

BEFORE THE INDIAN CLAIMS COMMISSION

THE SISSETON AND WAHPETON BANDS)	
OR TRIBES, ETC.,)	
)	
Petitioners,)	
)	
v.)	Docket No. 142
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: July 19, 1968

FINDINGS OF FACT

The Commission, having considered the petition for allowance of attorneys' fees in the above-entitled case filed herein on December 21, 1967, and all the evidence of record in support of said petition, including that evidence developed at the hearing on February 28, 1968, involving the companion case, Docket No. 362, makes the following findings of fact:

1. The award. On July 25, 1967, the Commission entered a final award in Docket No. 142 for \$5,097,575.00 in favor of the Sisseton and Wahpeton Tribes of Sioux Indians.

2. Attorneys contracts and assignments. The claim of the Sisseton and Wahpeton Tribes of Sioux Indians in Docket No. 142 was prosecuted by the petitioner-attorneys pursuant to the following contracts:

(a) Contract No. 10, Symbol 14-20-650, between the Sisseton and Wahpeton Sioux Tribe of South Dakota and Emerson Hopp and Marvin J. Sonosky, approved December 31, 1952 by the Commissioner of Indian

Affairs for a period of ten years from the date of approval, extended for a period of ten years beginning January 1, 1963 by extension approved May 3, 1963 by the Area Director, Bureau of Indian Affairs, Aberdeen Area, Aberdeen, South Dakota. By letter of October 25, 1957 the Acting Commissioner of Indian Affairs approved the association of Louis L. Rochmes as an attorney to render services under Contract No. 10. (See Finding 2, subparagraph D, Docket Nos. 359-363.)

(b) Contract No. 11, Symbol 14-20-650, between the Sisseton and Wahpeton Sioux Tribe of North Dakota and Traynor and Traynor, Emerson Hopp and Marvin J. Sonosky, approved December 31, 1952 by the Commissioner of Indian Affairs for a period of ten years from the date of approval and extended for a period of ten years beginning January 1, 1963 by extension approved May 1, 1963 by the Area Director, Bureau of Indian Affairs, Minneapolis, Minnesota. The letter of approval dated December 31, 1952 from the Commissioner of Indian Affairs specified that Contract No. 11 superseded a prior attorney's Contract No. 42008 dated October 16, 1947 between the Sisseton and Wahpeton Band or Tribe of Sioux Indians of North Dakota and the law firm of Traynor and Traynor, approved March 8, 1948 by the Acting Commissioner of Indian Affairs for a period of ten years from the date of approval. By letter dated October 25, 1957 the Acting Commissioner of Indian Affairs approved the association of Louis L. Rochmes with the contract attorneys under Contract No. 11. (See Finding 2, subparagraph F, Docket Nos. 359-363.)

(c) Contract No. 14, Symbol 20-0250-3439, between the Sisseton-Wahpeton Sioux of the Fort Peck Reservation, Montana, and Marvin J. Sonosky, approved July 21, 1965 by the Area Director, Bureau of Indian Affairs, Billings, Montana, for a period of five years from the date of approval. (See Finding 2, subparagraph G, Docket Nos. 359-363.)

3. Compensation provisions of the contracts. With one exception, all contracts identified in Finding 2, supra, provide that the compensation for attorneys' services should be ten per cent of the amount recovered. The exception is superseded Contract No. 42008, identified in Finding 2, subparagraph (b), supra, which provides that the compensation for attorneys' services should not exceed ten per cent of the amount recovered.

4. The claim of the heirs of Kelly Brown, deceased, and Wesley E. Disney, deceased.

(a) Kelly Brown, Muskogee, Oklahoma, and Wesley E. Disney of Tulsa, Oklahoma, and Washington, D. C., entered into Contract No. 42153 (Symbol I-1-ind.), dated December 2, 1948 with the "Sisseton and Wahpeton Band or Tribe of Sioux Indians of the Sisseton Reservation of South Dakota," approved April 4, 1949 by the Commissioner of Indian Affairs. The Commissioner of Indian Affairs terminated Contract No. 42153 by letter of December 31, 1952. (Pet. Ex. 22.)

(b) Attorneys Kelly Brown and Wesley E. Disney are deceased. The heirs of the deceased attorneys, following service of notice of the

petition for allowance of attorneys' fees in this case, appeared by their attorneys and filed their response to the petition for allowance of attorneys' fees in which they claimed an interest in the fees for services rendered in Docket No. 142 for the Sisseton and Wahpeton Sioux Tribe of South Dakota. Thereafter by stipulation filed May 16, 1968, the petitioner-attorneys and the attorneys for the heirs of Kelly Brown and Wesley E. Disney stipulated as follows:

"3. That the heirs of Kelly Brown and Wesley E. Disney have no objection to the release to the petitioner-attorneys of 100% of one-third and 81% of two-thirds of any of the fees which may be allowed by the Commission in Docket No. 142 to the petitioner-attorneys."

5. Services. The attorneys of record for petitioners in Docket No. 142 under the contracts identified in Finding 2, supra, have rendered valuable legal services in the successful prosecution of the tribal claims asserted in Docket No. 142. Having tested these legal services by the standards obtaining for prosecuting similar claims in courts of law, by the long protracted period of litigation that was involved, by the very complex and contingent nature of the cases, and by the highly rewarding results obtained, the Commission finds and concludes that the value of all legal services rendered in this docket should be fixed at \$509,757.50; and that Marvin J. Sonosky, Emerson Hopp, Louis L. Rochmes and the law firm of Traynor and Traynor are entitled to fees in the sum of \$445,188.22 as partial payment for attorneys' services rendered by those attorneys in Docket No. 142. This sum in accordance with the stipulation referred to in Finding 4, supra,

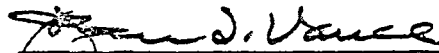
represents 100 per cent of one-third and 81 per cent of two-thirds of ten per cent of the award entered in Docket No. 142, and leaves for determination the remaining sum of \$64,569.28.

6. These findings are without prejudice to the claims of the petitioner-attorneys and the claim of the heirs of Kelly Brown, deceased, and Wesley E. Disney, deceased, to the remaining \$64,569.28 in dispute, referred to in Finding 5, supra.

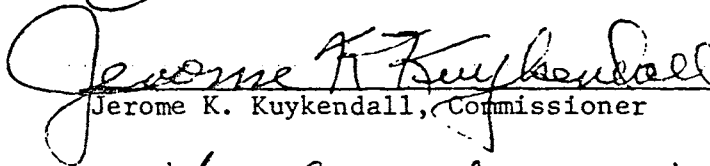
7. On June 25, 1968 the law firm of Traynor and Traynor, which has an interest in the attorneys' fees under Contract No. 11, identified in Finding 2, subparagraph (b), supra, filed in this case a sworn statement by Mack V. Traynor, a partner, consenting and requesting that the share of the law firm of Traynor and Traynor in all fees allowed as compensation for attorneys' services rendered in Docket No. 142, including any interest in the \$64,562.28 in fees remaining in dispute as described in Finding 5, supra, be awarded and paid to Marvin J. Sonosky, Emerson Hopp and Louis L. Rochmes, and said law firm has authorized Marvin J. Sonosky, Emerson Hopp and Louis L. Rochmes to receive such fees and give appropriate discharge therefore.

8. On July 12, 1968 Louis L. Rochmes, who has an interest in the attorneys' fees under Contract No. 10 and Contract No. 11, identified in Finding 2, subparagraphs (a) and (b), supra, filed in this case a sworn statement consenting and requesting that his share in all fees allowed as compensation for attorneys' services rendered in Docket No. 142, including any interest in the \$64,569.28 in fees remaining

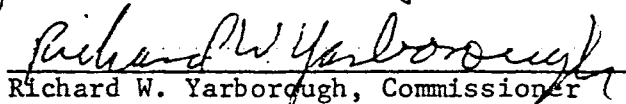
in dispute as described in Finding 5, supra, be awarded and paid to Marvin J. Sonosky and Emerson Hopp, and he has authorized Marvin J. Sonosky and Emerson Hopp to receive such fees and give appropriate discharge therefor.



John T. Vance, Chairman



Jerome K. Kuykendall, Commissioner



Richard W. Yarborough, Commissioner

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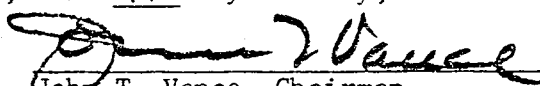
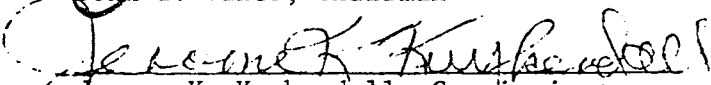
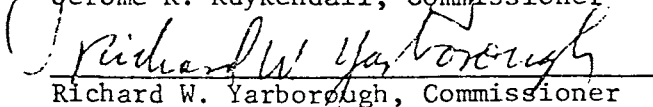
ORDER FIXING ATTORNEYS' FEES
AND AWARDING PORTION THEREOF

The petition for allowance of attorneys' fees in this case having been duly considered and the Commission having filed its findings of fact this day, which findings of fact are hereby made a part of this order,

IT IS ORDERED that,

- a) there shall be awarded as attorneys' fees for all legal services in this case the sum of \$509,757.50, being ten per cent of the final award entered herein on July 25, 1967; and,
- b) in partial payment for attorney services rendered in this case, Marvin J. Sonosky and Emerson Hopp be paid the sum of \$445,188.22 representing 100 per cent of one-third, plus 81 per cent of two-thirds of ten per cent of the final award entered July 25, 1967; and,
- c) disposition of the balance of said attorneys' fees, to wit the sum of \$64,569.28, shall await further order of the Commission.

Dated at Washington, D. C., this 19th day of July, 1968.


John T. Vance, Chairman

Jerome K. Kuykendall, Commissioner

Richard W. Yarborough, Commissioner

(E)
B.W.