

BEFORE THE INDIAN CLAIMS COMMISSION

SHAWNEE TRIBE OF INDIANS OF)	
OKLAHOMA, et al.,)	Docket No. 64
)	
EASTERN SHAWNEE TRIBE OF)	
OKLAHOMA, et al.,)	Docket Nos. 335 and 338
)	
ABSENTEE SHAWNEE TRIBE OF)	
OKLAHOMA, et al.,)	
)	
Plaintiffs,)	
)	
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: March 10, 1978

FINDINGS OF FACT ON ATTORNEYS' FEE

UPON CONSIDERATION of the joint petition for award of attorneys' fee, filed July 18, 1977, by James R. Fitzharris, attorney of record for the Shawnee Tribe of Indians of Oklahoma, et al., plaintiffs in Docket 64, and Jack Joseph, attorney of record for the Eastern Shawnee Tribe of Oklahoma, et al., and the Absentee Shawnee Tribe of Oklahoma, et al., plaintiffs in Dockets 335 and 338, the joint statement accompanying said petition, the substantiation submitted in support of said petition and the record in its entirety, the Commission makes the following findings of fact:

1. Petition. On July 18, 1977, James R. Fitzharris, attorney of record for the Shawnee Tribe of Indians of Oklahoma, plaintiff in Docket

64, and Jack Joseph, attorney of record for the Eastern Shawnee Tribe of Oklahoma and the Absentee Shawnee Tribe of Oklahoma, plaintiffs in Dockets 335 and 338, filed a joint petition pursuant to Section 15 of the Indian Claims Commission Act, 60 Stat. 1049, 1053 (1946), for the award of attorneys' fees, in the amount of \$87,257.34 in Docket 64 and \$87,257.34 in Dockets 335 and 338, or a total of \$174,514.68. The total sum requested represents an amount equal to ten per cent (10%) of the final award of \$1,745,146.86, entered on June 3, 1977, 40 Ind. Cl. Comm. at 173, in the consolidated Dockets 64, 335 and 338. The joint statement accompanying the fee petition set forth the applicable provisions of the various contracts, and assignments and extensions thereof, the nature of the claims against the government, and statements of the services rendered to establish that said attorneys and others involved therewith had contributed equally in rendering valuable legal services in successfully prosecuting said claims and ultimately receiving a final award.

2. Award. On June 3, 1977, the final award entered herein provided as follows:

IT IS THEREFORE ORDERED that Docket Nos. 64 and 335, and the claims of the above-captioned Shawnee plaintiffs in Docket No. 338 be, and the same hereby are, consolidated for the purpose of entry of final judgment, and IT IS FURTHER ORDERED that the Stipulation for Entry of Final Judgment is hereby accepted, and the Joint Motion for Approval of Settlement and for Entry of Final Judgment is hereby granted, and that plaintiffs in Docket 64, the Shawnee Tribe of Indians of Oklahoma, and plaintiffs in Dockets 335 and 338, the Eastern Shawnee Tribe of Oklahoma and the Absentee Shawnee Tribe of Oklahoma shall, in full settlement of all their respective claims under these consolidated dockets, have and recover from the defendant, on behalf of the Shawnee Tribe as it existed in 1795, the sum

of One Million Seven Hundred Forty Five Thousand One Hundred Forty Six Dollars and Eighty Six Cents (\$1,745,146.86), subject to the terms and provisions set forth in the Stipulation for Entry of Final Judgment. */

Funds to pay the said award were appropriated by Public Law No. 95-240 (March 7, 1978).

3. Contracts.

(a) Shawnee Tribe of Indians of Oklahoma. The claim presented in Docket 64 was initiated pursuant to a contract, designated I-1-ind. 42267, between authorized tribal representatives of the Shawnee Tribe of Indians of Oklahoma and Charles B. Rogers, dated January 27, 1950. A fifty percent interest in the contract was assigned on January 31, 1950, by Attorney Rogers to Arthur B. Honnold and thereafter the agreement was approved on April 13, 1950, for a period of ten years beginning with the date of its approval. By an assignment, dated August 10, 1953, and approved May 27, 1955, Attorneys Rogers and Honnold assigned a 60% portion of their interest in the contracts pertaining to Docket 64 to an attorney group consisting of Jay H. Hoag, Rodney J. Edwards, Clarence G. Lindquist, Denis McGinn, James R. Fitzharris and O. R. McGuire.

Contract I-1-ind. 42267 was amended on February 6, 1977, approved March 1, 1977, making it retroactive to April 13, 1960, and extending its term through March 1, 1980.

The following attorneys in Docket 64 who have or did have an interest in the fee are reported deceased: Charles B. Rogers, Arthur B. Honnold, Jay H. Hoag, Clarence H. Lindquist, Denis McGinn and O. R. McGuire.

*/ 40 Ind. Cl. Comm. 161, 173-74.

(b) Eastern Shawnee Tribe of Oklahoma. The Eastern Shawnee Tribe of Oklahoma in Docket 335, were initially represented by Attorneys Henry J. Aaron and Charles Aaron under Contract No. I-1-ind. 42019, dated February 7, 1947. The contract approved May 7, 1948, for a period of ten years beginning with the date of approval, provided, inter alia:

"This contract shall not be effective until an agreement between the parties of the second part and other firms of attorneys (known as Joint Efforts Agreement) becomes effective, and if such agreement has not become effective by October 1, 1948, this agreement shall be void and have no further force and effect.

This contract was voided for the reason that the Joint Efforts Agreement did not become effective by October 1, 1948. Subsequently the concerned parties executed a new Joint Efforts Agreement, its terms requiring it to become effective by December 30, 1948. The Joint Efforts Agreement became effective on December 17, 1948, and on December 24, 1948, the attorney contract of February 7, 1947, was reinstated and approved by the tribal representatives and Aaron, Aaron, Schimberg and Hess (formerly Aaron and Aaron) for a period of ten years beginning December 24, 1948.

By an agreement approved July 6, 1951, the law firm of Aaron, Aaron, Schimberg and Hess conveyed all its rights, title and interest in Contract No. I-1-ind. 42019 to the law firm of Brown, Dashow and Ziedman, which firm subsequently became the law firm of Brown, Dashow and Langeluttig. The contract was subsequently extended for two periods of five years each through December 23, 1963, and then was amended by the parties on

November 30, 1963, to extend the term for a period of ten years from December 24, 1963. The amendment was approved on December 18, 1963.

By an amendment dated November 13, 1969, the contracting law firm became Brown, Dashow, Langeluttig, Arons and Doran and Attorney Jack Joseph became a party to the agreement.

On April 21, 1977, an extension of the contract from December 24, 1973, through December 23, 1978, was approved.

(c) Absentee Shawnee Tribe of Oklahoma. A contract, designated Contract No. I-1-ind. 42278, between the Absentee Shawnee Tribe of Oklahoma for representation of them herein by the law firm of Brown, Dashow and Ziedman was concluded April 25, 1950. The contract was approved September 29, 1950, for a period of ten years beginning with the date of approval. The contract was extended by agreement between the parties for a term of five years from September 29, 1960, approved November 16, 1960. The contract was amended on January 27, 1970, and approved April 13, 1970, to change the firm name of the attorneys to Brown, Langeluttig, Arons and Doran and to add the name of Jack Joseph as a party thereto.

An extension of the contract as amended was approved April 28, 1977, for the period beginning September 27, 1975, to September 27, 1978.

4. Pertinent Contract Provisions. The contracts with the Eastern Shawnee and Absentee Shawnee Tribes (plaintiffs in Dockets 335 and 338) provided the contract attorneys' compensation would be ". . . wholly contingent upon a recovery for the tribe. . ." and amount to ". . . ten per centum (10%) of any and all sums recovered. . ." through the efforts of said attorneys.

The contract with the Shawnee Tribe of Indians of Oklahoma (plaintiff in Docket 64), provided the contract attorneys would receive such compensation as may be found equitable, not exceeding ten per centum of the amount recovered on behalf of the tribal plaintiffs.

5. Requested Fee. The petitioners herein pray for two separate awards each in the amount of \$87,257.34; one to the attorney of record in Docket 64, and the other to the attorney of record in Dockets 335 and 338. The total attorneys' fee requested is \$174,514.68 which is ten per cent (10%) of the total award of \$1,745,146.86.

6. Notices to Parties. On July 21, 1977, copies of the petition for attorneys' fee were forwarded to the tribal representatives of the plaintiff tribes, the Commissioner of Indian Affairs, Department of the Interior, and the Department of Justice requesting comments or information for the Commission's consideration in determining the amount of the attorneys' fee to be allowed. No response has been received from any of the plaintiffs.

7. Defendant's Response. The January 6, 1978, response of the defendant to the notice aforementioned enclosed a copy of a letter dated December 30, 1977, from the Office of the Solicitor of the Department of the Interior and an accompanying memorandum dated December 5, 1977, from the Assistant Secretary for Indian Affairs, and indicated that neither the Department of Interior nor the Department of Justice takes any position as to the attorneys' fees requested in the application.

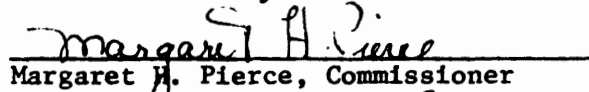
8. Conclusion. The attorneys for the plaintiffs in Dockets 64, 335 and 338 undertook serious responsibilities and complex litigation pursuant to agreement wherein, in all the above cases, the payment of compensation was contingent upon recovery. Considering the responsibilities assumed, the difficult problems of fact and law herein presented and resolved, the time and work involved in litigating the issues, the award obtained, and all appropriate factors pertinent to the determination of attorneys' fees under the standards established by the Indian Claims Commission Act, the Commission concludes the claims attorneys have rendered valuable legal services in prosecuting their clients' claims and ultimately obtaining a judgment. Pursuant to the contracts in force between the attorneys and the Indian plaintiffs and said standards, the attorneys herein have earned a gross fee of \$174,514.68 representing ten per cent of the award to the plaintiffs. In accordance with the petition filed by the attorneys of record, the Commission finds the attorneys' fee herein awarded for services rendered should be apportioned (1) one-half, or the sum of \$87,257.34, to James R. Fitzharris, on his own behalf and on behalf of all contract attorneys having or claiming an interest in the attorneys' fee in Docket 64, for distribution by him to such attorneys or their representatives in accord with their respective interests, and (2) one-half, or the sum of \$87,257.34, to Jack Joseph, on his own behalf and on behalf of all contract attorneys or legal firms having or claiming an interest in the attorneys' fee in Dockets 335 and 338, for distribution by him to such attorneys and legal firms in accord with their respective interests. Payment of these sums are in

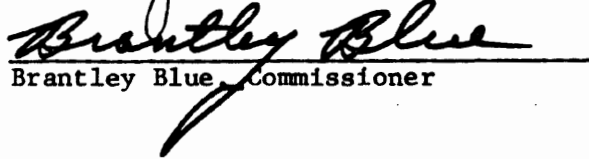
full and complete satisfaction of any and all claims for legal services rendered to the plaintiffs in Dockets 64, 335 and 338.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner