

BEFORE THE INDIAN CLAIMS COMMISSION

ABSENTEE DELAWARE TRIBE OF OKLAHOMA, )  
 )  
 Petitioner, )  
 )  
 v. ) Docket No. 337  
 )  
 THE UNITED STATES OF AMERICA, )  
 )  
 Defendant. )

Decided: Mar. 18 1965

FINDINGS OF FACT RE: ATTORNEY FEES

1. On August 5, 1963, the Commission entered a final judgment in this docket in which it awarded the sum of \$1,627,244.64 to the Absentee Delaware Tribe of Oklahoma for and on behalf of the Delaware Nation as constituted at the time of the Treaty of October 3, 1818 (7 Stat. 188). The Absentee Delaware Tribe of Oklahoma appealed from the above award of the Commission to the Court of Claims. However, by leave of court and with the approval of the tribe and the Commissioner of Indian Affairs, said appeal was subsequently withdrawn. The judgment entered herein on August 5, 1963, is now final in all respects.

2. On August 10, 1964, the law firm of Pritzker, Pritzker, and Clinton, by Stanford A. Clinton, a partner, filed before the Commission an "Application For Allowance Of Attorneys Fees", in which said firm, hereinafter referred to as the petitioner, asks this Commission to award to it pursuant to the present attorney contract entered into between the petitioner and the Absentee Delaware Tribe of Oklahoma, a full 10 percent (10%) of the final award entered herein or the sum of \$162,724.46.

3. The claims attorney contract referred to in the petitioner's application is Contract I-1-ind. No. 42264, entered into on November 30, 1949, between the Delaware Tribe of Indians (Lemi Lenape) and Pritzker, Pritzker, and Clinton.

For services rendered under this contract in prosecuting the claims of the Delaware Tribe of Indians (also known as the Absentee Delaware Tribe of Oklahoma) against the United States, it was agreed that any compensation to be paid to the attorneys "is wholly contingent upon a recovery for this tribe" and that,

"\*\*\* The parties of the second part shall receive as such compensation ten per centum (10%) of any and all sums recovered or procured, through efforts, in whole or in part, for the said Indians, whether by award of the Indian Claims Commission, suit, action of any department of the Government or of the Congress of the United States, or otherwise, plus reasonable expenses incurred in the prosecution of the claims:  
\*\*\*"

It was further agreed that the contract should continue for a period of ten years from the date of its approval by the Commissioner of Indian Affairs, with further provision that upon expiration thereof it could be extended if necessary by the Commissioner of Indian Affairs for an additional five year period.

4. The foregoing claims attorney contract was approved on March 17, 1950, by Assistant Commissioner William Zimmerman, Jr., and on September 27, 1960, a five year extension to March 16, 1965, of said contract with an amendment relative to reimbursement of expenses was approved by the Deputy Solicitor, Edmund T. Fritz, Department of the Interior.

5. On October 14, 1947, the Commissioner of Indian Affairs, William Zimmerman, Jr., approved a ten year attorney claims contract, as amended, dated November 30, 1946, between the Delaware Tribe of Indians of Oklahoma (Muskogee Area Office) and attorneys Wesley E. Disney and Charles B. Rogers. The contract is identified as Contract No. I-1-ind. 18359. As compensation for said attorneys the contract, as amended, provided as follows:

"In consideration of the services to be rendered under the terms of this contract the party of the second part shall receive such compensation as the Secretary of the Interior may find equitably to be due, if the matter be settled without submission to a court or tribunal, or in the event it is submitted to said court or tribunal, then such sum as may be determined by said court or tribunal equitably to be due for the services theretofore rendered under this contract, but in no event shall the aggregate fee exceed ten per centum of any and all sums recovered or procured, through efforts, in whole or in part, for the said Indians, whether by suit, action of any department of the Government, or of the Congress of the United States, or otherwise."

The Delaware Tribe of Indians of Oklahoma under the Bureau's Muskogee Area Office is a separate and distinct group of Delaware Indians from the Absentee Delaware Tribe of Oklahoma under the Bureau's Anadarko Area Office, the latter group being the contracting party to Contract No. I-1-ind. 42264.

6. On November 8, 1955, the Commissioner of Indian Affairs, Glenn L. Emmons, approved the following agreement between Wesley E. Disney, representing the Delaware Tribe of Indians, and the Executrix of the Estate of Charles B. Rogers, deceased, parties of the first part, and the law firm of Pritzker, Pritzker and Clinton representing the Absentee Delaware Tribe of Indians, parties of the second part:

"AGREEMENT"

Whereas the Delaware Tribe of Indians has filed certain claims before the Indian Claims Commission, set forth hereinafter in Schedule A, and the Absentee Delaware Tribe of Indians has filed certain claims before the Indian Claims Commission, set forth hereinafter in Schedule B, all of which claims have been brought on behalf of the Delaware Nation, and

Whereas the Indian Claims Commission has decided one of said claims and, insofar as the right to prosecute the same is concerned, held and adjudged that each of said claimants was and is equally entitled to prosecute the same, and that "said causes of action must be consolidated and any recovery for such injury must be for the benefit of all descendants of the Delaware Nation as constituted in 1829 and 1854", and

Whereas the Court of Claims has affirmed such determination of the Indian Claims Commission, and no appeal having been taken from such decision, the issue as to the respective rights of said claimants to prosecute the several claims set out in said Schedules A and B, has been finally determined, and

Whereas in the further prosecution of said claims, or any of them, the best interest of said parties will be advanced and better protected by a unified presentation thereof, it is hereby

AGREED

Between Wesley E. Disney, Esq., representing the Delaware Tribe of Indians, and the Executrix of the Estate of Charles B. Rogers, deceased (hereinafter referred to as the parties of the first part), and Pritzker, Pritzker & Clinton, representing the Absentee Delaware Tribe of Indians (hereinafter referred to as the parties of the second part):

I.

The parties of the second part assume full responsibility for the preparation and prosecution of the cases listed in Schedules A and B through all trial and appellate stages, Provided that if, contrary to present expectation, a conflict should arise between the interests of the Absentee Delaware Tribe and those of the Delaware Tribe, the parties of the second part shall call upon Wesley E. Disney, Esq. to represent the interests of the latter tribe and said Wesley E. Disney, Esq. shall then discharge that responsibility, and Provided, further that said Wesley E. Disney, Esq. shall have the right to appear at any time in any of the aforementioned cases and introduce such evidence and make such argument on behalf of the Delaware Tribe as he may deem proper.

## II.

The parties of the second part shall assume the cost of the preparation and prosecution of the aforementioned cases to the extent to which such preparation and prosecution take place under their responsibility.

## III.

Wesley E. Disney, Esq. agrees to make available to the parties of the second part the results of his research of the cases and the parties agree to consult with each other fully as to the manner in which the cases are to be presented.

## IV.

In case an award is made, all items of expenditure in connection with travel not reimbursed out of the judgment shall be reimbursed out of the total fee allowed in the cases before division of that fee under the formula provided by this agreement.

## V.

Attorney fees resulting from any awards in the aforementioned cases shall be shared by the attorneys in the proportion of 35% payable to the parties of the first part and 65% payable to the parties of the second part, payable in separate checks by the Treasurer of the United States.

## VI.

This agreement shall in no way affect the interests of the Delaware Tribe of Indians and the Absentee Delaware Tribe of Indians.

## VII.

This agreement shall not take effect until approved by the Commissioner of Indian Affairs.

Date <u>Aug 23, 1955</u>	<u>Wesley E. Disney</u> Wesley E. Disney
Date <u>Aug 27, 1955</u>	<u>Ida J. Rogers</u> Executrix of the Estate of Charles B. Rogers
Date <u>Sept 1, 1955</u>	<u>Pritzker, Pritzker and Clinton</u> By <u>Stanford Clinton</u> Pritzker, Pritzker & Clinton

SCHEDULE A

Indian Claims Commission  
Docket No.

Docket No. 298	)	
27-A	)	THE DELAWARE TRIBE OF INDIANS
27-B	)	
27-C	)	v.
27-D	)	
27-E	)	THE UNITED STATES OF AMERICA

SCHEDULE B

Indian Claims Commission  
Docket No.

Docket No. 72	)	ABSENTEE DELAWARE TRIBE OF OKLAHOMA,
202	)	DELAWARE NATION Ex. Rel., W.E.
241	)	EXENDINE AND MYRTLE HOLDER
337	)	v.
		THE UNITED STATES OF AMERICA
Docket No. 289	)	THE PEORIA TRIBE OF OKLAHOMA, etc. and
		THE ABSENTEE DELAWARE TRIBE, etc.
		v.
		THE UNITED STATES OF AMERICA
Docket No. 338		ABSENTEE DELAWARE TRIBE OF OKLAHOMA, etc.
		(Greenville Treaty)
		v.
		THE UNITED STATES OF AMERICA

"DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS

WASHINGTON 25, D. C.      NOV 8 1955

The foregoing agreement between Wesley E. Disney and the law firm of Pritzker, Pritzker & Clinton providing for the prosecution and division of fees in the Delaware cases pending before the Indian Claims Commission is hereby approved under authority delegated to me by Secretarial Order No. 2508, dated January 11, 1949 (14 Fed. Reg. 258, 260), pursuant to Section 2106 of the United States Revised Statutes (Section 84, Title 25 U. S. C.). The approval of this agreement does not affect the interest of any attorney or law firm having a contract of employment with any tribe other than the Delaware, whose claims may be incorporated in one of the petitions or dockets with the Delaware claims.

Glenn L. Emmons  
Commissioner"

The agreement called for a unified presentation of all the Indian claims pending before the Indian Claims Commission by the two Delaware Indian groups for and on behalf of the Delaware Nation and a division of both the responsibility of prosecuting the several Delaware claims as well as the legal fees that may be realized upon a successful prosecution thereof. The full responsibility for the preparation and prosecution of all the Delaware claims before the Indian Claims Commission, including necessary costs consistent with said responsibility, was assumed by the law firm of Pritzker, Pritzker, and Clinton as set forth in Articles I and II of the agreement.

Under Article V of the agreement it was agreed that any attorney fees resulting from any of the cases in Schedules A and B would be divided 35% to the parties of the first part, Wesley E. Disney and the Executrix of the Estate of Charles B. Rogers, and 65% to the parties of the second part, Pritzker, Pritzker and Clinton.

The following docket numbers were embodied in the above agreement as set forth in Schedules A and B which were made a part thereof: Docket Nos. 298, 27-A, 27-B, 27-C, 27-D, 27-E, 72, 202, 241, 337, 289, and 338.

Mrs. Ida J. Rogers had been duly appointed Executrix of the Estate of Charles B. Rogers by the County Court of Tulsa, Oklahoma, on January 27, 1955, and is now acting as such Executrix.

7. Mr. Wesley E. Disney's attorney claims contract with the Delaware Tribe of Indians (Contract No. I-1-ind. 18359) terminated in 1957, and had not been renewed at the time of Mr. Disney's death in March of 1961. Ralph W. Disney was appointed Executor of the Estate of Wesley E. Disney on November 7, 1961, by the County Court of Tulsa, Oklahoma, and is now acting as such Executor.

8. On February 15, 1963, the Associate Commissioner of Indian Affairs conditionally approved a contract entered into on March 13, 1962, between the Delaware Tribe of Indians of Oklahoma (under the Bureau's Muskogee Area Office), and the law firm of Pritzker, Pritzker, and Clinton. The conditions were accepted by the Delaware Tribe on March 4, and June 13, 1963, and by Pritzker, Pritzker, and Clinton on February 22 and April 22, 1963. Said contract, identified as Contract Symbol 14-20-0650 No. 1216, provides for a term of ten years from the date of approval. The contract contains the following with respect to attorney's compensation:

"As compensation for the services to be rendered under the terms of the contract the Attorneys are to receive ten percent of any and all sums recovered or procured through their efforts in whole or in part for the Tribe, whether by award of the Indian Claims Commission, suit, action of any department of the Government or of the Congress of the United States, or otherwise, Provided, however, that compensation which may be allowed to the estate of Wesley E. Disney, deceased, and the estate of Charles B. Rogers, deceased, or either of them, for services heretofore rendered by Wesley E. Disney and Charles B. Rogers in connection with the prosecution of the pending claims of the Tribe shall be payable out of the said ten percent, it being the intention of the parties that the total fees allowed shall not exceed ten percent of the total recoveries."

9. On September 26, 1963, the Area Director, Anadarko Area Office, Anadarko, Oklahoma, approved the request of Pritzker, Pritzker, and Clinton, contract attorneys for the Absentee Delaware Tribe of Oklahoma under Contract No. I-1-ind. 42264, to associate Louis L. Rochmes, Esq., with the said contract attorneys in prosecuting the claims of the Absentee Delaware Tribe of Oklahoma before the Indian Claims Commission.

10. By letter of November 12, 1964, Assistant Attorney General, Ramsey Clark advised the Commission that the defendant had no objection to the application for allowance of attorney's fees filed by Pritzker,



Pritzker, and Clinton on August 10, 1964. Enclosed was a copy of the letter of November 2, 1964, from the Solicitor of the Department of the Interior to the Assistant Attorney General as well as a copy of a memorandum from the Commissioner of Indian Affairs dated October 12, 1964, in which it was stated that the Department had no objection to an allowance of the ten per centum fee requested in the subject case pursuant to the provisions of claims attorney contracts.

11. On November 6, 1964, the petitioner advised the Commission that it was challenging the validity of the 1955 attorneys agreement in a declaratory judgment action that had been initiated on October 14, 1964, by the representatives of the Estates of Wesley E. Disney and Charles B. Rogers in the United States District Court for the Northern District of Illinois, Eastern Division, as case No. 64C 1747.

12. From the foregoing findings of fact the Commission finds and concludes that, in conformity with the terms and conditions of the approved claims attorney contract with the Absentee Delaware Tribe of Oklahoma, the attorney fees to be awarded in this docket have been fixed at ten percentum (10%) of the amount of the final award previously entered herein, or the sum of \$162,724.46, and that, in view of the valuable legal services that have been rendered the Absentee Delaware Tribe of Indians in the successful presentation and prosecution of its claims in this case for and on behalf of the Delaware Nation of Indians, the Commission hereby approves the allowance of said fees in the full amount as set forth above.

The Commission also finds that the petition for the allowance of attorney fees in this case indirectly challenges the application and validity of that provision of the 1955 attorneys agreement between the

petitioner law firm and the late Wesley E. Disney and the Estate of Charles B. Rogers governing the apportionment of attorney fees resulting from any final awards that may be realized in any and all the cases filed before this Commission for and on behalf of the Delaware Nation of Indians. In view of this situation, the Commission concludes that all the interested parties should be afforded the opportunity to be heard on this matter before the Commission makes any ruling on the current status of the 1955 attorneys agreement. Since even under the 1955 attorneys agreement the petitioner law firm is unequivocally entitled to 65% of the total amount of the attorney fees awarded herein, the Commission will enter an order at this time awarding to the petitioner law firm the sum of \$105,770.90. Disposition of the balance of said attorney fees will be held in abeyance pending further order of the Commission.

/s/ Arthur V. Watkins  
Chief Commissioner

/s/ Wm. M. Holt  
Associate Commissioner

/s/ T. Harold Scott  
Associate Commissioner