

BEFORE THE INDIAN CLAIMS COMMISSION

THE DELAWARE TRIBE OF INDIANS,)	Docket No. 27-E
)	
Plaintiffs,)	
)	
ABSENTEE DELAWARE TRIBE OF)	
OKLAHOMA, DELAWARE NATION,)	
ex red., W. E. Exendine and)	
Myrtle Holder,)	Docket No. 202
)	
Plaintiffs,)	
)	
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: September 29, 1978

FINDINGS OF FACT AND ORDER ALLOWING ATTORNEYS' FEES

UPON CONSIDERATION of the application for attorneys' fees filed on August 28, 1978, by Jack Joseph, attorney of record herein; the responses thereto by the Department of Justice and the Department of the Interior, the attorney contracts under which the plaintiffs were represented; and the entire record in this docket, the Commission finds as follows:

1. Application for Attorneys' Fees. The application for attorneys' fees was filed on August 28, 1978, by Jack Joseph, attorney of record for the Delaware Tribe of Indians, plaintiffs in Docket No. 27-E, and the Absentee Delaware Tribe of Oklahoma, Delaware Nation, et al., plaintiffs in Docket 202. The application is made for an award in the amount of \$56,142.42 for services rendered in these consolidated dockets. The amount requested represents 10 percent of the final award entered by the Commission herein.

2. Final Award. On August 17, 1978, the Commission entered a final award in this case in the amount of \$561,424.21 in favor of the plaintiffs. 42 Ind. Cl. Comm. 348. Funds to satisfy this award are to be made available pursuant to the Act of March 7, 1978, 92 Stat. 107.

3. Attorneys' Contracts - The Delaware Tribe of Indians. The claim presented in Docket 27-E 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 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 this docket to the law firm of Pritzker, Pritzker and Clinton. Attorney fees resulting from any awards in this docket 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 and 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 and 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 and 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. This contract was extended on January 26, 1978, for five years from February 15, 1978.

4. Attorneys' Contracts - Absentee Delaware Tribe of Oklahoma, et al.

The claim presented in Docket 202 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 and 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 and Clinton agreed to divide all the attorney awards in this docket, 35 percent to Disney and the Rogers Estate and 65 percent to Pritzker, Pritzker and 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. An extension of this contract for an additional three years to March 16, 1981, was approved on August 10, 1978.

5. Contractual Provisions for Compensation. Attorneys' contracts currently in effect and described above provide that compensation to the attorneys for services rendered is wholly contingent upon recovery for plaintiffs, and the attorneys' fees shall be 10 percent of any and all sums recovered for the plaintiffs.

6. Notice to Parties. The Clerk of the Commission sent notice of the filing of the fee application to both plaintiff tribes, the Department of Justice, the Department of the Interior, and Jack Joseph, the attorney of record herein. No response has been received from the plaintiff tribes.

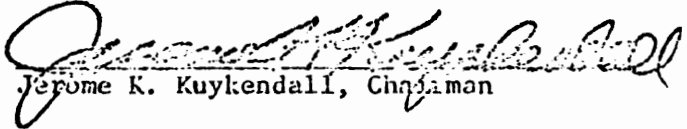
On September 25, 1978, the Department of Justice, taking no position with respect to allowance of attorneys' fees in this case, forwarded to the Commission a letter dated September 20, 1978, from the Associate Solicitor, Division of Indian Affairs, Department of the Interior, and a memorandum dated September 18, 1978, from the Deputy Assistant Secretary, Indian Affairs, Department of the Interior. The report of

the Deputy Assistant Secretary, in which the Solicitor concurred, concluded that the amount claimed as attorneys' fees is in accord with the terms of the contracts, and that the Department of the Interior had no objection to the allowance of attorneys' fees in the sum of \$56,142.42.

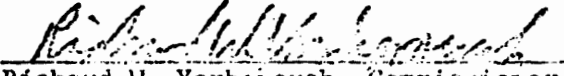
7. Attorneys' Services. The attorneys for the plaintiffs in both dockets undertook serious responsibilities and engaged in complex litigation pursuant to the agreements between them and their Indian clients. Considering the responsibilities assumed, the difficult problems of fact and law encountered, the time and work involved in successfully litigating the issues of liability and value, the award obtained, the contingent nature of the compensation agreed upon, and all appropriate factors pertinent to the determination of attorneys' fees under Section 15 of the Indian Claims Commission Act, 60 Stat. 1049, and standards established pursuant thereto, the Commission finds that the attorneys rendered valuable legal services entitling them to the attorneys' fees applied for.

8. Conclusion. On the basis of the entire record in this consolidated docket, section 15 of the act, the above stated standards, and the contracts currently in force between the attorney and the plaintiff tribes, the Commission concludes that the attorneys herein have earned a gross fee of \$56,142.42, representing 10 percent of the award to the plaintiffs.

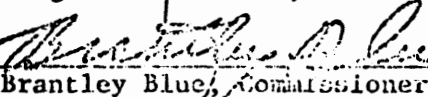
IT IS THEREFORE ORDERED that there shall be awarded to Jack Joseph the amount of \$56,142.42 for distribution by him to all participating attorneys, and other persons entitled to share in the fee. This sum shall represent payment in full of all claims for legal services in this docket.


Jerome K. Kuykendall, Chairman

John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner