

BEFORE THE INDIAN CLAIMS COMMISSION

THE MIAMI TRIBE OF OKIAHOMA, ET AL.,)	Docket No. 253
)	
THE MIAMI INDIAN TRIBE OF INDIANA,)	Docket No. 131
)	
Plaintiffs,)	
)	
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: February 7, 1973

Appearances:

Edwin A. Rothschild, attorney for the Plaintiff in Docket 253, David L. Kiley, attorney for the Plaintiff in Docket 131.

David M. Marshall, with whom was Mr. Assistant Attorney General Kent Frizzell, attorneys for the Defendant.

OPINION OF THE COMMISSION

Pierce, Commissioner, delivered the opinion of the Commission.

Pending before the Commission in consolidated Docket Nos. 131 and 253 are separate petitions for allowance of attorneys' fees, as well as a motion filed by plaintiffs' attorney in Docket No. 253 seeking a Commission proceeding to determine the proper allocation of attorneys' fees herein.

Both petitions are based on the amended final award entered by the Commission on January 8, 1970, in Docket Nos. 131 and 253 in the amount of \$3,826,660.20 in favor of the plaintiffs herein.

The petition for attorneys' fees filed in Docket No. 253 on September 18, 1970, requested an allowance of ten percent of the final award as a fee payable to all Miami counsel in both dockets. The petition noted that if counsel are unable to agree upon a division of said fee, then the matter of allocation would have to be submitted to the Commission for its determination.

By a petition filed on October 19, 1970, in Docket No. 131, counsel for the Miami Indian Tribe of Indiana asked the Commission to allow a separate fee of \$273,103.82 as compensation for their services therein. This amount represents approximately 71% of the ten percent fee allowable as compensation to all Miami counsel in consolidated Dockets Nos. 131 and 253. Counsel in Docket No. 131 argue that they are entitled to the major portion of the combined fee on the theory that attorneys' fees should be distributed in the same manner as the final award, namely on a per capita basis.

On March 22, 1971, the attorneys in Docket No. 253 filed a motion requesting a proceeding on allowance of attorneys' fees. The motion asked the Commission to issue an order that would authorize counsel for both the Miami Tribe of Oklahoma, and the Miami Indians of Indiana, to do the following:

1. To file, on or before a day to be fixed by the Commission, written evidence relating to the allocation

- of attorneys' fees in this consolidated proceeding;
2. To submit their respective advisory proposals within 30 days thereafter as to the allocation of fees and proposed findings of fact and briefs in support thereof; and
 3. To reply within an additional 30 days to the respective advisory proposals.

In support of this motion counsel for the Miami Tribe of Oklahoma stated that it does not appear that the respective attorneys will agree on an allocation of the fees which will be awarded in consolidated Docket Nos. 131 and 253. They contended that attorneys' fees should be allocated on the basis of the relative contribution made to the final results of the case.

In response to this motion, counsel for the Miami Indians of Indiana argued that the Oklahoma Miami and Indiana Miami are separate claimant groups, with separate legal counsel in separate cases, and were joined together only for the purpose of a hearing. They indicated that there is nothing speculative about dividing legal fees on the basis of enrollment of the individual tribes. Furthermore, Indiana counsel suggested that action on the subject motion might await the outcome of the appeal to the Court of Claims of Miami Tribe of Oklahoma v. United States, Dockets 255, et al., 24 Ind. Cl. Comm. 450 (February 18, 1971), in which guidelines applicable to the proper allocation of attorneys' fees are set forth.

Counsel in Docket No. 253 opposed such a delay, in a reply filed on April 7, 1971, and argued that the aforementioned appeal is plainly without merit, and that the pendency of the appeal, meritorious or not, should not be grounds for delaying the presentation and briefing of the underlying facts in these dockets.

Since the Court of Claims decided the above-mentioned appeal on October 13, 1972, sub nom. Godfroy v. United States, 199 Ct. Cl. ____, 467 F.2d 909*, the issue regarding the appropriate time to rule on the motion is moot. In accordance with the Court of Claims decision, and for the reasons set out below, the Commission grants the motion made by counsel for the Miami Tribe of Oklahoma.

In Godfroy v. United States, supra, the Court of Claims was presented with a case involving the same issue as in Docket Nos. 131 and 253. The issue is, specifically, what method should be used to apportion attorneys' fees, based on recoveries by the Miami Tribe of Indians, where one consolidated award is made by the Commission to two identifiable tribes that are each qualified to retain attorneys, pursuant to the Indian Claims Commission Act, 25 U.S.C. §70n (1970).

In Godfroy the attorneys for the Miami Tribe of Indiana asked the Court of Claims to increase the Commission's allocation of fees to them on the grounds that they represented 71% of the present day descendants of the original Miami Tribe of Indians, and that therefore

*Motion for rehearing filed November 6, 1972.

their part of the total fee should be allocated accordingly. The attorneys for the Miami Tribe of Oklahoma opposed this view and argued that the distribution of attorneys' fees should be decided on the basis of each attorney's relative contribution to the final results of the case.

To resolve this dispute, the Court of Claims applied the standard it first enunciated in Red Lake and Pembina Bands v. United States, 173 Ct. Cl. 928, 355 F. 2d 936 (1965). The Court decided that attorneys' fees should be apportioned according to the type and extent of services performed by each group of attorneys in terms of the relative contribution made for the benefit of the common concern. By relating the determination of fees to the performance of services, the Court rejected the proposition, argued therein by counsel for the Miami Indians of Indiana, that fees be apportioned on a per capita basis.

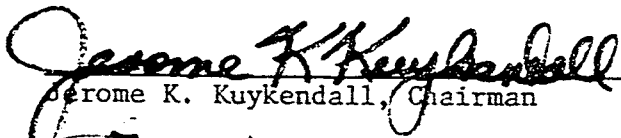
Therefore, we find that a further proceeding is necessary, to allow respective counsel to present evidence regarding the respective services they performed for the Miami Tribe of Oklahoma and the Miami Indians of Indiana, so that we can determine the relative contribution these services had to the final award entered in favor of plaintiffs.

In accordance with this decision, the Commission orders counsel in Dockets No. 253 and 131 to:

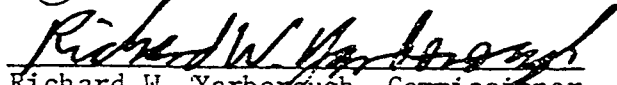
1. File on or before February 23, 1973, written evidence relating to the allocation of attorneys' fees in consolidated Docket Nos. 131 and 253.
2. Submit, within 30 days thereafter, their proposals as to the allocation of fees and proposed findings of fact and briefs in support thereof; and
3. Reply, within an additional 30 days, to the adversary proposals.

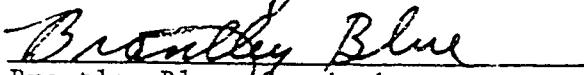

Margaret H. Pierce, Commissioner

Concurring:


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Brantley Blue, Commissioner