

BEFORE THE INDIAN CLAIMS COMMISSION

THE SENECA NATION OF INDIANS,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 342-G
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: February 3, 1977

FINDINGS OF FACT ON COMPROMISE SETTLEMENT

This docket is now before the Commission for approval of a compromise settlement and entry of final judgment in the amount of \$600,000, with a waiver of review or appeal by either party, said judgment to dispose of all claims and offsets which either party has asserted or could have asserted in this docket under the provisions of the Indian Claims Commission Act, 60 Stat. 1049 (1946). A hearing having been held on the proposed compromise settlement on November 22, 1976, the Commission makes the following findings of fact:

1. History of Litigation. On August 11, 1951, the Seneca Nation of Indians, a recognized Indian tribe, or nation, authorized to prosecute claims in its own behalf before this Commission under the Indian Claims Commission Act, supra, filed a petition designated by the Commission as Docket 342, containing twelve separate claims.

On January 20, 1958, the Commission entered an order in Docket 342 directing plaintiff to file separate petitions for a number of the claims

set forth in the original petition. In compliance with that order, plaintiff filed an amended petition on November 20, 1958, designated Docket 342-G, setting forth the claim asserted in the "Tenth Claim" of the original petition. The defendant filed its answer to the said amended petition on July 17, 1959.

The amended petition set forth a claim for a complete accounting of the proceeds from leases of plaintiff's lands contained within the Allegany and Cattaraugus Reservations in the State of New York, together with a claim for just compensation for plaintiff's interest in the lands covered by the leases.

Defendant filed its General Accounting Office Report herein on February 4, 1975. Subsequently, the parties began settlement negotiations and eventually reached the agreement here under consideration.

2. Offer to Compromise. On July 14, 1975, counsel for plaintiff wrote to the Assistant Attorney General, Lands Division, Department of Justice, formally offering to compromise the claims in this docket. The body of that letter reads as follows:

In accordance with our conversations with you and Mr. Mileur over the past few months, this will confirm our proposal to dispose of all the claims encompassed within the above numbered docket as follows:

An agreement to the entry of a final award to the plaintiffs, the Seneca Nation of Indians, for the sum of \$600,000. We will endeavor to obtain appropriate approval by the Nation's officials and, if required, the approval of the Bureau of Indian Affairs.

We believe the foregoing proposal will produce a fair and equitable disposition for these claims and will serve the interests of the government, as well as our client.

Your early consideration and ultimate acceptance will be appreciated.

3. Defendant's Conditional Acceptance. By letter dated April 13, 1976, the defendant, by Assistant Attorney General Peter R. Taft, accepted the offer to compromise, subject to the following conditions:

1. That the proposed settlement be approved by appropriate resolution of the governing body of the Seneca Nation.

2. That the approval of the settlement be secured from the Secretary of the Interior, or his authorized representative.

3. That a copy of the tribal resolution 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 plaintiff has asserted, or could have asserted in Docket No. 342-G, including but not limited to claims for village, railroad, oil and gas and mineral leases.

5. That the judgment shall be by way of compromise and settlement and shall not be construed as an admission of any party as to any issue for purposes of precedent in any other case or otherwise.

6. That the United States does not claim any offsets in this settlement but reserves its right to claim them in other active dockets.

4. Notice of Meetings. At a regularly scheduled meeting of the Council of the Seneca Nation of Indians held on June 13, 1976, plaintiff's attorney formally presented the matter to the Council. The councilors present at the meeting unanimously authorized the submission of the proposed settlement to the Nation's membership (Pl. Ex. 1). Pursuant to the said authorization, the following notice of general meetings of the Seneca membership was prepared:

SENECA NATION OF INDIANS
NOTICE OF PUBLIC HEARING REGARDING PROPOSED
Settlement of Claims against the United States Asserted
in Docket No. 342-G of the Indian Claims Commission.

Notice is hereby given in accordance with the requirements of the Indian Claims Commission that a public hearing will be held at 7:30 p.m. on the 18th day of August 1976 at the Haley Community Building on the Allegany Reservation in New York, and on the 19th day of August, 1976 at 7:30 p.m. at the Saylor Community Building on the Cattaraugus Reservation in New York.

The purpose of these hearings is to consider the acceptance by the Seneca Nation of a proposal agreed to between the Department of Justice and Earle & Reilly, the claims attorneys for the Seneca Nation, which by its terms provides for the payment by the United States of the sum of \$600,000 in full settlement of the claim of the Seneca Nation in respect to the failure of the United States to properly protect the Seneca Nation in the making of leases in and around the City of Salamanca and various other leases of Seneca Nation property during the period 1870 to 1951.

A complete explanation of the settlement will be given at the meetings by Paul Reilly, and will be followed by a question and answer session in which members of the Seneca Nation will be encouraged to participate. At the end of each meeting, a vote will be taken on the question of whether to accept an award of \$600,000. To be effective the proposed settlement also must be approved by the Seneca Council.

THE ABOVE MEETINGS AND SUBSTANTIAL ATTENDANCE BY TRIBAL MEMBERS ARE REQUIRED BY RULES OF THE INDIAN CLAIMS COMMISSION. THE APPROVAL OF THE COMMISSION IS ESSENTIAL BEFORE THE SETTLEMENT CAN BE EFFECTIVE. ALL ADULT MEMBERS OF THE SENECA NATION, THEREFORE, ARE STRONGLY URGED TO ATTEND AND VOTE AT THE MEETINGS.

Robert C. Hoag, President
Seneca Nation of Indinas

Notice of the tribal meetings was published in the following newspapers: O He Yoh Noh, the Allegany Indian Reservation newspaper; Si Wong Geh, the Cattaraugus Indian Reservation newspaper; the official newsletter of the Seneca Nation; and The Post-Journal and the Salamanca Republican.

Press, local newspapers of general circulation in Jamestown, N.Y. and Salamanca, N.Y., respectively. Most residents of the Allegany and Cattaraugus Reservations receive copies of either O He Yoh Noh or Si Wong Geh. The official newsletter of the Seneca Nation is sent to all eligible voters of the Seneca Nation on the tribal rolls who are twenty-one years of age, regardless of where they reside. (See Tr. at 24-27, 35-36, 49; Pl. Ex. 3-6, 8)

5. Meeting of the Seneca Nation. The official public meetings of the Seneca Nation membership were held as scheduled on August 18, 1976, at the Allegany Reservation and on August 19, 1976, at the Cattaraugus Reservation. The Allegany meeting was presided over by Genevieve Plummer, the Clerk of the Nation, and Floyd Bucktooth, a councilor of the Nation. Paul G. Reilly, plaintiff's counsel, and Joe Garcia and Robert St. Arnold, BIA representatives, were also present. The Cattaraugus meeting was presided over by Calvin E. Lay, the then Treasurer and current President of the Seneca Nation. Genevieve Plummer, the Clerk, was also present, as were Paul G. Reilly, plaintiff's counsel, and the said BIA representatives. (See Tr. 30, 37-38, 43-44; Joint Ex. 4)

At each meeting a copy of the stipulation for the entry of final judgment and a copy of a draft resolution were given to each person in attendance. Paul G. Reilly presented a statement outlining the history and nature of the litigation, the events leading to the proposed settlement, and the various considerations which led him to recommend the

\$600,000 settlement figure. After open discussions and a question and answer period, the below-reproduced draft resolution was voted upon and adopted unanimously. The same resolution was approved on September 18, 1976, at a regularly scheduled meeting of the Council of the Seneca Nation by a vote of 11 in favor and 0 against (Joint Ex. 3):

R E S O L U T I O N

WHEREAS, the Seneca Nation of Indians has been prosecuting a case identified as Docket No. 342-G before the Indian Claims Commission seeking an award for damages suffered by the Seneca Nation because of the failure of the United States to properly protect the interest of the Seneca Nation in the making and management of leases made by it to various persons of lands situated within the boundaries of the Allegany Reservation, the major portion of which lands were and are within the present boundaries of the city of Salamanca, New York; and

WHEREAS, the case has been the subject of considerable research and may involve a determination of the reasonable rental value of several thousand small parcels of land and the trial of such case will entail considerable additional expense and further delay; and

WHEREAS, in order to expedite the settlement and disposition, the claims attorney for the Nation believed it to be in the best interests of the Nation to begin negotiations toward a possible settlement of the claim and did obtain from the Attorney General of the United States approval of a settlement of \$600,000, which settlement is conditioned upon formal approval of the governing body of the Seneca Nation, the Council of the Seneca Nation; and

WHEREAS, PAUL G. REILLY, the claims attorney representing the Nation requested the authority of the Seneca Council to proceed with the proposed settlement by having it submitted to members of the Nation and the Council having at its meeting on June 12, 1976, authorized the submission to the members of the Nation of the proposed \$600,000 settlement for the claims pending in Docket No. 342-G; and

WHEREAS, at meetings of the Seneca Nation called for the purpose of considering the determination of the foregoing settlement, at which meetings the proposed settlement was fully discussed by the attorney for the Nation and members of the Seneca Nation were given full opportunity to enter into said discussions and ask questions concerning all phases of the claim; and

WHEREAS, a representative of the Department of the Interior was present during said meetings and observed the proceedings; and

WHEREAS, the members of the Seneca Nation are fully informed regarding the proposed settlement and with the proposed Stipulation for Entry of Final Judgment, the same having been distributed to the members and read and explained in the aforementioned meetings

NOW, THEREFORE, BE IT RESOLVED that the proposed final settlement of all claims and offsets in Docket No. 342-G in the amount of \$600,000 be and the same is hereby approved, it being understood that by this approval the attorneys for the Seneca Nation of Indians are authorized to execute said proposed Stipulation for Entry of Final Judgment; and

BE IT FURTHER RESOLVED that the President of the Seneca Nation or other authorized representative of the Seneca Nation is hereby authorized, if required, to execute the proposed Stipulation and, to appear and testify at any hearing before the Indian Claims Commission with respect to the proposed settlement; and

BE IT FURTHER RESOLVED that the Secretary of the Interior or his duly authorized representative and the Indian Claims Commission are hereby requested to approve the proposed settlement and Stipulation for Entry of Final Judgment as described above.

MOTION CARRIED.

6. Approval of the Secretary of the Interior. In a letter dated October 29, 1976, addressed to Paul G. Reilly, attorney for plaintiff, the Acting Deputy Commissioner of Indian Affairs, Raymond V. Butler, who is the authorized representative of the Secretary of the Interior, approved the settlement. The body of the Commissioner's letter reads as follows (Joint Ex. 4):

You have advised this Bureau that you have entered into an agreement with the United States for a settlement of the Seneca Nation claim in Indian Claims Commission Docket No. 342-G relating to the Salamanca leases for the sum of \$600,000. Specifically, the Seneca Nation is seeking an award for damages suffered by it because of the failure of the United States to properly protect the interest of the Nation in the making and management of leases made by it to various persons of lands situated within the boundaries of the Allegany Reservation, the major portion of which lands were and are within the present boundaries of the City of Salamanca, New York.

The defendant has offered to pay the Seneca Nation the sum of \$600,000 in settlement of the claim, such offer being contingent upon the Nation's acceptance of the offer of settlement. The terms of the proposed settlement are set out in the proposed Stipulation for Entry of Final Judgment that has been executed by the Seneca Nation and awaits execution by the United States.

Authority to prosecute Seneca Nation claims before the Indian Claims Commission is governed by the following contracts, extensions and amendments:

The Seneca Nation of Indians, plaintiff in Docket 342-G, was represented in this claim by the law firm of Earle and Reilly (now Reilly, Fleming and Reilly) under one contract. Contract No. I-1-ind. 42260 is dated December 5, 1949, and was approved on January 27, 1950, for a period of ten years from the date of approval. On September 13, 1961, this contract was extended five years beyond January 27, 1960. An extension for ten years beyond January 27, 1965, was approved on May 28, 1969. The contract was again extended for a period of three years retroactive from January 17, 1975, to January 17, 1978.

Your offer to settle this claim by entry of final judgment in the amount of \$600,000 was accepted on April 13, 1976, by Assistant Attorney General Peter R. Taft of the Department of Justice, subject to certain conditions, namely, that the proposed settlement be approved by resolution of the Seneca Nation, that the approval of the settlement be secured from the Secretary of the Interior, or his authorized representative, and that a copy of the tribal resolution and the approval of the terms of the settlement by the Department of Interior be furnished to the Department of Justice.

The proposed settlement was submitted to the tribal members at meetings held on August 18, 1976, at the Allegany Reservation, and on August 19, 1976, at the Cattaraugus Reservation. Mr. Robert P. St. Arnold, the Bureau's Liaison Officer at Syracuse, New York, who attended both meetings, reports that 10 Senecas were in attendance at the Allegany Reservation

meeting, and that 19 tribal members attended the Cattaraugus Reservation meeting. He further reports that each tribal member was given a packet containing a copy of a proposed resolution being considered at the meetings, a copy of the proposed stipulation for entry of final judgment, and a ballot to be cast by the tribal member either approving or disapproving the proposed settlement. This procedure was followed at both meetings.

Mr. St. Arnold states that you fully explained the proposed settlement to the tribal members and answered all questions posed by them. After a full discussion of the proposed settlement, a vote was taken and the proposed settlement was accepted unanimously by the tribal members at both meetings. The meetings were publicized in the following newspapers: Salamanca Republican Press, Olean Times Herald, Buffalo Evening News, Jamestown Post Journal, Bradford Era, Dunkirk Evening News, OH HE YOH NOH, and SI WONG GEH, the last two being weekly newspapers for both reservations. The notices appeared in the newspapers at three different times for a duration of three weeks.

Some concern was first felt at the small number of tribal members who attended these meetings. Our review of the general conduct of tribal business by the Seneca people confirmed statements of the Clerk of the Nation that the tribal council is most conscientious in keeping its constituents informed on all tribal matters and in obtaining their views as to the course of action to be taken by it. When tribal meetings are scheduled and held and their purpose is advertised, only a few tribal members usually attend such meetings as they feel that they have already made their views known to their council representatives. For example, Mr. St. Arnold reports in a memorandum dated October 8, 1976, that he has attended six reservation meetings and no more than a total of 125 tribal members appeared at these meetings. We also found that the Seneca Nation Tribal Council uses the two tribal newspapers to disseminate information on tribal issues to the tribal members.

On September 18, 1976, the Seneca Nation Tribal Council adopted a resolution by unanimous vote of twelve to nothing, four being absent, approving the proposed settlement in the amount of \$600,000. The resolution is signed by Genevieve R. Plummer as Clerk of the Seneca Nation of Indians. The signature of Miss Plummer is the same as that appearing in Seneca tribal records on file in this office.

We are satisfied that the general tribal meetings were well publicized and that the tribal members had an opportunity to attend and to express their views. The meetings were satisfactorily conducted with the voting held after the members had an opportunity to consider the proposed settlement. The meeting of the Seneca Nation Tribal Council was also satisfactorily called and conducted with the resolution approving the settlement

being duly adopted. The resolution of September 18, 1976, as adopted by the Seneca Nation Tribal Council, and the actions taken by the tribal members at the August 18 and 19, 1976, meetings to accept the proposed settlement are 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 claim in Docket 342-G is fair and just. The proposed settlement is hereby approved.

7. Stipulation. A stipulation for entry of final judgment was agreed to and executed by counsel for the parties. It was also executed by Robert C. Hoag, who was President of the Seneca Nation at the time the agreement was entered into. The stipulation reads (Joint Ex. 5):

STIPULATION FOR
ENTRY OF FINAL JUDGMENT

It is hereby stipulated by the parties, through their counsel, as follows:

1. All claims asserted in Indian Claims Commission Docket No. 342-G shall be settled by entry of final judgment in the Indian Claims Commission in the amount of \$600,000.

2. The final judgment shall be in favor of the Seneca Nation, plaintiff, and against the United States of America, defendant, no review to be sought or appeal to be taken by either party.

3. The final judgment shall dispose of all claims or demands which the plaintiff has asserted, or could have asserted in Docket No. 342-G, including, but not limited to, all claims for the leasing of plaintiff's reservation lands for any purpose.

4. The Stipulation for Entry of Final Judgment set out herein shall be by way of compromise and settlement, and shall not be construed as an admission of any party as to any issue for purposes of precedent in any other case or otherwise.

5. The United States on its part agrees that it waives any and all claims for offsets, gratuities, consideration paid or, payments on the claims, arising prior to June 30, 1951, under the Indian Claims Commission

Act, as amended, 60 Stat. 1049, 25 U.S.C., Section 70a, as to the plaintiff's claims asserted in Docket No. 342G.

Respectfully submitted,

/s/ Peter R. Taft
PETER R. TAFT
Assistant Attorney General

/s/ A. Donald Mileur
A. DONALD MILEUR
Attorney for Defendant

/s/ James M. Mascelli
JAMES M. MASCELLI
Attorney for Defendant

/s/ Paul G. Reilly, Sr.
PAUL G. REILLY, SR.
Attorney of Record for Plaintiff

/s/ Robert C. Hoag
President, Seneca Nation of Indians

8. Settlement Hearing Before the Commission. A hearing on the proposed compromise settlement was held before Chairman Kuykendall, and Commissioners Pierce and Blue on November 22, 1976, in Washington, D. C. Mr. Calvin Lay, President of the Seneca Nation of Indians, Mr. Floyd Bucktooth, a councilor of the Nation, and Mrs. Sandy Abrams, Clerk of the Seneca Nation, testified at the said hearing on behalf of plaintiff.

Mr. Lay and Mr. Bucktooth both testified that they were familiar with the claims presented in this docket and with the proceedings respecting the proposed settlement. They identified and testified to the accuracy of the documents relating to the settlement which were introduced

by counsel, and identified the signature of Robert Hoag, who executed the stipulation on behalf of the Seneca Nation. Both witnesses further testified that to the best of their knowledge the general tribal meetings were well publicized and that the entire tribal population of the Seneca Nation was notified of the said meetings. Mr. Lay presided at the Cattaraugus meeting, and Mr. Bucktooth presided at the Allegany meeting. Both witnesses attended the counsel meetings on June 12 and September 18, 1976. The witnesses stated that the proposed settlement was fully and clearly explained at the general membership meetings, as well as at the tribal council meetings, and that full opportunity to ask questions concerning the settlement and to comment thereon was given at all the said meetings. The witnesses expressed the opinion that the tribal members, as well as members of the council, understood the settlement and considered it to be fair and equitable. Mr. Lay further testified he was aware that this was the last claim of the Seneca Nation pending before the Indian Claims Commission.

During the course of the hearing counsel for both parties submitted a fully executed stipulation for entry of final judgment set forth above (Finding 7) and the following fully executed joint motion for entry of final judgment:

JOINT MOTION FOR ENTRY OF FINAL JUDGMENT

The parties in the above-entitled case, by their attorneys-of-record move the Commission for entry of final judgment herein pursuant to the enclosed stipulation for entry of final judgment in favor of the SENECA NATION OF INDIANS in the amount of \$600,000.

In support of said motion, the parties offer the following joint exhibits, together with confirming evidence of their authority:

1. Letter of offer to settle Docket 342-G claims in full, to James M. Mascelli, Land and Natural Resources Division, Department of Justice, from Paul G. Reilly, dated July 14, 1975.
2. Letter from Assistant Attorney General Peter R. Taft to Paul G. Reilly, accepting offer to settle, dated April 13, 1976.
3. Resolution of the Tribal Council of the Seneca Nation of Indians Approving Settlement of Docket Nos. 342-G before the Indian Claims Commission.
4. Stipulation for Entry of Final Judgment in Docket No. 342-G.
5. Letter from the authorized representative of the Secretary of the Interior, dated October 29, 1976, approving the settlement.

WHEREFORE, the parties respectively move the Commission to enter an order of Final Judgment based on the Stipulation for Entry of Final Judgment attached hereto.

Respectfully submitted,

/s/ Peter R. Taft

Peter R. Taft
Acting Assistant Attorney General

/s/ A. Donald Mileur

A. Donald Mileur, Esquire
Attorney for Defendant

/s/ James M. Mascelli

James M. Mascelli, Esquire
Attorney for Defendant

/s/ Paul G. Reilly

Paul G. Reilly, Esquire
Attorney of Record for the
Petitioner, The Seneca Nation
of Indians, Docket No. 342-G

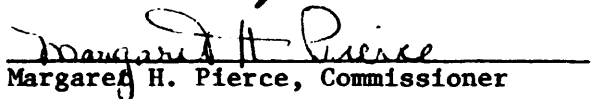
9. Conclusion. Based on the entire record in this docket; the testimony of the witnesses at the hearing before the Commission on November 22, 1976; the representations of counsel; and all other pertinent facts before us, the Commission finds that this proposed compromise settlement is fair to the parties and has been freely entered into by the Seneca Nation of Indians and duly approved by the authorized representative of the Secretary of the Interior.

The Commission hereby approves the proposed compromise settlement and will enter a final award in favor of the plaintiff in the amount of \$600,000 in settlement of the plaintiff's claim and all claims of defendant, subject to the terms and provisions set forth in the stipulation for entry of final judgment herein.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner