 9-13) listing certain towns, cities, counties and railroad lines in what is now Oklahoma. Neither the material contained in these paragraphs nor the accompanying map (apparently a photocopy of an undated Rand-McNally New Commercial Atlas Map of Oklahoma), designated "Appendix A", has ever been previously offered into evidence.

The purpose of an offer of proof is to allow the trial court to rule intelligently and to preserve the record for appeal. Rule 103(a)(2) of the Federal Rules of Evidence describes the circumstances in which an offer of proof is proper.

For the reasons set forth below, plaintiffs' Offer of Proof is improper and therefore must be rejected by the Commission.

1. The preamble to the plaintiffs' Offer of Proof is not evidence and simply restates events previously set forth in the record. For that reason it is superfluous.

2. Plaintiffs' legal argument (in paragraphs 1-8) is not proper subject matter for inclusion in an offer of proof. An offer of proof properly should contain only proposed evidence; legal theory is immaterial.

3. The object of an offer of proof precludes evidence previously admitted from being a part thereof. The offer of Exhibit A is unnecessary.

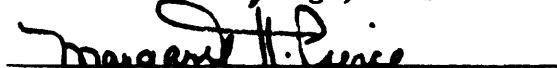
4. Exclusion from the record is a prerequisite before an item may be properly offered. Fed. R. Evid. 103(a)(2). The lists of places and railroads set out in plaintiffs' Offer of Proof in paragraphs 9 to 13 must be rejected since evidence relating thereto has never been offered and excluded. The Commission also rejects the form in which plaintiffs have offered the material in paragraphs 9 to 13. The lists the plaintiffs submit are not evidence, but rather only a second-hand discussion of evidence.

However, if plaintiffs were to offer into evidence proper documentary material relating to the discussion set out in paragraphs 9 to 13 of the Offer of Proof, that evidence would be excluded from evidence, and any subsequent offer of proof rejected, because any such evidence is immaterial. The Commission has previously ruled on the legal issue which underlies plaintiffs' Offer of Proof -- the definition of municipality. See 37 Ind. Cl. Comm. 499. The bare recital by plaintiffs of other geographical areas which are not "municipalities" within the meaning of that definition, or any documentary evidence relating to such geographical areas, has no place in the record of these dockets.

We concur:


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner


Jerome K. Kuykendall, Chairman