

BEFORE THE INDIAN CLAIMS COMMISSION

ABSENTEE DELAWARE TRIBE OF OKLAHOMA, )

Petitioner, )

v. )

THE UNITED STATES OF AMERICA, )

Defendant. )

Docket No. 337

Decided: April 23, 1965

SUPPLEMENTAL OPINION

PER CURIAM:

Because of certain language in the second paragraph on page 4 of our opinion of March 18, 1965, as well as the Commission's action in awarding at this time to the petitioner law firm, Pritzker, Pritzker, and Clinton, 65% of the full 10% attorney fee found to have been earned in this case, some anxiety has been expressed in that the Commission may have departed from its former position that it will not undertake to divide or apportion attorney fees between or among contesting attorneys.

The Commission feels that it has not departed from its prior position in awarding to the petitioner 65% of the full 10% attorney fee even though the matter before us is somewhat unique. It is unique only because in 1955 it was agreed between the petitioner and the late Wesley E. Disney and the estate of Charles B. Rogers that attorney fees that might be earned in this case, as well as in all other Delaware cases, shall be divided 65% to the petitioner and 35% to Disney and company. This 1955 attorney agreement was approved by the Commissioner of Indian Affairs.

The petitioner, who owns the attorney contract governing the award of attorney fees in this case is challenging the validity and applicability of the 1955 attorney agreement by asking this Commission to award to it exclusively the full 10% fee. Thus, petitioner challenges that portion of the 1955 attorney agreement which would give 35% of the fee to the estates of Disney and Rogers. We have decided to award to the petitioner at this time 65% of the total fee, and withhold disposition of the remaining 35% until all interested parties have had an opportunity to settle their dispute over this validity question.

Any feeling that the Commission may ultimately be compelled to apportion attorney fees either contrary to its established policy on apportionment, or in a manner inconsistent with the fee division previously agreed upon by the interested parties in 1955, would probably arise if the 1955 agreement is found to be invalid and does not apply. If this should be the case, the Commission would not attempt to settle any further disputes between the attorneys by apportioning the remaining 35% on some sort of a quantum meruit basis. Instead, the Commission, under the applicable attorneys contract, would award to the petitioner the entire 10% fee and leave the parties to settle any further differences in another forum. This would necessarily follow since the only applicable claims attorney contract under which a fee could be awarded in this docket belongs to the petitioner law firm. Thus, in light of this possible situation the petitioner as of now would have received a 65% advance on the full 10% fee that has been earned.

If, on the other hand, the validity of the 1955 attorney agreement is upheld, then as far as the Commission is concerned, the petitioner has received all that it is entitled to, and the balance of the fee (35%) would go to the estates of Wesley Disney and Charles B. Rogers. Again, any further dispute on this score between the interested parties would have to be settled in another forum.

Arthur V. Watkins  
Chief Commissioner

Wm. M. Holt  
Associate Commissioner

T. Harold Scott  
Associate Commissioner