

BEFORE THE INDIAN CLAIMS COMMISSION

THE DELAWARE TRIBE OF INDIANS,)	Docket No. 27-B
)	
ABSENTEE DELAWARE TRIBE OF)	
OKLAHOMA,)	Docket No. 338
)	
Plaintiffs,)	
)	
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: December 16, 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 27-B and in the claims of the above-captioned Delaware plaintiffs in Docket 338 in the total amount of \$1,199,763.20.

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 Delaware Tribe of Indians were the owners of a specifically described 1,150,720 acres of land lying within the boundaries of the ceded area (Royce Area 11) in the present State of Ohio. The tract consisted of the land included within the present day counties of Tuscarawas, Coshockton and Muskingum, in southeastern Ohio. 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 Delaware Tribe of Indians, plaintiffs in Docket 27-B, and the Absentee Delaware Tribe of Oklahoma, plaintiffs in Docket 338, are successors to the Delaware 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 144. Plaintiffs in both dockets are presently represented by Jack Joseph.

Agreement was subsequently reached among the parties on a compromise settlement of the Delaware claims in these cases. A hearing having been held before the Commission on December 8, 1977, on the proposed settlement, the Commission makes the following findings of fact which are supplemental to the previous findings numbered 1 through 34 in the original decision, 31 Ind. Cl. Comm. 89, and to the previous findings numbered 35 through 47 in the Commission's decision of June 3, 1977, on the compromise settlement of the Shawnee claims in Royce Area 11, 40 Ind. Cl. Comm. 161.

48. On December 8, 1977, the plaintiffs in Docket 27-B and the Delaware plaintiffs in Docket 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 final judgment in favor of the plaintiffs for and on behalf of the Delaware Tribe in the amount of \$1,199,763.20.

49. The parties also filed seven exhibits, identified as D-1 through D-7, in support of the proposed settlement. These exhibits are hereby received in evidence.

50. On June 2, 1976, counsel for the plaintiffs submitted a letter to Assistant Attorney General Peter R. Taft, offering to compromise and settle the Delaware claims in Dockets 27-B and 338 for a final judgment in favor of the plaintiffs for and on behalf of the Delaware Tribe in the net amount of \$1,199,763.20 (Exhibit D-1).

51. 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 D-2).

52. 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 on December 8, 1977, which reads as follows:

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

1. Above Docket Nos. 27-B and the Absentee Delaware Tribe of Oklahoma, et al., claims in Docket 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, one hundred ninety nine thousand seven hundred sixty three and twenty one-hundredths [sic] (\$1,199,763.20) dollars.
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. 27-B 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 (60 Stat. 1049) accruing before June 30, 1951.

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 2nd day of December, 1977.

/s/ Jack Joseph
Jack Joseph, Attorney for
Plaintiffs in Docket 27-B
and Delaware Plaintiffs in
Docket 338

/s/ James W. Moorman
JAMES W. MOORMAN
Assistant Attorney General

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

/s/ D. Lee Stewart
D. Lee Stewart
Attorney for Defendant

53. On January 22, 1977, a general council meeting of the Delaware Tribe of Western Oklahoma (formerly and sometimes now known as the Absentee Delaware Tribe of Oklahoma) took place at Anadarko, Oklahoma,

called by the officers of the tribe. The meeting was presided over by Lawrence Snake, President of the tribe, and Bonnie Stephenson, the Secretary of the tribe, recorded the minutes. The tribe had been supplied copies of a written report recommending the settlement which had been prepared by Jack Joseph, counsel for the tribe. Mr. Joseph and Mr. Louis L. Rochmes, another of the tribe's attorneys, explained the nature and terms of the settlement and recommended its approval. Questions from members of the tribe were posed and answered. Mrs. Betty Bell, Administrative Officer and designated observer of the Anadarko Agency of the Bureau of Indian Affairs, attended the meeting and made a report thereon, and the meeting was also attended by Mr. Charles Delaney of the Anadarko Area Office and Mr. Stan Speaks, the incoming Area Director for that office. Lawrence Snake, President, and Harold Pruner, Claims Councilman at Large, also addressed the meeting. The 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 75 for and 0 against (Exhibit D-3).

54. On February 17, 1977, the Delaware Tribal Business Committee, with a quorum present, adopted a resolution approving the settlement upon the recommendation of Jack Joseph and Louis L. Rochmes, the tribal attorneys (Exhibit D-4). Although no formal determination had been made as to whether or not the resolution of the Tribal Business Committee constituted sufficient approval of the settlement by the Delaware Tribe (plaintiffs in Docket 27-B), it was determined that on a question as

important as the proposed settlement, the expression of the membership of the tribe should be obtained. In the opinion of the tribal officers, a general council meeting was inadequate for this purpose in the case of the Delaware tribe, in part because its membership is geographically widespread, and it was therefore determined in consultation with representatives of the Bureau of Indian Affairs that a mail referendum be held. On June 29, 1977, a "Call and Notice of Referendum" (Exhibit D-5) was mailed to all eligible voters, together with a memorandum explaining the settlement prepared from the memorandum submitted by Jack Joseph, the tribal attorney. The relevant question on the ballot was, "Shall Indian Claims Commission Cases 27-B and 338, which are claims brought by the Delawares against the United States for breach of the 1795 Treaty of Green[e]ville, be settled for \$1,199,763.20?" Of 2,015 ballots accepted and counted, 1,896 voted yes and 115 voted no (Exhibit D-6).

55. The resolution of the general council meeting of the Delaware Tribe of Western Oklahoma (Absentee Delaware) and of the Business Committee resolution and referendum, along with reports by the attorneys and the field representatives of the Bureau of Indian Affairs were submitted to the Commissioner of the Bureau of Indian Affairs and the Assistant Secretary, Indian Affairs, of the Department of the Interior. On November 15, 1977, the Department of the Interior approved the action of the tribes accepting the settlement and approved the settlement by letter from Forrest J. Gerard, Assistant Secretary, Indian Affairs, to Jack Joseph, attorney of record for plaintiffs in Dockets 27-B and 338 (Exhibit D-7). The pertinent portions of the letter are as follows:

Our record shows that on June 2, 1976, you advised the Assistant Attorney General, Department of Justice, that the Delaware plaintiffs are willing to accept by way of compromise a judgment of \$1,199,763.20, a sum equal to \$1.06 per acre for the 1,150,720 acres of land determined by the Bureau of Land Management to be contained in the tract found by the Indian Claims Commission in its decision of August 9, 1973, 31 Ind. Cl. Comm. 89, affirmed, Court of Claims, certiorari denied, less consideration valued at \$20,000.00. Your offer was accepted on August 5, 1976, by the Assistant Attorney General, subject to certain conditions. The conditions are that the proposed settlement be approved by appropriate resolutions of the governing bodies of the plaintiff tribes, that the approval of the settlement, as well as the resolutions of the tribes, be secured from the Secretary of the Interior, or his authorized representative, and that a copy of each resolution and the approval of the terms of the settlement by the Department of the Interior be furnished to the Department of Justice.

Tribal Consideration of the Proposed Settlement

Delaware Tribe of Western Oklahoma (Absentee Delaware Tribe)

Mrs. Betty Bell, Administrative Officer and designated Bureau observer, attended a general council meeting of the Delaware Tribe of Western Oklahoma on January 22, 1977. There are about 450 eligible tribal voters, of whom about 350 live away from the immediate area. Administrative Officer Bell reports that a total of 75 eligible voters attended the meeting, compared to an average attendance at such meetings of approximately 30.

Mrs. Bell reports that Claims Attorney [sic] Louis Rochmes and Jack Joseph carefully summarized the history of the claims involved in Dockets 27-B and 338 and sought to assure the complete understanding of the proposed settlement by the tribal members present and fully explained the terms of the proposed compromise settlement. A copy of a "Memorandum with respect to Proposed Settlement of Royce Area 11 (Greenville Treaty) Case" was given to each tribal member to assist him in following the attorneys' explanations.

After a full question and answer session was held, a vote was taken with the result that the proposed compromise settlement was approved by a vote of 75 to nothing.

In Mrs. Bell's opinion, the tribal members appeared to understand the terms of the proposed settlement and, inasmuch as this is the largest number of tribal voters to participate in a general council meeting, she feels that the vote of the tribal members reasonably reflects the cross-section feeling of the tribe as a whole. The general council at this meeting adopted a resolution approving the proposed settlement for the sum of \$1,199,763.20 in accordance with the terms and conditions set forth by the Assistant Attorney General in his letter of August 5, 1976.

A notice of the general council meeting was mailed to all adult tribal members whose addresses were of record. Notice of the meeting was also published in The Anadarko Daily News, The Oklahoma Journal, The Daily Oklahoman, and it was also announced over the KRPT Radio Station.

Administrative Officer Bell has advised us that the signatures of Tribal President Lawrence Snake and Tribal Secretary Bonnie Stephenson appearing on the general council resolution of January 22, 1977, are genuine. The resolution is hereby approved.

The Delaware Tribe (Cherokee Delawares)

Following our letter to you of April 7, 1977, we discussed with Bruce Miller Townsend, Chairman of the Delaware Tribe of Oklahoma, the need to obtain tribal expression with respect to the proposed compromise settlement of claims in Indian Claims Commission dockets 27-B and 338. We brought out in these discussions that a general council meeting of a tribe is not invariably required to accomplish a compromise settlement under procedures set out in the Omaha decision, 8 Ind. Cl. Comm. 392. What is needed is the views of as many of the tribal members as possible. This is not to say however, that other business of the Delaware Tribe may be conducted without general council sanction. Therefore, since the Omaha decision, rather than the tribal bylaws, provides the general guidelines by which proposed compromise settlements are presented to tribes, we are separating the proposed settlement from consideration of Referendum Questions 2 through 5.

A five-member election committee was formed to conduct a referendum by mail to consider six specific matters, the foremost of which was whether the proposed compromise settlement should be approved. The vote on the compromise settlement of Indian Claims Commission Consolidated dockets 31, 37, 80, 80-D, 176, 215, 333, and 347, Indians of California (13 Ind. Cl. Comm. 369), as well as Docket 198, The Confederated Tribes of the Warm

Springs Reservation of Oregon (32 Ind. Cl. Comm. 7), was accomplished by mail referendum after informative sessions were held with the Indians involved.

A detailed written report prepared by Claims Attorney Jack Joseph concerning the proposed compromise settlement was mailed to the eligible voters. The question posed to the tribal voter on the proposed settlement reads as follows:

"QUESTION NO. 1--Shall Indian Claims Commission Cases 27B and 338, which are claims brought by the Delawares against the United States for Breach of the 1795 Treaty of Greeneville, be settled for \$1,199,763.20?" [sic]

The resultant vote was 1,896 for and 115 against.

A Call and Notice of the Referendum scheduled for July 30, 1977, appeared in the Tulsa Tribune, Tulsa World, Coffeyville Journal, Nowata Star, Bartlesville Examiner-Enterprise, Miami Newspaper, Oklahoma Journal Newspaper, Daily Oklahoman Newspaper, and the Muskogee Phoenix Newspaper. The Call and Notice of the Referendum was also announced through the local radio and television news media. The Delaware Business Committee also conducted area meetings to explain the referendum in Dewey, Nowata, Vinita, and Coffeyville on July 16 and 17, 1977.

We find that the matter of the proposed compromise settlement was satisfactorily presented to the general membership of the Delaware Tribe of Indians in the July 30, 1977, election and further find that the affirmative vote therein constitutes their acceptance of the compromise settlement. Thus we conclude there has been the needed Indian approval of compromise proposals discussed in the Omaha decision. Accordingly, the July 30, 1977, vote of the membership of the Delaware Tribe of Indians to accept the proposed compromise settlement in the sum of \$1,199,763.20 is hereby approved.

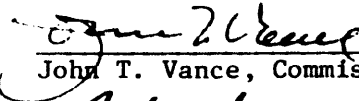
In light of the information which you have furnished to us, that which has been submitted by our field office, and that obtained from other sources, we are satisfied that the proposed settlement of the claims in Dockets 27-B and 338 is fair and just. The proposed settlement is hereby approved.

56. At a hearing before the Commission held on December 8, 1977, Lawrence Snake and Harold Pruner, President and Councilman at Large of the Delaware Tribe of Western Oklahoma (Absentee Delaware) and Bruce Miller Townsend, Chairman of the Delaware Tribe, testified regarding the approval of the settlement by their respective groups. The representatives of the Absentee Delaware Tribe testified that there was notice of the tribe's meeting published in local newspapers and broadcast on area radio stations. The representative of the Delaware Tribe described the various notices in publications and radio and television media, and the meetings held in Dewey, Nowata, Vinita, and Coffeyville on July 16 and 17, 1977, explaining the proposed settlement. The tribal representatives also expressed the opinion that the tribal members of each group understood the settlement and considered it to be in the best interest of the Indians and that it should be approved.

57. 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 December 8, 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 has been freely entered into by the members of the plaintiff tribes and duly approved by the Assistant Secretary of the Interior.

The Commission hereby approves the proposed compromise and settlement and will enter an order consolidating Dockets 27-B and 338 for the purposes of entry of final judgment in said dockets, and entering final judgment in said dockets in the amount of \$1,199,763.20, in favor of plaintiffs in Docket 27-B, the Delaware Tribe of Indians, and the Absentee Delaware Tribe of Oklahoma, plaintiffs in Docket 338, on behalf of the Delaware Tribe of Indians as it existed in 1795, subject to the terms and provisions of the stipulation for entry of final judgment.

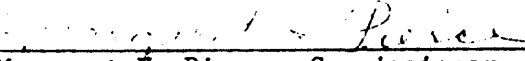
Jerome K. Kuykendall, Chairman



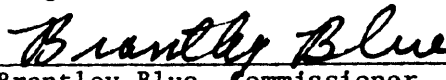
John T. Vance, Commissioner



Richard W. Yarborough, Commissioner



Margaret H. Pierce, Commissioner



Brantley Blue, Commissioner