

BEFORE THE INDIAN CLAIMS COMMISSION

THE SAC AND FOX TRIBE OF INDIANS)	
OF OKLAHOMA, et al., THE SAC AND)	
FOX OF MISSOURI, et al., and)	
SAC AND FOX OF THE MISSISSIPPI)	
IN IOWA, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 95
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

ORDER ALLOWING ATTORNEYS' FEES

HAVING CONSIDERED the application for attorneys' fees filed on July 31, 1975, by the attorneys of record for the plaintiffs in this docket, the responses to the application filed by the Department of Justice and the Department of the Interior, the contracts of employment under which the attorneys served plaintiffs herein, and the record of all proceedings in this docket, the Commission finds and orders as follows:

1. Fee Application. The fee application was filed on July 31, 1975, by the following attorneys on behalf of their respective law firms in which they are partners:

(a) George B. Pletsch, Attorney of Record for the Sac and Fox Tribe of Indians of Oklahoma, on behalf of the firm of Schiff, Hardin & Waite;

(b) Lawrence C. Mills, Attorney of Record for the Sac and Fox Tribe of the Mississippi in Iowa, on behalf of the firm of Mills and Garrett;

(c) Stanford Clinton, Attorney of Record for the Sac and Fox Tribe of Missouri, on behalf of the firm of Pritzker, Pritzker & Clinton.

2. Attorneys' Contracts. This claim has been prosecuted pursuant to the following contracts:

(a) The Sac and Fox Tribe of Indians of Oklahoma entered into contract No. I-1-ind. 44249, dated October 29, 1949, with the law

firm of Pam, Hurd and Reichman (now Schiff, Hardin & Waite). It was approved on February 13, 1950, for a period of 10 years. A five-year extension of this contract was approved on October 3, 1960. The same parties entered into a contract No. 14-20-0200 No. 1879 on December 12, 1964. This contract approved on February 15, 1965 for 5 years commencing with the date of approval, has been extended several times. The most recent extension was approved on November 17, 1972, until February 14, 1976.

(b) The Sac and Fox Tribe of the Mississippi in Iowa entered into contract No. I-1-Ind. 42274 on March 31, 1950, with the law firm of Dempsey, Mills & Casey (now Mills and Garrett). This contract, approved on August 29, 1950, for a period of 10 years from the date of approval was extended until August 29, 1965. The same parties entered into contract 14-20-0350, No. 278 on March 12, 1965. This contract was approved on July 23, 1965, for 5 years from the date of approval and is currently in effect until April 10, 1977.

(c) The Sac and Fox Tribe of Missouri entered into Contract No. I-1-ind. 42262 on September 3, 1949, with the law firm of Pritzker, Pritzker, & Clinton. This contract, approved on March 8, 1950, for a period of 10 years from the date of approval, was extended until March 8, 1965. The same parties entered into contract 14-20-0200, No. 1922 on April 16, 1965. That contract, approved on May 7, 1965, for a period of 5 years from March 8, 1965, was last extended on January 31, 1974, for a period of 3 years from and after March 8, 1973.

(d) All of the foregoing contracts provide that compensation for services rendered thereunder shall be wholly contingent upon a recovery and that such compensation shall be 10 percent of any such recovery.

3. Final Award. On September 25, 1974, the Commission entered a final award (35 Ind. Cl. Comm. 12) in favor of plaintiffs as follows:

(a) that the plaintiffs do have and recover jointly of and from the defendant the sum of \$20,421.78 which represents the amount of the Commission's interlocutory award to plaintiffs of December 27, 1971 [See 26 Ind. Cl. Comm. 513-14 (1971)];

(b) that plaintiff, Sac and Fox Tribe of Mississippi in Iowa, do have and recover severally of and from the defendant the sum of \$23,083.34 which constitutes the balance standing to the credit of that tribe in Treasury Account No. 14X7085 as of November 30, 1973, less the sum of any payments made from

said account between November 30, 1973, and the date of payment of this award.

Funds to satisfy the award of \$20,421.78 were appropriated by Public Law 94-32 of June 12, 1975.

4. Amount of Fees Requested. The application for attorneys' fees herein states as follows:

(a) The three law firms and their respective attorneys of record in this docket named in finding 1 supra request an order of the Commission allowing them jointly the sum of \$2,042.18, in fees, being 10 percent of the final award in the amount of \$20,421.78 entered by the Commission on September 25, 1974;

(b) The law firm of Mills and Garrett requests an order of the Commission allowing it the sum of \$2,308.33 in fees, being 10 percent of the amount ordered to be paid over to the Sac and Fox Tribe of Mississippi in Iowa from Treasury Account No. 14X7085 in the Commission's final award of September 25, 1974.

5. Notice to Parties and Responses. A notice of the filing of the application for the allowance of attorneys' fees in this docket were mailed on July 31, 1975, by the Clerk of the Commission to the tribal representatives, the Department of Justice, and to the Department of the Interior. No responses have been received to date by the Commission from the plaintiffs.

On September 17, 1975, the Department of Justice filed its opposition to the allowance of any attorneys fees arising out of the Commission's order of September 25, 1974, respecting the final judgment of \$23,083.34 in favor of the plaintiff, Sac and Fox Tribe of Mississippi in Iowa. Included in and made a part of the Department's response is a letter dated August 29, 1975, from the Assistant Solicitor, Division of Indian Affairs, Department of the Interior, and a memorandum of August 28, 1975, from the Commissioner of Indian Affairs, both of which communications oppose any award of attorneys' fees arising out of the judgment of \$23,083.34.

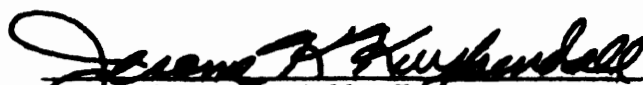
The Department of Justice and the Department of the Interior state, in opposition to this portion of the requested fee, that the funds from which the \$23,083.34 judgment arose were on deposit to the credit of the plaintiff (Sac and Fox of Mississippi in Iowa) before the accounting claim in this docket was filed. The plaintiff gained nothing by that judgment since title to the subject funds, properly credited to and belonging to the plaintiff tribe, was never in dispute. Hence, no money was appropriated by Congress to pay the judgment because none was needed to satisfy it. Since there has been no recovery by the plaintiff, both Departments contend that there can be no award of attorneys' fees. No objections have been made to the fee request arising from the award of \$20,421.78 noted in finding 3(a) supra.

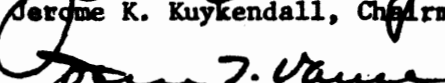
Fee Determination. Pursuant to Section 15 of the Indian Claims Commission Act and in accordance with the terms of the attorneys' contracts under which the claims in this docket were prosecuted, counsel herein are entitled to fees which "shall not exceed 10 per centum of the amount recovered in any case. . ." for all services rendered in prosecuting the claims in question. As noted in finding 3, supra, the amount of recovery in this docket was \$20,421.78.

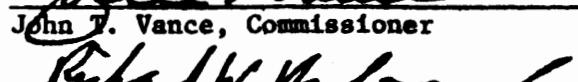
On the basis of the foregoing findings, the entire record herein and considering the contingent nature of the case, the services rendered by counsel, the recovery obtained for the benefit of plaintiffs, and all appropriate factors pertinent to the determination of attorneys' fees, the Commission concludes that the attorneys' fee of \$2,042.18, representing 10 percent of the final award recovered in this case, is a reasonable fee for said legal services.

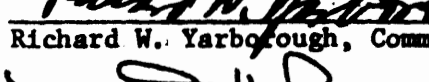
IT IS THEREFORE ORDERED that out of the funds appropriated to pay the final judgment entered herein on September 25, 1974, in favor of plaintiff tribes, there shall be disbursed the sum of \$2,042.18 jointly to the firms of Schiff, Hardin & Waite, Mills and Garrett, and Pritzker, Pritzker & Clinton as payment in full of all claims for legal services in connection with the prosecution of this case, said sum to be distributed by said firms to the participating attorneys in accordance with whatever interest they may have therein.

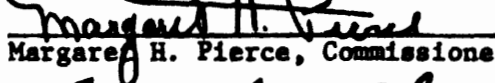
Dated at Washington, D. C., this 6th day of November 6, 1975


 Jerome K. Kuykendall, Chairman


 John T. Vance, Commissioner


 Richard W. Yarborough, Commissioner


 Margaret H. Pierce, Commissioner


 Brantley Blue, Commissioner