

BEFORE THE INDIAN CLAIMS COMMISSION

MINNESOTA CHIPPEWA TRIBE, et al.,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 18-T
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: August 29, 1973

FINDINGS OF FACT ON ATTORNEYS' FEE

Upon consideration of the petition for award of attorneys' fee in the above-entitled case and the statement in support thereof, filed on December 8, 1972, by Rodney J. Edwards, attorney of record for the Minnesota Chippewa Tribe, et al., plaintiff in this case, and upon consideration of the entire record herein, including the several contracts of employment of attorneys by the plaintiff and assignments of interest in those contracts, the Commission makes the following Findings of Fact:

1. The Award

On May 31, 1972, the Commission entered a final award in Docket 18-T directing that the Minnesota Chippewa Tribe on behalf of and for the benefit of the Chippewa Indians of the Mississippi and Lake Superior, plaintiff, recover from the defendant the sum of \$529,000.00 in full satisfaction of all claims in Docket No. 18-T. (28 Ind. Cl. Comm. 103.)

2. The Petition for Attorneys' Fee

On December 8, 1972, Rodney J. Edwards, attorney of record in the above-entitled case, filed a petition on behalf of all contract attorneys having an interest in the fee in Docket 18-T for an award of attorneys' fee in the amount of \$52,900.00, being ten percent of the final judgment of \$529,000.00 which was entered in the subject docket.

3. Notice of Filing to Executive Agencies and Plaintiff

By letters of December 11, 1972, the Deputy Clerk of the Commission notified the President of the Minnesota Chippewa Tribal Executive Committee, the Commissioner of Indian Affairs, Department of the Interior, and the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, of the filing of subject petition for attorneys' fee. In reply thereto, a representative of the Department of Justice transmitted comments on the petition from the Associate Solicitor, Division of Indian Affairs, Office of the Solicitor, Department of the Interior, and from the Deputy Assistant Secretary for Management and Budget, Office of the Secretary, Department of the Interior. The replies were noncommittal with respect to the amount of the attorneys' fee requested in subject petition.

The Commission has received no reply to the letter notifying the Minnesota Chippewa Tribal Executive Committee of the filing of the petition for attorneys' fee in this case.

4. Attorneys' Contracts

Attorneys' services in this case were performed under a contract of October 13, 1949, identified as I-1-Ind. 42241, between the Minnesota Chippewa Tribe and Austin L. Lathers, Jay H. Hoag, and Clarence G. Lindquist, effective January 26, 1950, the date of its approval by the Assistant Commissioner of Indian Affairs. The contract expired 10 years thereafter at which time it became subject to an extension by the Commissioner of Indian Affairs for an additional period of ten years if the claims of the Minnesota Chippewa Tribe had not then been finally disposed of.

At the expiration of the initial ten-year term of the contract of October 13, 1949, a successor ten-year contract, identified as 14-20-0650 No. 851, of May 20, 1960, approved on March 20, 1961, by the Deputy Solicitor, Department of the Interior, as of January 26, 1960, was entered into by the Minnesota Chippewa Tribe and attorneys Clarence G. Lindquist, Jay H. Hoag, Edward L. Gruber, and Rodney J. Edwards. This contract, referred to hereafter as contract no. 851, contained several provisions which differed from those of its predecessor, I-1-Ind. 42241. Thus, after the expiration of the initial 10-year term of contract no. 851, it became subject to extension for successive one-year periods by the Secretary of the Interior or his delegate. On May 17, 1971, contract no. 851 was extended for one year from March 20, 1971, and it was again extended on September 8, 1972, for a period of one year from March 20, 1972.

The provisions for attorneys' fee in contract no. 851 are not identical with those in its predecessor contract of October 13, 1949, but the differences with respect to Indian Claims Commission work are not great. Contract no. 851 under which Docket 18-T was completed provides in applicable part as follows:

In consideration of the services rendered and to be rendered under the terms of this contract and prior contract bearing symbol I-1-Ind-42241, the parties of the second part shall be entitled to receive and shall be paid such compensation as the Secretary of the Interior or his authorized representative or if submitted to a Court, Tribunal or Commission, such Court, Tribunal or Commission may determine to be reasonable and equitable compensation for the services rendered herein, but in no event shall the aggregate fee exceed ten per centum (10%) of the sum or sums recovered or procured through their efforts in whole or in part for such Indians, whether by such action or act of any department of government or of Congress or otherwise.

Contract no. 851 limits the duties of the attorneys to advising, representing, and prosecuting claims for the Minnesota Chippewa Indians arising out of the Treaty of August 2, 1847 (9 Stat. 904), which treaty gave rise to the claim for compensation in Docket 18-T. The contract contains the following provision on the assignment of interests in attorneys' fees:

It is hereby agreed by the parties of the second part that this contract is subject to the terms and provisions of the applicable assignments of interest in the attorney fees which have heretofore been approved by the Commissioner of Indian Affairs.

5. Assignment of Interests in Attorneys' Contracts in Docket 18-T

By agreement of November 18, 1949, approved January 27, 1950 (the

approval was given subject to conditions which do not affect this proceeding), Austin L. Lathers, Jay H. Hoag, and Clarence G. Lindquist assigned the following interests in contract I-1-Ind. 42241 of October 13, 1949, with the Minnesota Chippewa Tribe:

G. Arthur Johnson		4.25
Verne R. Edwards)	4.25
Rodney J. Edwards)	
Ward Winton		3.06
Thomas L. St. Germain		0.55 ^{1/}
heirs		
Herschel B. Fryberger,		1.70
Jr.		
E. L. Gruber		2.102
Paul L. Adams)	
James J. Fenlon)	1.70
H. J. Grannis		1.70
Austin L. Lathers)	
Jay H. Hoag)	65.688
Clarence G. Lindquist)		
Preston Boyden)	
George E. McGrath)	15.00
Patrick A. Burke)	
		<hr/> 100.00

^{1/} The agreement of November 18, 1949, provided that the interests listed were subject to determination by the Court of Claims or Commission of the fees of Thomas L. St. Germain at the time of his decease. Commission findings in support of an order allowing attorneys' fee in Docket No. 18-B, Minnesota Chippewa Tribe et al. v. United States, 16 Ind. Cl. Comm. 423, 424 (1965) state that none of the heirs of Thomas L. St. Germain executed the agreement of November 18, 1949, and that it is not an effective agreement as to them. The record in this proceeding contains no information regarding this interest.

The contract of November 18, 1949, then recites that when duly approved by the Commissioner of Indian Affairs, it shall constitute and be an assignment in each of several contracts listed, including the above-mentioned contract no. 42241 of October 13, 1949, predecessor of contract no. 851 involved in this proceeding. The contract of November 18, 1949, also provides that it shall apply to renewal contracts of the parties thereto.

By an agreement of April 18, 1950, approved July 13, 1950, Austin L. Lathers, Jay H. Hoag, and Clarence G. Lindquist assigned a 2-1/2% interest in the fees to be allowed and paid in several contracts, including no. 42241, to Denis McGinn and James A. Fitzharris, attorneys of Escanaba, Michigan.

By agreement of November 21, 1955, approved May 11, 1956, between Austin L. Lathers, Jay H. Hoag, Clarence G. Lindquist, and Henry Oakey, the latter, an attorney at law of Osceola, Wisconsin, agreed to perform services in connection with actions pending before the Indian Claims Commission including Docket 18-C for 1% of the net fees. The subject Docket 18-T involving the Treaty of August 2, 1847, 9 Stat. 904, was severed from Docket No. 18-C by Commission order of October 23, 1957.

By assignment intended to be retroactive to April 22, 1950, approved by the Deputy Commissioner of Indian Affairs June 30, 1958, Preston Boyden and George E. McGrath assigned to Denis McGinn and James R. Fitzharris a 1% interest in the contract of October 13, 1949, between the Minnesota Chippewa Tribe and Austin L. Lathers, Jay H. Hoag, and Clarence G. Lindquist.

By assignment of May 22, 1961, approved December 20, 1962, amending an agreement of February 15, 1954, approved May 17, 1955, Austin L. Lathers, Jay H. Hoag, Rodney J. Edwards, and Clarence G. Lindquist assigned a 20% interest in the fees to be allowed and paid in Docket 18-T to Marvin J. Sonosky. The following attorneys also agreed that their respective interests be charged with a proportionate share of the assignment to Marvin J. Sonosky: G. Arthur Johnson, Verne R. Edwards Estate by Rodney J. Edwards, Ward Winton, and Herschel B. Fryberger, Jr.

By agreement of February 25, 1965, approved by the Acting Area Director at Minneapolis on June 28, 1965, ^{2/} Preston Boyden assigned to Jay H. Hoag and Rodney J. Edwards all the interest which he might have in the contracts listed in the agreement of November 18, 1949, including the contract of October 13, 1949 here involved between the Minnesota Chippewa Tribe and Austin L. Lathers, Jay H. Hoag, and Clarence G. Lindquist.

By assignment dated January 20, 1972, approved January 31, 1972, Patrick A. Burke assigned all of his interest under the agreement of November 18, 1949, to Rodney J. Edwards and Marvin J. Sonosky.

By an assignment dated July 20 and accepted July 23, 1973, and approved by the Area Director, Minneapolis, effective July 20, 1973,

2/ The approval was given subject to conditions not here relevant.

George E. McGrath assigned to Rodney J. Edwards all of his right, title, and interest in the assignment agreement of November 18, 1949, approved January 27, 1950, involving 16 attorney contracts with Bands or Groups of Chippewa Indians, including the contract of October 13, 1949, between the Minnesota Chippewa Tribe and Austin L. Lathers, Jay H. Hoag, and Clarence G. Lindquist.

6. Deceased Attorneys

The following attorneys named in or having assigned interests in contract nos. 42241 and 851 are now deceased: Austin L. Lathers, Jay H. Hoag, Clarence G. Lindquist, Edwards L. Gruber, Denis McGinn, Verne R. Edwards, H. J. Grannis, and Preston Boyden.

7. Services

The attorneys who prosecuted the claim herein gave legal advice and representation in support of the tribe's position in the title proceeding, having prepared and presented legal arguments and factual data to support the Commission's findings and opinion on title which were favorable to the tribe. (19 Ind. Cl. Comm. 341 (1968).) Thereafter, the tribe's attorneys performed extensive legal services in preparing argument and evidence for the trial on value and in preparing the brief and proposed findings supporting the tribe's interest in the value proceeding. (See opinion and findings on value in this docket, 25 Ind. Cl. Comm. 146 (1971).) The attorneys

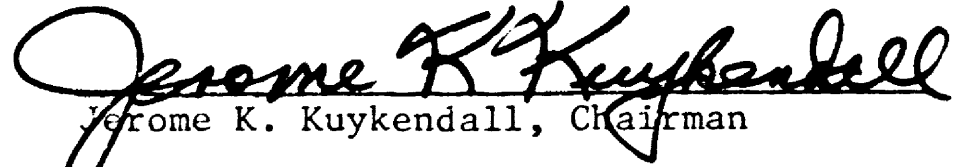
performed additional legal services supporting the plaintiff's interest in connection with the Commission opinion and additional findings in the proceeding on the defendant's payments on the claim and the entry of the final award. (28 Ind. Cl. Comm. 103 (1972).) In view of the problems of fact and law involved herein, and of the proceedings leading to the successful prosecution of this claim, the Commission finds that the attorneys have rendered valuable legal services to the plaintiff.

8. Conclusion

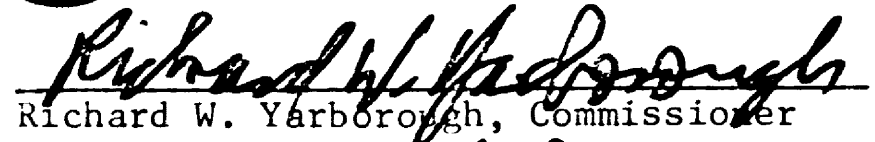
Considering the services rendered by the attorneys in these proceedings, the time involved in litigation, the results obtained, and in accordance with standards obtaining for prosecuting similar claims in courts of law, the Commission finds that the attorneys for the plaintiff are entitled to receive the full ten percent of the award as provided in Section 15 of the Indian Claims Commission Act (60 Stat. 1049, 1053) and in their respective attorneys' contracts.

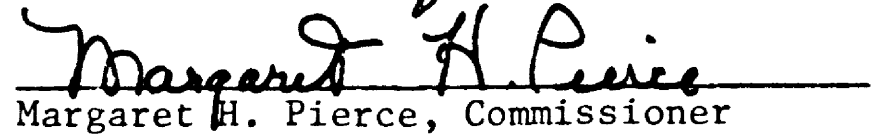
The Commission finds that the attorneys for the plaintiff are entitled to an attorneys' fee in the amount of \$52,900.00, being ten percent of the final judgment of \$529,000.00 which was entered in this proceeding, and that payment to Rodney J. Edwards, Attorney of Record, of this sum out of the funds appropriated to pay the aforementioned award, for appropriate distribution by him of the amounts due each of

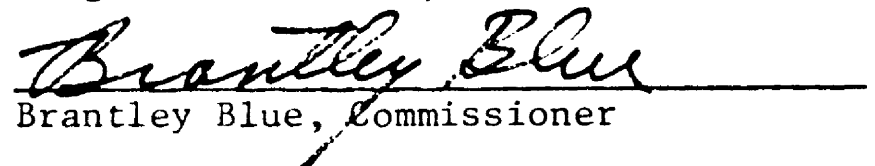
the participating attorneys pursuant to their respective contracts and assignments, will represent payment in full of all claims for legal services rendered in the docket herein.


Jerome K. Kuykendall, Chairman


John I. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner