

## BEFORE THE INDIAN CLAIMS COMMISSION

THE DELAWARE TRIBE OF INDIANS,	)	Docket No. 27-B
	)	
ABSENTEE DELAWARE TRIBE OF	)	
OKLAHOMA,	)	Docket No. 338
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: March 30, 1978

FINDINGS OF FACT AND ORDER ALLOWING ATTORNEY FEES

UPON CONSIDERATION of the petition for award of attorney fees, filed January 9, 1978, by Jack Joseph, attorney of record for the Delaware Tribe of Indians, plaintiffs in Docket 27-B, and for the Absentee Delaware Tribe of Oklahoma, plaintiffs in Docket 338, 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 January 9, 1978, Jack Joseph, attorney of record for the Delaware Tribe of Oklahoma, plaintiffs in Docket 27-B, and for the Absentee Delaware Tribe of Oklahoma, plaintiffs in Docket 338, filed a petition pursuant to Section 15 of the Indian Claims Commission Act, 60 Stat. 1049, 1053 (1946), for the award of attorney fees, in the amount of \$119,976.32. The sum requested represents an amount equal to ten percent (10%) of the final award of \$1,199,763.20, entered on

December 16, 1977, 41 Ind. Cl. Comm. at 158, in the consolidated Dockets 27-B and 338.

2. Award. On December 16, 1977, the final award entered herein provided as follows:

IT IS THEREFORE ORDERED that Docket 27-B, and the claims of the Delaware plaintiffs in Docket 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 the plaintiffs in Docket 27-B, the Delaware Tribe of Indians, and the Delaware plaintiffs in Docket 338, the Absentee Delaware 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 Delaware Tribe as it existed in 1795, the sum of one million one hundred ninety nine thousand seven hundred sixty three dollars and twenty cents (\$1,199,763.20), subject to the terms and provisions set forth in the stipulation for entry of final judgment. \*/

Title II of Public Law No. 95-240 (March 7, 1978) constitutes the statutory authority for payment of this award.

3. Contracts.

(a) The Delaware Tribe of Indians. The claim presented in Docket 27-B was initiated pursuant to a contract, designated I-1-ind. 18359, between the Delaware Business Committee, acting on behalf of the Delaware Tribe of Indians, and Wesley E. Disney and Charles B. Rogers, attorneys. This contract was dated November 30, 1946, and had a

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\*/ 41 Ind. Cl. Comm. 147, at 158-59.

specified initial term of 10 years from the date of approval by the Secretary of the Interior. The contract was approved by the Department of the Interior, after amendment dated February 18, 1947, on October 14, 1947.

On September 1, 1955, Wesley E. Disney and the Executrix of the Estate of Charles B. Rogers transferred full responsibility for the prosecution of Docket 27-B to the law firm of Pritzker, Pritzker, & Clinton. Attorney fees resulting from any awards in Docket 27-B (as well as in Docket 338) were to be shared in the proportion of 35 percent payable to Disney and the Estate of Charles B. Rogers, and 65 percent payable to the law firm of Pritzker, Pritzker & Clinton. This agreement was approved by the Commissioner of Indian Affairs on November 8, 1955.

Subsequent to the expiration of contract I-1-ind. 18359, a second contract, 14-20-0650-1216, was entered into by the Delaware Tribal Business Committee with the law firm of Pritzker, Pritzker & Clinton on March 13, 1962. After amendment agreed to by both parties, the Commissioner of Indian Affairs approved the contract on June 26, 1963. The contract was to be effective for 10 years from the date of approval by the Commissioner of Indian Affairs, with the option of a five year extension beyond that period.

On January 5, 1968, the association of Louis L. Rochmes with Pritzker, Pritzker & Clinton was approved by the Commissioner of Indian

Affairs. On February 7, 1973, approval was given to a five year extension of the 1963 contract, and to the employment of Jack Joseph as associate counsel.

(b) Absentee Delaware Tribe of Oklahoma. The claim presented in Docket 338 was initiated pursuant to a contract designated I-1-ind. 42264 between authorized tribal representatives of the Delaware Tribe of Indians, also known as the Absentee Delaware Tribe of Oklahoma, and the law firm of Pritzker, Pritzker & Clinton, dated November 30, 1949. The contract was for 10 years with a possible extension of another five years and was approved by the Bureau of Indian Affairs on March 17, 1950. On September 1, 1955, Wesley E. Disney and the Executrix of the Estate of Charles B. Rogers, and Pritzker, Pritzker & Clinton agreed to divide all the attorney awards in Docket 338, 35 percent to Disney and the Rogers Estate and 65 percent to Pritzker, Pritzker & Clinton.

In 1960 the five year extension of the contract was approved and on September 16, 1963, the association of Louis L. Rochmes in the prosecution of the suit was approved.

The parties entered into another contract, effective March 16, 1965, designated 14-20-0200-2047. This agreement was to be effective for five years, with optional renewal periods of three years. This contract was approved by the Bureau of Indian Affairs on January 19, 1966. The contract was extended for three years beginning March 16, 1970, and five years from March 16, 1973. On May 3, 1973, approval was given to the association of the firm of Joseph and Friedman as additional claims attorneys.

4. Pertinent Contract Provisions. The final contractual agreement between the Delaware Tribe of Indians and the law firm of Pritzker, Pritzker & Clinton, contract 14-20-0650-1216, provided that "as compensation . . . the attorneys are to receive 10 percent of any and all sums recovered or procured through their efforts. . . ."

The initial contract between the Absentee Delaware Tribe of Oklahoma, I-1-ind. 42264, called for attorney fees of 10 percent of all sums recovered. The final agreement signed, contract 14-20-0200-2047, incorporated that provision.

5. Requested Fee. The petitioner prays for an award of \$119,976.32, or 10 percent of the total award to the plaintiff tribes in Dockets 27-B and 338.

6. Notice to Parties. On January 16, 1978, copies of the petition for attorney fees were forwarded to the tribal representatives of the plaintiff tribes, the Assistant Secretary of the Interior for Indian Affairs, and the Acting Assistant Attorney General of the Land and Natural Resources Division of the Department of Justice, and their comments were solicited.

7. Plaintiffs' Response. No response has been received from any of the plaintiffs.

8. Defendant's Response. On March 13, 1978, the Department of Justice responded to the Commission's request for comments in a letter

which also included a copy of a letter from the Department of the Interior to the Department of Justice. The Department of Justice indicated that it takes no position as to the attorney fees requested. The Department of the Interior indicated it had no objection to the allowance of the attorney fees requested.

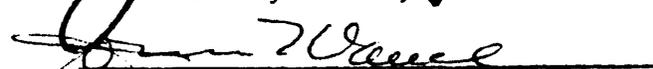
9. Award to Attorneys. The attorneys for the plaintiffs in Dockets 27-B and 338 undertook serious responsibilities and complex litigation pursuant to agreement wherein, in all the above cases, the payment of compensation was contingent upon recovery. Considering the responsibilities assumed, the difficult 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 attorney 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 \$119,976.32 representing 10 percent of the award to the plaintiffs. Payment of these sums are in full and complete satisfaction of any and all claims for legal services rendered to the plaintiffs in Dockets 27-B and 338.

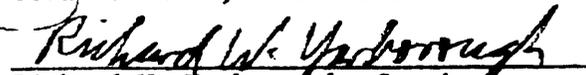
10. Distribution of Attorney Fees. Under an existing agreement, Jack Joseph, attorney of record, is to distribute attorney fees,

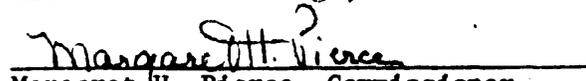
35 percent to Wesley E. Disney (now deceased) and to the Estate of Charles B. Rogers, and 65 percent to the law firm of Pritzker, Pritzker & Clinton.

IT IS THEREFORE ORDERED that out of the funds appropriated to pay the final award of December 16, 1977, in these dockets, there shall be distributed to Jack Joseph, as attorney of record, the sum of \$119,976.32 for distribution by him to all persons entitled to share in the fee. This sum shall be payment in full for all legal services rendered in the prosecution of these claims.

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarborough, Commissioner

  
Margaret H. Pierce, Commissioner

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Brantley Blue, Commissioner