BEFORE THE INDIAN CLAIMS COMMISSION

CITIZEN BAND OF POTAWATOMI INDIANS OF OKLAHOMA, et al., Plaintiffs	)	Docket No. 217
THE PRAIRIE BAND OF THE POTTAWATOMIE TRIBE OF INDIANS, et al., Plaintiffs,	)	Docket No. 15-K
HANNAHVILLE INDIAN COMMUNITY, et al., Plaintiffs,	)	Docket No. 29-J
v.	)	
THE UNITED STATES OF AMERICA, Defendant.	)	

Decided: October 23, 1975

Appearances:

Louis L. Rochmes, Attorney of Record in Docket 217; Robert S. Johnson, Attorney of Record in Docket 15-K; Jack Joseph was on the Brief.

Robert C. Bell, Jr., Attorney of Record in Docket 29-J.

D. Lee Stewart, with whom was Assistant Attorney General Wallace H. Johnson, Attorneys for Defendant.

OPINION OF THE COMMISSION

Pierce, Commissioner, delivered the opinion of the Commission.

This matter is now before the Commission on the application of the attorneys of record in Dockets 217, 15-K and 29-J, to have the Commission award an attorneys' fee and to apportion that fee among the attorneys for the three dockets.

On April 25, 1973, the Commission entered a judgment in the amount of $4,104,818.98 for the plaintiffs in Dockets 217, 15-K and 29-J jointly, on behalf of the Potawatomi Tribe or Nation as it existed between 1795 and 1833, 30 Ind. Cl. Comm. 144. There was no appeal from this judgment and funds to satisfy it were appropriated by Public Law 93-245, approved January 3, 1974, 87 Stat. 1071, 1085.

In a decision dated March 28, 1972 (Dockets 71 et al.), 27 Ind. Cl. Comm. 187, issued pursuant to an order of remand of the Court of Claims in Hannahville Indian Community v. United States, 180 Ct. Cl. 477 (1967), the Commission concluded that the party with whom the United States dealt in the treaties under consideration in the remanded dockets, including the Treaty of July 29, 1829, 7 Stat. 320, involved in the three consolidated dockets herein, was the Potawatomi Tribe or Nation as it existed between 1795 and 1833, and that the Potawatomi Tribe during that period was a single land owning entity having overall ownership of the Potawatomi lands ceded under such treaties. Accordingly, although each of the plaintiffs herein are presently an identifiable tribe or group of Potawatomi Indians entitled to bring suit and retain separate counsel under the Indian Claims Commission Act, and has in fact done so, none is the full successor to the original 1795-1833 Potawatomi Tribe, and the award is a single joint award to the three plaintiffs. In view of these circumstances, there can be only one attorney fee to be paid from the joint award. The

attorneys of record in Docket 217 and Docket 15-K have come to an agreement as to the proper division of their share of the total fee which may be awarded, but have been unable to agree with the attorney of record for Docket 29-J as to the division of that fee between them and the latter attorney.

On September 13, 1973, Louis L. Rochmes and Robert Stone Johnson, attorneys of record for plaintiffs in Docket 217 and Docket 15-K, respectively, filed a joint petition for the award of attorneys fees, and requested the Commission to schedule a hearing at which they might present evidence in support of their contention that 95% of the total attorney fee should be awarded to them as compensation for their efforts in bringing about the final judgment in the three dockets. On December 10, 1973, Robert C. Bell, attorney of record for plaintiffs in Docket 29-J, filed a similar petition on behalf of himself and the estate of Walter H. Maloney, Sr., contending that 50% of the attorney fee should be apportioned to him and the Maloney estate.

On July 31, 1974, the Commission consolidated for trial the fee apportionment petitions in these three dockets with three other Potawatomi dockets, i.e., Dockets 146, 15-M and 29-K, in which latter three dockets a similar fee dispute exists between the same attorneys. A trial was held on September 23, 1974, and oral argument was heard on April 4, 1975. The fee problem in the latter three dockets will be dealt with in a separate decision.

A detailed account of the legal representation of all three dockets is set forth in our findings of fact numbered 2, 3, 4, 5, 7 and 8. These findings also include identification of deceased counsel, notice to the parties of the fee applications, and the response of the parties to such applications.

The final award in the three dockets represented additional compensation for lands identified as Royce Area 147, lying partly in Illinois and partly in Wisconsin, and Royce Area 148, lying in Illinois, ceded to the United States under the Treaty of July 29, 1829, supra, for a consideration which the Commission held to be unconscionable within the meaning of the Indian Claims Commission Act (40 Stat. 1049, 1050). Under Section 15 of the Act the Commission is required to fix the fees of claims attorneys in such amounts as the Commission, in accordance with standards obtaining for prosecuting similar contingent claims in courts of law, finds to be adequate compensation for services rendered and results obtained, unless the amount of such fees is stipulated in the approved contract between the attorneys and the claimants. Pertinent portions of this section are set forth in our Finding of Fact No. 6.

The attorney contracts in Docket 217 provide for a fee to the attorneys equivalent to 10% of the final award. In Docket 15-K and Docket 29-J, the contracts provide that the fee for attorney services shall be determined by the Commission in an amount not in excess of 10% of the final award. On the basis of the entire record of the proceedings in all of these dockets and in the light of the responsibilities undertaken by counsel, the difficult problems of fact and law, the appeals, the trials on remand and the extensive briefings and oral arguments, and based on the findings of fact made herein, the Commission is of the opinion that the attorney fee in these three dockets should be 10% of the final award, or $410,481.90.

In Sisseton and Wahpeton Bands or Tribes v. United States, 191 Ct. Cl. 459, 423, F. 2d 1386 (1970), the Court of Claims determined that the Commission has jurisdiction to apportion fees between attorneys operating under separate contingency fee employment contracts.

The criterion for apportioning the allowable attorney fee is basically set out in the Indian Claims Commission Act, 25 U.S.C. 70n, but has been further explained by the Court of Claims. The Act, supra, states that attorneys are to be compensated for ". . . all services rendered in prosecuting the claim in question . . ." It is clear that to participate in any fee award an attorney must have participated in "promoting the particular claim for which recovery has been allowed." Red Lake and Pembina Bands v. Turtle Mountain Band of Chippewa Indians, 173 Ct. Cl. 928, 933, 355 F. 2d 936 (1965).

Further, when the claim in question is joint, "the services for which an attorney is to be compensated . . . consist of efforts to create and preserve that fund, not of unsuccessful attempts to capture it for one entity." Red Lake, supra, 937-938.

The criterion to be used in any apportionment decision was further defined in Godfroy v. United States, 199 Ct. Cl. 487 (1972), aff'g on rehearing, Docket 124-D, et al., 24 Ind. Cl. Comm. 450 (1971), rehearing denied, 200 Ct. Cl. 728, 473 F. 2d 892 (1973), cert. denied, 414 U.S. 825 (1973). There the court made the following statement which is pertinent herein:

> Where two law firms representing two descendant branches of an Indian tribe succeed in obtaining awards from the Indian Claims Commission, the maximum attorney fees allowed are to be apportioned between the two firms. . . in proportion to the relative contribution of each firm in rendering services for the benefit of the common cause of the two descendant groups. Supra, at 488.

In support of their contention that 95% of the attorneys' fee should

be awarded to counsel for Dockets 217 and 15-K, these attorneys assert that very little of the work of counsel for Docket 29-J was devoted to advancing the common concern of the three dockets, i.e., title, value and other substantive issues, but rather was directed to advancing the cause of only a portion of those Indians who participated in the 1829 treaty to the exclusion of the Prairie and Citizen Bands of Potawatomi Indians.

In support of this argument counsel rely on the decision of the Court of Claims in Red Lake and Pembina Bands, supra. In that case the court held that where one of the attorneys to whom the Commission had awarded a fee had done none of the work on the "claim in question," although he was one of the attorneys of record, he was not entitled to a fee. In the Red Lake case the efforts of the attorney in question were not in support of the joint or mutual interests of all of the involved groups but rather were directed at furthering the interests of only one party at the expense of the other claimants. Counsel for plaintiffs in Dockets 217 and 15-K appear to feel that the efforts of counsel in Docket 29-J in establishing the so-called single land owning entity theory, i.e., that is, that at the time of the treaty in suit the United States was dealing with the Potawatomi Tribe or Nation and not with several autonomous bands of Potawatomi Indians as the owner of the land being ceded, was an attempt to benefit the plaintiffs in Docket 29-J at the expense of the plaintiffs in the other dockets. It appears that the ultimate adoption by the Commission of the single land owning entity theory as distinguished from the "Band" theory espoused by Dockets 217 and 15-K, 27 Ind. Cl. Comm. 187 (1972), had the effect of allowing all

petitioning Potawatomi Indians to participate in the award, whereas the "Band" theory, if it had prevailed would have required the dismissal of some of the plaintiffs in Docket 29-J.

The determination of the proper Indian parties to the treaty or treaties under consideration is a legitimate aspect of the title phase of a claims case in considering whether the attorneys' services for this work are compensable. When the Court of Claims remanded this case for precisely such a determination, Hannahville Indian Community v. United States, 180 Ct. Cl. 477 (1967), we stated in our subsequent decision on remand as follows:

> . . . the nature of the political structure of the Potawatomis must be answered in order to determine who the United States considered the owner of the Potawatomi lands during the times under consideration, for the purposes of transferring to the United States the entire Indian interest in these lands. The answer to that question will also determine what group or groups are entitled to share in an award being sought as additional compensation for lands ceded to the United States by the Potawatomi Indians during the treaty period under consideration. [27 Ind. Cl. Comm. 187, 191-192.]

There was no appeal from our so-called "entity decision", but several of the dockets consolidated for the purpose of determining the entity question did file appeals. In Pottawatomie Nation of Indians v. United States, 205 Ct. Cl. 765, 502 F. 2d, 852 (1974), involving our Dockets 29-N, 15-P and 306, the Commission's single entity holding was affirmed as to the treaties involved in those dockets. By order of

March 7, 1975, similar action was taken on the appeals of several of the other dockets consolidated in the entity proceeding (Dockets 128, 309, 310, 15-N, 15-O, 15-Q, 15-R, 29-L, 29-M, 29-O and 29-P). No appeal was taken in the three dockets here under consideration.

Since it is clear that determining who was the Indian owner of the land in suit is as much a part of the title phase of these proceedings as what land is involved in the particular transaction, it appears that the counsel for plaintiffs in all three dockets are entitled to compensation for their efforts in this regard.

Another general contention made by counsel for all dockets is that the fee should be apportioned in proportion to the size of the present day plaintiff groups. This theory was expressly rejected by the Court of Claims in Godfroy v. United States supra. The court again stated that the fee should be apportioned in proportion to the relative contributions of each set of attorneys in rendering services for the common concern of all sharing in the award. Accordingly, we shall now turn our attention to the services so rendered by the three sets of counsel.

On September 30, 1953, these three dockets along with related claims of three other dockets (See Finding 9) were consolidated for trial on title. On December 12, 1955, a hearing was held on the issue of title to Royce Area 147 and Royce Area 148, mentioned above. Defendant conceded that plaintiffs in the three dockets herein had recognized

title to all of Royce Area 147 and to that part of Royce Area 148 lying west of the Fox River. As to the land lying east of the Fox River in Royce Area 148, the parties were not in agreement as to whether the title in the Indians was recognized or aboriginal.

At the trial of the case counsel for Dockets 217 and 15-K acted jointly and introduced some 63 exhibits. Counsel for Docket 29-J introduced 34 exhibits. None of the counsel for the three dockets presented the testimony of an expert witness, as the matter of title was not in serious controversy. All counsel paritcipated in the cross-examination of Dr. Barreis, the Government's witness on the issue of title. Some of the exhibits introduced by counsel for Docket 29-J dealt with the political structure of the Potawatomi Indians at the time of the treaty in suit. He also introduced evidence bearing on the nature of the title to the land lying east of the Fox River in Royce Area 148. By agreement of all parties, the Commission did not issue a separate decision on the issue of title, but deferred such decision until the completion of the trial on value and consideration. This was a relatively uncontroversial phase of the case and on the basis of the record we have found that all counsel contributed equally.

The hearings on the value of the lands in suit were held from January 12 through January 15, on March 18, 1959, and on January 26, 1962. Counsel for Dockets 217 and 15-K introduced the testimony of four expert witnesses: Mr. Fred J. Hartman, a cartographer, who had forestry training

and experience, and who prepared maps showing the timbered areas, prairie areas, the acreage, etc. of the land to be valued; Dr. Thomas LeDuc, a professor of history who had done research in land sciences, agronomy and other relevant areas, and the history of public lands; Dr. Charles H. Behre, a professor of geology at Columbia University and chief geologist of Behre, Dolbear & Co. (Dr. Behre was the co-author of studies of lead and zinc deposits in the Upper Mississippi Valley which included the Illinois-Wisconsin-Iowa lead region); Professor Roland D. Parks, an associate professor of mineral industry at the Massachusetts Institute of Technology, and an associate of Behre, Dolbear & Co., and co-author of the appraisal with Dr. Behre. Counsel for Docket 29-J offered the testimony of Mr. Francis J. Gillies, Supervisory Claims Examiner, Indian Tribal Section, Claims Division, General Accounting Office, not for the purpose of establishing the value of the lands in suit, but to identify payrolls evidencing the payment of annuities to Potawatomi Indians beginning in 1822. Mr. Gillies' testimony and supporting exhibits were offered in connection with the theory advanced by plaintiffs in Docket 29-J that from 1795 to 1833 the land owning entity with whom the United States had treaty relations in the cessions of Potawatomi lands, was a single tribe or nation and not separate autonomous bands of Potawatomi Indians. The evidence and testimony introduced by counsel for Dockets 217 and 15-K were concerned with the surface and mineral value of the land ceded to the United States. Counsel for Dockets 217 and 15-K cross-examined Dr. Walter R. Kuehnle, defendant's expert witness on value, whose appraisal completely

excluded any value for minerals present in the lands. Counsel for Docket 29-J did not cross-examine Dr. Kuehnle. All of the exhibits offered in evidence by counsel for Docket 29-J bore on the entity question.

Counsel for Dockets 217 and 15-K submitted proposed findings of fact and briefs on the issue of both the surface and mineral value of the land in suit. Counsel for Docket 29-J offered only one finding related to value (Finding 38) and all other findings dealt with the land owning entity issue. At the oral argument in January of 1962, counsel for Docket 29-J confined his remarks to the political structure of the Potawatomi Indians at the time of the treaty. Counsel for the other two dockets argued the entity point and also the issues of title and the surface and mineral values of the lands.

On November 29, 1962, the Commission issued findings of fact, opinion and an interlocutory order (11 Ind. Cl. Comm. 641) determining, among other things, that the three plaintiffs had recognized title to that portion of Royce Area 148 lying west of the Fox River and all of Royce Area 147, and that they had aboriginal title to that portion of Royce Area 148 lying east of the Fox River. In accordance with the contentions of counsel for Dockets 217 and 15-K, the Commission determined that plaintiffs in Dockets 13-L, 18-I and 40-J, consolidated for trial in the title phase of the case, were not proper parties and dismissed their petitions. The Commission found that the 3,528,949 acres of land ceded had a fair market value of $2,470,264.30 on July 29, 1829; that plaintiffs were not entitled to

recover anything because of the presence of minerals on the land; that the consideration of $364,901.00 given for the lands should be credited to defendant and that plaintiffs should receive the difference less allowable offsets to be determined later. The Commission also determined that petitioners in Docket 29-J (amendment issued April 15, 1965, 15 Ind. Cl. Comm. 232, 233) had a right to institute and maintain an action in a representative capacity on behalf of the United Nation of Chippewa, Ottawa and Potawatomi, for any interest in claims arising out of the Treaty of July 29, 1829, but rejected the single entity theory advanced by Docket 29-J plaintiffs.

On the basis of an examination of the record of the value phase of this proceeding prior to remand, we have found that all of the significant services contributing to the 1964 judgment, were performed by counsel for Dockets 217 and 15-K. Up to this point in the litigation, Mr. Walter H. Maloney, Sr. represented plaintiffs in Docket 29-J. Mr. Robert Bell did not become associated as counsel for Docket 29-J plaintiffs until later.

On November 14, 1963, a hearing was held on the matter of the $10,790.28 which defendant was claiming as allowable offsets for gratuitous expenditures for the benefit of the plaintiffs from 1830 to 1845. In view of the smallness of the amount and the expense to the plaintiffs that would be involved in a prolonged contest, the hearing was brief. All counsel for plaintiffs urged the Commission to disallow the

offsets, but all were allowed and a judgment in the net amount of $2,094,572.02 was entered on April 15, 1965, 15 Ind. Cl. Comm. 232. Under the circumstances, it seems fair to conclude that attorneys for all plaintiffs contributed equally to the offset phase of this case.

On March 1, 1965, counsel for plaintiffs in Docket 29-J filed a notice of appeal to the Court of Claims in several dockets, including, among the others, Docket 29-J. Since the basic issue in this appeal was the Commission's rejection of the single land owning entity theory, the Citizen Band and the Prairie Band of Potawatomi Indians along with the United States, were named as appellees. The Court designated this appeal No. 5-65.

On June 30, 1965, counsel for plaintiffs in Docket 217 and 15-K appealed from the Commission's value decision, strongly urging that the Commission erred in eliminating all mineral value from its final value determination. All appropriate papers and briefs were filed in connection with this appeal. Counsel for plaintiffs in Docket 29-J moved the court to consolidate its entity appeal, No. 5-65, with the value appeal of Dockets 217 and 15-K, No. 6-65, but this motion was denied by the court. Subsequently, the court treated plaintiffs in Docket 29-J as intervenors in the value appeal (No. 6-65), and counsel for plaintiffs in Docket 29-J filed a brief and participated in the oral argument before the court on the value issue. While a large portion of the Docket 29-J brief was devoted to the land owning entity question, several pages did deal with

the issue of the propriety of including the mineral value in the award, and defendant found it necessary to respond to these arguments in a separate brief. In a reply brief, counsel for Docket 29-J devoted part of the brief to the entity question and part to a further discussion of the mineral value of the land and the reasons why it should have been included in the judgment. Counsel for Dockets 217 and 15-K filed extensive joint briefs on the subject of the surface and mineral value of the land, and in opposition to the single entity theory advanced by counsel for Docket 29-J.

On April 14, 1967, 179 Ct. Cl. 372, the Court of Claims, having severed the entity issue from the value appeal, issued its opinion in Appeal No. 6-65, confined to the correctness of the value determination of the Commission. The court held that the Commission had erred in excluding the mineral value of the ceded lands, and remanded the case for rehearing on that matter. The court affirmed the Commission's determination that the United States had acted properly in excluding the value of certain lands granted to individuals.

Counsel in Dockets 217 and 15-K jointly, and counsel in Docket 29-J separately, petitioned for certiorari, both of which petitions were denied, 389 U.S. 1046 (1968), and 390 U.S. 958 (1968), respectively.

In connection with the value appeal, counsel for plaintiffs in Docket 217 and 15-K bore the major part of the burden of persuading the Court of Claims that the Commission had erred in refusing to include in

its judgment the mineral value of the ceded land. The contribution to this issue by counsel for Docket 29-J was minor by comparison.

On June 9, 1967, 180 Ct. Cl. 477, the Court of Claims rendered its decision in Appeal No. 5-65. Consolidated in this appeal were Dockets 29-D, E, J and K, and Dockets 217 and 15-K. The plaintiffs in Docket 29-J, et al., urged that the Commission had erred in dismissing Potawatomi claims in those dockets on the ground that the ancestors of the plaintiffs were not signatories to the treaties in suit and that the United States had dealt with separate autonomous Potawatomi bands rather than a single Potawatomi land owning entity when it negotiated the treaties involved, and had erroneously held that this issue had already been decided in previous litigation involving the Potawatomi western lands. The court held that the decision in the western lands case was not a bar to a decision on the entity question in connection with treaties ceding eastern lands prior to 1833, and remanded the dockets to the Commission for a de novo determination of the political structure of the Potawatomis at the times when the United States negotiated the various treaties in question.

On the basis of the record before us, we are of the opinion that the contribution of counsel for Docket 29-J was somewhat more than that of either of the other counsel (Dockets 217 and 15-K) in connection with this appeal of the entity issue.

Hearings on the political structure of the Potawatomis between 1795 and 1833 were held by the Commission on January 18, 1968, and December 6, 1968. Counsel for all parties, including the Government, introduced evidence (some new and some already present in other dockets), prepared and submitted proposed findings of fact and briefs, and later participated in oral argument. On March 28, 1972, the Commission in a 3-2 decision, held that the party with whom the United States dealt in the treaties involving Potawatomis between 1795 and 1833 was a single land owning entity, i.e., the Potawatomi Tribe or Nation. Citizen Band of Potawatomi Indians v. United States, 27 Ind. Cl. Comm. 187. This holding was affirmed by the Court of Claims on December 18, 1974 in a decision issued in connection with an appeal by Docket 306 (Citizen Band of Potawatomi Indians of Oklahoma, et al.) and Docket 15-P (Potawatomi Tribe of Indians, The Prairie Band of Pottawatomie Indians, et al.), Pottawatomie Nation v. United States, 205 Ct. Cl. 765, 502 F. 2d 852. Although the position of counsel in Docket 29-J presuaded the majority of the Commission, and the Commission's holding was affirmed by the Court of Claims, it appears to us that all of the attorneys contributed equally to this phase of the litigation. None of the dockets before us in this proceeding took an appeal to the Court of Claims from the Commission's 1974 entity decision.

The second value trial was held, in accordance with the order of remand from the Court of Claims, from March 2 through March 6, 1970. Counsel for plaintiffs in Dockets 217 and 15-K relied on the reports on mineral value in the ceded lands, prepared by their expert witnesses at the first valuation hearing in 1959. They also offered an additional appraisal report on mineral value prepared by Dr. Raleigh Barlowe, chairman of the Department of Resource Development at Michigan State University. Dr. Barlowe testified at length in connection with his report on the subject of his estimates of the value of the minerals in the Indians' lands and the enhancement of value in the non-mineral lands by reason of the presence of nearby minerals.

Counsel for plaintiffs in Docket 29-J presented two expert witnesses on mineral valuation, Harris A. Palmer and Marius P. Gronbeck. Using somewhat different methods than those employed by the witnesses for Dockets 217 and 15-K, they testified to their conclusions regarding the fair market value of the mineral deposits and stated that they accepted the conclusions of Dr. Barlowe regarding the enhancement value of the mineral deposits.

Defendant's counsel offered reports and testimony of three expert witnesses. Professor Wright, a consulting mining engineer and professor of mining engineering and geology at the University of Kentucky, appraised the minerals in Royce Area 147 for defendant, presenting his appraisal in a written report and in oral testimony, concluding that the lead ore

deposits in Area 147 had an 1829 value substantially lower than the value testified to by the experts for the three plaintiffs. Dr. Thomas P. Field, a professor of geography at the University of Kentucky, prepared a report, supported by maps and other documents, to show the extent and location of lead deposits in Royce Areas 147 and 149 (the latter area not involved in the instant dockets). Defendant also offered the testimony of Mr. Walter R. Kuehnle, a real estate appraiser and consultant who had testified in the original valuation trial, and who prepared a supplemental appraisal report for the defendant. Counsel for plaintiffs in all three dockets cross-examined defendant's expert witnesses at considerable length.

Counsel for Dockets 217 and 15-K collaborated in filing one set of proposed findings of fact and in the necessary briefs. Counsel for Docket 29-J filed separate proposed findings of fact, briefs and a reply brief. All participated in oral argument before the Commission.

On April 25, 1973, the Commission entered its final decision and a net award of $4,104,818.98, or nearly double the previous award. 30 Ind. Cl. Comm. 144. The final award was made payable to the plaintiffs on behalf of the Potawatomi Tribe or Nation as it existed between 1795 and 1833.

After examining the record on the second value trial phase of the case, and on the basis of the findings entered herein, we are of the opinion that counsel for all three dockets contributed equally in this phase of the case.

Counsel for Docket 29-J produced certain time records kept by Mr. Walter H. Maloney, Sr., one of the original attorneys of record, now deceased. The details of those records are set forth in Finding 22. Counsel for Dockets 217 and 15-K did not submit such time records. In Indian claims litigation, such records are not of great assistance to the Commission in determining the amount of an attorney fee or the allocation of such fee between several participating attorneys in consolidated dockets where there has been a single joint award. This is particularly true in the instant case where it is clear, from the number of exhibits, the length of the trials, the appeals, the briefs and oral arguments required, that an enormous amount of time has been spent by counsel for all parties in bringing the case to its final conclusion. If all counsel had kept accurate records of the time actually spent on these dockets from the filing of the petitions to final judgment, it is quite likely that the fee of 10% of the award would not equal what those attorneys would have earned had they charged the hourly rates prevailing at various times during the course of the litigation.

In summary, our findings support the following conclusions as to the relative contributions of the attorneys for the three consolidated dockets with respect to the amount of work each performed at each phase of the litigation. During the title phase, the offset phase and the second value trial, the work contribution of the attorneys for each of the three dockets was equal or the same. In connection with the original value trial and the appeal to the Court of Claims (Appeal No. 5-65) from the Commission's final award after that trial, the attorneys for Dockets 217 and 15-K performed nearly all of the significant work done, and only a relatively small amount of the work can be fairly attributed to the counsel for Docket 29-J. In the so-called

entity appeal, No. 6-65, counsel for Docket 29-J did more than one half of the work, although the work of counsel for Dockets 217 and 15-K in resisting the position asserted by 29-J counsel, was significant.

The work which contributed most to the ultimate result in this case took place in the original value phase of the case, the value appeal, and the second trial on valuation of mineral resources and enhancement. There was little controversy between defendant and plaintiffs in either the title phase of the case or the offset phase, and in both of these relatively insignificant phases all counsel contributed equally. The original value phase of the case was especially significant. At that trial counsel for Dockets 217 and 15-K introduced expert testimony and the reports of their expert witnesses on the mineral value of the lands in suit, whereas counsel for Docket 29-J offered no such testimony and did not cross-examine defendant's witnesses. Similarly, on the appeal from the award made by the Commission in 1962, counsel for Dockets 217 and 15-K bore the brunt of the work of persuading the Court of Claims that the Commission had erred in excluding any value for minerals or for enhancement to non-mineral lands by virtue of the presence of minerals in adjacent lands. In the second value trial held on the order of remand, counsel for Dockets 217 and 15-K were able to rely on the expert witness reports on mineral value they had introduced in evidence in the first value trial. In addition they offered an additional expert witness on the matter of enhancement, whose conclusions were accepted by counsel for plaintiffs in Docket 29-J. While it is true that counsel for Docket 29-J produced two excellent expert witnesses on the subject of mineral value at the second trial and participated in the cross examination of defendant's

expert witnesses on mineral location and value, it must be said that the same award might well have resulted on the basis of the evidence introduced by counsel for Dockets 217 and 15-K in the original value trial and the additional report and testimony of their expert witness in the second value trial. Accordingly, although counsel for Docket 29-J did considerable work in connection with the second value trial, it was, in effect, more cumulative than otherwise. Insofar as the entity appeal, No. 6-65, is concerned, this issue was important in connection with the proper parties and the question of who had title to the lands in suit for the purpose of receiving the award. It will serve well Potawatomi Indians in other dockets whose claims might otherwise be dismissed if the "Band" theory of land ownership had prevailed. However, in these three dockets, the issue is not of the same importance as the issue of value and accordingly the work done by counsel for Docket 29-J on this issue will not materially increase his share of the fee, despite the fact that he did the greater share of the work on this aspect of the case.

On the basis of the record in these proceedings, our findings of fact, and for the reasons stated above, we conclude that the attorneys in each of the dockets involved are entitled to the following percentage allocation of the fee for the services each have rendered in prosecuting these claims:

Dockets 217 and 15-K	75%
Docket 29-J	25%

Counsel in Dockets 217 and 15-K have requested that the Commission not make any apportionment of the fees payable to counsel in those dockets. The findings indicate that certain agreements may exist between present counsel in Docket 15-K and the estates of deceased counsel relative to division of any fee awarded. We have included this material in Finding No. 3 because it was made a part of this record. However, the Commission is not required to take into account such agreements in awarding the attorney fees to the present attorneys of record beyond stating that the awards are made to such attorneys for distribution to those entitled to share in the fee award.

Accordingly, we are awarding a fee of $307,861.42 to counsel in Dockets 217 and 15-K and a fee of $102,620.48 to counsel in Docket 29-J. These sums are to be paid to the attorneys of record in the respective cases on their own behalf and on behalf of all contract attorneys having an interest in the fees in these cases. The attorneys of record are to make appropriate distributions of the fees to all interested attorneys or their representatives.

Margaret H. Pierce, Commissioner

We concur:

Jerome K. Kuykendall, Chairman

John T. Vance, Commissioner

Richard W. Yarborough, Commissioner

Brantley Blue, Commissioner