

BEFORE THE INDIAN CLAIMS COMMISSION

BAY MILLS INDIAN COMMUNITY, SAULT STE.)	
MARIE, ARTHUR LAWRENCE LEBLANC,)	
DANIEL EDWARDS, AND JOHN L. BOUCHER)	Docket No. 18-E
)	
AND)	
)	
OTTAWA AND CHIPPEWA INDIANS OF MICHIGAN)	
ex rel. ROBERT DOMINIC, ET AL.,)	Docket No. 58
)	
Plaintiffs,)	
)	
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: August 9, 1973

FINDINGS OF FACT ON AWARD OF ATTORNEYS' FEE

On December 15, 1972, Rodney J. Edwards, attorney of record for plaintiffs in Docket 18-E, and James R. Fitzharris, attorney of record for plaintiffs in Docket 58, filed a joint petition for award of attorneys' fee. This petition was accompanied by a joint statement of the attorneys of record concerning the legal services performed in successfully formulating and prosecuting the claims of the plaintiffs in these two dockets. On May 23, 1973, they filed an amended joint petition and an amended joint statement. Having considered these petitions and statements, the defendant's responses filed herein on January 31, 1973, and July 16, 1973, the contracts of employment under which the attorneys served the plaintiffs, and the evidence supporting the petition, including the entire record of all proceedings in the dockets involved herein, the Commission finds the following facts.

1. Award

On March 15, 1972, the Commission entered an amended final award in the amount of \$10,109,003.55 in favor of the plaintiffs in Dockets 18-E and 58 jointly. This award was on behalf of and for the benefit of the Ottawa and Chippewa Nations of Indians who negotiated the treaties of July 6, 1820, 7 Stat. 207, and March 28, 1836, 7 Stat. 491 (27 Ind. Cl. Comm. 94, 97). Funds to satisfy the judgment were appropriated by Public Law 92-607, approved October 31, 1972 (86 Stat. 1498).

2. Contractual Authority and Compensation in Docket 18-E

The claim in Docket 18-E was instituted and prosecuted pursuant to attorneys' contracts made with the tribal council of the Bay Mills Indian Community. These contracts are:

(a) Contract dated July 7, 1948, approved October 6, 1948, bearing Contract No. I-1-ind. 42084, with attorneys Paul L. Adams and Jay H. Hoag, is effective for a period of five years from date of approval. The fee is to be determined by any tribunal making an award, and can be up to 10% of any amount recovered.

(b) Contract dated June 2, 1949, approved October 19, 1949, bearing contract No. I-1-ind. 42200, with attorneys Paul L. Adams, James J. Fenlon, Austin L. Lathers, Jay H. Hoag, and Clarence G. Lindquist, supersedes contract No. I-1-ind. 42084, above, and is effective for a period of ten years from the date of approval. The fee is to be 7 1/2% of all amounts recovered, except that the Commission may, upon application by the attorneys, determine a fee of not more than 10% of the amount recovered.

(c) Contract dated July 29, 1960, approved September 29, 1961, bearing contract No. Symbol 14-20-0650 No. 1111, with Attorneys Paul L. Adams, Clarence G. Lindquist, Jay H. Hoag, Edward L. Gruber, Rodney J. Edwards, James R. Fitzharris, and Denis McGinn, is effective for a period of ten years from October 19, 1959. The fee may be up to 10% of the award.

(d) Contract dated February 17, 1971, approved February 26, 1971, bearing contract No. F 50 C 14200460, with Attorneys Jay H. Hoag, Rodney J. Edwards, Paul L. Adams, and James R. Fitzharris, is effective for five years. The fee is to be determined by the tribunal deciding the claim, and may be up to 10% of the amount recovered.

3. Assignments to other Attorneys of Interest in Attorneys' Contracts in Docket 18-E

(a) By agreement dated November 18, 1949, approved January 27, 1950, the attorneys named in Contract No. I-1-ind. 42200, identified above, assigned an interest in this contract with the plaintiff, Bay Mills Indian Community, to Attorneys G. Arthur Johnson, Vern R. Edwards, Rodney J. Edwards, Ward Winton, Thomas L. St. Germaine heirs, Herschel B. Fryberger, Jr., E. L. Gruber, H. J. Grannis, Preston Boyden, George E. McGrath, and Patrick A. Burke.

(b) By assignment dated April 18, 1950, approved July 13, 1950, Austin L. Lathers, Jay H. Hoag and Clarence G. Lindquist, attorneys named in Contract No. I-1-ind. 42200, identified above, assigned an interest in this contract with the plaintiff, Bay Mills Indian Community, to Attorneys Denis McGinn and James R. Fitzharris.

(c) By an undated assignment approved June 30, 1958, Preston Boyden and George E. McGrath, attorneys named in the agreement dated November 18, 1949, identified above, reassigned a portion of their interest under this agreement to Attorneys Denis McGinn and James R. Fitzharris.

(d) By agreement of May 22, 1961, approved December 20, 1962, Austin L. Lathers, Jay H. Hoag, Rodney J. Edwards and Clarence G. Lindquist, attorneys named in Contracts No. I-1-ind. 42200 and Symbol 14-20-0650 No. 1111, identified above, assigned an interest in their contracts with the plaintiff, Bay Mills Indian Community, to Attorney Marvin J. Sonosky.

(e) By an assignment dated February 25, 1965, approved June 28, 1965, Preston Boyden assigned all his interest in the attorney contracts in Docket 18-E to Jay H. Hoag and Rodney J. Edwards.

(f) By an assignment dated January 20, 1972, approved January 31, 1972, Patrick A. Burke assigned all his interest in the Docket 18-E contracts in equal shares to Rodney J. Edwards and Marvin J. Sonosky.

(g) By an assignment dated and approved effective July 20, 1973, George E. McGrath assigned all his interest in the attorney contracts in Docket 18-E to Rodney J. Edwards.

4. Attorneys in Docket 18-E Now Deceased

The following attorneys in Docket 18-E who have or did have an interest in the fee are reported deceased: Austin L. Lathers, Jay H. Hoag, Clarence G. Lindquist, Edward L. Gruber, Denis McGinn, Vern R. Edwards, H. J. Grannis, and Preston Boyden.

5. Contractual Authority and Compensation in Docket 58

The claims in Docket 58 were instituted and prosecuted pursuant to attorneys' contracts with the Ottawa and Chippewa Indians of Michigan and the Northern Michigan Ottawa Association. These contracts are:

(a) Contract dated June 5, 1948, approved September 23, 1948, bearing contract No. I-1-ind. 42078, is between the Northern Michigan Ottawa Association and Attorneys Charles B. Rogers and Arthur B. Honnold. This contract is for 10 years, and it provides for a maximum fee of up to 10% of any amount recovered. This contract also bears Office of Indian Affairs No. 15622.

(b) Contract dated May 7, 1951, approved June 15, 1951, bearing Contract No. I-1-ind. 42488. This contract is between Robert Dominic, president of the Northern Michigan Ottawa Association, and Attorneys Charles B. Rogers and Arthur B. Honnold. This contract, which is for 10 years, incorporates Contract No. 15622, supra, by reference and provides that it is adopted as the contract between the parties so far as is pertinent to the interests of the Indians on whose behalf Robert Dominic appears in a representative capacity before the Indian Claims Commission.

(c) Contract dated August 29, 1959, approved September 28, 1961, bearing Contract No. Symbol 14-20-0350 No. 197, is between Ottawa and Chippewa Indians of Michigan and Attorneys Jay H. Hoag, Rodney J. Edwards, Clarence G. Lindquist, Denis McGinn, James R. Fitzharris, and O. R. McGuire. This contract is effective for ten years from September 23,

1958, and it provides for a maximum contingent fee of up to 10% of any amount recovered.

(d) Contract dated June 17, 1967, approved February 8, 1968, bearing Contract No. F 50 C 14200361, is between Ottawa and Chippewa Indians of Michigan and Attorneys Jay H. Hoag, Rodney J. Edwards, and James R. Fitzharris. This contract is for ten years from the date of approval, and it provides that the deciding tribunal will determine an equitable fee up to 10% of the amount recovered.

6. Assignments to Other Attorneys of Interest in Attorneys' Contracts in Docket 58

(a) By agreement dated August 10, 1953, approved May 27, 1955, the attorneys named in Contracts No. I-1-ind. 42078 and I-1-ind. 42488, identified above, assigned an interest in their contract with the plaintiff, Ottawa and Chippewa Indians of Michigan, to Attorneys Jay H. Hoag, Rodney J. Edwards, Clarence G. Lindquist, Denis McGinn, James R. Fitzharris, and O. R. McGuire.

(b) By agreement of May 22, 1961, approved December 20, 1962, Attorneys Lathers, Hoag, Edwards, and Lindquist assigned to Marvin J. Sonosky an interest in their contracts with the plaintiffs in Docket 58.

7. Attorneys in Docket 58 Now Deceased

The following attorneys in Docket 58 who have or did have an interest in the fee are reported deceased: Charles B. Rogers, Arthur B. Honnold, Jay H. Hoag, Clarence G. Lindquist, Denis McGinn, and O. R. McGuire.

8. Statutory Provision on Fees

The Indian Claims Commission Act (60 Stat. 1049), under which the

claims herein were prosecuted, contains the following provisions (at page 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 prosecuting of the claim; but the amount so fixed by the Commission, exclusive of reimbursement of actual expenses, shall not exceed 10 per centum of the amount recovered in any case

9. Requested Fee

Mr. Rodney J. Edwards is the attorney of record for the plaintiffs in Docket 18-E, and Mr. James R. Fitzharris is the attorney of record for the plaintiffs in Docket 58. They pray for an award of attorneys' fee to them jointly in the amount of \$1,010,900, which is 10% of the award of \$10,109,003.55.

10. Defendant's Response

The defendant responded to the notice of this joint petition for fees by letter dated January 31, 1973, from the Department of Justice. This letter states in pertinent part:

On January 29, 1973 we received a letter of that date from the Associate Solicitor, Division of Indian Affairs, Department of the Interior, to which was attached a copy of a memorandum dated January 23, 1973 to the Solicitor from the Deputy Assistant Secretary, Management and Budget. We enclose a copy of the letter and of the memorandum.

As the enclosures indicate, the Bureau of Indian Affairs feels that it lacks sufficient information to make any recommendation regarding the claimed attorneys' fees. Accordingly, the Department of Justice takes no position in regard to the amounts claimed for fees by the attorneys other than to point out that the contracts with the two attorneys indicate that the aggregate fee shall not exceed 10 percent of the award. The requested \$1,010,900 is 10 percent.

The defendant further responded to the amended joint petition and amended joint statement filed May 23, 1973, by letter dated July 11, 1973, filed July 16, 1973. This letter reiterated the position taken by defendant on January 31, 1973, and stated above.

11. Notice to Plaintiffs

On December 18, 1972, the several plaintiffs were advised of this application by letter inviting them to comment on it within two weeks. A copy of the joint petition and the accompanying statement of the attorneys were enclosed with this notice, but no response has been received from the plaintiffs. This notice was sent to:

Mr. Donald Parish, President
Bay Mills Indian Community, et al.
Route # 1
Brimley, Michigan 49715

Mr. Robert Dominic, President
Northern Michigan Ottawa Assn.
911 Franklin Street
Petoskey, Michigan 49770

12. The Claims Involved

The consolidated petitions in these two dockets state two causes of action. The first involves the Treaty of July 6, 1820 (7 Stat. 207), whereby the Ottawa and Chippewa Nations of Indians ceded the St. Martin Islands in Lake Huron. The second involves the cession of March 28, 1836 (7 Stat. 491), by the same parties of that portion of the northern

peninsula of Michigan east of the Chocolay and Escanaba Rivers, together with the approximate north and west two-thirds of that part of the southern peninsula of Michigan lying north of the Grand and Thunder Bay Rivers. The ceded areas are identified as Areas 113 and 205, respectively, on Royce's Map 1 of Michigan, Vol. 18, B.A.E. Area 205 includes within its outer boundaries Area 113 and several other tracts of land acquired by the United States prior to 1836.

13. Services By Counsel

On January 12, 1948, a petition was filed which encompassed the claims in these two dockets. This petition was assigned Docket 18. By an order dated July 13, 1949, the Commission separated the several claims in this docket into different lettered suffixes.

On August 16, 1949, the petition in Docket 18-E was filed. Twelve attorneys are named on the petition as representing the plaintiffs in this docket, including the present attorney of record, Rodney J. Edwards.

On March 9, 1950, the petition in Docket 58 was filed by attorneys Arthur B. Honnold and Charles B. Rogers of Tulsa, Oklahoma. This petition was in behalf of separate plaintiffs and claimed compensation for the same parcels of land that were the subject of the claims in Docket 18-E. These claims had been previously filed under Dockets 13-B and 40-A. On November 29, 1957, Dockets 18-E and 58 were consolidated for trial by order of the Commission.

These claims presented legal and factual issues for resolution which included:

1. Plaintiffs' right and capacity to prosecute the claims.
2. The nature of title to the land, if any.
3. The treaty date value of the lands ceded.
4. The consideration for the lands ceded.
5. Gratuitous offsets claimed by the defendant.

These claims were tried in three stages. The first trial was in February of 1958, and was to determine the plaintiffs' right to proceed and the Indian title to the ceded areas. The Commission determined on May 20, 1959, that these plaintiffs were proper parties, and that they did have aboriginal title to a portion of Royce Area 205. The Commission further held that they did not have recognized title to any of the ceded area and that they did not have aboriginal title to Royce Area 113 or Sub-areas "U" and "S" which lie within the boundaries of Royce Area 205 (7 Ind. Cl. Comm. 576).

The plaintiffs moved the Commission to amend this decision, and on October 28, 1970, the Commission entered an order amending the earlier decision and finding that the plaintiffs did have recognized title to Royce Area 113 and Sub-Areas "U" and "S" (24 Ind. Cl. Comm. 50).

A second trial was held to determine the treaty date valuation of the awarded portion of Royce Area 205. This resulted in the Commission's determination that the then awarded portion of Royce Area 205 contained 12,044,934 acres and had a treaty date value of \$10,800,000 (20 Ind. Cl. Comm. 137).

The Commission reduced, as a result of a motion by defendant, the net awarded acreage to 11,923,483.25 and the fair market value to \$10,690,694.33 (22 Ind. Cl. Comm. 372).

A third trial was held to determine treaty consideration credits and gratuitous offsets. At the same time, and following the October 28, 1970, decision restoring the right to recover for sub-areas "U" and "S" of Royce Area 205 and Royce Area 113, hearings were also held to determine the value of the additional lands. The Commission determined the total value and the total offsets on December 29, 1971, and entered a final award in the amount of \$10,300,247.03 (26 Ind. Cl. Comm. 538).

Plaintiff moved to correct this decision, and as a result the Commission entered an order on March 15, 1972, amending its previous decision and awarding the amount of \$10,109,003.55 (27 Ind. Cl. Comm. 94).

In each trial stage of this case, and in support of or opposition to the various motions, the attorneys for the plaintiffs filed with the Commission requested findings of fact and briefs on the law and facts as warranted to assist the Commission in determining the issues. Following the final award, the attorneys met with their clients, submitted to them a written report, and assisted them in determining whether or not to appeal to the United States Court of Claims. No appeal was taken. Funds for payment of the award were appropriated by Public Law 92-607, approved October 31, 1972 (86 Stat. 1498).

14. Conclusion

On the basis of the entire record in these dockets and considering


the responsibilities undertaken, the difficult problems of fact and law involved, the contingent nature of the compensation, and the substantial award obtained for the plaintiffs, all appropriate factors pertinent to the determination of attorneys' fees under the standards established by the Indian Claims Commission Act, and the foregoing findings of fact, the Commission concludes that the attorneys for the plaintiffs have rendered valuable legal services in successfully prosecuting their clients' claims and ultimately obtaining a judgment. Under the terms of their contracts and the pertinent standards fixed by Section 15 of the Indian Claims Commission Act, supra, including those obtaining in the prosecution of similar claims in courts of law, the attorneys have earned an attorneys' fee of \$1,010,900, representing 10% of the award to the plaintiffs, and they are entitled to receive that amount. Accordingly, payment of this amount jointly to Rodney J. Edwards, attorney of record in Docket 18-E, on behalf of all contract attorneys having an interest in the fee in this docket, and to James R. Fitzharris, attorney of record in Docket 58, on behalf of all contract attorneys having an interest in the fee in this docket, for distribution by them to all such contract attorneys, will represent payment in full of all claims for legal services in these two dockets. Such payment will be out of the funds appropriated to pay the award.


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner


Jerome K. Kuykendall, Chairman

John T. Vance, Commissioner


Richard W. Yarbrough, Commissioner