

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

FINDINGS OF FACT ON AWARD AND
APPORTIONMENT OF ATTORNEYS' FEES

On the basis of the entire record in the proceedings involving Dockets 217, 15-K and 29-J, the Commission makes the following findings of fact:

THE FINAL JUDGMENT:

1. On April 25, 1973, the Commission entered an amended final award of \$4,104,818.98 in these three consolidated 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. This award 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, 7 Stat. 320, for a consideration which the Commission held to be unconscionable within the meaning of the Indian Claims Commission Act.

ATTORNEY CONTRACTS AND PROVISION FOR FEES

2. Docket 217. The plaintiffs in Docket 217 are the Citizen Band of Potawatomi Indians of Oklahoma, the Potawatomi Nation, and certain named individuals, suing in their representative capacities. The first attorney contract was between the Citizen Band of Potawatomi Indians of Oklahoma and two law firms, i.e., Blake, Voorhees & Stewart of New York, N.Y., and Adams, Moses & Culver of Chicago, Illinois. This original contract, No. I-1-Ind. 42065, signed April 17, 1948, approved August 4, 1948, was for 10 years, later extended 5 years to August 4, 1963. In May of 1963, Louis L. Rochmes was added to the contract by an amendment. On July 27, 1963, a new 5-year contract was entered into between the plaintiffs and the Chicago and New York law firms, i.e., Contract 14-20-0200 No. 1837. This contract was approved August 28, 1963, and extended by amendments to August 5, 1978. The addition of Louis L. Rochmes as a party to this contract was approved January 7, 1966, and an amendment to the same contract was approved February 7, 1973, adding the law firm of Joseph and Friedman of Chicago as counsel. All contracts and amendments thereto had the approval of the plaintiffs and the Bureau of Indian Affairs.

The compensation for attorneys stipulated in the contracts was to be wholly contingent upon a recovery by the plaintiffs and in an amount equal to 10% of any and all sums recovered for the plaintiffs. Mr. Louis L. Rochmes is attorney of record in this docket.

3. Docket No. 15-K. The plaintiffs in Docket 15-K are the Prairie Band of the Potawatomi Tribe of Indians, the Potawatomi Nation and certain named individuals suing in their representative capacities. The claim

originally given Docket No. 15 was subsequently severed and refiled as 15-C and later, pursuant to Commission order, again severed and designated Docket No. 15-K.

On October 22, 1947, the Prairie Band entered into a 10-year contract, No. I-1-Ind. 18372, with the law firm of Stone, McClure, Webb, Johnson, and Oman of Topeka, Kansas. On November 15, 1947, the firm was dissolved and Robert Stone continued to represent the Prairie Band as its claims counsel. The contract was approved by the Bureau of Indian Affairs on December 19, 1947. On January 19, 1948, the association of O. R. McGuire as claims attorneys for the Prairie Band on the above contract, was approved. By assignments dated February 9, 1953, approved May 13, 1954, James A. McClure, Robert L. Webb and Ralph W. Oman conveyed an interest in the attorney fees to Robert Stone and an interest to Beryl R. Johnson. Under another agreement approved May 13, 1954, Robert Stone assigned an interest in the fees to Robert Stone Johnson, the present attorney of record for the Prairie Band. The assignments of interest approved on May 13, 1954, were as follows: O. R. McGuire, 50%; Robert Stone, 19%; Robert S. Johnson, 19%; and Beryl L. Johnson, 12%. On June 17, 1960, two 2-year periods of extension of Contract No. I-1-Ind. 18372 were approved beginning as of December 19, 1957. On December 12, 1964, the Prairie Band entered into contract No. 14-20-0200-1856 with Robert Stone Johnson and Beryl R. Johnson for a period of 5 years beginning on December 29, 1964. On December 24, 1969 a 10-year extension of this contract was approved to begin on December 29, 1969. All contracts and extensions had the requisite tribal and Bureau of Indian Affairs approval.

Contract No. 14-20-0200-1856 recited that Robert Stone and O. R. McGuire had died and provided, among other things, that the estates of the deceased attorneys should be allowed compensation in such sum as the "tribunal * * * awarding a judgment to the TRIBE may find equitably to be due for the services heretofore rendered under said contracts". In an affidavit, dated May 6, 1975, sworn to by Lillian Stone Johnson, administratrix c.t.a. of the estate of Robert Stone, deceased, the affiant states that she is the only daughter of Robert Stone, deceased, and the sole heir of any and all interest he may have had at the time of his death in any attorneys' fee awarded in the Prairie Band of Potawatomi tribal claims; that Robert Stone was the person referred to in Contract No. 14-20-0200-1865, dated December 12, 1964; that she directs the Indian Claims Commission to distribute to Robert Stone Johnson the equitable share of Robert Stone in the attorneys' fees under Docket 15-K; and that she relieves the Commission of any liability for determining the distributive share between Robert Stone, Robert Stone Johnson and Beryl R. Johnson, provided such fee is paid to Robert Stone Johnson in accordance with an understanding between the estate of Robert Stone and Robert Stone Johnson and Beryl R. Johnson.

In an affidavit dated April 30, 1975, sworn to by Herbert Parker, Arlington Trust Company, Virginia, which bank is the executor of the estate of Ava Hale McGuire, deceased, it is stated that Ava McGuire was the surviving widow, sole heir and executrix of the estate of O. R. McGuire; that O. R. McGuire was the McGuire referred to in Claims

Attorneys' Contract No. 14-20-0200-1856, dated December 12, 1964; that the heirs and devisees of O. R. McGuire, deceased, and Ava Hale McGuire, deceased, have agreed that there shall be due them as their equitable share in the Prairie Band Potawatomi treaty claims attorneys' fees, payable under judgments rendered in proceedings before the Indian Claims Commission, one-half of the fee allowed to the Prairie Band Potawatomi counsel in Docket 15-K prior to appeal to the United States Court of Claims and hearing on remand before the Indian Claims Commission (i.e., judgment in the amount of \$2,470,264.30), and 15% of the fee allowed to Prairie Band Potawatomi counsel under Docket 15-K after the appeal to the Court of Claims and the hearing on remand before the Indian Claims Commission, i.e., judgment in the amount of \$4,104,818.98. The affidavit also states that in consideration of the efforts of Robert Stone Johnson and others associated with him in Dockets 15-K and 15-M during the twelve years since the death of O. R. McGuire, the heirs of O. R. McGuire waive any interest in the remaining Prairie Band Potawatomi claims attorneys' fees in all other pending treaty claims cases.

The above Prairie Band contracts provided that any compensation for the attorneys would be wholly contingent upon a recovery by the plaintiffs, that the amount of such fee should be determined by the Commission, and that in no event would the fee exceed 10% of the award to the plaintiffs.

Robert Stone Johnson is the attorney of record in Docket 15-K.

4. Docket 29-J. The plaintiffs in Docket 29-J are the Hannahville Indian Community, the Forest County Potawatomi Community, the Potawatomi Indians of Michigan, Inc., and certain individuals suing in a representative capacity.

On January 5, 1948, the Hannahville Indian Community entered into a 10 year contract with attorneys Dorr E. Warner of Cleveland, Ohio, and Walter H. Maloney, Sr. of Washington, D. C., designated No. I-1-Ind. 42007. The contract was approved on March 8, 1948, by the Department of the Interior, Office of Indian Affairs.

After Mr. Warner's death on a date not disclosed by the record, the Hannahville Indian Community entered into a new 10 year contract of employment with Walter H. Maloney, Sr. effective March 8, 1948, designated Contract 14-20-0650 No. 983. On March 24, 1964, the Bureau of Indian Affairs approved an assignment by Mr. Maloney, Sr. of his interest in this claims contract to his son, Walter H. Maloney, Jr. In November, 1964, Mr. Walter H. Maloney, Jr. made a similar assignment of his interests in the same claims contract to Mr. Robert C. Bell, Jr. Contract 14-20-0650 No. 983 has been extended twice since 1968 and is valid until March 7, 1978. All of the above actions had the requisite approval of plaintiffs and the Bureau of Indian Affairs.

On January 7, 1948, the Forest County Potawatomi Community entered into a claims employment contract No. I-1-Ind. 42011, effective May 3, 1948, for a period of 10 years, with Mr. Dorr Warner of Cleveland, Ohio, and Mr. Walter H. Maloney, Sr. After Mr. Warner's death on a date not

disclosed by the record, the plaintiffs entered into a new 10 year contract No. 14-20-0650 No. 978, with Mr. Maloney, Sr. This contract was approved by the Bureau on August 13, 1958, and made effective as of May 3, 1958. In 1963, Mr. Maloney, Sr. assigned his interest in the contract to his son Walter H. Maloney, Jr. In November, 1964 Mr. Maloney, Jr., made a similar assignment of his interest in the employment contract to Robert C. Bell, Jr. This contract has been extended twice since 1968 and is valid until May 2, 1978. All of the above contracts and assignments had the requisite approval by plaintiffs and the Bureau of Indian Affairs.

Each of the above contracts provided that in the event of the death of either or both of the attorneys, the estate of the deceased attorney or the estates of the deceased attorneys, would be allowed compensation in such sum as the Commissioner of Indian Affairs or an appropriate court or tribunal might find equitably due for the services rendered by the deceased attorney or attorneys, and that the death of one of the attorneys, leaving the other surviving, would not terminate the contract.

Mr. Robert C. Bell, Jr., attorney of record for the Hannahville Indian Community and the Forest County Potawatomi Community, is petitioning for a share of the attorneys' fee which may be awarded, for himself and for the estate of Walter H. Maloney, Sr.

On February 20, 1965, the Potawatomi Indians of Indiana and Michigan, Inc., entered into a ten year contract, No. 14-20-0350 No. 260, with Robert C. Bell, Jr. and Walter H. Maloney, Sr. No extensions of this contract are on record with the Commission. On July 16, 1965, the plaintiff corporation petitioned for the right to intervene as a party plaintiff in Docket 29-J and other dockets and on March 28, 1972, the petition was approved by the Commission. 27 Ind. Cl. Comm. 187, 326 and 327.

The compensation for attorneys under all of the above contracts was made contingent upon a recovery by the plaintiffs, was to be fixed in amount by the Commission, and the amount was in no event to exceed 10% of any and all sums recovered by the plaintiffs.

Mr. Robert C. Bell, Jr., is the attorney of record in Docket 29-J.

5. Deceased Counsel. The attorneys who represented plaintiff in these claims, now deceased, are:

Dkt. 217 - All members of the law firm of Adams, Moses and Culver.
All members of the law firm of Blake, Voorhees and Stewart.

Dkt. 15-K - Robert Stone
O. R. McGuire

Dkt. 29-J - Dorr E. Warner
Walter H. Maloney, Sr.

6. Statutory Fee Provision. The Indian Claims Commission Act (60 Stat. 1049), under which the claims herein were prosecuted, contains the following provisions (at page 1053) pertaining to the allowance of attorneys' fees:

Sec. 15 . . . The fees of such attorney or attorneys for all services rendered in prosecuting the claim in question whether before the Commission or otherwise, shall unless the amount of such fees is stipulated in the approved contract between the attorney or attorneys and the claimant, be fixed by the Commission at such amount 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, considering the contingent nature of the case, plus all reasonable expenses incurred in the prosecuting of the claim; but the amount so fixed by the Commission, exclusive of reimbursement of actual expenses, shall not exceed 10 per centum of the amount recovered in any case
. . . .

7. Notice to the Parties. On September 17, 1973, for the purpose of advising the plaintiffs in Dockets 217 and 15-K of an application by their attorneys for an award of fee, a copy of Messrs. Johnson's and Rochmes' petition was mailed to the following persons with a letter inviting them to comment within two weeks.

Mr. Jerry Fox	Mr. Jack Carson, Supt.
Route 5, Box 79 C	Horton Agency
Shawnee, Oklahoma 74801	Bureau of Indian Affairs
	Horton, Kansas 66439

On December 11, 1973, a copy of Mr. Bell's application for award of fee, with an invitation to comment, was sent to:

Mr. Jake McCullough, Chairman
Hannahville Indian Community
Route 1
Wilson, Michigan 49896

On February 13, 1974, a copy of Mr. Bell's application for award of fee, with an invitation to comment, was sent to:

Mr. Michael B. Wilson, Recording Secretary
Potawatomi Indians of Indiana and Michigan
Box 406
Dowagiac, Michigan 49047

On February 14, 1974, a copy of Mr. Bell's application for award of fee, with an invitation to comment, was sent to:

Mr. Harvey Tucker, Tribal Chieftain
Forest County Potawatomi Community
Route 1
Wabeno, Wisconsin 54566

Both the Departments of Justice and Interior were advised by letters dated September 17, 1973, of Messrs. Johnson's and Rochmes' fee application in Dockets 217 and 15-K. They were both also advised by letters dated December 11, 1973, of Mr. Bell's fee application in Docket 29-J.

8. Response of Parties. None of the plaintiffs or their officers, as distinguished from their counsel, has responded to any of the notices of application for attorneys' fees.

The defendant responded by letter from the Department of Justice dated January 4, 1974, to the petitions for fees in Dkts. 217, 15-K, and 29-J. Attached were letters from the Bureau of Indian Affairs and the Office of the Solicitor, both of the Department of Interior. They took no position regarding the fee, except to note that it should not exceed 10% of the award.

TITLE PHASE

9. On September 30, 1953, the three dockets under consideration herein were consolidated for trial on title along with related claims of the Chippewa Tribe, the Red Lake Band of Chippewas, and the Ottawa Tribe, respectively designated Dockets 13-L, 18-I and 40-J.

On December 12, 1955, a hearing was held on the issue of title to Royce Area 147 and Royce Area 148. 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 regarding the nature of Potawatomie title, i.e., whether recognized or aboriginal.

At the trial of the case counsel for Dockets 217 and 15-K acted cooperatively, and together introduced some 63 exhibits. Counsel for the Docket 29-J plaintiffs introduced 34 exhibits. Counsel for all plaintiffs participated in cross examining Dr. Barreis, the Government's expert witness on title. Some of the exhibits introduced by Mr. Maloney on behalf of plaintiffs in Docket 29-J dealt with the political structure of the Potawatomi Indians. He also introduced evidence bearing on the nature of the title to land lying east of the Fox River in Royce Area 148.

By agreement of all parties the Commission did not issue a separate decision regarding title, but deferred such decision until the trial on value and consideration had been completed.

Attorneys for each docket contributed equally to the title phase.

VALUE PHASE

10. Hearings on the value of the lands in Royce Areas 147 and 148 were held January 12-15 and 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; Mr. 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 report 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 title to or value of the lands in suit, but to identify payrolls evidencing the payment of annuities to Potawatomi Indians beginning in 1822. Mr. Gillies's testimony and the exhibits offered in support of it were 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 dealt when it entered into treaties covering Potawatomi lands, was the Potawatomi Tribe or Nation and not separate autonomous bands of Potawatomis. The evidence and testimony introduced by counsel for Dockets 217 and 15-K related to the claim that the Potawatomi Indians who were parties to the treaty of July 29, 1829, supra, were the exclusive aboriginal owners of that part of Royce Area 148 lying east of the Fox River and included in the 1829 cession, and to the value, both surface and mineral of the land ceded under the treaty. Counsel for Dockets 217 and 15-K cross-examined defendant's expert witness, Dr. Walter R. Kuehnle, on value. Counsel for Docket 29-J did not cross-examine defendant's expert witness, and offered no evidence on value.

Counsel for Dockets 217 and 15-K submitted proposed findings of fact and briefs in support of their contention that the land had a surface value, and that such value was enhanced by the presence of known mineral deposits. The proposed findings of fact and brief filed for Docket 29-J were confined to the question of whether or not the party entitled to participate in any award was a single Potawatomi land owning entity or was composed, as contended by defendant and plaintiffs in Dockets 217 and 15-K, of several autonomous bands of Potawatomi

Indians. Only one proposed finding of fact related to the value issue, i.e., number 38. At the oral argument in January of 1962, counsel for Docket 29-J confined his remarks to the political structure of the Potawatomi Indians. Counsel for the other two dockets argued this point and also the matter of title and surface and mineral value of the lands.

On November 29, 1962, the Commission issued findings of fact, opinion, and 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 Royce Area 147, and aboriginal title to that portion of Royce Area 148 lying east of the Fox River. The Commission also determined that the lands involved contained 3,528,949 acres having a fair market value as of July 29, 1829, of \$2,470,264.30; that the consideration of \$364,901.00 given for the lands should be credited to defendant; that plaintiffs in the three dockets should recover the difference from defendant less allowable offsets as might be later determined; and that plaintiffs in Dockets 13-L, 18-I and 40-J were not proper parties and that their petitions should be dismissed. The Commission also determined that the 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 Indians, for any interest in claims arising out of the Treaty of July 29, 1829, rejecting the single Potawatomi land owning entity theory advanced by Docket 29-J plaintiffs. The Commission also rejected the theory advanced by all plaintiffs that the value of the land was enhanced by minerals known to be present therein, and held that the United States had retained title to 144,000 acres of lead lands encompassed in the cession. All of the significant services rendered on the pre-remand value phase of this case and which contributed to the 1964 judgment of the Commission, were performed by counsel for Dockets 217 and 15-K.

OFFSETS PHASE

11. On May 23, 1963, defendant filed an amended answer claiming \$10,790.28 for gratuitous offsets representing expenditures for the benefit of plaintiffs from 1830 to 1845. On November 14, 1963, a hearing was held on the matter of offsets with all counsel arguing against the allowance of any offsets. The Commission entered a final award on April 15, 1965, allowing all claimed offsets and entering judgment in the amount of \$2,094,572.02. 15 Ind. Cl. Comm. 232. Because the amount of claimed offsets was small, they were not contested at length by any of the parties plaintiff. Attorneys for each docket contributed equally.

APPEALS

12. On March 1, 1965, counsel for plaintiffs in Docket 29-J filed a notice of appeal to the Court of Claims from certain orders and opinions of the Commission in several dockets including Docket 29-J. The United States and the Citizen Band and the Prairie Band of Potawatomi Indians

were appellees in this appeal since the basic issue was whether or not the proper Potawatomi party in claims under treaties from 1795 to 1833 were several separate bands or a single land owning entity. This appeal was designated No. 5-65.

13. On June 30, 1965, counsel for plaintiffs in Dockets 217 and 15-K appealed the Commission's 1962 value decision as amended by order of April 15, 1965, 15 Ind. Cl. Comm. 232, to the Court of Claims (Appeal No. 6-65), filing all of the appropriate papers and briefs. Counsel for plaintiffs in Docket 29-J moved the court to consolidate the entity appeal, No. 5-65, with the value appeal, 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 Docket 29-J plaintiffs filed a brief and participated in the oral argument before the court not only on the question of the single vs. multiple entity theory of land ownership, but also on the matter of the value of the land ceded in 1829. While a large portion of the Docket 29-J brief on appeal was devoted to the entity question, several pages covered the question of mineral value to which defendant found it necessary to respond in a separate brief. In a reply brief, counsel for Docket 29-J also devoted part of the brief to the entity question and part to a further discussion of the mineral value of the land. Counsel for Dockets 217 and 15-K filed extensive joint briefs on the subject of surface and mineral value of the land in suit, and in opposition to the single entity theory advanced by counsel for Docket 29-J.

14. 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 value determination of the Commission. The court held that the Commission had erred in finding that the 1829 cession did not contain lead lands not yet selected by the President, and in not valuing such lands as mineral lands. The case was remanded to the Commission for rehearing on the matter of the mineral value of the lands. 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 and counsel in Docket 29-J both petitioned independently for certiorari. Both petitions were denied, 389 U.S. 1046 (1968), and 390 U.S. 957 (1968), respectively. In connection with the value appeal, counsel for Dockets 217 and 15-K did most of the significant work which resulted in the reversal by the Court of the Commission's refusal to include in its final judgment the value of the minerals in the ceded lands. The contribution to this issue by counsel for Docket 29-J was minor by comparison.

15. On June 9, 1967, 180 Ct. Cl. 477, the Court of Claims rendered its decision on the entity question appealed in No. 5-65. In this appeal the following dockets were consolidated: 29-D, E, J and K, and 271 and 15-K. The Commission had dismissed certain claims on the ground that ancestors of the plaintiffs in those dockets were not signatories to the treaties in suit, and it rejected the single land owning contention of the appellants on the ground of res judicata i.e., that this precise issue had been finally determined adversely to petitioners in previous litigation involving their western lands, between the same parties and affirmed by the Court of Claims. 4 Ind. Cl. Comm. 515, aff'd, 143 Ct. Cl. 131, 165 F. Supp. 139 (1958), cert. denied, 359 U.S. 908 (1959).

The court held that the former decision of the court in the western lands case was not a bar to the litigation of the political structure of the Potawatomis in the eastern land cases since the court had not actually decided the question of the political structure of the Potawatomis during the earlier treaty period. The case was remanded to the Commission to make a de novo determination of the political structure of the Potawatomi Indians at the times when the United States negotiated the various treaties which gave rise to the claims asserted in the cases on appeal. The contribution of counsel for Docket 29-J was somewhat more than that of either of the counsel for Dockets 217 and 15-K in connection with the appeal of the entity issue.

POLITICAL ENTITY PROCEEDINGS ON REMAND

16. Hearings upon the political structure of the Potawatomis between 1795 and 1833 were held on January 18 and December 6, 1968. Counsel for all parties, including the Government, introduced evidence, some new and some already present in previously tried dockets, prepared and submitted proposed findings of fact and briefs and participated in oral argument. The resulting record was voluminous and the issue was vigorously contested by the parties in their proposed findings, briefs and 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 under consideration was a single land owning entity, i.e., the Potawatomi Tribe or Nation as it existed between 1795 and 1833. Citizen Band of Potawatomi Indians v. United States, 27 Ind. Cl. Comm. 187. Although the position of counsel in Docket 29-J persuaded the majority of the Commission, attorneys for each docket contributed equally to this phase of the litigation.

VALUE PROCEEDINGS ON REMAND AND FINAL AWARD

17. On March 2 through March 6, 1970, in accordance with the order of remand from the Court of Claims, the Commission held hearings on the issue of land valuation including the mineral value of the lands in suit.

18. 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 (Finding 10). 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 on the Indians' lands and the enhancement of the value in the nonmineral lands brought about because of the presence of the nearby mineral deposits.

19. 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 in

Dockets 217 and 15-K, they estimated the fair market value of the lead deposits and accepted the valuation of Dr. Barlowe regarding the enhancement value of the lead deposits. 30 Ind. Cl. Comm. 144, 184.

Defendant's counsel offered reports and the testimony of three expert witnesses. Professor Fred D. 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, concluding that the ore deposits in Area 147 had an 1829 value substantially lower than the value contained in the appraisals of the experts for the 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 148 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.

20. Counsel for all plaintiffs participated in cross examining defendant's witnesses. Counsel for Dockets 217 and 15-K collaborated in filing one set of findings of fact and in briefing. Counsel for

Docket 29-J filed separate findings of fact, briefs and reply brief
All counsel participated in oral argument.

21. On April 25, 1973, the Commission entered its final decision and an award of \$4,104,818.98, 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.

Counsel for all three dockets contributed equally to the outcome of this phase of the case.

TIME RECORDS

22. Counsel for Docket 29-J produced time records of Walter H. Maloney, Sr., one of the original attorneys of record, now deceased, in Docket 29-J. These records indicated that he and associated counsel devoted some 16,475 hours between 1948 and 1964 to Dockets 29-J and 29-K. Both dockets are included in this time compilation because the Commission consolidated these two dockets with Dockets 217, 146, 15-K and 15-M for proceedings on fee applications and apportionment. The record does not indicate the breakdown of hours between Docket 29-J and 29-K. The record does not indicate the hours of attorney time spent on Docket 29-J after 1964, nor does it reflect the hours of time expended by counsel in Dockets 217 and 15-K. For more than 25 years counsel for plaintiffs in all three dockets have performed services they deemed best suited to the interests of their respective clients.

FEE AWARD

23. The attorney contracts in Docket 217 provide for a fee of 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 to exceed 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 foregoing findings of fact herein, the Commission finds that the attorney fee should be 10% of the final award, or \$410,481.90.

CONCLUSION ON APPORTIONMENT OF FEE

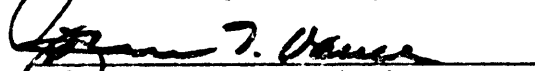
24. For the services rendered in prosecuting these claims, the Commission finds that the gross attorney fee of \$410,481.90 should be apportioned as follows:

To Louis L. Rochmes and Robert S. Johnson, attorneys of record in Dockets 217 and 15-K, respectively, on their own behalf and on behalf of all contract attorneys having an interest in the fee in these cases (Dockets 217 and 15-K), for distribution by the attorneys of record to such attorneys or their representatives in accord with their respective interests\$307,861.42


To Robert C. Bell, Jr., attorney of record in Docket 29-J, on his own behalf and on behalf of all contract attorneys having an interest in the fee in this case (Docket 29-J), for distribution by him to such attorneys or their representatives in accord with their respective interests\$102,620.48

The payment of these sums are in full satisfaction for legal services rendered to the plaintiffs in Dockets 217, 15-K and 29-J.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret A. Pierce, Commissioner


Brantley Blue, Commissioner