

BEFORE THE INDIAN CLAIMS COMMISSION

ABSENTEE DELAWARE TRIBE OF OKLAHOMA, ET AL.,)	Docket No. 72
)	
and)	
)	
THE DELAWARE TRIBE OF INDIANS,)	Docket No. 298
)	
Plaintiffs,)	
)	
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

ORDER ALLOWING ATTORNEYS' FEES

HAVING CONSIDERED the application for allowance of attorneys' fees filed on February 11, 1970, for the law firm of Pritzker, Pritzker and Clinton by Louis L. Rochmes, Esquire, an associate of the said firm and the attorney of record herein for the above-named plaintiffs; the joinder in the said application filed on February 16, 1970, for Ralph W. Disney, executor of the last will and testament of Wesley E. Disney, deceased, and Ida J. Rogers, executrix of the last will and testament of Charles E. Rogers, deceased, by their attorneys, Dent, Hampton & Doten; the response of the defendant to the said application, filed on March 31, 1970; the contracts under which the attorneys served the said plaintiffs, and the remainder of the record herein, the Commission finds as follows:

1. On September 10, 1969, the Commission entered a final award herein which provided "that the plaintiffs shall have and recover of and from the defendant as a final judgment the sum of \$9,168,171.13 plus an additional amount of damages measured by simple interest at the rate of 5% per annum on the principal sum of \$1,385,617.81 from August 31, 1969, to the date of payment of the principal sum" (21 Ind. Cl. Comm. 344, 369). Funds to satisfy the judgment were appropriated by the Act of December 26, 1969 (83 Stat. 447). Payment of the judgment was made on January 16, 1970, in the amount of \$9,194,364.99, being the sum of \$9,168,171.13 stated in the judgment and \$26,193.86, the amount of interest computed at 5% per annum on the principal sum of \$1,385,617.81 from August 31, 1969, to the said date of payment.

2. The application by the attorney of record and the joinder in the application both request the allowance of fees to all attorneys having an interest in the litigation herein in the aggregate amount of \$919,436.49, comprising 10% of the award to the plaintiffs. Both the application and the joinder also request the allowance of 65% of such aggregate amount, or \$597,633.72, to the law firm of Pritzker, Pritzker and Clinton, and the allowance of 35% of such aggregate amount, or \$321,802.77, to Ralph W. Disney, executor of the last will and testament of Wesley E. Disney, deceased, and Ida J. Rogers, executrix of the last will and testament of Charles B. Rogers, deceased.

3. The attorneys' services in behalf of the plaintiffs were rendered under contracts separately made with the Delaware Tribe of Oklahoma under the Anadarko Area Office of the Bureau of Indian Affairs, also known as the Absentee Delaware Tribe of Oklahoma, and the Delaware Tribe of Indians of Oklahoma under the Muskogee Area Office of the Bureau of Indian Affairs.

4. The petition in Docket No. 72 was filed on behalf of the Absentee Delaware Tribe of Oklahoma by the law firm of Pritzker, Pritzker and Clinton, acting under a contract entered into with the tribe on November 30, 1949. This contract, assigned number I-1-ind. 42264, was approved on March 17, 1950, and had a term of 10 years beginning with the date of approval. An extension of the contract for a period of 5 years from March 17, 1960, with an amendment relating to reimbursement of expenses was approved on September 27, 1960. On October 14, 1965, the same parties entered into a new contract, assigned number 14-20-0200-2047. This contract, approved on January 19, 1966, effective as of March 16, 1965, continued in effect through March 16, 1970, essentially the same terms of the preceding contract with certain changes not herein pertinent. An extension of contract number 14-20-0200-2047 for a period of three years beginning March 16, 1970, was approved on April 29, 1970, and is still in effect.

5. The petition in Docket No. 298 was filed on behalf of the Delaware Tribe of Indians of Oklahoma under the Muskogee Area Office of the Bureau of Indian Affairs by Messrs. Wesley E. Disney and Charles B. Rogers, attorneys at law of Tulsa, Oklahoma, acting under a contract entered into with the tribe on November 30, 1946. This contract, assigned number I-1-ind. 18359, was approved on October 14, 1947, and had a specified term of ten years beginning with the date of approval.

6. On November 8, 1955, an agreement between Wesley E. Disney and the executrix of the estate of Charles B. Rogers, then deceased, and the firm of Pritzker, Pritzker and Clinton was approved which provided, inter alia, that the firm of Pritzker, Pritzker and Clinton

would assume full responsibility for the prosecution of the Delaware claims in several pending dockets of the Indian Claims Commission, including, among others, those in Docket Nos. 337, 72 and 298, and that attorney fees resulting from any awards in those dockets would be shared by the attorneys in the proportion of 35% to Wesley E. Disney and Ida J. Rogers as executrix of the estate of Charles B. Rogers, deceased, and 65% to the firm of Pritzker, Pritzker and Clinton. The said agreement was upheld by the decree of the United States District Court for the Northern District of Illinois, Eastern Division, entered on November 21, 1966, in Case No. 64 C 1747. This decree was affirmed by the United States Court of Appeals, Seventh Circuit, on October 12, 1967. After the said decree became final, 35% of the attorney fees earned in the case in Docket No. 337, the disposition of which had been held in abeyance, were awarded to Ralph E. Disney, executor of the last will and testament of Wesley E. Disney, deceased, and Ida J. Rogers, executrix of the last will and testament of Charles B. Rogers, deceased (19 Ind. Cl. Comm. 90). The text of the 1955 agreement is quoted in finding 6 of the Commission's initial decision in the attorney fee proceeding in Docket No. 337 in which 65% of the attorney fees earned in that case were awarded to the firm of Pritzker, Pritzker and Clinton (15 Ind. Cl. Comm. 157, 159).

7. Wesley E. Disney died in March 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.

8. After the expiration of the aforementioned contract numbered I-1-ind. 18359, the Delaware Tribe under the Muskogee Area Office, plaintiff in Docket 298, entered into a new contract with the firm of Pritzker, Pritzker and Clinton on March 13, 1962. This contract, assigned number 14-20-0650-1216, provides for a term of 10 years from the date of approval. It was approved on February 15, 1963, subject to certain conditions that were accepted by the parties. This contract is still in force.

9. Since the aforementioned contractual arrangement of 1955, the prosecution of the common claims pleaded in Docket Nos. 72 and 298 was carried on by the firm of Pritzker, Pritzker and Clinton in association with Louis L. Rochmes, Esquire, whose association with the said firm for that purpose has been duly approved. Mr. Rochmes has informed the Commission that he has no interest in the attorneys' fees herein separate from that of Pritzker, Pritzker and Clinton.

10. Each of the aforementioned contracts under which the Delaware tribal client retained the firm of Pritzker, Pritzker and Clinton

provides that the compensation of the attorneys for services rendered shall be 10% of any and all sums recovered for the Indians. Contract No. 14-20-0650-1216 between the said firm and the plaintiff in Docket No. 298 further provides that compensation which may be allowed to the estate of Wesley E. Disney, deceased, and the estate of Charles B. Rogers, deceased, shall be payable out of the said 10%, "it being the intention of the parties that the total fees allowed shall not exceed ten percent of the total recoveries."

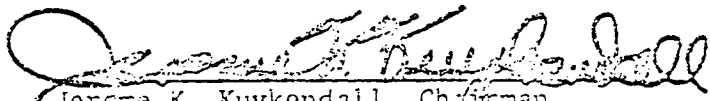
11. The defendant's response to the application for allowance of attorneys' fees enclosed a copy of a letter dated March 16, 1970, from the Acting Associate Solicitor for Indian Affairs, Department of the Interior, and a copy of an accompanying memorandum dated February 27, 1970, from the Acting Associate Commissioner of the Bureau of Indian Affairs and indicated that the Department of Justice takes no position in this matter. Inter alia, the letter from the Acting Associate Solicitor referred to the application of the attorney of record and the joinder therein and the memorandum from the Bureau of Indian Affairs and concluded by stating: "We concur in the views of the Acting Associate Commissioner that since the applicable claims attorney contracts provided for contingent attorney fees of ten percent of the amount recovered by the Indians, there is no objection to the allowance of the ten percent fees claimed in the petitions."


12. Notices of the filing of the application for allowance of attorneys' fees and the joinder therein were duly sent during February 1970 to the Chairman of the Delaware Tribal Business Committee of the tribe under the Muskogee Area Office of the Bureau of Indian Affairs, and to the President of the Absentee Delaware Tribal Council. In a letter dated February 20, 1970, the Chairman of the Delaware Tribal Business Committee indicated that he had no objection to payment of the attorneys' fees requested in the said application. No response was received to the notices sent to the President of the Absentee Delaware Tribal Council.

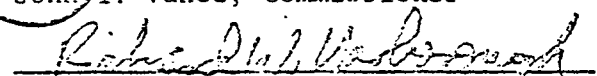
13. The attorneys have rendered valuable legal services in the successful prosecution of the Delaware tribal claims asserted herein and are entitled under the terms of the aforementioned contracts to an allowance of fees in the total amount of 10% of the above-mentioned award herein, or \$919,436.49. As requested in the application of the attorney of record and the joinder therein, 65% of such total amount of fees should be paid to the firm of Pritzker, Pritzker and Clinton, and 35% thereof should be paid to Ralph W. Disney, executor of the last will and testament of Wesley E. Disney, deceased, and Ida J. Rogers, executrix of the last will and testament of Charles B. Rogers, deceased.

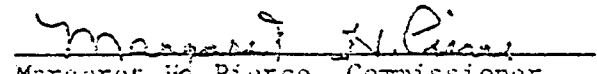
IT IS THEREFORE ORDERED that out of the judgment money resulting from the final award entered herein on September 10, 1969, there shall be disbursed, as payment in full of the attorneys' fees owed for services rendered herein by the attorneys for the above-named plaintiffs, the sum of \$597,633.72 to the law firm of Pritzker, Pritzker and Clinton, and the sum of \$321,802.77 to Ralph W. Disney, executor of the last will and testament of Wesley E. Disney, deceased, and Ida J. Rogers, executrix of the last will and testament of Charles B. Rogers, deceased.

Dated at Washington, D. C., this 13th day of May 1970.


Jerome K. Kuykendall, Chairman


John F. Vance, Commissioner


Richard W. Yarbrough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner