

## BEFORE THE INDIAN CLAIMS COMMISSION

THE MIAMI TRIBE OF OKLAHOMA, ET AL.	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Docket Nos. 76, 251-A, 252,
	)	253, 254, 255 and 256
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: October 6, 1971

## Appearances:

Edwin A. Rothschild, Attorney  
for Plaintiffs,

David M. Marshall, with whom was Mr.  
Assistant Attorney General Shiro  
Kashiwa, Attorneys for the Defendant.

OPINION ON REIMBURSEMENT OF ATTORNEYS' EXPENSES

Pierce, Commissioner, delivered the opinion of the Commission.

The Commission has before it the application of the law firm of Sonnenschein Levinson Carlin Nath and Rosenthal, attorneys for the plaintiffs, for an order allowing reimbursement of the following expenses incurred by said firm in connection with its preparation and prosecution herein of the claims of the plaintiffs.

<u>Docket No.</u>	<u>Expense</u>	<u>Status of case</u>
76	\$ 120.97	Dismissed
251-A	12.36	Final Award of \$ 10,000.00
252	\$ 2,067.16	Pending
253	7,957.84	Final Award of \$ 3,826,660.20
254	1,600.15	Pending
255	200.15	Final Award of 66,996.00
256	<u>9,571.87</u>	Final Award of <u>1,373,000.00</u>
Total	\$21,530.50	\$ 5,276,656.20

The application alleges that in Docket Nos. 76 (dismissed) and 251-A, there was no consolidation with the Indiana Miami claimants, and the expenses were incurred solely on behalf of the Miami Tribe of Oklahoma.<sup>1/</sup> The attorneys accordingly ask that their expenses in both dockets be paid from the \$10,000 recovered in Docket No. 251-A. The application alleges that since the remaining dockets all involve claims based upon treaties entered into prior to division of the Miami Tribe, the expenses therein were incurred on behalf of both the Oklahoma and Indiana Miami jointly as representatives of the Miami Tribe as it existed prior to division. The firm asks that its expenses in Docket Nos. 252 (pending) and 253<sup>2/</sup> be paid from the \$3,826,660.20 award in Docket No. 253; that its expenses in Docket Nos. 254 (pending) and 255 be paid from the \$66,996.00 award in Docket No. 255; and that its expenses in Docket No. 256 be paid from the \$1,373,000.00 award therein.

The question whether attorneys' expenses incurred on behalf of a plaintiff in one docket may be paid out of an award won by the same attorneys for the same plaintiffs in another docket was decided in the negative by this Commission in Docket No. 67, Miami Tribe v. United States, 14 Ind. Cl. Comm. 608 (1965). Therein the same law firm

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<sup>1/</sup> Docket No. 67, Miami Tribe v. United States, 14 Ind. Cl. Comm. 608, 611 (1965), states, in effect, that the attorneys then took the position that the expenses in all dockets listed therein, including Docket Nos. 76, 252, 253, 254, 255, and 256, were incurred on behalf of the entire Miami Tribe as it existed in 1818.

<sup>2/</sup> Although the expenses in Docket 253 also benefited the Wea Tribe whose claims were consolidated therewith, the expenses therein have been apportioned between the two tribes based upon the division of recovery in the final award.

involved herein, requested that its then current expenses in Docket Nos. <sup>3/</sup>76, 252, 253, 254, 255, and 256, in the then total amount of \$9,202.48, be paid from the award in Docket No. 67. The Commission denied the request on the ground that Section 15 of the Indian Claims Commission Act (25 U.S.C. §70n) provides no jurisdiction to the Commission to allow attorneys' expenses except on a case-by-case basis. We are now of the opinion that that decision entailed a too narrow interpretation of section 15 of the Act.

Section 15 of the Indian Claims Commission Act reads in part:

SEC. 15. Each such tribe, band, or other identifiable group of Indians may retain to represent its interests in the presentation of claims before the Commission an attorney or attorneys at law, of its own selection, whose practice before the Commission shall be regulated by its adopted procedure. The fees of such attorney or attorneys for services rendered in prosecuting the claim in question, whether before the Commission or otherwise, shall, unless the amount of such fees is stipulated in the approved contract between the attorney or attorneys and the claimant, be fixed by the Commission at such amount as the Commission, in accordance with standards obtaining for prosecuting similar contingent claims in courts of law, finds to be adequate compensation for services rendered and results obtained, considering the contingent nature of the case, plus all reasonable expenses incurred in the prosecution of the claim; but the amounts so fixed by the Commission, exclusive of reimbursements for actual expenses, shall not exceed 10 per centum of the amount recovered in any case.

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<sup>3/</sup> In Docket No. 67 the amount of attorneys' expenses claimed for Docket No. 76 was \$121.17. This appears to have included the \$120.97 expenses presently claimed herein for Docket No. 76. This item of expense was denied by the Commission in Docket No. 67.

Our decision in Docket No. 67 (14 Ind. Cl. Comm. at 612-13) placed great emphasis on the plurality or singularity of the word "claim(s)" as used in section 15 of the Act, and in effect equated the term "claim" with "docket", and concluded that the provision only authorized the Commission to allow reimbursement of attorneys' expenses from the award, if any, in the docket in which the expenses were incurred. It is obvious that under ordinary circumstances allowable attorneys' expenses should be paid out of the award in the docket where the expenses were incurred. However, we do not now read in section 15 of the Act a limitation to that effect upon the Commission's authority for allowing payment of attorneys' expenses. Such authority seems to be implicit in the portions of section 15 which direct that in fixing attorneys' fees, the Commission shall consider all reasonable expenses incurred in prosecution of the claim, and that fees fixed by the Commission shall not exceed ten per centum of the amount recovered in any case, exclusive of reimbursements for actual expenses. There is nothing in the Act which says where the money for reimbursement of expenses shall come from, or that it may not be paid from awards recovered by the same attorneys for the same plaintiffs under other docket numbers if the circumstances so warrant.

The use of the term "claims" in section 15 of the Act appears to be general. The Act does not use the term "docket" and of course does not equate "claim" with "docket". No fixed rule has been followed in assignment of docket numbers. In some early petitions a tribe's total claims were included in a single pleading and given a single docket

number. In other cases, including those at bar, the Commission, for administrative reasons, has asked the plaintiffs to divide their claims. The division was sometimes left to the discretion of the respective parties. While separate treaty claims were sometimes docketed under separate numbers, not infrequently two or more treaty claims appeared under the same docket number. Thus while the Indiana Miami claims for the treaties of 1834, 1838, and 1840 were assigned separate docket numbers (124-D, E and F), the Oklahoma Miami claims for the same treaties were lumped under Docket No. 256. If there had been recovery under only one of the treaties, the rationale of the decision in Docket No. 67 apparently would have allowed recovery to the Oklahoma Miami counsel for expenses in all three treaties, while denying the Indiana Miami counsel reimbursement of expenses in the two dockets which didn't yield recovery. We do not believe that section 15 of the Act involves any limitation which would result in such inequity merely because of happenstance in the manner in which docket numbers have been assigned.

In the instant cases, the petitioning law firm has been employed by the plaintiffs, the Miami Tribe of Oklahoma, under an attorneys' contract approved on May 10, 1948, by the Acting Commissioner of Indian Affairs. The contract, as approved, provided for compensation of 10% of any and all sums recovered, plus reasonable expenses, all to be wholly contingent upon a recovery for the tribe and to be allowed and reimbursed out of recovery only. By supplemental agreement dated September 4, 1950, the

plaintiffs authorized the firm to file claims on their behalf as representatives of any tribe, band, or identifiable group of Indians of which the Miami Tribe of Oklahoma was then or had been a part. On December 4, 1956, the Acting Commissioner of Indian Affairs approved modification of the attorneys' contract to insert the following provision:

Reimbursement of expenses incurred by said attorneys in the prosecution of any claim or claims of said Indian Tribe filed with the Indian Claims Commission shall be determined by the Indian Claims Commission as provided in Section 15 of the Act of August 13, 1946, 60 Stat. 1049, and shall not be subject to the approval of the Commissioner of Indian Affairs.

All of the claims in the dockets consolidated herein, as well as those in Docket Nos. 67 and 251, were litigated under the above described attorneys' contract. The attorneys have recovered over \$10,000,000.00 for the plaintiffs under this contract, which permits reimbursement of attorneys' expenses out of recovery, without regard to docket.

At a special meeting of the Business Committee of the Miami Tribe of Oklahoma, on January 16, 1971, the application of the firm for reimbursement of expenses in the total sum of \$21,530.50 was examined, discussed, and approved by unanimous resolution. By memorandum dated June 26, 1971, the Commissioner of Indian Affairs expressed the opinion that generally, "the items claimed are reasonably supported with statements and receipts", and "appear to reasonably fall within those categories of reasonable expenses proper for reimbursement", although

"some of the miscellaneous travel expenses are not identified."<sup>4/</sup>

The defendant takes the position that it would be improper to permit the petitioning law firm to be reimbursed for the expenses of \$120.97 incurred in Docket No. 76 in which no recovery was had; that the item was rejected by the Commission in Docket No. 67, (see discussion at note three, supra), and that therefore the doctrines of stare decisis and res judicata apply; that any ambiguity in the attorneys' contract should be construed in favor of the Indians; and that the application is premature as to Docket Nos. 252 and 254 in which awards may be made. We find no ambiguity in the attorneys' contract, and for reasons stated herein we are not in accord with the defendant's position as to Docket No. 76.

Docket No. 76 was an accounting claim intended to develop information for use in all of the dockets herein. It was dismissed upon a determination that the claims therein were covered in the other dockets, and that the defendant had accounted as fully as it was required to do. Under the circumstances, to hold that the attorneys' expenses in Docket No. 76 can not be recovered because there was no monetary award in that docket, would thwart the intent of the plaintiffs as well as the implicit intent of section 15 of the Act, that all reasonable expenses of prosecution should be reimbursed. The situation is similar to that in consolidated Docket Nos. 15-B and 111, Potawatomie Tribe of Indians v. United States 4 Ind. Cl. Comm. 540 (1956). Pursuant to a Commission order, the

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<sup>4/</sup> The memorandum also notes the Commission's adverse decision in Docket No. 67, supra, at note three.

plaintiffs in original Docket No. 15 filed petitions in Docket Nos. 15-A through 15-M, asserting in each docket a separate claim previously pleaded jointly in original Docket No. 15. The attorneys' expense accounts submitted in consolidated Docket Nos. 15-B and 111, included items incurred prior to separation of the causes of action. Many of the items applied to consolidated Docket Nos. 15-B and 111 and to other dockets, and a few items were incurred entirely in respect to the other dockets. The defendant contended that the attorneys were entitled to recover from the award in consolidated Docket Nos. 15-B and 111 only such items as were incurred after approval of the attorneys' contract and prior to the Commission's order of separation, and such expenses incurred after the order of separation as were in relation only to Docket Nos. 15-B and 111. The Commission held:

Under the wording of the contract . . . and the provisions of Section 15 of the Indian Claims Commission Act, it appears that said attorneys are entitled to recover for all reasonable expense actually incurred by them in investigating, preparing and presenting all claims of said Pottawatomie Indians under the contract of employment of October 22, 1947, and that such right of recovery is contingent upon the recovery of an award on behalf of said Indians against the United States but not upon a recovery for each claim which may have been honestly and conscientiously presented; and that in the determination and allowance of attorneys' fees and remuneration of expenses incurred, this Commission may take into consideration the services rendered by said attorneys under said contract, and expenses legitimately incurred by them in the proper, diligent and conscientious investigation, preparation and presentation of all claims of said claimant Indians. (4 Ind. Cl. Comm. at 543-44) (Emphasis added).



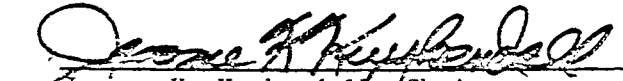
We believe that the same reasoning applies equally to Docket No. 76, and we so hold. To the extent that our decision in Docket No. 67 (supra, at note three) is in disagreement with this holding, it is overruled. As to Docket Nos. 252 and 254 which are still pending and for which separate awards may issue, we agree with the defendant that the application for attorneys' expenses, the total amount of which is not yet determined, is premature.

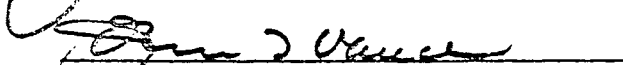
We have examined in detail the separate expense vouchers for each of the subject dockets. Voucher No. I-15 includes laundry expenses of \$1.58 and valet expenses of \$3.00 incurred by a member of the law firm while traveling on behalf of the plaintiffs in Docket No. 256. In view of the Commission's position that such expenses are not allowable as personal expenses, the law firm has, by letter dated June 29, 1971, requested that voucher No. I-15 be considered to be reduced by \$4.58. Accordingly, the allowable expenses in Docket No. 256 are reduced from \$9,571.87 to \$9,567.29.


An appropriate order will be issued.

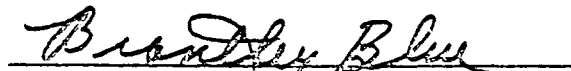
  
Margaret H. Pierce, Commissioner

We concur:

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarborough, Commissioner

  
Brantley Blue, Commissioner