

BEFORE THE INDIAN CLAIMS COMMISSION

THE SEMINOLE INDIANS OF THE STATE)	
OF FLORIDA,)	
and)	
THE SEMINOLE NATION OF OKLAHOMA,)	
)	
Plaintiffs,)	
)	
v.)	Docket Nos. 73 and 151
)	(Consolidated)
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: November 19, 1976

FINDINGS OF FACT ON AWARD OF ATTORNEYS' FEE

On June 10, 1976, Paul M. Niebell, attorney of record for the plaintiffs in Docket 151, Charles Bragman, attorney of record for the plaintiffs in Docket 73, Effie Knowles, Roy L. Struble and the Estate of Roy St. Lewis (by Paul M. Niebell under power of attorney from Paula D. Greenhouse, Executrix), filed a joint application, together with supporting statement and documents, for allowance of attorneys' fee. On June 25, 1976, Guy Martin filed objections to the above application and also filed in Docket 73, on his own behalf, an application, with supporting statement, for allowance of attorneys' fee. On June 30, 1976, Paul M. Niebell, Roy L. Struble, Charles Bragman and Effie Knowles filed a motion to quash Mr. Martin's objections and application. On August 25, 1976, Paul M. Niebell filed a motion requesting that separate orders be entered in Dockets 73 and 151, each for one-half of the total attorneys' fee requested. On September 28, 1976, J. Roy Thompson, Jr., on behalf of Guy Martin, replied in opposition to the motion to quash objections and deny application. On October 8, 1976, Bragman and Struble filed an answer to this reply asserting, inter alia, that it had been filed too late,

whereupon, on October 27, 1976, Guy Martin filed a motion for leave to file said reply out of time. On October 12, 1976, Effie Knowles filed a petition asking that her name be withdrawn from the joint application filed on June 10, 1976, and that separate awards be made to each attorney. On October 26, 1976, Roy L. Struble and Charles Bragman responded in opposition to Ms. Knowles' petition but stated that they did not object to her name being withdrawn from the joint application. On November 3, 1976, Bragman and Struble answered Martin's motion of October 27, 1976, for leave to file a late reply.

Having considered the application filed, and the objections and motions filed with respect thereto, the defendant's responses, filed on July 15 and August 18, 1976, the contracts under which legal services have been performed on behalf of the plaintiffs with respect to the claims under these consolidated dockets, and the entire record of all proceedings under said dockets, the Commission makes the following findings of fact:

1. Award. On April 27, 1976, the Commission entered a final award in the amount of \$16,000,000, in favor of the plaintiffs (38 Ind. Cl. Comm. 62, 91). This final award was entered upon the joint motion of the parties for entry of final judgment under these consolidated dockets, pursuant to a stipulation between the parties for entry of final judgment. Funds to pay this award have been appropriated by the Congress pursuant to Public Law 94-303, June 1, 1976.

2. Contractual Authority and Compensation. On October 15, 1949, representatives of the Seminole Indians residing in Florida entered into Contract No. I-1-ind, 42239, retaining Roger J. Waybright and John O. Jackson, attorneys, to represent them in connection with the prosecution of their claims in Docket 73 before the Indian Claims Commission. This contract was

approved by the Acting Commissioner of Indian Affairs on January 6, 1950, for a term of five years from the date of its approval, with provision for two-year extensions. The contract was extended several times, finally expiring on January 4, 1965. On February 10, 1958, the Commissioner of Indian Affairs approved Roger J. Waybright's resignation of October 11, 1957, thus terminating Mr. Waybright's entire interest in the contract. John O. Jackson died in September 1963.

On July 25, 1959, a supplement to the above contract was entered into between the Seminole Tribe of Florida and Roy L. Struble, Effie Knowles and Charles Bragman, employing them as attorneys with John O. Jackson, and giving them an interest in the contract. This supplement was approved on October 8, 1959.

Contract 14-20-0650 No. 1292, dated April 30, 1965, and approved June 3, 1965, and an amendment thereto, approved June 29, 1965, extended the employment of Struble, Knowles and Bragman for ten years from January 5, 1965. Contract No. K51C14200921, dated November 22, 1974, approved April 16, 1975, extended their employment for 10 years from April 16, 1975, and is now in full force and effect.

On October 6, 1947, the Seminole Nation of Oklahoma entered into a contract with Roy St. Lewis, Contract Symbol I-1-ind. 18362, for ten years from December 8, 1947, the date of approval. A renewal contract, Symbol 14-20-0650, No. 803, was entered into between the Seminole Nation and Roy St. Lewis on August 25, 1959, and approved on November 28, 1960. On July 3, 1967, an assignment of an undivided 50% interest in this contract by Roy St. Lewis to Paul M. Niebell was approved. Subsequent extensions of this contract have been approved and the contract is now in full force and effect.

All of the above-described attorney contracts, as amended, with both Seminole plaintiffs provided for a contingent fee in an amount not to exceed 10% of the amount of recovery.

3. Requested Fee. The application is for allowance of an attorneys' fee of \$1,600,000, which is ten percent (10%) of the award of \$16,000,000.

4. Statutory Provision on Fees. The authority to make the requested award in the amount of ten percent (10%) of the judgment is set forth in Section 15 of the Indian Claims Commission Act, 60 Stat. 1049, 1053 (1946), as follows:

The fees of . . . attorneys for all services rendered in prosecuting the claim in question, whether before the Commission or otherwise, shall, unless the amount of such fee 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 amount so fixed by the Commission, exclusive of reimbursement for actual expenses, shall not exceed 10 percentum of the amount recovered in any case. . . .

5. Defendant's Response. The defendant responded by letter from the Department of Justice, filed July 15, 1976, to the application for allowance of attorneys' fee filed by the contract attorneys. The letter stated that the Department of Justice takes no position as to the allowance of attorneys' fee to the contract attorneys.

6. Plaintiffs' Consent to Attorneys' Application. On May 14, 1976, the Tribal Council of the Seminole Tribe of Florida, unanimously adopted Resolution No. C-82-76, which consented to the award of the requested fee. On June 5, 1976, a similar resolution, No. 76-7, was unanimously adopted by the General Council of the Seminole Nation of Oklahoma.

7. Attorneys' Services in Prosecution of the Claims. The attorneys served the plaintiffs for a period of more than twenty-five years, beginning with the formulation of the claims and culminating in 1976 with the entry of an award of \$16,000,000 in plaintiffs' favor and appropriation of that amount by the Congress.

During these years, the attorneys researched and analyzed several novel and complicated issues of law and fact, filed several motions and responded to several motions filed by defendant, supervised the preparation of testimony by several experts (and prepared for and conducted cross-examination of defendant's expert witnesses), engaged in numerous hearings before the Commission, and participated in the disposition of several appeals in the Court of Claims involving these claims.

As part of the litigation of these claims, the attorneys successfully protected the plaintiffs' interests in connection with overlapping claims of the Creek Nation East of the Mississippi, plaintiff in Docket 280. The resolution of this matter in plaintiffs' favor took three and one-half years and involved consolidation of Dockets 73 and 151 with Docket 280, numerous motions, two hearings before the Commission, and three separate appeals in the Court of Claims. Ultimately, the claims of the plaintiff in Docket 280 were dismissed.

After dismissal of Docket 280, the attorneys commenced negotiations with defendant's counsel for settlement of these claims. These negotiations resulted in the entry by the Commission on April 27, 1976, of a final award of \$16,000,000, upon joint motion of the parties. After the entry

of the final award, the attorneys engaged in extensive efforts to secure an appropriation to pay the award and succeeded in having such an appropriation included in Public Law 94-303, June 1, 1976.

8. Status of Attorney Guy Martin. Mr. Martin has objected to the application for attorneys' fee filed by the contract attorneys and has filed application in Docket 73 on his own behalf for an attorneys' fee of \$80,000. The contract attorneys have filed a motion to quash Mr. Martin's objections and deny his application. On August 17, 1976, the Department of Justice wrote to the Commission stating that it took no position with respect to Mr. Martin's application but enclosed with that letter copies of an August 6, 1976, memorandum to the Solicitor of the Department of the Interior from the Commissioner of Indian Affairs and an August 16, 1976, letter from Interior's Associate Solicitor to Assistant Attorney General Taft.

In the memorandum of the Commissioner of Indian Affairs, dated August 6, 1976, there is set forth a full review of the history of Mr. Martin's participation in the litigation of these claims. The opinion expressed at the conclusion of that memorandum is that Mr. Martin is not entitled to a fee from the award of an attorneys' fee in Docket 73 because Mr. Martin is not a party to any contract approved by the Commissioner of Indian Affairs to represent the Seminole Indians of the State of Florida nor does he have an approved assignment of interest in any such contract.

In the letter dated August 16, 1976, from the Associate Solicitor to Assistant Attorney General Taft the conclusion is reached on the basis

of the decision in the case of Sisseton and Wahpeton Bands v. United States, 191 Ct. Cl. 459-469-70 (1970) that Mr. Martin's application and objections are an instance of an internal dispute among counsel over which the Indian Claims Commission has no jurisdiction and which is of no concern to the United States.

The Commission finds that Mr. Martin is not, and never was, a contract attorney in Docket 73. Consequently, he has no standing to object to the application of the contract attorneys and the Commission lacks jurisdiction to entertain his application.

9. Attorney Niebell's Motion to Enter Separate Orders. Mr. Niebell's motion of August 25, 1976, requested that the Commission enter a separate order in Docket 151 wherein one-half of the attorneys' fee to be awarded in consolidated Dockets 73 and 151 would be awarded to Attorney Niebell for distribution to him and to the Estate of Roy St. Lewis, deceased. Mr. Niebell asserts that equal division of the attorneys' fee between the attorneys representing the plaintiffs in Docket 73 and those representing the plaintiffs in Docket 151 has been agreed to by all contract attorneys as recited in the motion for attorneys' fee filed with the Commission on June 10, 1976. Mr. Niebell's stated reason for requesting such relief is to avoid delay in the payment of the attorneys' fee to the attorneys for the plaintiffs in Docket 151 due to the objections and motion filed by Guy Martin. Mr. Martin's objections and motion apply only to the attorneys' fee to be awarded to the attorneys for plaintiffs in Docket 73.

For two reasons we find that Mr. Niebell's motion should be dismissed. First, the attorneys' fee to be awarded here will constitute a percentage of the single award entered in favor of the plaintiffs in both Dockets 73 and 151. Both the ultimate division of that award between the plaintiffs and the ultimate division of the attorneys' fee among the contract attorneys are matters beyond the Commission's jurisdiction. Secondly, our conclusions with respect to Mr. Martin's objections and application render Mr. Niebell's motion moot.

10. Conclusions. On the basis of the entire record in these consolidated dockets and considering the responsibilities undertaken, the difficult problems of fact and law involved, the contingent nature of the compensation, the award obtained, and all appropriate factors pertinent to the determination of attorneys' fees under the standards established by the Indian Claims Commission Act, the Commission concludes that the contract attorneys have rendered valuable legal services in successfully prosecuting their clients' claims and ultimately obtaining judgment. Under the terms of their contracts and the above-enumerated standards, including those standards obtaining in the prosecution of similar claims in courts of law, the contract attorneys have earned an attorneys' fee of \$1,600,000, representing ten percent (10%) of the award to plaintiffs. Accordingly, payment of the sum of \$1,600,000 jointly to Paul M. Niebell, attorney of record for the plaintiffs in Docket 151, and Charles Bragman, attorney of record for plaintiffs in Docket 73, for distribution by them to the contract attorneys

and their representatives in accordance with the respective interests of each, will represent payment in full of all claims for legal services in these consolidated dockets. Such payment will be out of funds appropriated to pay the award.

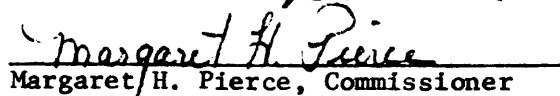
The Commission further concludes, for the reasons hereinbefore stated, that the objections filed by Guy Martin to the contract attorneys' fee application should be dismissed, that the application for attorneys' fee filed by Mr. Martin in Docket 73 should also be dismissed, and that the motion by Paul M. Niebell to enter separate attorneys' fee awards should likewise be dismissed. Mr. Martin's motion of October 27, 1976, for leave to file a late reply will be granted.

Finally, the Commission has concluded that the motion filed by Effie Knowles on October 12, 1976, to have her name withdrawn from the joint application of June 10, 1976, for award of attorneys' fee may in the absence of objection, be granted. Her motion for separate awards of attorneys' fees will, for the reasons set forth in the accompanying opinion, be dismissed for lack of jurisdiction.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner