

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: *April 9, 1969*

ADDITIONAL FINDINGS OF FACT -- ATTORNEYS' FEES

9. In consideration of legal services rendered to the Sisseton and Wahpeton Tribes of Sioux Indians under the Disney-Brown contract, which is Contract No. 42153 previously referred to in Finding 4 (19 Ind. Cl. Comm. 275, 277), attorneys Disney and Brown, party of the second part,

"..... shall receive a fee to be fixed by the Indian Claims Commission in an amount not to exceed ten percent (10%) of any and all sums received, procured or collected, through the efforts in whole or in part of the second party in behalf of said Indians whether by suit, actions of any department of the government or of the Congress of the United States or otherwise."

10. Under their contract, attorneys Disney and Brown had the duty and responsibility

"..... to advise and represent the said Tribe of Indians in connection with properly investigating and formulating any claims of said Tribe or Band against the United States which relate to the lands ceded to the United States under a Treaty dated July 23, 1851, and to represent the said Tribe of Indians before ..... the Indian Claims Commission, ..... and to file suits to prosecute any necessary litigation on behalf of the said Band or Tribe."

11. Pursuant to their approved contract, attorneys Disney and Brown, in conjunction with the law firm of Traynor and Traynor, did render valuable services to the Sisseton and Wahpeton Tribe of Sioux Indians by advising and representing the tribe in the investigation and formulation of certain claims relating to the Sioux lands ceded under the Treaty of July 23, 1851; all of which services resulted in the filing of an original petition in this docket on July 11, 1951.

12. There was also the following provision in this contract that was intended to cover a premature termination thereof:

"This contract may be terminated by the Secretary of Interior for cause deemed by him to be reasonable and satisfactory upon sixty (60) days notice to the parties in interest; and, if the contract shall be so terminated, the party of the second part shall be credited with such interest should any sum or sums be recovered by a judgment of a court or tribunal as the court or tribunal may determine to be equitable in the fee found to be due upon the final determination of the said suit and the controverted matters therein included, ....."

13. On March 26, 1952 attorney Disney addressed a letter to Mr. James Renville, a member of the Sisseton-Wahpeton tribal council, in which he requested to be released from his attorney contract.

As his prime reason for withdrawing from this case, Mr. Disney stated in his letter that he had given careful consideration to defendant's motion of September 28, 1951, to dismiss the petition herein, and in his professional judgment defendant's motion would probably carry;

and that

"I am extremely reluctant to admit defeat but on the other hand I am also reluctant to pursue a matter which appears to me to have such a slight chance of success. Under the circumstances I feel it my duty to the Sisseton and Wahpeton Indians to withdraw from the case which will permit them to select other counsel."

By letter of the same date, Mr. Disney also made his intentions known to the Superintendent of the Sisseton Indian Agency of his intentions to withdraw from this case.

On April 2, 1952, Mr. Disney filed a motion herein in which he advised this Commission of his intention to withdraw from this case and at the same time requesting the Commission to postpone argument on defendant's pending motion to dismiss until such time as the Sisseton and Wahpeton tribes had secured other counsel.

On this same date Mr. Disney sent a letter to the Commissioner of Indian Affairs advising the Commissioner of his intentions to withdraw and that he was still awaiting a reply from the tribe to his letter of March 26th to Mr. Renville.

14. On April 28, 1952, the Commissioner of Indian Affairs in responding to attorney Disney's letter of April 2nd advised him among other things that if the Indians did not wish to terminate the litigation, were unable to obtain other counsel and wanted him to continue as counsel, then the Bureau would have to consider his request in more detail. He

also advised Mr. Disney that he could terminate his interest as attorney either by an assignment to other counsel or by supplemental agreement with the Indians releasing him from his contract obligations. We find no evidence that the tribal petitioners ever demanded that attorney Disney carry out his contract obligations.

15. On August 12, 1952, attorney Marvin J. Sonosky addressed a letter to Mr. Disney/<sup>stating</sup> that on August 5, 1952, he and attorney Emerson Hopp had entered into an attorney's contract with the Sisseton-Wahpeton Sioux Tribe of South Dakota and that their Tribal Claims Committee had recommended that the Secretary of Interior

".....be requested to accept the withdrawal of Wesley E. Disney and to terminate the contract above described with Kelly Brown ....." (Heirs of Brown-Disney, Ex. B)

In his letter Mr. Sonosky made a further request of Mr. Disney:

"We have not yet accepted this contract since, considering the posture of the case, we do not wish to assume responsibility for it until these attorney problems are solved. We should appreciate it very much if Mr. Brown will withdraw from the case and, at the same time, disclaim any interest for whatever past services he may have rendered, in order that we may go forward with the work. I know what your views are in this matter and I should appreciate your help in persuading Mr. Brown to voluntarily withdraw and disclaim any interest."

16. Attorney Brown, who had evidenced some reluctance in withdrawing from this case, formally notified the Commissioner of Indian Affairs by letter of September 4, 1952 that he was withdrawing from this case. (Pet. Attorney's Ex. 19)

At this same time he addressed a letter to the Sisseton Tribal Council advising the council of his withdrawal action, and also advising them that,

"In accordance with the wording of your letter, I am not inclined at this time to make any charge for services I have rendered but in utmost fairness I thought that it might be well to submit an expense bill in the modest sum of approximately \$500.00, which would not cover more than a small part of my expenses in this case. . . ." (Pet. Attorney's Ex. 20)

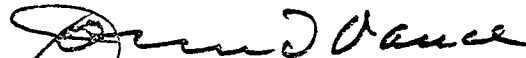
The Commission finds no evidence that either attorney Brown or Attorney Disney disclaimed any fee interest that might be awarded in this case for services rendered by them under their attorney contract with the Sisseton and Wahpeton tribes.

17. On December 31, 1952, the Commissioner of Indian Affairs by letter to Mr. Disney officially terminated the Disney-Brown contract and advised Mr. Disney that the attorney contract with successor counsel had been approved the same day. The Commission finds that the Commissioner's termination of the Brown-Disney contract was accomplished pursuant to terms of the contract and with the approval of the Sisseton and Wahpeton tribes and such termination action by the Commissioner of Indian Affairs did not prejudice or vitiate the fee interest rights of either Messrs. Disney or Brown under the contract for services performed.

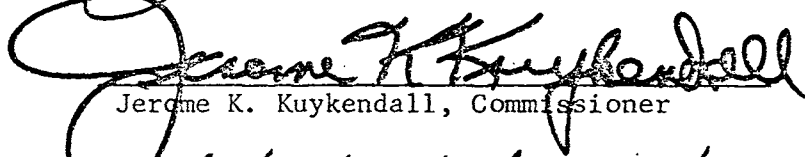
18. The Commission finds that Attorneys Disney and Brown performed valuable legal services for the Sisseton and Wahpeton Indians under the attorney contract by preparing and filing the original petition herein, and that such legal services qualify under Section 15 of the Indian Claims Commission Act (60 Stat. 1049, 1053) as ". . . services rendered in prosecuting the claim in question." Accordingly, the heirs of attorneys Disney

and Brown are entitled to claim fee compensation in this docket.

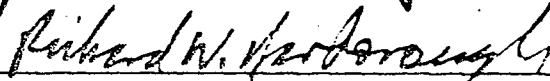
19. Based upon all the matters set forth in the preceding findings of fact, the Commission awards the balance of the attorney fee withheld under previous order, to wit, \$64,569.28 to Marvin J. Sonosky, Emerson Hopp, and the heirs of Wesley E. Disney and Kelly Brown.




John T. Vance, Chairman



Jerome K. Kuykendall, Commissioner



Richard W. Yarborough, Commissioner



Margaret A. Pierce, Commissioner



Theodore R. McKeldin, Commissioner