

BEFORE THE INDIAN CLAIMS COMMISSION

THE IOWA TRIBE OF THE IOWA RESERVATION)	
IN KANSAS AND NEBRASKA, THE IOWA TRIBE)	
OF THE IOWA RESERVATION IN OKLAHOMA,)	
ET AL.,)	
)	
Plaintiffs,)	
)	Docket No. 79
v.)	
)	Docket No. 79-A
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

ORDER ALLOWING ATTORNEYS' FEES AND REIMBURSABLE EXPENSES

HAVING CONSIDERED the joint application for allowance of attorneys' fees filed on February 16, 1970, for the law firm of Dykema, Wheat, Spencer, Goodnow & Trigg of Detroit, Michigan (the Dykema firm) and the law firm of McCarter & English of Newark, New Jersey by Brian Sullivan, Esquire, a member of the Dykema firm and the attorney of record for the Iowa Tribe of the Iowa Reservation in Kansas and Nebraska (the Iowa Tribe of Kansas and Nebraska) and Nicholas Conover English, Esquire, a member of the firm of McCarter & English and the attorney of record for the Iowa Tribe of the Iowa Reservation in Oklahoma (the Iowa Tribe of Oklahoma); the separate applications for reimbursement of expenses filed for the firm of McCarter & English by the said Nicholas Conover English and for the Dykema firm by the said Brian Sullivan on February 9, 1970, and April 3, 1970, respectively; the defendant's response, dated March 20, 1970, to the joint application for fees and the expense application of the McCarter & English firm; the defendant's response, dated June 26, 1970, to the expense application of the Dykema firm; the contracts under which the attorneys served the aforementioned tribes; and the remainder of the record in Docket Nos. 79 and 79-A, the Commission finds as follows:

1. A final award in favor of the above-named plaintiffs totaling \$11,394.67 was entered in Docket No. 79 on February 28, 1966 (16 Ind. Cl. Comm. 568). Funds to satisfy this award were appropriated by the Act of October 27, 1966 (80 Stat. 1057).

2. A final award was entered in Docket No. 79-A on May 21, 1969, which provided that the same plaintiffs "shall have and recover of and

from the defendant the sum of \$1,367,701.90 plus an additional amount of damages, measured by simple interest at the rate of 5% per annum on the principal sum of \$207,752.15 from February 16, 1969, to the date of payment of said principal sum" (21 Ind. Cl. Comm. 15). Funds to satisfy this award were appropriated by the Act of December 26, 1969 (83 Stat. 447). Payment of the award was made, effective January 16, 1970, in the total amount of \$1,377,207.27, being the sum of \$1,367,701.90 stated in the award and \$9,505.37, the amount of interest computed at 5% per annum on the principal sum of \$207,752.15 from February 16, 1969, to January 16, 1970.

3. On January 10, 1967, after funds had been appropriated to pay the final award in Docket No. 79, the attorneys for the plaintiffs sought and obtained an agreement with Commissioner William M. Holt that their application for fees earned and reimbursement of expenses incurred in the two dockets herein could be deferred until after entry of the expected larger award in Docket No. 79-A. In accordance with this agreement, their applications now before the Commission request payment out of funds appropriated to pay the award in Docket No. 79-A. The agreement was a proper one. The awards in both dockets relate to causes of action included in the amended petition for an accounting filed in Docket No. 79 on August 7, 1951. All of those causes remained in Docket No. 79 until the two major ones were severed and set up as Docket No. 79-A by the Commission's order of February 28, 1966, in order to facilitate entry of the final award of that date in Docket No. 79. It was not adverse to the interests of the Indians that the attorneys elected to wait until after the adjudication of the principal portion of the overall claim initially asserted in Docket No. 79 before submitting applications for allowance of their fees and reimbursable expenses.

4. The representation herein of the Iowa Tribe of Kansas and Nebraska was initially under a contract, No. I-1-ind. 42192, that the tribe entered into with the law firm of Dykema, Jones & Wheat (now Dykema, Wheat, Spencer, Goodnow and Trigg) on May 24, 1949. This contract was approved on September 8, 1949, and had a specified term of 10 years beginning with its approval date. An extension of the contract for a period of five years beginning on September 8, 1959, was approved on June 22, 1959. On September 30, 1964, the same tribe entered into a new contract, No. 14-20-0200-1857, with the Dykema firm which continued in effect essentially the same terms and conditions that had been in effect under the prior contract. The new contract was approved on December 24, 1964, and had a specified term of 5 years commencing with the expiration of contract No. I-1-ind. 42192 on September 7, 1964. An extension of contract No. 14-20-0200-1857 for a period of 10 years beginning on September 8, 1969, was approved on September 12, 1969.

5. The representation herein of the Iowa Tribe of Oklahoma was under a contract, No. I-1-ind. 42016, that the tribe entered into with the law firm of McCarter, English & Studer (now McCarter and English) on February 14, 1947. This contract was approved on May 10, 1948, and had a specified term of 10 years beginning with its approval date. An extension of the contract for a period of 5 years beginning on May 10, 1958, was approved on March 17, 1958. Another extension for a period of 10 years beginning on May 10, 1963, was approved on May 23, 1963.

6. All of the aforementioned contracts provide for compensation of the attorneys in the amount of 10% of any and all sums recovered by them for the Indians and for reimbursement of reasonable expenses incurred by the attorneys in the prosecution of the Indians' claims.

7. The defendant's response of March 20, 1970, to the joint application for fees and the expense application of the McCarter & English firm enclosed a copy of a letter, dated March 17, 1970, from the Acting Associate Solicitor, Indian Affairs, Department of the Interior, and copies of two accompanying memorandums, dated March 10, 1970, from the Acting Associate Commissioner, Bureau of Indian Affairs, and indicated that the Department of Justice took no position as to the "amount of claims for fees and expenses." The letter from the Acting Associate Solicitor referred to the two applications and its last paragraph concluded by stating: "The Acting Associate Commissioner advises that the Bureau of Indian Affairs has no objections to the allowance of the fees and expenses claimed in the petitions. We concur." The defendant's response of June 26, 1970, to the expense application of the Dykema firm, together with a copy of a letter, dated June 19, 1970, from the Acting Associate Solicitor, Indian Affairs, Department of the Interior, and a copy of a memorandum, dated June 11, 1970, from the Acting Associate Commissioner, Bureau of Indian Affairs, that it transmitted, informed the Commission that neither the Bureau of Indian Affairs nor the Department of the Interior had any objection to the allowance of the claimed expenses and that the Department of Justice had no knowledge of any objection to them.

8. Appropriate notices of the attorneys' pending applications for allowance of fees and reimbursable expenses were duly sent as the applications were filed to the Chairman of the Executive Committee of the Iowa Tribe of Kansas and Nebraska and the Chairman of the Tribal Council of the Iowa Tribe of Oklahoma. Two responses to the notices were received, both were from the Chairman of the Executive Committee of the Iowa Tribe of Kansas and Nebraska. The first, dated February 26, 1970, indicated that the Chairman was certain the majority of the members of the tribe understood the terms of the attorneys' contracts and that he was "very much in favor" of a joint award to the Dykema firm and the McCarter & English firm of their requested fee out of the funds appropriated to pay the final award in Docket No. 79-A. The Chairman's second response, dated April 15, 1970, was to the expense application of the Dykema firm and expressed

his agreement that the claimed expenses should be paid out of the same funds.

9. The two final awards herein together total \$1,388,601.94. The application for allowance of attorneys' fees requests that the Dykema firm and the McCarter & English firm be awarded jointly 10% of this sum, or \$138,860.19, for services rendered in Docket Nos. 79 and 79-A for the Iowa Tribe of Kansas and Nebraska and the Iowa Tribe of Oklahoma.

10. The attorneys have rendered valuable legal services to the Iowa Tribe of Kansas and Nebraska and the Iowa Tribe of Oklahoma and they are entitled under the terms of their contracts to an award of fees in the amount of \$138,860.19.

11. The application for reimbursement of expenses of the McCarter & English firm accounts for unreimbursed expenses incurred herein totaling \$1,539.75. All of the expenses included in this total are reasonable and properly reimbursable out of the funds appropriated to pay the final award in Docket No. 79-A.

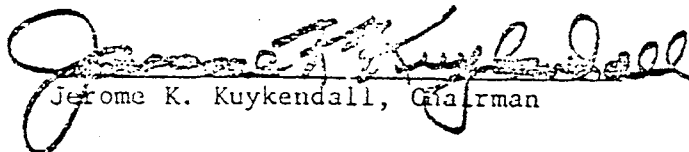
12. The application for reimbursement of expenses of the Dykema firm accounts for unreimbursed expenses incurred herein totaling \$1,240.47. All of the expenses included in this total are reasonable and properly reimbursable out of the funds appropriated to pay the final award in Docket No. 79-A.

IT IS THEREFORE ORDERED that out of the award money resulting from the final award entered in Docket No. 79-A on May 21, 1969 (21 Ind. Cl. Comm. 15), there shall be disbursed to the law firm of Dykema, Wheat, Spencer, Goodnow & Trigg of Detroit, Michigan, and the law firm of McCarter & English of Newark, New Jersey, the sum of \$138,860.19 as payment in full of the attorneys' fees owed for services rendered herein by the attorneys for the above-named plaintiffs.

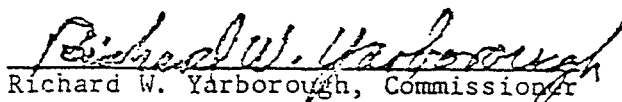
IT IS FURTHER ORDERED that out of the same award money there shall be disbursed to the law firm of McCarter & English the sum of \$1,539.75 as payment in full for the unreimbursed expenses incurred herein by the said firm.

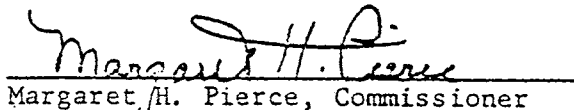
IT IS ALSO FURTHER ORDERED that out of the same award money there shall be disbursed to the law firm of Dykema, Wheat, Spencer, Goodnow & Trigg the sum of \$1,240.47 as payment in full for the unreimbursed expenses incurred herein by that firm.

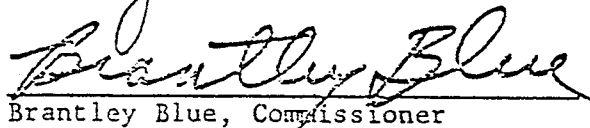
Dated at Washington, D. C., this 30th day of June 1970.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner