

BEFORE THE INDIAN CLAIMS COMMISSION

THE SENECA NATION OF INDIANS,)	Docket No. 342-A
)	
Plaintiff,)	
)	
THE TONAWANDA BAND OF SENECA)	
INDIANS,)	Docket No. 368-A
Plaintiff,)	
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

ORDER ALLOWING ATTORNEYS' FEE

On February 28, 1973, counsel for the plaintiffs, the Seneca Nation of Indians and the Tonawanda Band of Seneca Indians, applied for an attorneys' fee. This application was filed by Paul G. Reilly on behalf of Earle and Reilly, attorneys for the plaintiffs. The application includes a statement of the legal services performed in successfully formulating and prosecuting the claims of these plaintiffs in these dockets. Having considered this application and statement; the defendant's response, filed April 20, 1973; the contracts of employment under which Earle and Reilly served the Seneca Nation of Indians and the Tonawanda Band of Seneca Indians; and the evidence supporting the application, including the entire record and all proceedings in these dockets, the Commission finds as follows:

1. The Award

On November 22, 1972, (in accordance with a stipulation filed in Dockets 342-A, B, C, F, and I, and 368 and 368-A on November 14, 1972) the Commission entered a final award herein in the amount of \$5,466,615.04 (29 Ind. Cl. Comm. 169). Money to pay this award was appropriated by Congress July 1, 1973.

2. The Attorney Contracts

A. The Seneca Nation of Indians plaintiff in Docket 342-A, was represented in this claim by the law firm of Earle and Reilly under one contract.

Contract No. I-1-ind. 42260 is dated December 5, 1949, and was approved on January 27, 1950, for a period of 10 years from the date of approval. On September 13, 1961, this contract was extended five years

beyond January 27, 1960. An extension for 10 years beyond January 27, 1965, was approved May 28, 1969, so that the present termination date is January 27, 1975.

B. The Tonawanda Band of Seneca Indians, plaintiff in Docket 368-A, was represented in this claim under three contracts.

(1) Contract No. I-1-ind. 42524, dated June 28, 1951, was entered into with Attorney August Merrill. It was approved July 31, 1951, for a period of two years from that date. On August 13, 1951, Attorney Merrill filed a petition in Docket No. 368. This contract provided in pertinent part:

It is agreed that in the event of the death of the attorney, his estate shall be allowed compensation in such sum as the Commissioner of Indian Affairs may find equitably to be due for the services theretofore rendered under the contract, if the matter be settled without submission to a court or tribunal, or in the event it is submitted to said court or tribunal, then such sum as may be determined by such court or tribunal equitably to be due for the services theretofore rendered under this contract.

It is agreed that the death of the attorney shall terminate the contract unless he leaves surviving associate counsel holding an interest in the contract under an assignment duly approved by the Commissioner of Indian Affairs

(2) Sometime prior to August 1952, August Merrill died. A contract designated as Symbol 14-20-650, Contract No. 3, dated August 15, 1952, was entered into between the Tonawanda Band of Seneca Indians and Attorney Kevin Kennedy. This contract was approved September 18, 1952, for five years from that date. This contract was amended by the Commissioner of Indian Affairs to provide that a court or tribunal determining a claim should also determine an equitable fee not to exceed 10% of the award. This amendment also:

. . . provided that part of said compensation arising out of the recovery upon claims already filed by August Merrill, deceased, shall be equitably prorated between the estate of said August Merrill and the party of the second part (Kennedy) by the Commissioner of Indian Affairs or such court or tribunal before whom the claims have been filed.

This contract also provided that in the event of the death of Mr. Kennedy, his estate would receive such compensation as would be equitably due for the services rendered.

The Deputy Assistant Secretary of the Interior has advised by copy of a memorandum to the Solicitor dated April 3, 1973, that:

By letter dated April 19, 1954, relative to termination of the contract, the attorney (Kennedy) stated that he would make no claim for fees against any recovery for the Indians. The contract was terminated, effective as of June 28, 1954.

(3) A contract designated as Symbol 14-20-650 Contract No. 172, dated April 6, 1954, was entered into between the Tonawanda Band of Seneca Indians and Earle and Reilly, Attorneys at Law. This contract was approved June 28, 1954, for a period of five years. On February 9, 1962, this contract was extended five more years from June 28, 1959. The contract provided:

. . . that part of said compensation arising out of the recovery upon claims already filed by August Merrill, deceased, shall be equitably prorated between the estate of said August Merrill and the Attorneys as they may agree, or, in the event no such agreement shall be reached then by the Commissioner of Indian Affairs or such court or tribunal before whom the claims have been filed.

By an agreement of June 29, 1969, between the Tonawanda Band of Seneca Indians and Paul G. Reilly, surviving partner of Earle and Reilly, this contract was amended and extended 10 years, or until June 28, 1974. This amendment and extension was approved September 2, 1969.

C. Contractual Duties

The contracts of employment impose upon the attorneys the duties of advising and representing the plaintiffs in investigating, formulating, filing, and prosecuting the claims of the tribes against the United States growing out of any treaty or arising from any law of Congress, or otherwise. The attorneys are to represent the plaintiffs before the Indian Claims Commission and all courts, departments, tribunals, the Committees of Congress, and other officers having any duties in connection with such claims.

The attorneys are subject to the supervision and direction of the Commissioner of Indian Affairs, and may not make any compromise settlement, or other adjustment of the matters in controversy unless with the approval of the Commissioner of Indian Affairs. The attorneys are to pursue the litigation in question to and through the court of final resort unless authorized by the Commissioner of Indian Affairs to terminate the proceedings at an intermediate stage thereof.

D. Contractual Compensation

The contracts of employment provide for a contingent fee of not to exceed 10 per cent of the recovery of the plaintiff Indians. The pertinent provision in Contract Symbol 14-20-650 Contract 172, dated April 6, 1954, the effective contract in Docket 368-A, provides:

It is agreed that the compensation of the Attorneys for the services to be rendered under the terms of this contract is to be wholly contingent upon a recovery for the Band of Indians. The Attorneys shall receive as such compensation ten per centum (10%) of any and all sums recovered or procured, through efforts, in whole or in part, for the Band of Indians, whether by award of the Indian Claims Commission, suit, action of any department of the Government or of the Congress of the United States, or otherwise, plus reasonable expenses incurred in the prosecution of the claims

This contract was approved June 28, 1954, by the Commissioner of Indian Affairs, "subject to the condition that the compensation due the attorneys shall not exceed 10% of the amount recovered for the Indians."

The effective contract in Docket 342-A is Symbol I-1-ind. 42260, dated December 5, 1949. This contract provides that:

The parties of the second part shall receive as such compensation ten per centum (10%) of any and all sums recovered or procured

3. Statutory Provision on Fees

The Indian Claims Commission Act (60 Stat. 1049), under which the claims were prosecuted, contains the following provision (p. 1053) pertaining to the allowance of attorneys' fees:

Sec. 15 . . . The fees of such attorney or attorneys for all 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 amount so fixed by the Commission, exclusive of reimbursements for actual expenses, shall not exceed 10 per centum of the amount recovered in any case

4. The Requested Fee

The application requests allowance of an attorneys' fee in the amount of \$546,661.50. This is ten per cent of the final award of \$5,466,615.04 which we granted in these two dockets.

5. The Defendant's Response

The defendant responded by letter dated April 20, 1973, which states:

Re: Seneca Nation and Tonawanda Band of
Seneca Indians v. United States, Docket
Nos. 342-A and 368-A, before the Indian
Claims Commission.

Attached is a copy of a letter from William A. Gershuny, Associate Solicitor, United States Department of the Interior, advising this Department that there is no objection to the payment of a 10 percent attorney fee of \$546,661.50 in the above-styled cases, as provided by contract.

In view of this letter no pleading in opposition to the fee request will be filed.

6. Notice to the Plaintiffs and Response

Notice of this application for attorneys' fee, together with a copy, was mailed March 1, 1973, to Dean Williams, President of the Seneca Nation of Indians, and to Chiefs Ellsworth George and Corbett Sundown of the Tonawanda Band of Seneca Indians.

Under date of March 8, 1973, President Williams responded:

I have read the Application for Attorneys fees for 10 percent of the final award entered by the Commission in favor of the plaintiffs on November 22, 1972 (29 Ind. Cl. Comm. 169) in total amount of \$5,466,615.04.

I would ask the Commission to render a favorable determination on this Application for fees as

filed by Earle & Reilly, attorneys for the Seneca Nation of Indians.

Under date of March 28, 1973, Chief George responded:

The Council of Chiefs of the Tonawanda Indian Reservation held a meeting to certify the attorney fees as presented to the Commission. They held that the fee was reasonable and that it should be paid. This was for Docket Nos. 342-A and 368-A.

No response has been received from Chief Sundown.

7. Portion of Fees Attributable to Docket 368-A

On June 28, 1954, arrangements were made between Attorney Kevin Kennedy and the firm of Earle and Reilly, which are still in force, whereby a certain portion of the fee attributable to the Tonawanda claims in Docket 368-A would be paid to Mr. Kennedy by Earle and Reilly subject to adjustment between the parties. The portion of the total award attributable to Docket 368-A is \$307,273.44. Thus the portion of the total attorney's fee attributable to that docket is \$30,727.34.

The Commission is advised in Mr. Reilly's "Supplemental Statement In Support of Application For Attorneys' Fees" that the attorneys have agreed among themselves upon a division of the attorneys' fee for Docket 368-A, that Mr. Kennedy has been advised of the pending fee application, and that Paul G. Reilly is authorized to receive payment of the entire fee for appropriate distribution among the attorneys. Mr. Reilly states that neither he nor the firm of Earle and Reilly have any knowledge as to the existence of any representative of the estate of August Merrill, and have been informed that Mr. Kennedy similarly has no such information.

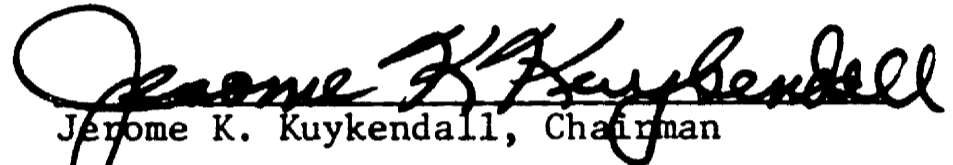
8. Services Rendered by the Attorneys

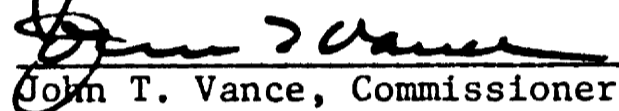
Pursuant to the aforementioned contracts, the attorney of record for the plaintiffs herein, Paul G. Reilly on behalf of the firm of Earle and Reilly, filed a claim in these dockets on which those plaintiffs received an award of \$5,466,615.00. The attorney had rendered valuable services for his clients, and he is entitled under the terms of the contracts with the Seneca Nation and Tonawanda Band of Seneca Indians, to an award of an attorney's fee for services rendered in this case. Therefore,

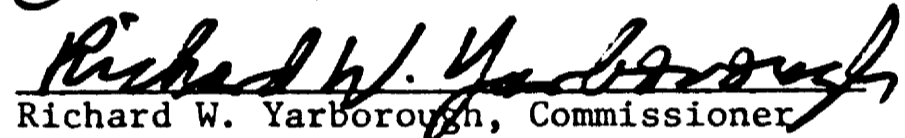
HAVING CONSIDERED the application for allowance of attorney fee for services in behalf of the plaintiffs herein and the factors pertinent to the determination of attorney fees under the standards established by the Indian Claims Commission Act, the Commission finds that the attorneys for the plaintiffs have rendered valuable services for their clients and are entitled to an attorneys' fee in the amount of \$546,661.50.

IT IS THEREFORE ORDERED that out of the funds appropriated to pay the final award, entered in Docket Nos. 342-A and 368-A, on November 22, 1972, in favor of the Seneca Nation and the Tonawanda Band of Seneca Indians, there shall be disbursed to Paul G. Reilly the sum of \$546,661.50, for his services and for distribution by him to any participating attorney in accordance with his respective interest therein.

Dated at Washington, D. C., this 25th day of July 1973.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner

Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner