

BEFORE THE INDIAN CLAIMS COMMISSION

THE SEMINOLE INDIANS OF THE)	
STATE OF FLORIDA, and THE)	
SEMINOLE NATION OF OKLAHOMA,)	
)	
Plaintiffs,)	
)	
v.)	Docket Nos. 73 and 151
)	(Consolidated)
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

FINDINGS OF FACT AND ORDER ALLOWING ATTORNEYS' EXPENSES

Having considered the entire record of litigation in this case and the petition for allowance of reimbursable expenses dated December 17, 1976, as amended on February 14, 1977, filed herein by Roy L. Struble and Charles Bragman, attorneys for the Seminole Indians of the State of Florida, together with supporting schedules, vouchers, and other documentation, and the contracts under which these cases were prosecuted, the Commission finds as follows:

1. Award. On April 27, 1976, the Commission entered a final award in the amount of \$16,000,000.00 in favor of the plaintiffs. 38 Ind. Cl. Comm. 62, 91. This final award was entered upon the joint motion of the parties for entry of final judgment under these consolidated dockets, pursuant to a stipulation between the parties for entry of final judgment. Funds to pay this award have been appropriated by the Congress pursuant to Public Law 94-303, dated June 1, 1976.

2. Contractual Authority Regarding Litigation Expenses. By its order dated November 19, 1976, allowing attorneys' fees in these dockets, the Commission entered findings of fact covering in detail the attorneys' contracts under which these cases were prosecuted. 39 Ind. Cl. Comm. 167, 172. These findings are hereby incorporated by reference. With regard to the terms of the said contracts regarding litigation expenses, Contract No. K51C14200921, currently in full force and effect between the Seminole Indians of the State of Florida and the petitioning attorneys herein, provided that:

The attorneys shall also be allowed and reimbursed from the amount of any judgment received such actual expenses incurred by them as may be fixed by the court, or tribunal or, if the matter be settled without submission to a court or tribunal, then by the Secretary of the Interior or his authorized representative, or such amounts as may be agreed upon.

3. The Expense Application as Amended. The attorneys, in their original petition of December 17, 1976, requested the Commission to enter an order allowing reimbursement to them of litigation expenses in the total amount of \$41,409.05. On February 14, 1977, attorney Roy L. Struble filed an amended petition whereby expenses totalling \$4,676.84^{1/} were withdrawn from consideration. According to the supporting vouchers, said expenses were properly incurred in the prosecution of Docket 73-A and will

^{1/} The amended petition listed expenses totalling \$4,671.84. However, the correct figure is \$4,676.84, the difference resulting from an error in carrying over item 25(a), p. 18, of Exhibit "A".

be considered with the petition for reimbursement of expenses filed in Docket 73-A and now pending before the Commission.

By memoranda dated August 23, 1978, from the Deputy Assistant Secretary, Indian Affairs, Department of the Interior, forwarded to the Commission by the Department of Justice on September 13, 1978, and hereby made part of this record, the Commission was advised that on July 28, 1978, attorney Roy L. Struble, in conference with the Department of the Interior, withdrew from the petition herein certain travel expenses totaling \$1,888.92, as calculated by the Commission.

On the basis of the foregoing amended petition and withdrawals, the Commission finds that the net amount of the expenses for which counsel herein request reimbursement totals \$34,843.29, itemized as follows:

Roy L. Struble:	\$30,985.97
Charles Bragman:	1,087.32
Dr. John H. Mahon:	270.00
Estate of Dr. John M. Goggin:	<u>2,500.00</u>
Totals	\$34,843.29

4. Attorneys' Claim for Interest. In addition to the above claims for reimbursable expenses actually disbursed, counsel request the payment of interest expenses incurred on amounts borrowed for expenses advanced in these cases at the rate of 7 3/4 percent on the total expenditures claimed from the year incurred to the date of payment and calculated annually from 1960 to 1976 inclusive. The Commission finds that there are no provisions in the contracts between counsel and plaintiffs herein,

nor in our act allowing the payment of interest expenses advanced for the prosecution of these claims. See, Pillager Bands of Chippewa Indians v. United States, Docket No. 144, 40 Ind. Cl. Comm. 249, 252 (1977).

Accordingly, we find that the claim for allowance of interest in this case should be denied.

5. Notice to the Parties. Pursuant to the rules of the Commission notices of the filing of the expense petition as amended were mailed by the Clerk of the Commission on December 17, 1976, and on February 14, 1977, to the Department of Justice, the Department of the Interior, and to the tribal representatives in Oklahoma and in Florida.

6. Response of Parties. On May 10, 1977, a reply was recieved from Mr. Bill Osceola, Vice-Chairman, Seminole Tribal Council (Florida). Mr. Osceola stated that the Tribal Council had no objections to the reimbursement of all expenses claimed by counsel in their amended petition.

The Department of Justice responded by letter dated September 13, 1978, incorporating therein a letter of August 31, 1978, from the Acting Associate Solicitor, Division of Indian Affairs (Interior), and a memorandum dated August 23, 1978, from the Assistant Secretary, Indian Affairs, Department of the Interior. The Department of Justice takes no position on the attorney expenses claimed. The memorandum from the Assistant Secretary, Indian Affairs states that the expenses claimed appear to be reasonable and fall into categories usually considered proper for reimbursement except for certain expense items totalling \$458.33 discussed below.

7. Department of Interior Adjustments. As noted in finding 6, supra, the Department of Interior found certain items in the total amount of \$458.33 improper for reimbursement. These items are as follows:

(a) Personal Expenses:	\$ 25.36
(b) Normal Office Expenses:	154.09
(c) Unreasonable Printing Costs:	77.00
(d) Non-Relevant Publications:	51.00
(e) Docket 73-A Expenses (erroneously charged to this claim):	146.88
(f) Overcharge:	4.00

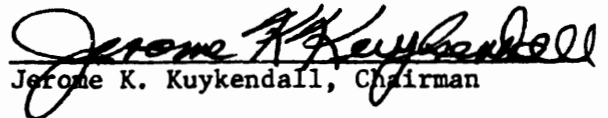
On the basis of an examination of the entire record with particular reference to the foregoing items, the Commission finds that with regard to item (e) above, the purchase of publications relating to Spanish land grants at a cost of \$50.00 is a proper litigation expense in this case and should be allowed, and in the matter of excessive printing costs (item (c)), that 50 percent or \$38.50 of the claimed amount is reasonable and should be allowed. The remaining items in the total amount of \$369.83 are disallowed in this case. With regard to item (e) above, these items in the total amount of \$146.88 are properly chargeable to Docket 73-A and will be considered in connection with the petition for reimbursement of expenses filed in that docket.

8. Determination of Reimbursable Expenses. Pursuant to Section 15 of the Indian Claims Commission Act, 25 U.S.C.A. 70n., and Rule 34(b) of the Commission's Rules of Procedure (25 C.F.R. §503.34(b), as amended, 39 Fed. Reg. 41173 (1974), the Commission's Policy Statement §102 issued July 15, 1968, the findings of fact entered herein, the employment

contracts between the parties, and the entire record of expenses incurred in the prosecution of this case, the Commission concludes that the items claimed in the amount of \$34,473.46, (\$34,843.29 - \$369.83), are reasonable and proper for reimbursement.

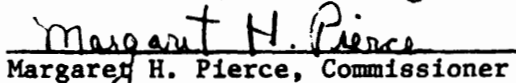
IT IS THEREFORE ORDERED that out of the funds appropriated to pay the award in this docket there shall be disbursed to Roy L. Struble and Charles Bragman, contract attorneys for the Seminole Indians of the State of Florida, the total sum of \$34,473.46, as reimbursement in full for expenses incurred by them in these consolidated dockets, said sum to be distributed by said attorneys to all parties having an interest in this application.

Dated at Washington, D. C., this 22nd day of September 1978.


Jerome K. Kuykendall, Chairman

John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner