

BEFORE THE INDIAN CLAIMS COMMISSION

SAC AND FOX TRIBE OF THE MISSISSIPPI IN IOWA, )  
 THE SAC AND FOX TRIBE OF INDIANS OF OKLAHOMA, )  
 AND KENNETH YOUNGBEAR, CHARLES DAVENPORT, )  
 HARRY LINCOLN, ALBERT DAVENPORT, EDWARD DAVENPORT,) )  
 PERCY BEAR, COLUMBUS KEAHNA, EDWARD MACK, PAULINE )  
 LEWIS, WILLIAM NEWASHE, AND AMOS BLACK, appearing )  
 as the representatives of and on the relation of )  
 the SAC AND FOX OF THE MISSISSIPPI, and as repre- )  
 sentatives of and on behalf of all the members )  
 thereof, and appearing as the representatives of )  
 and on the relation of the CONFEDERATED OR UNITED )  
 TRIBES OF SAC AND FOX INDIANS, and as representa- )  
 tives and on behalf of all of the members thereof,) )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 THE UNITED STATES OF AMERICA, )  
 )  
 Defendant. )

Docket No. 219

ORDER ALLOWING REIMBURSEMENT OF ATTORNEYS' EXPENSES

HAVING CONSIDERED the application for allowance of attorneys' expenses filed on July 28, 1971, for the law firm of Mills and Garrett, of Chicago, Illinois, by Lawrence C. Mills, Esquire, a partner in the firm of Mills and Garrett, formerly known as Dempsey, Mills and Casey, and attorney of record for the Sac and Fox Tribe of the Mississippi in Iowa, the contracts under which the attorneys served the said tribe; the defendant's response to the application filed on September 9, 1971; and the remainder of the record herein, the Commission finds as follows:

1. On September 29, 1967, a final award was entered herein in favor of the Sac and Fox plaintiffs in the sum of \$899,408.54 (18 Ind. Cl. Comm. 558). Funds to satisfy the award were appropriated by the Act of October 21, 1968 (82 Stat. 1190, 1198).

2. The representation in this docket of the Sac and Fox Tribe of the Mississippi in Iowa was under two contracts. The one involving the petitioning attorneys herein was contract No. I-1-ind. 42274, entered into on March 31, 1950, with the law firm of Demsey, Mills & Casey, a predecessor firm of Mills and Garrett. This contract was

approved on August 29, 1950, and had a specified term of 10 years beginning with its approval date. An extension of the contract for an additional period of 5 years commencing on August 29, 1960, was approved on August 29, 1960. On March 12, 1965, the Sac and Fox Tribe of the Mississippi in Iowa entered into a new contract with the law firm of Mills and Garrett. This contract, assigned No. 14-20-0350-278, was approved on July 23, 1965. It had a specified term of 5 years commencing on its approval date and continued with certain changes the provisions of the prior contract. An extension of contract No. 14-20-0350-278 for a period of 3 years ending on July 22, 1973, was approved on January 12, 1968. The contract provided that the attorneys would be reimbursed for reasonable expenses incurred by them in the prosecution of plaintiffs' claim before this Commission.

3. The Commission on February 3, 1971, issued an order which granted the joint fee application of both sets of attorneys for the two tribes. It allowed attorneys' fees in the amount of \$89,940.85. As provided in said contract the fees awarded were 10% of the final judgment.

4. On July 28, 1971, Mills and Garrett filed a request for reimbursement for actual expenses aggregating \$3,825.36. The attorneys have detailed and explained the expenses in two schedules attached to their request. It is noted that the attorneys have listed expenses incurred subsequent to the enactment date (October 21, 1968) of the appropriation bill to satisfy the award in Docket 219. These expenses were travel expenses in the amount of \$420.31 (Schedule A) and miscellaneous expenses of \$66.96 (Schedule B), or a total of \$487.27.

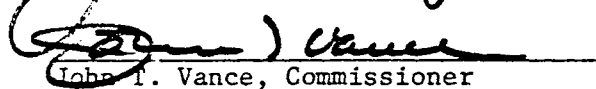
5. Appropriate notices dated July 29, 1971, of the filing of the reimbursement petition were mailed to the Tribal Chairman of the Sac and Fox of Mississippi in Iowa, to the Department of Justice and to the Department of the Interior. The Sac and Fox Tribal Chairman did not respond to the notice. The Department of Justice, on September 8, 1971, said that it had no objection to the expenses incurred prior to the recovery date of the award, but it objected to the expense items which were incurred subsequent to that date, in the absence of some explanation as to how they were related to the prosecution of the case. The Solicitor of the Department of the Interior in a letter dated August 26, 1971, made the same comment on the expenses as the Department of Justice. By letter dated September 10, 1971, Mills and Garrett explained that the post-1968 expenses had been incurred in an effort to settle the disagreement between the Oklahoma Sac and Fox Tribe and the Iowa Sac and Fox Tribe as to the division of the award. However, the expenses incurred after the appropriation of funds to satisfy the award were not involved with the prosecution of the claim in Docket 219. With the appropriation of the judgment funds on October 21, 1968, the prosecution of the claim was ended and expenses involving the division of those funds are matters over which this Commission has no

jurisdiction. Cherokee Nation v. United States, Docket 173, 13 Ind. Cl. Comm. 96, 139 (1964). The expenses incurred after October 21, 1968, (\$487.27) are matters between the tribe and the attorneys on a new account for services rendered. They are not allowable on the present application.

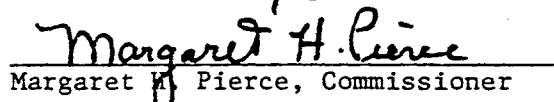
IT IS THEREFORE ORDERED that out of the funds appropriated to pay the aforementioned final award there shall be disbursed to the firm of Mills and Garrett, the sum of \$3,338.09 as full reimbursement to the said firm of all its actual expenses incurred in its prosecution of this case.

Dated at Washington, D. C., this 6<sup>th</sup> day of October, 1971

  
Jerome K. Kuykendall, Chairman

  
John I. Vance, Commissioner

  
Richard W. Farborough, Commissioner

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner