BEFORE THE INDIAN CLAIMS COMMISSION

THE STOCKBRIDGE MUNSEE COMMUNITY, THE STOCKBRIDGE TRIBE OF INDIANS AND THE MUNSEE TRIBE OF INDIANS BY ARVID E. MILLER AND FRED L. ROBINSON, Plaintiffs, v. THE UNITED STATES OF AMERICA, Defendant.	Docket No. 300-A

Decided: February 24, 1978

Appearances:

Marvin S. Chapman, Attorney for the Plaintiffs. Dean A. Dickie, Aaron, Aaron, Schimberg & Hess were on the briefs.

M. Edward Bander, with whom was Assistant Attorney General Wallace H. Johnson, Attorneys for the Defendant.

OPINION OF THE COMMISSION

Pierce, Commissioner, delivered the opinion of the Commission.

This docket involves claims under clauses 3 and 5 of section 2 of the Indian Claims Commission Act, 60 Stat. 1049, 1050 (1946), for additional compensation for lands in Madison and Oneida counties, New York, acquired by the State of New York from the Stockbridge Tribe of Indians in fifteen separate transactions between them during the period 1818 to 1847.

The plaintiffs contend that by passage of the Trade and Intercourse Act of 1790, 1 Stat. 137, as amended, the United States assumed an affirmative obligation to protect the property of Indian tribes, including that of the Stockbridge Tribe of Indians, and to assure that Indian tribes were dealt with fairly by third parties and received conscionable consideration when disposing of their lands. Plaintiffs allege that they received unconscionable consideration for the sale of their lands to the State of New York and that the defendant is therefore liable for failing to fulfill the obligations it owed the plaintiffs pursuant to the Trade and Intercourse Act.

On April 28, 1971, the Commission entered an interlocutory judgment against the defendant in which it was determined that the Stockbridge Tribe of Indians had a compensable property interest in the lands acquired from them by the State of New York, that the United States was under a duty, pursuant to the Trade and Intercourse Act, to protect the tribe's property interest in said lands and that the United States would be liable if the Stockbridges received less than a conscionable consideration for the lands they transferred to New York State. See 25 Ind. Cl. Comm. 281 (1971).

No appeal was taken from the above-cited Commission decision in this case but the United States did appeal two subsequently decided cases in which the Commission entered similar decisions. In the decision on appeal in one of these cases, Oneida Nation v. United States, 201 Ct. Cl. 546 (1973) (aff'g in part, remanding in part, Docket No. 301, 26 Ind. Cl. Comm. 138 (1971)),

the Court of Claims held, as had the Commission, that the Trade and Intercourse Act of 1790, supra, did establish a fiduciary relationship between the Indians and the United States Government, that actual federal participation in transactions between Indian tribes and third parties is not a prerequisite to the imposition of this fiduciary obligation, and that the federal Government did owe a fiduciary duty to the Oneida Nation when, with knowledge of transactions involving land transfers from the Oneida Nation to New York State, the federal Government failed to protect the rights of the Oneidas. However, the Court of Claims reversed the Commission's determination that the existence of the fiduciary duty to the Oneidas created by the Trade and Intercourse Act was, without more, sufficient to impose liability upon the United States with respect to all twenty-five of the land transactions involved in that case. Instead, the court held that with respect to each individual land transaction the fiduciary relationship continued to exist only if the federal Government had either actual or constructive knowledge of that particular transaction. The case was therefore remanded for the Commission to determine whether the federal Government actually knew or can be held to have known of each transaction between the Oneida Nation and the United States. See also United States v. Cayuga Nation, 202 Ct. Cl. 1101 (1973) (aff'g in part, remanding in part, Docket 343, 28 Ind. Cl. Comm. 237 (1972)).

Following the Oneida decision, the Commission entered an order herein on October 17, 1973, scheduling a trial on the issue of scienter. On

May 6 and 7, 1974, trials were held concurrently on that issue in both this case and the Oneida case.

In findings of fact previously entered in this docket, the Commission recited and described the fifteen separate transactions entered into during the years 1818 to 1847 between the State of New York and the Stockbridge Tribe of Indians whereby the Stockbridges ceded piecemeal to New York State their interests in the six square mile tract known as "New Stockbridge." We must now determine those particular transactions of which the federal Government actually knew or should be held to have known.

The defendant has conceded that the federal Government had constructive knowledge of the last ten transactions--those which took place between June 21, 1825 and September 24, 1847. We agree that this was so because the evidence establishes that the Secretary of War knew in February of 1825 that the New York State Legislature was then considering a bill relating to anticipated sale of Stockbridge lands to the State. See finding of fact No. 18, infra. Thus the issue of scienter remains to be resolved only with respect to the first five transactions which are those treaties between the Stockbridges and New York State dated July 14, 1818; March 25, 1820; February 23, 1822; August 28, 1822; and September 16, 1823.

If the federal Government had actual knowledge of any of these five transactions, the fact of such knowledge should be ascertainable from the

evidentiary record in this case. If, however, resort must be had to constructive knowledge, it becomes necessary to establish reasonable criteria for permitting inferences to be drawn from facts which, in themselves, do not demonstrate actual knowledge of the treaties. The Court of Claims in the Oneida case, supra, indicated in the following language the types of facts from which the inference of constructive knowledge might reasonably be drawn:

> It is not difficult to contemplate possible items which could be construed as imposing constructive knowledge upon the Government. For example: the possibilities that the treaties were registered with some government agency; that there was pertinent correspondence relating to the treaties; that the treaties were reflected in federal land maps; that the treaties altered the state land tax structures which might have been reflected in federal government statistics; that the seat of Government being in New York itself imposed knowledge; and other similar items. Finally, it was also suggested at oral argument that the United States Government actually assisted in the subsequent removal of the Indians to the State of Wisconsin. If this be the case, then it could be assumed that someone in the federal bureaucracy knew why the Indians were moving, i.e. the sale of their lands to the State of New York. (201 Ct. Cl. at 555 n. 16.)

We have carefully considered the evidence herein to determine whether the United States had actual notice of any of the five treaties entered into by New York State and the Stockbridges between July 14, 1818, and September 16, 1823. The earliest and only evidence of actual knowledge on the part of the United States that the Stockbridges had sold a part of their reservation to the State of New York is the letter of June 9, 1821, from Solomon Hendricks, the Stockbridge Chief, to

Secretary of War John C. Calhoun, wherein Hendricks informed Calhoun that the Stockbridges had sold some lands to the State a "few years ago." (Finding of fact No. 16, infra.) We do not believe that knowledge so indefinite of a sale at a prior date is actual knowledge of the particular transaction nor is it actual knowledge of any sales transaction subsequent to the date of the letter.

Such being the case, it is necessary that we consider whether the evidence is such that the defendant can be reasonably held to have had constructive knowledge of the five treaties in question.

Constructive knowledge is the law's substitute for actual knowledge. Butte & S. Cooper Co. v. Clark-Montana Realty Co., 249 U.S. 12 (1918). Whatever fairly puts a person on inquiry is sufficient notice where the means of knowledge are at hand; and if he omits to inquire, he is then chargeable with all the facts which, by a proper inquiry, he might have ascertained. Simmons Creek Coal Co. v. Doran, 142 U.S. 417 (1892). In ordinary commercial dealings, the doctrine of constructive notice has traditionally been very strictly applied. United States v. Detroit Lumber Co., 200 U.S. 321 (1905); Townsend v. Little, 109 U.S. 504 (1883).

Following this line of strict application with respect to constructive knowledge, the defendant has urged here that it cannot be held to have had constructive knowledge of the five treaties at issue because the facts do not show that the Government's actions were so grossly or culpably negligent as to warrant its application. For several reasons, we find the defendant's position untenable.

We are not dealing here with an ordinary arms-length commercial transaction. The Court of Claims has, in the Oneida case, supra, held that the Trade and Intercourse Act did create a fiduciary relationship, the continued existence of which was contingent only upon Government knowledge, either actual or constructive, of the treaties. Given the pre-existence of this fiduciary relationship, defeasible only by the absence of knowledge of the treaties, reason dictates that it was the Government's duty to inquire fully into the affairs of the Stockbridges if Government officials had any actual knowledge from which it could reasonably be inferred that land sales transactions between the Stockbridges and New York State might be going on. Such an interpretation of the Government's duty prevents the unconscionable result which would ensue were we to conclude that negligence and indifference on the part of Government officials could serve to extricate the Government from a pre-existing fiduciary relationship. The items used by the Court of Claims in the Oneida case to illustrate constructive knowledge support this interpretation in that they exemplify situations where the Government could not simply walk away from facts which would lead reasonable men to inquire further. Finally, this interpretation is merely a logical extension of the position taken by the Court in the case of Seneca Nation v. United States, 173 Ct. Cl. 917, 925 (1965) (aff'g in part, rev'g in part, Docket Nos. 342-A, et al., 12 Ind. Cl. Comm. 755 (1963)) that:

> . . . the concept is obviously one of full fiduciary responsibility not solely of traditional market-place morals. When the Federal Government undertakes an 'obligation of trust' toward an Indian tribe or group, as it has in the Intercourse Act, the obligation is 'of the highest responsibility and trust,' not that of 'a mere contracting party' or a better business bureau. Cf. Seminole Nation v. United States, 316 U.S. 283, 296-97 (1947).

Given this framework within which to consider the application of the doctrine of constructive knowledge, we now turn to the question of what the federal Government actually did know of the affairs of the Stockbridges during the relevant period. Because the affairs of the Stockbridges were so closely intertwined with the affairs of the tribes of the Six Nations Confederacy, particularly with the Oneidas (see finding of fact no. 10, infra), what the Government knew of the affairs of those tribes, especially the Oneidas, is also relevant in determining whether the Government can be held to have constructively known of the Stockbridge-New York transactions.

In 1795, the Secretary of War knew that New York State and the Oneidas, in defiance of federal law, had entered into a treaty whereby the Oneidas sold part of their reservation (which was adjacent to the Stockbridge reservation and out of which the Stockbridge reservation had been created) to New York State. The Secretary of War decided to do nothing. In 1803, Secretary of War Dearborn appointed Jasper Parris to be sub-agent of the United States to the Six Nations and instructed him to visit regularly several tribes, inclucing the Stockbridges. As early as 1804, federal Indian agents knew (and informed the War Department) that tribes of the Six Nations were receiving annuities from New York State for lands sold by the Indians to the State. Beginning in 1808 federal agents actually distributed these State annuities to the tribes.

In 1815, leaders of the Six Nations wrote President Monroe asking what the Federal Government would do if the tribes removed to the West. Secretary of War Crawford wrote to New York Governor Tompkins on January 22, 1816, interpreting the Six Nations' letter as evidencing a "desire . . . to sell the reservations of lands upon which they at present reside in the State of New York, and to remove and settle upon lands in, or west of the state of Ohio."

In February of 1818, David Ogden, a proponent of removal whose Ogden Land Company had large real estate interests in New York State, submitted a report to President Monroe describing the history of removal efforts to that time. In that report Ogden stated to the President that the Six Nations were receiving approximately $16,000 per year in annuities from New York State and unidentified individuals. In August of 1818, Secretary of War Calhoun wrote to Ogden stating that the policy of the United States was ". . . to induce as many of the tribes of Indians as may be disposed to change their residence, to emigrate to the west of the Mississippi."

In November 1818, the Oneida addressed a memorial to President Monroe stating, in part, that they had ". . . sold to the State of New York a great proportion of their reservation."

In January and February of 1820, Eleazer Williams, who lived among the Oneidas and Stockbridges, and Jedidiah Morse, respectively, visited Washington and spoke with federal officials regarding westward removal of the Six Nations. Both were authorized and given funds to visit Michigan Territory to pursue possible removal of the Six Nations and the Stockbridges thereto.

On June 9, 1821, the Stockbridge Chief, Solomon Hendricks, wrote to Secretary of War Calhoun, informing him, inter alia, that: (1) the Stockbridges intended to remove to the area of Green Bay, Wisconsin; (2) the Stockbridges had sold some of their lands to New York State a few years before; and (3) the New York Legislature had enacted a law pursuant to which the proceeds of the prior sale would be available to the Stockbridges only upon their removal from New York.

In October of 1821, Secretary of War Calhoun was advised that the Six Nations (and the Stockbridges) had acquired lands in Wisconsin to which they would remove. Finally, in February of 1825, Secretary Calhoun was informed by Solomon Hendricks that the Stockbridges had begun their emigration to Green Bay.

From the above-recited facts, we may reasonably draw certain conclusions: (1) As early as 1795, and repeatedly thereafter, federal officials, including the Secretary of War, knew that the tribes of the Six Nations (including the Oneidas) had sold lands to the State of New York. By the end of 1818, the President of the United States knew that the Oneidas had already sold most of their reservation to New York State. (2) As early as 1808, and periodically thereafter, federal officials, including the Secretary of War, were aware that removal of the Six Nations from New York State was under consideration. At least as early as January 1816, the Secretary of War understood the situation to be that the Six Nations wished to sell their lands in New York State and remove to the west. Documentation exists showing that as of August 1818, it was the policy of the United States to remove the Six Nations from New York State.

Subsequently, federal officials, including the Secretary of War, actively encouraged efforts to remove the Six nations from New York State. (3) In June 1821, the Secretary of War learned that the Stockbridges had previously sold some of their lands to the State of New York and that the Stockbridges were planning to remove to Green Bay.

Once these conclusions (which are clearly supported by the evidence) are stated, our inquiry resolves itself into the narrow determination of whether, based upon actual Government knowledge and actions, the United States can reasonably be held to have had constructive knowledge of the five Stockbridge-New York treaties themselves. We believe that the United States must be held to have had such constructive knowledge.

With respect to the latest three of these treaties, those of February 23, 1822, August 28, 1822, and September 16, 1823, the United States had constructive knowledge of them because several months before the earliest of these three treaties the Secretary of War was informed by the Stockbridge chief that the Stockbridges had already sold some of their lands to New York State and that the Stockbridges were actively planning to remove from New York State under pressure from the State. Such actual knowledge was more than sufficient to obligate the United States to monitor closely future dealings between the Stockbridges and New York State for the purpose of ascertaining the likelihood of future sales. Reasonable Government officials, with the actual knowledge they had in June of 1821, would have anticipated that future land sales by the Stockbridges to New York State were likely and would have taken steps to assure that the United States protected the Stockbridges in any future

sales transactions. Failure of Government officials to inquire cannot relieve them of responsibility which the knowledge available by such inquiry would have brought.

With respect to the first two treaties, those of July 14, 1818, and March 25, 1820, we also hold that the United States had constructive knowledge thereof. We base this holding upon several factors. It is established that prior to the date of the first of these two treaties, federal officials, including the Secretary of War, knew that the tribes of the Six Nations (including the Oneidas) had sold lands to New York State and that those tribes were receiving annuities from New York State for such sales. For several years prior to the first of these treaties, officials of the United States knew that there was considerable agitation among influential New Yorkers in favor of removing the Six Nations from New York State. Furthermore, as early as 1816, the understanding of United States officials, as demonstrated by the statement of Secretary of War Crawford in January of 1816, was that the Six Nations intended to sell their lands in New York and remove westward. Only one month after the first of these two treaties then Secretary of War Calhoun announced that the policy of the United States was to encourage westward removal of the Six Nations. Four months after the first of these treaties, President Monroe was informed by the Oneidas, whose affairs were intimately connected with those of the Stockbridges, that the Oneidas had already sold a large portion of their reservation to the State of New York.

We believe that the evidence establishes that in the minds of Federal officials removal and sale of lands were two sides of the same coin. In 1818

the United States knew that there had been sales before 1818 and also knew that removal was only a matter of time. Given the pre-existing fiduciary obligation toward the Stockbridges (and the tribes of the Six Nations) created by the Trade and Intercourse Act, and given the knowledge at hand, reason and fairness would dictate that officials of the United States should have inquired before July 14, 1818, regarding the likelihood of Stockbridge land sales to the State of New York and failure to have done so should not absolve the United States from responsibility that the knowledge available by such inquiry would have brought. Furthermore, knowledge of the Oneida sales acquired by the President only four months after the first of these two treaties and before the second treaty, provided the United States with knowledge that it could ignore only at its own peril.

The defendant has also argued as a defense here that by entering into the five treaties at issue the Stockbridges voluntarily surrendered title to the lands involved. The defendant argues that such voluntary relinguishment of title is legally analogous to abandonment thus absolving the United States from any responsibility in connection with the relinquishment of title to these lands. Such an interpretation is untenable in that it would completely negate the beneficient purposes of the Trade and Intercourse Act. That Act was designed to protect the Indians against the hazards of voluntary relinquishment of their lands to more sophisticated

whites. Seneca Nation v. United States, supra, 173 Ct. Cl. at 925. Thus the fact that the Stockbridges may have voluntarily treated away their lands to New York State cannot in any way absolve the United States from the responsibilities toward the Stockbridges created by the Trade and Intercourse Act.

There remains pending in this docket a motion by plaintiffs, filed on January 20, 1975, for oral argument. Defendant filed no response to this motion. We see nothing to argue since all proposed findings and briefs have been filed, the case stands submitted to the Commission for decision, and no substantive motions are pending. Accordingly, in the accompanying order, we will deny plaintiffs' motion for oral argument.

Based upon the conclusions set forth in this opinion, the United States will be liable under the Indian Claims Commission Act if the Stockbridges received less than a conscionable consideration for the lands they transferred to New York State in each of the fifteen treaties between 1818 and 1847. To the extent that the Commission's opinion, findings of fact, and order of April 28, 1971, 25 Ind. Cl. Comm. 281, are inconsistent with our conclusions here, they will be superseded by the accompanying order.

Questions of value and consideration will be determined in future proceedings.

Margaret H. Pierce, Commissioner

We concur:

Jerome K. Kuykendall, Chairman

Richard W. Yarborough, Commissioner

John T. Vance, Commissioner

Brantley Blue, Commissioner