

BEFORE THE INDIAN CLAIMS COMMISSION

IRA SYLVESTER GODFROY, et al.,)	Docket No. 131
)	
THE MIAMI TRIBE OF OKLAHOMA, et al.,)	Docket No. 253
)	
Plaintiffs,)	
)	
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: October 18, 1973

FINDINGS OF FACT ON ATTORNEYS' FEESPreliminary Statement

On January 8, 1970, the Commission entered a single, amended final award in these consolidated dockets in the amount of \$3,826,660.20 in favor of the plaintiffs herein "on behalf of the Miami and Eel River Tribes." 22 Ind. Cl. Comm. 92, 179 (1970). On September 18, 1970, counsel for the Oklahoma Miami (hereinafter Docket 253) filed a petition for allowance of attorneys' fees for all Miami counsel in the amount of ten percent of the total award, or \$382,666.02, to be allocated by mutual agreement. Counsel for Docket 253 suggested that in the event counsel in both dockets were unable to agree upon an appropriate division of said fee, the matter of allocation be submitted to the Commission for determination.

On October 19, 1970, counsel for the Indiana Miami (hereinafter Docket 131) filed a petition for themselves and their associates for

attorneys' fees in the amount of \$273,103.82. This amount represents 10 percent of the share of the total award the Indiana Miami will receive as a result of the individual per capita distribution of the award, the Indiana Miami constituting approximately 71% of all present day Miami Indians entitled to share in the award.

Following a motion filed in Docket 253 on March 22, 1971, seeking a Commission proceeding to determine the proper allocation of attorneys' fees herein and the response thereto from counsel in Docket 131 filed on April 21, 1971, the Commission, by its opinion and order of February 7, 1973, directed both parties to file written evidence and appropriate briefs in the matter. 29 Ind. Cl. Comm. 424, 430. Counsel in both dockets have complied with said order. On August 20, 1973, the Commission heard oral argument on the fee issue in which both groups of attorneys participated.

Having considered the said petitions, supporting statements and oral argument for attorneys' fees, the respective contracts of employment under which each group of attorneys performed legal services, the evidence in support of the petitions including the briefs filed pursuant to the Commission order of February 7, 1973, and the entire record and proceedings in these consolidated dockets, the Commission makes the following findings of fact:

The Award

1. On January 8, 1970, the Commission entered an amended final award in these consolidated cases in the amount of \$3,826,660.20 in favor of the Miami Tribe of Oklahoma, et al. (Docket 253), and the

Miami Indians of Indiana, et al. (Docket 131), as representatives of and on behalf of the Miami and Eel River Tribes. 22 Ind. Cl. Comm. 92, 179. The case concerned Royce Areas 56, 71, and 72, ceded under the Treaty of Grouseland, of August 21, 1805 (7 Stat. 91) and the Treaty of Fort Wayne, of September 30, 1809 (7 Stat. 113). Also consolidated with these claims was the claim of the Wea Tribe (Docket 314-D), represented by the Peoria Tribe of Indians of Oklahoma. A separate award was made to the Docket 314-D claimants for their part interest in Royce Areas 56 and 71, which award was included in the January 8, 1970, amended final award. Counsel for Docket 314-D have no interest in the fee application of the Miami counsel.

Tribal Representation

2. In the title decision in these dockets of June 4, 1957, the Commission found that there were two identifiable tribes (the Oklahoma Miamis and the Indiana Miamis) authorized under the Indian Claims Commission Act (60 Stat. 1049) to prosecute the claims set forth in their respective petitions, and that the plaintiffs, the Miami Tribe of Oklahoma, and the plaintiffs, the Miami Tribe of Indiana, constitute and represent all descendants of members of the original Miami Tribe of Indians. 5 Ind. Cl. Comm. 180. Neither of the plaintiffs in Dockets 131 nor 253 is, however, full successor to the original tribe, although both are entitled to represent it. As a result, the award in these dockets is a single joint award to the two plaintiff tribes. 22 Ind. Cl. Comm. 92, 179.

The two tribes herein retained separate attorneys for the prosecution of the claim. The contracts of the attorneys are described below.

Contract, Indiana Miami

3. The plaintiffs in Docket 131, the Indiana Miamis, were originally represented by attorneys Walter H. Maloney, Sr. and Albert W. Sullivan pursuant to Contract No. 950, Symbol No. I-1-ind. 42496, dated October 31, 1949. On June 10, 1950, prior to the approval of this contract by the Bureau of Indian Affairs, Mr. Sullivan withdrew as attorney. The Bureau of Indian Affairs approved the contract for a period of ten years commencing on June 7, 1951. The contract has been extended several times, the last of which extensions was approved August 17, 1970, for five years beginning April 20, 1970.

On April 4, 1963, Walter H. Maloney, Sr. assigned his interest in the contract to Walter H. Maloney, Jr., but Mr. Maloney, Sr. remained in the case as "of Counsel." Walter H. Maloney, Jr. reassigned his interest in the contract to Mr. Maloney, Sr., effective November 27, 1964. On May 10, 1965, Walter H. Maloney, Sr. assigned his interest in the contract to the firm of Kiley, Osborn, Kiley and Harker. All of the foregoing assignments were approved by the Commissioner of Indian Affairs. At the request of the Kiley firm, the Commissioner, on May 16, 1968, also approved the firm's association with Robert C. Bell, Jr. in connection with said contract.

Mr. Walter H. Maloney, Sr. died testate on November 14, 1967. His wife, Mrs. Madeline F. Maloney and his son, Walter H. Maloney, Jr., were appointed co-executors under a will admitted to probate in the United States District Court for the District of Columbia on December 14, 1967.

Contract, Oklahoma Miami

4. The plaintiffs in Docket 253, the Oklahoma Miamis, are represented by the law firm of Sonnenschein, Levinson, Carlin, Nath and Rosenthal pursuant to Contract No. I-1-ind. 42017, approved by the Bureau of Indian Affairs on May 10, 1948. At the time of the contract, the firm was then known as Sonnenschein, Berkson, Lautmann, Levinson and Morse. The principal contract was extended several times. The last extension was approved on May 23, 1973, for a period of five years commencing May 10, 1973.

Mr. Edward P. Morse, who had been named by the Sonnenschein firm as attorney of record for the Oklahoma Miami clients, resigned as general partner of the firm on January 1, 1957. He remained as a limited partner of the firm for purposes of retaining his representation of the Indian clients and continued to act as attorney of record for the Miami clients until his death on April 6, 1961. Mr. Edwin Rothschild of the Sonnenschein firm became attorney of record for the Oklahoma Miami.

Pursuant to a Joint Efforts Agreement between the Sonnenschein firm and the firm of Riegelmann, Strasser, Schwartz and Spiegelberg (now Fried, Frank, Harris, Shriver and Kampelman), the Riegelman firm agreed to assist in the preparation and prosecution of the claims of the Oklahoma Miami. Mr. Louis L. Rochmes of the Riegelman firm was designated to assist in this work. While Mr. Rochmes has discontinued his association with the Riegelman firm, he has continued to assist in the

representation of the Oklahoma Miamis under the supervision of the tribal attorneys.

Contractual Terms, Docket 131

5. Contract No. 950 (I-1-ind. 42496) between Mr. Maloney, his successors, and the Indiana Miamis in Docket 131, provides that the compensation for attorneys' services shall not exceed ten percent of any amount recovered.

Contractual Terms, Docket 253

6. Contract No. I-1-ind. 42017 between the Sonnenschein firm and the Oklahoma Miamis in Docket 253 provides that compensation for attorneys' services shall be ten percent of the amount recovered.

Fee Entitlement

7. Upon examination of the record of the proceedings before this Commission, and pursuant to Section 15 of the Indian Claims Commission Act (25 U.S.C. §70n), the Commission finds that counsel for both Miami groups have rendered valuable services in the successful prosecution of the claims. As particularized in findings entered herein below, both groups of attorneys participated in the trials of the various phases of these claims, in the related briefings and arguments before the Commission, and in certain procedural and substantive motions which required the attention and expertise of both counsel on a number of occasions during the history of these claims. The diligent work of both counsel in representing and protecting the interests of their respective clients resulted in the final award order of January 8, 1970, supra, in the amount of \$3,826,660.20 in favor of their clients.

Defendant's Position Regarding Fees

8. In response to the Commission's requests for comments on the fee applications of the attorneys for the Indiana Miamis (Docket 131) and the Oklahoma Miamis (Docket 253), the Department of Justice, on January 5, 1971, informed the Commission that it would take no position in regard to the amounts claimed for fees by the attorneys in Dockets 131 and 253, other than to concur in the statement of the Associate Solicitor of the Department of the Interior that the fees allowed the two sets of attorneys should not exceed 10 percent of the award to the Miami Indians. The Solicitor's statement was communicated to the Department of Justice on December 8, 1970.

Notice to Tribes

9. Notices of the filing of the separate petitions for allowance of attorneys fees were mailed by the Deputy Clerk of the Commission to Mr. Forest Olds, Chief, Miami Tribe of Oklahoma on September 23, 1970, and to Mrs. Eva G. Bossley, Secretary, Miami Tribe of Indiana on October 20, 1970, with copies to each. No responses to those notices were received.

Amount of Fee (Combined)

10. As compensation for the services rendered in the prosecution of the claims of the Miami Indians in these consolidated dockets (Nos. 131 and 253), the Commission finds that the firm of Kiley, Osborn, Kiley and Harker, attorneys for the Miami Indians of Indiana, plaintiffs in Docket 131, and the firm of Sonnenschein, Levinson, Carlin, Nath and Rosenthal, attorneys for the Miami Tribe of Oklahoma, plaintiffs

in Docket 253, are entitled to share in a fee of \$382,666.02 which is ten percent of the total final award of \$3,826,660.20 made to the two plaintiff tribes on behalf of the Miami Indians.

Need For Additional Findings Respecting Fee Division

11. Since the attorneys for both groups have not agreed as to the proper division between them of the gross fee award of \$382,666.02, and have submitted this question to the Commission for determination, the Commission makes the foregoing additional findings of fact concerning the relative contribution and services rendered by each set of attorneys.

Pre-Title Phase

Original Petitions and Consolidation

12. Original pleadings were filed on July 2, 1951, in Docket 131 and on August 9, 1951, in Docket 253. On March 27, 1953, counsel for Docket 253 filed a motion which, among other things, requested the Commission to consolidate Docket 131 with Docket 253 for the purpose of determining the recovery, if any, to which petitioners in said dockets or either of them, would be entitled with respect to the cessions of Royce Areas 56, 71, 72 and 73. (Royce Area 73 was subsequently removed from consideration in these dockets.)

Hearing on the Matter of Consolidation

13. A hearing on the motion for consolidation was held on April 21, 1953, at which counsel for both plaintiffs appeared. Counsel for Docket 253 were the principal participants at this hearing. Mr. Edwin Rothschild (Docket 253) stated the following respecting the purpose of the consolidation:

Mr. Maloney's group under No. 131, Mr. Maloney's group of Miami Indians has filed for recovery on the same treaties. It seemed proper that his petition and our petition should be consolidated for the purpose of proof as to the title of the Miami Tribe and as to the recovery which the Miami Tribe as a whole would be entitled to. [Tr. p. 20.]

Mr. Maloney, for Docket 131, orally agreed at the hearing to the consolidation. On April 21, 1953, the Commission issued an order consolidating Dockets 131 and 253 along with several other dockets which had possible interests in the same subject matter.

Title Phase

Docket 67 et al Decision

14. The initial issue which the Commission set for determination in Dockets 131 and 253 consolidated was whether plaintiffs had recognized title, by virtue of the Treaty of Greeneville, August 3, 1795 (7 Stat. 49), to the lands they ceded to defendant by the 1805 Grouseland treaty, supra, and the 1809 Fort Wayne treaty, supra. See 5 Ind. Cl. Comm. at 199-200, 202. Counsel for Docket 131 urges that in a related case, Docket 67, discussed below, counsel representing the Oklahoma Miamis in that case (the same Indians plaintiffs in Docket 253) improperly permitted the Commission, on motion of defendant, to delete a finding of fact concerning the interpretation of the Treaty of Greeneville as a treaty of recognition of title, thus allegedly requiring the relitigation of that question in consolidated dockets 131 and 253.

In the Docket 67 proceeding involving the same parties and the same counsel, the Commission entered a decision on title on March 26, 1954. Docket 67 et al., 2 Ind. Cl. Comm. 617. That case dealt with

Royce Area 99 in central Indiana, an area contiguous to the areas with which consolidated Dockets 131 and 253 are concerned, i.e., Royce areas 56, 71 and 72. Docket 67 also involved, among others, the same three treaties under consideration in Dockets 131 and 253. In its Docket 67 decision the Commission ruled as a matter of law that under the treaties in that proceeding, plaintiffs had recognized title to Royce Area 99. In the Findings of Fact issued with the decision, the Commission found that by the Treaty of Greeneville, the United States expressly acknowledged the exclusive rights of the Indians to the lands which the United States had relinquished to the signatory Indian tribes. Defendant then filed a motion for rehearing and for leave to introduce new evidence as to the effect of the Greeneville Treaty. In reply, plaintiffs stated that the Commission's finding regarding the effect of the Greeneville Treaty was not crucial and expressed no objection to the deletion of the particular finding as an alternative to a reopening of the case. Thereafter the Commission issued an order deleting that particular paragraph from its Finding of Fact No. 2 (appearing in the original version of the findings at the top of page 620 of Volume 2 of the Commission's decisions). Thereafter Docket 67 proceeded to trials on value and offsets and the final determination of the Commission was appealed by plaintiffs, on December 23, 1957, and by defendant on February 21, 1958. In addition to attacking the Commission's findings and conclusions on value, defendant specifically disputed the Commission's

legal conclusion that plaintiffs had recognized title to Royce Area 99 by virtue of the Treaty of Greeneville and subsequent treaties involving the lands relinquished by the United States to the Indians in 1795.

While the above cross appeals were still pending before the Court of Claims in Docket 67, the parties in Dockets 253 and 131 proceeded to the title phase trial. On January 24, 1957, defendant filed proposed findings substantially challenging the issue of recognized title under the Greeneville Treaty. The Commission's subsequent decision on title issued on June 4, 1957, resolved any possible doubts inherent in its earlier decision in Docket 67 regarding the effect of the Treaty of Greeneville as a treaty of recognition. On July 13, 1959, the Court of Claims issued its decision in the Docket 67 appeal, holding that the Commission had correctly determined as a matter of law that the Indians' title to the lands ceded in 1818 had been recognized and acknowledged by the United States under the terms of the Treaty of Greeneville. 146 Ct. Cl. 421, 441-446, 175 F. Supp. 926, 937-940.

From the foregoing chronology of events relating to the title issue in Dockets 131 and 253 and in Docket 67, it is clear that the recognized versus Indian title issue was far from settled

during the period Dockets 131 and 253 were pending before the Commission, and that the parties herein were required to meet the defendant's challenge on the matter of recognized title in the instant dockets over a year before the Court of Claims rendered its opinion in Docket 67 on the effect of the Greeneville Treaty.

Evidence on Title

15. In January of 1953, Docket 253 counsel put in evidence eighty exhibits selected from the Docket 67 proceeding. This was prior to consolidation of Dockets 131 and 253 in March of 1953. Docket 253 counsel introduced three additional exhibits in November of 1954. On June 2, 1955, both counsel introduced evidence in further support of plaintiffs' title claim. Counsel for Docket 131 introduced seven exhibits, and counsel for Docket 253 introduced 21 exhibits, in rebuttal against defendant's position.

Proposed Findings and Briefs on Title

16. On July 22, 1955, Docket 131 counsel filed eight proposed findings of fact without a separate brief. Findings 6 and 7, and parts of 5, were addressed to the issue of title.

On July 29, 1955, counsel in Docket 253 filed their proposed findings of fact and brief, which dealt extensively with the issue of title, and included an examination of defendant's position on title and the evidence submitted in support of that position.

Both counsel in their proposed findings and briefs borrowed freely from previous findings made by the Commission in its Docket 67 decision, supra, which docket involved the same parties and the same questions of law on title.

On September 5, 1955, Docket 131 counsel submitted a separate brief in which Docket 131 counsel stated that the title issue was ably briefed in Docket 253, that it would serve no purpose to duplicate the work of counsel in that docket, and that the Commission should reach the same conclusion on title as it did in Docket 67. Counsel for Docket 131 did, however, present arguments in rebuttal to those made by defendant on the effect of the Greeneville Treaty.

Defendant's Brief and Objections on Title

17. On January 24, 1957, defendant filed extensive proposed findings, brief, and objections to plaintiffs' proposed findings of fact. This document covered 185 pages and was devoted mainly to urging that the United States had not recognized title in any tribe under the Greeneville Treaty.

Plaintiffs' Reply Briefs on Title

18. Plaintiffs in both dockets filed reply briefs, on March 7, 1957, in Docket 253, and on May 28, 1957, in Docket 131. In addition, Docket 253 filed objections, on January 28, 1957, to defendant's motion of January 8, 1957, for the introduction of additional exhibits. The defendant replied to these objections and its motion was allowed on March 15, 1957.

Commission's Decision on Title

19. On June 4, 1957, the Commission issued its opinion and findings of fact on the title issue in these dockets. 5 Ind. Cl. Comm. 180. In substance, the Commission held that under the Greeneville Treaty, supra, the Miami Indians and Wea tribe acquired recognized title to the areas in question. The Commission's findings of fact were based for the most part upon evidence submitted by counsel in Docket 253, particularly exhibits 83 through 104.

Defendant's Motions for Rehearing on Title

20. Following the Commission's decision of June 4, 1957, on title, several motions for rehearing were filed by the defendant and the Prairie Band of Pottawatomie, plaintiff in Docket 15-H, which had been consolidated with dockets 131 and 253.

(a) In the title decision, the Commission found that the said Prairie Band had no title interest in the lands ceded by the Fort Wayne Treaty of September 30, 1809, supra, and dismissed the claim accordingly. On August 9, 1957, the Prairie Band filed a motion for

rehearing. The Docket 253 counsel, who filed a response to this motion, point out that Docket 131 failed to respond similarly. The record indicates, however, that the motion was never served upon Docket 131 counsel.

(b) On August 20, 1957, defendant filed a motion for rehearing on the title issue. Both parties herein filed responses, with Docket 131 counsel adopting the answer of Docket 253 counsel. Both parties actively participated in the oral argument on November 4, 1957. The Commission denied defendant's motion and the Prairie Band's motion on March 4, 1958.

(c) On May 2, 1958, defendant filed a new motion for rehearing on the question of the relationship, at the times of the treaties involved in the litigation, among the Miami, Eel River and Wea Tribes, contending, in effect, that the United States had then considered these tribes independent and as a consequence had dealt separately with them. A determination favorable to defendant would have reduced the award in favor of the Miami Indians by nearly two-thirds. The motion was served on all parties. Counsel in Dockets 253 and 314-D filed joint responses while counsel in Docket 131 did not respond at all. The defendant replied on May 29, 1958. Oral argument was had on the motion on June 10, 1958. Counsel for all parties appeared. The main argument for the Miami Indians was carried by counsel for Docket 253. (Tr. pp. 122-37.) Except for an argument that the issue could be settled by reference to the pertinent treaties, counsel in Docket 131 stated that they had nothing to add. (Tr. pp. 142-43) Defendant's motion was denied on June 25, 1958.

(d) On November 7, 1958, counsel in Dockets 253 and 314-D filed a joint motion to set the case for a trial on value. Defendant filed objections and on November 18, 1958, followed with another motion for a new trial on title. Docket 253 filed responses jointly with Docket 314-D to defendant's third request for a new trial. The record indicates that Docket 131 counsel were not served with copies of defendant's motion, or the responses. Defendant's motion was denied on February 21, 1959, and trial on value was set for October 5, 1959.

Value Phase

Defendant's Motions to Strike

21. The record indicates that prior to the valuation hearings, the defendant had filed a number of motions in 1959 to strike from the Commission's calendar the setting of these consolidated cases for value hearings. Although counsel in Docket 253 filed responses in each instance, the record further indicates that the defendant failed to serve plaintiffs in Docket 131 with copies of its motions, and that all the responses were not served on counsel for Docket 131.

Evidence on Value

22. On March 4, 1966, counsel in both dockets submitted evidence on value. Docket 131 counsel filed 111 exhibits (Nos. 58 through 168). Approximately 30 of these exhibits were selected from Docket 67. Docket 253 counsel filed 156 exhibits (Nos. 105 through 260). Approximately 62 of these exhibits were selected from Vols. VII and VIII of

Territorial Papers, and Vols. I, II, and III of American State Papers, both historical reference materials.

Hearings on Value

23. Trial on valuation was held on March 14-18, 1966, with active participation by both counsel. Neither party submitted an appraisal report, but counsel for Docket 253 offered the testimony of two experts, Dr. Gale Johnson and Dr. John Long, on behalf of all plaintiffs. Dr. Long was the principal witness. The witnesses were prepared by counsel in Dockets 253 and 314-D, and Docket 253 counsel conducted the examination at the trial. According to a March 13, 1973, affidavit of counsel for Docket 253, Docket 131 counsel met with Docket 253 counsel in Washington before the trial, reviewed the evidence and agreed upon how to proceed at the trial. At the trial, however, Docket 131 counsel stated that they had not participated in the employment of Dr. Johnson. The record shows that both expert witnesses were employed and paid by Docket 253 plaintiffs. (Tr. p. 107.) While counsel for Docket 253 took the initiative in presenting the case for all plaintiffs, Docket 131 counsel did effectively cross-examine defendant's leading witness. (Tr. pp. 398-43) 474-95.)

Proposed Findings and Brief on Value

24. (a) On December 9, 1966, counsel for Docket 253 jointly with Docket 314-D counsel filed proposed findings of fact and brief on value. In these findings and brief, counsel adopted substantially findings on value of adjacent areas made previously by the Commission in its

Docket 67 et al decisions. 4 Ind. Cl. Comm. 346 (1956), remanded, 146 Ct. Cl. 421 (1959); 9 Ind. Cl. Comm. 1 (1960), aff'd 159 Ct. Cl. 593 (1962).

(b) On March 30, 1967, Docket 131 counsel filed its proposed findings of fact and brief on value, supplementing to a certain extent the brief filed by Docket 253 counsel. Counsel for Docket 131 also relied substantially on decisions and findings in Docket 67, supra, relating to value of adjacent areas.

(c) On May 1, 1967, counsel in Docket 131, by leave of the Commission, filed proposed supplementary findings and brief on value. These requested findings also relied to a large extent on findings made by the Commission in Docket 67. The land classification table, for example, which appears as proposed Finding 11, was the basis for a Commission finding on this subject in Docket 67, Finding 6, 4 Ind. Cl. Comm. 346, 349, supra, as was proposed Finding 14 in Docket 253.

Defendant's Findings and Brief on Value

25. On April 15, 1968, defendant filed its proposed findings, brief, and objections to plaintiffs' proposed findings and brief. Defendant's objections were directed specifically and separately to each finding submitted by both parties, and whenever the grounds were identical, the defendant so stated. While defendant noted similarities in several of the two sets of proposed findings, it nevertheless entered its objections separately in full detail to both sets of findings submitted by both counsel.

Reply Briefs and Oral Argument

26. (a) Plaintiffs in both dockets filed detailed and extensive reply briefs to defendant's proposed findings and objections, on June 17, 1968, in Docket 131, and on August 14, 1968, in Docket 253.

(b) Final oral argument on the value phase of these dockets was held on November 7, 1968. All parties were represented at the hearing and agreed on the order of presentation. Counsel for each docket (131, 253, 314-D) participated equally in the argument and in rebuttal.

Title Controversy Between Miami and Wea Tribes

27. Counsel in both dockets briefed and argued a motion relating to a controversy between the Miami Tribe and the Wea Tribe (Docket 314-D) with respect to title to Royce Area 56. The Commission in its January 8, 1970, opinion on value, 22 Ind Cl. Comm. 92, held that the Wea Tribe owned a one-third interest in Royce Area 56 and made an award accordingly. Oral argument on the motion to sever and reconsider the award to the Wea Tribe was held on February 27, 1970, at which hearing all counsel participated actively. The Commission's opinion on the motion was issued on March 18, 1970, affirming the Wea Tribe's (Docket 314-D) interest in Royce Area 56. 22 Ind. Cl. Comm. 469.

On July 20, 1970, Docket 131 counsel filed a motion for leave to file an appeal out of time, with a supporting memorandum. Responses to said motion were filed by plaintiffs in Docket 314-D on July 27, 1970, and by the defendant on August 13, 1970. The motion was denied by the Commission on September 9, 1970.

Participation on Offsets Issue

28. A hearing on offsets was held on February 24, 1969, at which all counsel participated. Defendant's claim amounted to about \$1200.

Docket 253 counsel sought an adjustment to \$587.38 if defendant would withdraw certain items. Counsel in Docket 131 objected to the entire amount as de minimus in a separate memorandum on the point filed on February 24, 1969. The defendant filed its brief on March 20, 1969, claiming \$587.38. Docket 131 counsel filed proposed findings and brief on offsets on April 4, 1969. The Commission disallowed the offsets under the then valid Delaware rule under which no offsets were considered if less than 5 percent of the award in any given year. See Delaware Tribe of Indians v. United States, Dockets 27-A and 241, 21 Ind. Cl. Comm. 18 (1969), rev'd in part, 192 Ct. Cl. 385, 427 F. 2d 1218 (1970).

Conclusion

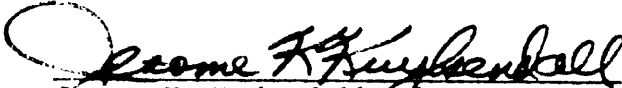
29. (a) As set forth in Finding No. 8 herein, the Commission finds that counsel in both dockets (131 and 253) are entitled to share in the gross fee award of \$382,666.02.

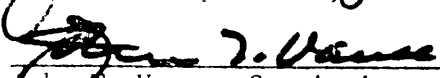
(b) On the basis of the entire record of the proceedings in these dockets and upon consideration of the responsibilities undertaken by counsel, the difficult problems of fact and law, the diligence of counsel in all phases of this prolonged litigation, the substantial award obtained for the benefit of plaintiffs, the services rendered by each group of attorneys and their relative contributions to the final results, the appropriate factors pertinent to the determination of attorneys' fees under the standards established by the Indian Claims Commission Act, and pertinent decisions of the Commission and the Court of Claims, the foregoing findings of fact, and for further reasons set


forth in our opinion, we conclude that the awarded gross fee of \$382,666.02 should be apportioned on a basis of 60 percent to counsel for Docket 253 and 40 percent to counsel for Docket 131.


(c) For the services rendered in the prosecution of the claims in the matter of the subject cases, the Commission further finds that the below named parties are entitled to the indicated sums as payment in full of attorneys' fees to be distributed by them to those entitled to participate in the sharing of the attorneys' fee in these cases in accordance with their respective interests therein:

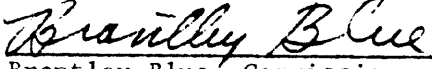
- (1) To Madeline F. Maloney and Walter H. Maloney, Jr., co-executors under the will of Walter H. Maloney, Sr., deceased; Walter H. Maloney, Jr.; and the law firm of Kiley, Osborn, Kiley and Harker \$153,066.41
- (2) To the law firm of Sonnenschein, Levinson, Carlin, Nath and Rosenthal 229,599.61


 Jerome K. Kuykendall, Chairman


 John I. Vance, Commissioner


 Richard W. Yarborough, Commissioner


 Margaret H. Pierce, Commissioner


 Brantley Blue, Commissioner