

January 31, 1963

TO Carter

FROM Tom

This is for your information only. I have discussed the matter with Paul Niebell, who was Washington counsel for the Cherokees, and we have agreed that Ed Edmondson should continue to take the lead in urging the approval of the amended contract by the Department of Interior. I told him that the Senator's office would continue to help in any way we could. He understands that it is Ed's or his responsibility to call on us for whatever is needed.

file

CB noted

DeTeresa
Adrian

PAUL M. NIEBELL
ATTORNEY AND COUNSELLOR AT LAW
1201 NINETEENTH STREET, N. W.
WASHINGTON 6, D. C.

FEDERAL 8-2228

December 26, 1962.

Senator Mike Monroney,
New Senate Office Building,
U. S. Capitol,
Washington, D. C.

Dear Senator Monroney:

I am enclosing herewith copies of the letter of Acting Solicitor, Edward W. Fisher, United States Department of the Interior, to me, dated December 12, 1962, and my reply of December 21, 1962, re the proposed amendment to the Cherokee attorney contract, submitted to the Interior Department for approval in July, 1961.

Appreciating your interest in securing favorable action by the Department on the proposed amendment, I am

Sincerely yours,

Paul M. Niebell,

Paul M. Niebell,
Attorney of Record, Cherokee Nation.

PMN/ebn

Enclosures (2)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Office of the Solicitor
Washington 25, D. C.

In Reply Refer to:

G-61-1173.9a

Dec 12 1962

Mr. Paul M. Niebell
Attorney at Law
1201 - 19th Street, N. W.
Washington 25, D. C.

Dear Mr. Niebell:

In connection with your request for reconsideration of the proposed amendment of the Cherokee claims attorney contract to provide a fixed 10% attorney fee, we would appreciate receiving written information and views on the following:

1. Do the parties intend that 10% of any sums recovered in Dockets other than Docket No. 173, in which \$14,789,476.15, less offsets was obtained for the Indians, shall be paid as the attorney fee, such fee also to constitute reimbursement of expenses? We ask because the language of the proposed amendment broadly covers the attorneys' compensation for services rendered the Cherokee Nation in the prosecution of all its claims but your justifications in support of the amendment have dealt with Docket No. 173.
2. How do the attorneys justify as part of their expenses, which are stated in your letter of October 27, 1961, to amount to over \$161,402.86, the \$110,000 claimed by the attorney who was engaged to work on certain land records? You have orally discussed that part of your expense claims with us, but we do not have your written views on it.
3. Can the Department of the Interior, as a matter of law, oust the Indian Claims Commission from its authority under 25 U. S. C. § 70 n to determine the attorney fees due in a particular claim by taking action to amend a tribal attorney contract after the Indians have received an award? We would like your views on this legal question.

In making this request, we do not mean to imply what our decision will be, for these points are only a part of all those which must be considered. We, however, want your views on them to be of record.

Upon receipt of your reply we will attempt to reach a decision in this matter at an early date.

Sincerely yours,

(Signed) Edward W. Fisher

Acting Solicitor

December 21, 1962.

Mr. Edward W. Fisher, Acting Solicitor,
Office of the Solicitor,
U. S. Department of the Interior,
Washington 25, D. C.

Dear Mr. Fisher:

In reply to your letter of December 12, 1962 (G-61-1173.9a), I submit to you the following answers to the three questions you ask with respect to the proposed amendment to the Cherokee claims attorney contract submitted to your office for approval in July, 1961:

1. Yes. The proposed amendment was intended by the Principal Chief of the Cherokee Nation and the Cherokee Executive Committee to cover all Cherokee cases, including Docket No. 173, and was submitted by said Principal Chief and Committee to carry out the original understanding between them and the attorneys at the time of the selection of the attorneys and the execution of the attorney contract with them.

However, the attorneys are willing to limit the application of the proposed amendment to the presently decided cases, which would include Docket No. 173; for, as you point out, the justification for the favorable consideration of the proposed amendment applies to the critical situation the attorneys are presently confronted with in carrying on this work for the Cherokee Nation. Once the present condition of the attorneys is alleviated, they would be willing to follow the course outlined in the originally approved contract.

2. In justification of the payment of \$110,000.00 to Mr. Warren Watkins for abstracting work done in this case I submit the following facts:

Mr. Watkins was a member of the bar of the State of Oklahoma, and was associated with Mr. George Norvell, of Tulsa, Oklahoma, one of the contract attorneys for the Cherokee Nation. Although Mr. Watkins was an attorney, he was employed as an expert witness in the Cherokee Outlet Case solely by Mr. George Norvell, and testified as such in the case (Transcript of Hearing, January 19, 1959, R. 53). He was never employed by the contract attorneys for the Cherokee Nation as an "associate attorney" to assist generally in the legal work involved in this case, but was employed by Mr. George Norvell to make abstracts of deed records, which abstracts were to be used as evidence of the value of the lands involved in this case. During his testimony in the Cherokee Outlet Case, and during the cross-examination by Government counsel Mr. Watkins frankly stated (Transcript of Hearing, Ind. Cls. Comm., January 19, 1959):

" Q When you were engaged in this research, were you the attorney of the plaintiff tribe?

" A No, I was employed by Judge George Norvell of Tulsa, Oklahoma.

" Q Did there come a time when you became an attorney of the plaintiff tribe?

" A No, I have been employed by the attorneys in the case, not by the tribe.

" Q Were you ever advised that whether or not you were paid all depended on the outcome of this suit?

" A Well, not in those terms. No, Mr. Stearns. Quite frankly, though, all of my expenses in this matter were paid by Judge Norvell during the time of this transcription, and I entered into no other contract with them.

"They have advised me, and I say this with complete candor, that if they are successful in this suit and if they prevailed then I expect to be compensated for the time I put in on it."

One of the several grounds for recovery presented by the pleadings in the Cherokee Outlet Case was whether the Cherokee Agreement ratified by Congress on March 3, 1893 should be revised upon the ground of unconscionable consideration. This issue raised the question of the fair market value of the Cherokee lands ceded to the United States on March 3, 1893, and whether the consideration specified in said agreement would approximate the fair market value of said land on that date. The contract attorneys believed that the best evidence of the fair market value of said lands was to be found in the warranty deed records of land sales on the open market in the six contiguous counties of Kansas containing similar lands, for a period of 10 years before the date of valuation, March 3, 1893, and 10 years after said date; and also in the Cherokee Outlet area for a period of 10 years after the date of opening of these lands to white settlement. In order to reduce this evidence into practical form abstracts of said deed records would have to be made by an attorney trained in such work. Mr. Watkins was employed by Mr. George Norvell to do this detailed job. Mr. Watkins' work on the deed records covered a period of over two years, and over 2,475 abstracts were made of open market land sales in the contiguous counties of Kansas, and over 12,187 abstracts were made of open market land sales in the Cherokee Outlet counties, covering 1,500,863 acres of Cherokee Outlet lands. These abstracts are voluminous, and were used as a basis for plaintiff's expert appraiser's report and testimony submitted in the case. So accurate were these abstracts made that the defendant's expert appraisers could not find any material errors in them, and used them also as a basis for some of their conclusions on value.

The contract attorneys for the Cherokee Nation felt that this abstracting work, done by Mr. Watkins, contributed to a large extent in securing a valuation of \$3.75 an acre for the Cherokee Outlet lands on March 3, 1893, as determined by the Indian Claims Commission, and we accordingly agreed to compensate Mr. Watkins in the amount of \$110,000.00 for this abstracting work. Mr. Watkins is satisfied with this amount, and we believe that we could well justify the payment of this amount as proper and necessary expenses in the preparation and prosecution of this litigation. Mr. Norvell had merely paid Mr. Watkins' living expenses while he was engaged in this abstracting work, and no actual compensation had been made to Mr. Watkins for his work in abstracting the warranty deed records. The amount agreed

to be paid to Mr. Watkins will be paid from the 10 per cent allowance to the contract attorneys which we feel we have justly and reasonably earned in this case, as will be all of the other expenses incurred in the preparation and prosecution of the Cherokee Outlet Case.

3. In answer to question 3 let us say first, that it is fundamental law that a party who has the right to make a contract, also has the right to amend it; and certainly the Principal Chief of the Cherokee Nation and the Cherokee Executive Committee, who made the original contract with the attorneys for the prosecution of Cherokee claims, have the right to amend it, and to conform it to the original understanding between the parties at the time the contract was originally executed, and the proposed amendment is within the 10 per cent limitation in the original contract and fixed by the Indian Claims Commission Act. The Indian Claims Commission Act (60 Stat. 1049) permits the Indian tribe claimant and the attorneys to agree upon an attorney fee by contract, and there is no limitation in the act as to the time when this can be done. The Act permits the attorney fee to be stipulated in the approved contract between the attorneys and the claimant, or to be fixed by the Commission within the limitation of 10 per cent in the Act. Thus the attorney fee can lawfully be fixed in these two ways. The Principal Chief of the Cherokee Nation and the Cherokee Executive Committee and the attorneys proposed to fix the attorney fee by agreement between the parties, as provided by the Indian Claims Commission Act within the limitation specified in said Act, by the proposed amendment to the attorney contract now before you for approval. When this amendment was submitted to the Department for approval in July, 1961, no final award had been made in the Cherokee Outlet Case. At that time the Attorney General had under consideration the question of whether the United States would appeal from the decision of the Commission fixing the comparatively high valuation of \$3.75 an acre for the Cherokee Outlet lands. Subsequently the Attorney General did decide to appeal the case to the Court of Claims, and the attorneys for the Cherokee Nation were faced with the further legal work and expense of defending the action of the Commission on appeal. Finally, however, the Attorney General decided not to appeal, and the attorneys for the Cherokee Nation were able to secure a final judgment in this case on September 14, 1961, based upon a stipulation of the parties worked out by the attorneys, so that the final judgment could be paid by Congress before it adjourned, thus permitting the Cherokee Nation to receive interest on the judgment money without having to wait the beginning of the next session of Congress for an appropriation to pay this judgment, and the consequent loss of interest on said judgment fund.

Therefore, it is evident that the approval of the proposed amendment would not be ousting the Indian Claims Commission of its authority to determine the attorney fee after the award had been made, but it would be following the alternate method provided by the Indian Claims Commission Act of permitting the claimant and the attorneys to fix the attorney fee by agreement, made by a highly competent and intelligent claimant with their attorneys, an arrangement which we believe will insure to the mutual satisfaction and benefit of the claimant and the attorneys alike.

Appreciating your further consideration of the proposed amendment in the light of the above facts, I am

Sincerely yours,

Paul M. Nisbell

Paul M. Nisbell.

Pmn/ebn.

311 Metropolitan Bldg.
Muskogee

January 5, 1963

Mr. Paul M. Niebell
Attorney at Law
1201 Nineteenth Street, NW
Washington, D. C.

Dear Paul:

Your letter of December 21, answering the questions of the Solicitor's Office contained in his letter of December 12, pertaining to the attorneys fees due in the Cherokee Outlet Case seems to answer all of the Solicitor's questions in line with the understanding we had from Congressman Edmondson and Mr. Finney, following their conference with the Solicitor's staff.

They mentioned another point the Solicitor indicated his office would tend to, which amounted to, as I understood it, to a check of the trial record of our cases in the Indian Claims Commission. Congressman Edmondson has suggested that perhaps you may wish to follow up with the Solicitor's office to see if anyone from that office is attending to the matter. I think it was Congressman Edmondson's idea that you could check into this matter and report to him when he returns there for the new session of Congress.

You can well understand that the death of Senator Kerr has stunned and shocked the State of Oklahoma, and particularly his colleagues and friends, and that this will necessarily increase the weight of public duties on all of our friends in Congress.

I wish I were there to help what little I could, but I know that all of us here will deeply appreciate any approach you may wish to undertake in the matter.

Wishing for you a happy and prosperous new year, and with kind personal regards, I am

Sincerely yours,

EBP/pb

Earl Boyd Pierce
Cherokee Tribal Attorney

cc: Senator A. S. Mike Monroney ✓
Congressman Ed Edmondson
Chief W. W. Keeler
Mr. Dennis Bushyhead
Mr. George Norvell