

## BEFORE THE INDIAN CLAIMS COMMISSION

THE PONCA TRIBE OF INDIANS OF	)	
OKLAHOMA, et al.,	)	
	)	
Plaintiffs,	)	
	)	Docket Nos. 322, 323
v.	)	and 324
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

ORDER ALLOWING REIMBURSEMENT OF ATTORNEYS' EXPENSES

Having considered the application for reimbursement of attorneys' expenses filed on April 16, 1974, for the law firm, Sonnenschein, Levinson, Carlin, Nath, & Rosenthal, tribal attorneys for the Ponca Tribe of Indians of Oklahoma, et al., by Edwin A. Rothschild, a partner in the firm; the documentation supporting the claimed expenses, including individual vouchers covering 399 items and other data; the response of the Department of the Interior to the said application; the contracts under which the attorneys prosecuted these claims, and the record herein, the Commission finds as follows:

1. Application

The applicant requests reimbursement in the sum of \$40,359.64, advanced by tribal attorneys between August 1951, after the approval of the earliest tribal attorneys' contract here involved, through July 1972, in prosecuting claims of the Ponca Tribe of Indians of Oklahoma, et al., before this Commission, the expenses to be paid from the final awards entered in Ponca Docket Nos. 322, 323, and 324.

2. Settlement

A final award of \$2,458.30 was entered on August 27, 1965, in Docket No. 324, in favor of the plaintiffs, THE PONCA TRIBE OF INDIANS OF OKLAHOMA, et al., as representatives of the PONCA TRIBE and all of the members thereof, 15 Ind. Cl. Comm. 573, 576. Funds for this award were appropriated by the Act of May 13, 1966 (80 Stat. 141).

A final award of \$1,878,500.00 was entered on September 8, 1971, in Docket No. 322 for plaintiffs, THE PONCA TRIBE OF OKLAHOMA, et al., as representatives of the PONCA TRIBE, and all the members thereof, 26 Ind. Cl. Comm. 203, 217. Funds for this award were appropriated by Act of May 27, 1972 (86 Stat. 163).

A final award of \$1,004,589.49, plus interest at 5%, on \$174,327.06 from June 30, 1972, until paid, was entered on August 23, 1972, in Docket No. 323 in favor of the plaintiffs, THE PONCA TRIBE OF INDIANS OF OKLAHOMA, et al., AS REPRESENTATIVES OF THE PONCA TRIBE AND ALL OF THE MEMBERS THEREOF, 28 Ind. Cl. Comm. 335, 350. Funds for this award totaling \$1,013,425.24, which included interest of \$8,835.75 on the principal sum of \$174,327.06 at the rate of 5 percent per annum from July 1, 1972, through July 5, 1973, were appropriated by Pub. L. No. 93-50 (Act of July 1, 1973, 87 Stat. 99).

### 3. Attorneys' Contract

The attorneys' contract with the Ponca Tribe of Oklahoma is valid and provides for reimbursement of reasonable expenses incurred in the prosecution of subject claims.

### 4. Notice

By letters of April 17, 1973, the Commission notified all parties of the filing of subject application and allowed two weeks' time for comment. The Commission has not received a reply from the Ponca Tribe. The Department of Justice took no position regarding the amount of expenses which should be awarded pursuant to the application, but in reply to the Commission's letter of April 17, transmitted correspondence from the Department of the Interior, including a memorandum to the Solicitor from Mr. Newton Edwards on behalf of the Assistant to the Secretary for Indian Affairs.

In the Interior Department memorandum, Mr. Edwards mentioned that voucher no. 46, which showed payment for many separate itemized expenses of an expert, amounting in all to \$663.72, included the cost for two movies totaling \$3.25. On the assumption that the cost for the movies represented charges for entertainment, Mr. Edwards' questioned their allowance. Mr. Edwards also questioned the propriety of a charge of \$1.20 listed on voucher no. 124 for copies of a contract supplement.

### 5. Withdrawal of Charges

By letter of July 23, 1973, replying to the Interior Department memorandum, applicant observed that supplying copies of the contract, itemized in voucher no. 124, related to its extension, and benefited both the tribe and counsel, but did not object to deleting that particular charge of \$1.20. The applicant also agreed to the deletion of the \$3.25 charge for movies listed in voucher no. 46. These amount to a reduction of \$4.45 from the total \$40,359.64 in expenses listed in subject application. The Commission considers the applicant's letter of July 23 agreeing to the deletion of the questioned items as a withdrawal of these items from the application, reducing the total amount applied for to \$40,355.19.

#### 6. Expenses Allowed

Section 15 of the Indian Claims Commission Act (60 Stat. 1049), provides for the reimbursement of attorneys for actual, reasonable expenses incurred in the prosecution of the claim. After careful examination of the vouchers and related data identifying actual expenditures by attorneys in the subject dockets, considering also Commission decisions on applications for payment of expenses, the expenses listed in the subject application are reasonable and permissible expenses which should be allowed, excepting the two items in voucher no. 46 and the charges listed under voucher no. 124, discussed above, amounting in all to \$4.45.

#### 7. Apportionment of Expenses

The applicant suggested that all of the expenses might be paid from the award in Docket No. 322 or, in the alternative, apportioned among the three dockets in accordance with a schedule showing the total expenses under each of the dockets separately, and designating the vouchers describing the items for which costs were advanced under the separate dockets. The memorandum from the Interior Department requested that the expenses for each of the dockets be paid from the separate award for that docket.

In view of the fact that expenses are ordinarily reimbursed from the recovery on the claim for which they were incurred, and since the expenses for the three dockets here involved have been listed by the applicant under the separate docket for which the expenses were incurred, and the Department of the Interior requests that the expenses be separated for each of these dockets, the Commission directs that the applicant's separation of expenses by docket be adopted as follows:

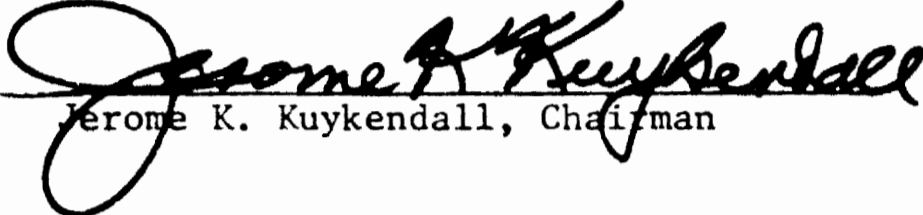
\$28,135.79	to be paid from the award in Docket No. 322
12,084.46	to be paid from the award in Docket No. 323
<u>134.94</u>	to be paid from the award in Docket No. 324
\$40,355.19	Total

IT IS ORDERED THAT out of the funds appropriated to pay the final judgment entered in Docket No. 322 on September 8, 1971, in favor of plaintiffs therein, there shall be disbursed to the applicant law firm, Sonnenschein, Levinson, Carlin, Nath, & Rosenthal, the sum of \$28,135.79 as payment in full of the said firm's claim for reimbursable expenses in this docket.

IT IS FURTHER ORDERED THAT out of the funds appropriated to pay the final judgment entered in Docket No. 323 on August 23, 1972, in favor of plaintiffs therein, there shall be disbursed to the applicant law firm, Sonnenschein, Levinson, Carlin, Nath, & Rosenthal, the sum of \$12,084.46 as payment in full of the said firm's claim for reimbursable expenses in this docket.

IT IS FURTHER ORDERED THAT out of the funds appropriated to pay the final judgment entered in Docket No. 324, on August 27, 1965, in favor of plaintiffs therein, there shall be disbursed to applicant law firm, Sonnenschein, Levinson, Carlin, Nath, & Rosenthal, the sum of \$134.94 as payment in full of the said firm's claim for reimbursable expenses in this docket.

Dated at Washington, D. C., this 15<sup>th</sup> day of August 1973.

  
Jerome K. Kuykendall, Chairman

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John T. Vance, Commissioner

  
Richard W. Yarborough, Commissioner

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner