

BEFORE THE INDIAN CLAIMS COMMISSION

ABSENTEE DELAWARE TRIBE OF OKLAHOMA )

Petitioner, )

v. )

Docket No. 337

THE UNITED STATES OF AMERICA, )

Defendant. )

Decided: March 18, 1965

Appearances:

Stanford Clinton and  
Louis L. Rochmes,  
Attorneys for Petitioners.

W. Braxton Miller, with whom was  
Acting Assistant Attorney General  
J. Edward Williams, Attorneys for  
the Defendant.

OPINION OF THE COMMISSION

PER CURIAM:

The petitioner herein is the law firm of Pritzker, Pritzker, and Clinton. On August 5, 1963, the Commission awarded to petitioner's clients in this docket, the Absentee Delaware Tribe et al., a judgment of \$1,627,244.64. Said award is now final in all respects.

On August 10, 1964, the petitioner filed herein an "Application For Allowance Of Attorneys Fees" in which it requested this Commission to enter an order awarding to the petitioner an attorney's fee equal to 10% of the amount of the final award or the sum of \$162,724.46. According to the petitioner its approved contract of employment with the Absentee Delaware Tribe of Indians et al., the tribal petitioner in Docket No. 337, provides that the attorney shall be paid ten percent of any and all sums recovered.

The petitioner entered into its contract with the Absentee Delaware Tribe of Oklahoma (under the Bureau's Anadarko Area Office) on November 30, 1949, and said contract was approved by the Commissioner of Indian Affairs on March 17, 1950. Thereafter this contract was amended and extended by action of the Solicitor of the Department of the Interior on September 27, 1960. As to compensation the contract provides as follows:

"\*\*\* 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 an award of the Indian Claims Commission, suit, action of any department of Government, or of the Congress of the United States, or otherwise \*\*\*." (Contract Symbol I-1-ind. 42264)

Under this contract the petitioner filed claims for the Absentee Delaware Tribe of Indians in Docket Nos. 72, 202, 241, 337, 289, and 338.

On October 14, 1947, the Assistant Secretary of the Interior approved a ten year contract between the Delaware Tribe of Indians of Oklahoma (under the Bureau's Muskogee Area Office) and Attorneys Wesley E. Disney, and Charles B. Rogers (Contract No. I-1-ind. 18359). Under this contract the attorneys were to be compensated on a quantum meruit basis, with total compensation not to exceed ten percent of any and all sums recovered. Under this contract Messrs. Disney and Rogers filed the following claims for their clients, Docket Nos. 298, 27-A, 27-B, 27-C, 27-D, and 27-E.

Thereafter the petitioner and attorney Wesley E. Disney and the Executrix of the Estate of Charles B. Rogers, deceased, entered into an agreement that was approved by the Commissioner of Indian Affairs on November 8, 1955, wherein it was agreed that the attorneys would make a

unified presentation of all the claims filed before the Commission on behalf of the Delaware Nation. Under this 1955 attorneys agreement the "full responsibility" for the presentation and prosecution of all the pending Delaware cases fell to the lot of the petitioner who would alone assume the costs of such presentation and prosecution consistent with its responsibility under this agreement. Any and all fees resulting from a successful prosecution of the Delaware cases as set forth in the attorneys agreement, were to be divided 65% to the petitioner and 35% to Mr. Disney and the Executrix of the Estate of Charles B. Rogers. Docket No. 337 is one of the cases embodied in this agreement.

Mr. Disney's 1947 attorney claims contract with the Delaware Tribe of Indians expired in 1957, and it had not been renewed at the time of Mr. Disney's death in March of 1961. On November 7, 1961, Ralph W. Disney was appointed Executor of his father's estate.

On March 13, 1961, the petitioner entered into an attorney's contract with Attorney Disney's former clients, the Delaware Tribe of Indians of Oklahoma. Said ten year contract was approved on February 13, 1963, by the Associate Commissioner of Indian Affairs (Contract Symbol 14-20-0650 No. 1216). This contract provides as follows 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."

In the petition now before us, the petitioner law firm is asking the Commission to award to it alone 100% of a full 10% fee. We find that under the approved attorney contract now in effect, attorney fees fixed at 10% of the amount of the final award in this docket are fully allowable, and we also find that such fees have been duly earned in the successful presentation and prosecution of this case, and should be allowed.

However, the Commission has been advised that the petitioner in another forum is currently challenging the efficacy of the 1955 attorneys agreement in a declaratory judgment action instituted by the Executor and Executrix respectfully of the Estate of Wesley E. Disney and Charles B. Rogers. The Commission feels that the petitioner has informally made the same challenge before this Commission by requesting that the entire fee in this case be awarded to it. While the Commission has in the past refused to apportion attorney fees among contesting lawyers, the matter before us is unique. Here, by approval of the Commissioner of Indian Affairs, an apportionment of fees was fixed in advance and if the 1955 attorneys agreement is still valid, then it is part and parcel of the attorney contract governing the award of attorney fees in this case. In any event, the petitioner is certainly entitled to at least 65% of any fee that may be awarded herein. However, before the Commission rules as to the remaining 35%, it is only right and proper that all parties concerned be present before the Commission and be heard on this matter.

At the present time only this petitioner has sought to petition for an attorney fee.

Having considered the petition herein in light of matters discussed above, the Commission first of all will enter an order allowing attorney fees aggregating 10% of the amount of the final award, or the sum of \$162,724.46. The Commission will then order an award to the petitioner equivalent to 65% of the total attorney fees as set forth above, or 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