

BEFORE THE INDIAN CLAIMS COMMISSION

IRA SYLVESTER GODFROY, WILLIAM ALLOLLA)	
GODFROY, JOHN A. OWENS, on relation)	
of the MIAMI INDIAN TRIBE and MIAMI)	
TRIBE OF INDIANA, and each on behalf)	
of others similarly situated and on)	
behalf of the MIAMI INDIAN TRIBE and)	
various bands and groups of each of)	Docket Nos. 124-C, 124-D,
them, comprising the MIAMI TRIBE AND)	124-E, 124-F, and 131
NATION,)	
)	
Plaintiffs,)	
)	
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: November 23, 1973

FINDINGS OF FACT ON ALLOWANCE OF
ATTORNEYS' EXPENSES

Upon consideration of the petitions for allowance of certain expenses incurred by counsel for the Miami Tribe of Indiana, et al., plaintiffs herein, and the evidence in support of the petitions, including the entire record and all proceedings in this case, the Commission makes the following findings of fact:

1. Claim. The petition for reimbursement of attorney expenses dated March 7, 1973, includes the claimed expenses of Robert C. Bell, Jr., for \$6,746.62 with respect to Dockets 124-C, D, E and F, assertedly incurred between 1965 and 1972, and for \$484.88 on Docket 131; the claimed expenses of D. L. Kiley and A. C. Harker for \$1,353.73, in Dockets 124-C, D, E and F, allegedly incurred in 1967-1968; and the claimed expenses of the late Walter H. Maloney, Sr., in Dockets 124-C,

D, E and F in the amount of \$3,077.17, incurred between November 4, 1952, and May 28, 1972.

2. Contracts. The Miami Tribe of Indiana and the late Walter H. Maloney, Sr., executed Contract No. 950, Symbol No. I-1-ind. 42496 on October 31, 1949, which was approved for ten years by the Department of the Interior on June 7, 1951, beginning on the date of approval. By Contract No. 950, Symbol 14-20-0650, dated May 8, 1961, approved on August 18, 1961, the 1949 contract was extended for three years beginning June 7, 1961. Another extension for two years, beginning on June 7, 1964, was approved on May 19, 1964, and an extension of the contract to June 6, 1975, was approved on August 17, 1970.

Several assignments of the contract were made including one from Mr. Maloney, Sr., to Walter H. Maloney, Jr., approved on April 13, 1963, and one from Mr. Maloney, Jr., to Mr. Maloney, Sr., approved on May 10, 1965. Approved also on May 10, 1965, was an assignment of an interest in the contract from Mr. Maloney, Sr., to the law firm of Harker, Kiley & Osborne, now Kiley, Osborne, Kiley & Harker. A request for the association of Mr. Bell with the Kiley firm was made by letter of April 23, 1968, from Mr. Kiley to the Bureau of Indian Affairs. By letter of May 16, 1968, the Commissioner of Indian Affairs approved of the association of Mr. Bell with the Kiley firm. (Mr. Bell had apparently been active in prosecuting the claim since 1965, as an agent or co-counsel with Mr. Maloney or the Kiley firm, or both.)

The contract of employment, although it refers to per diem payments, states that "such expenditures and necessary expenses are to be itemized,

verified and supported by evidence, either oral or written, as shall be deemed sufficient to properly establish the right . . . to recover their expenditures or any part thereof." A supplemental statement prepared by the Bureau of Indian Affairs, in the nature of an amendment to the contract, dated June 7, 1951, clearly provides that all expenses shall be deemed sufficient to properly establish the right . . . to recover their expenditures or any part thereof." A supplemental statement prepared by the Bureau of Indian Affairs, in the nature of an amendment to the contract, dated June 7, 1951, clearly provides that all expenses shall be properly supported and that such expenses shall be paid only upon approval of the Commissioner of Indian Affairs. A careful review of the contract of employment fails to disclose any special exemption from the duty of properly supporting all claimed expenditures, consistent with Section 15 of the Indian Claims Commission Act and Rule 34b of the General Rules of Procedure.

3. Settlement. Dockets 124-C and 255 were completed with entry on December 3, 1968, of an award of \$66,966.00 as additional compensation for land ceded under the treaty of February 11, 1828, 7 Stat. 300. 20 Ind. Cl. Comm. 97. Dockets 124-D, E, F and 256 were completed with entry on December 3, 1968, of an award of \$1,373,000.00 as additional compensation for lands ceded under the treaties of October 23, 1834, 7 Stat. 458, November 6, 1838, 7 Stat. 509, and November 28, 1840, 7 Stat. 582. 20 Ind. Cl. Comm. 113. Funds to cover the two awards were appropriated by Act of July 22, 1969, 83 Stat. 49.

Dockets 131, 253 and 314-D, as consolidated, were completed on January 8, 1970, by an award of \$3,826,660.20 to the Miami Tribe, 22 Ind. Cl. Comm. 179, for additional compensation for lands ceded under the Treaty of Grouseland of August 21, 1805, 7 Stat. 91, the Treaty of Ft. Wayne of September 30, 1809, 7 Stat. 113, and the Supplemental Wea Convention of October 26, 1809, 7 Stat. 116. Funds to cover the award were appropriated by Act of January 8, 1971, 84 Stat. 1981.

4. Attorney Fees. The successors to the Miami Tribe are now the Miami Tribe of Indians, represented by the attorneys herein, and the Miami Tribe of Oklahoma, represented by the firm of Sonnenschein, Levinson, Carlin, Nath & Rosenthal, under contract #42017. The Commission apportioned the 10 percent attorney fees as follows (24 Ind. Cl. Comm. 450 (1971)):

1. Madeline F. Maloney and Walter H. Maloney, Jr., co-executors under Will of Walter H. Maloney, Sr., deceased; Walter H. Maloney, Jr.; and firm of Kiley, Osborne, Kiley & Harker:

Dockets 124-C and 255 (Consolidated)	\$ 2,008.98
Dockets 256, 124-D, E and F (Consolidated)	41,190.00

2. Sonnenschein, Levinson, Carlin, Nath & Rosenthal:

Dockets 124-C and 255 (Consolidated)	\$ 4,687.62
Dockets 256, 124-D, E and F (Consolidated)	96,110.00

A decision of the Court of Claims, Appeal 6-71, October 13, 1972, affirmed the 70/30 apportionment of the fees as determined by the Commission. By opinion of February 22, 1973, the Court of Claims denied a motion for rehearing. Mr. Bell filed for a Writ of Certiorari in the Supreme Court of the United States, which was denied on

October 9, 1973.^{1/}

5. Responses to Petition. On March 7, 1973, copies of the petition for reimbursement of attorney expenses were forwarded to the Department of Justice, representing the defendant in this matter, and to the Assistant to the Secretary for Indian Affairs, United States Department of the Interior, as well as to representatives of the Miami Tribe of Indians of Indiana, the plaintiffs herein.

In the response of defendant of June 21, 1973, to the petition for reimbursement of attorneys' expenses, defendant objected to the claims for reimbursement of the following expenses:

- a. Expenses incurred after the date of the appropriations of the awards to the plaintiffs;
- b. Expenses incurred by the attorneys in connection with their claim that allocation of the attorney fees was wrongfully made by the Commission, including the cost of appealing the Commission's decision;
- c. Expenses incurred in connection with an Indian enrollment which was not related to prosecution of the claim;
- d. Expenses based on per diem rather than itemization of actual expenditures;
- e. Expenses not properly supported by receipts or other documentation;

^{1/} Godfroy v. United States, Miami Tribe of Oklahoma v. United States, 199 Ct. Cl. 487, 467 F.2d 909 (1972), aff'g on rehearing, Dockets 124-D, et al., 24 Ind. Cl. Comm. 450 (1971), cert. denied, U. S. Supreme Court No. 72-1555, October 9, 1973, _____ U. S. _____.

f. Expenses which were incurred in conducting the affairs of the tribe, as distinguished from prosecution of the claims; and

g. Expenses incurred by unauthorized personnel to attend tribal meetings and whose attendance did not contribute to prosecution of the claims.

The grounds for the foregoing objections are specifically set forth in a memorandum dated May 23, 1973, from Newton W. Edwards, for the Assistant to the Secretary for Indian Affairs, to the Solicitor of the Department of the Interior, transmitted by Charles M. Soller, Acting Associate Solicitor, Division of Indian Affairs, on May 31, 1973, to Ralph A. Barney, Chief, Indian Claims Section, Department of Justice.

The tribal representatives interposed no objection to the petition for reimbursement of attorneys' expenses.

6. Hearing. On July 2, 1973, Robert C. Bell, Jr., filed a motion requesting a hearing before the Commission on the petition for payment of the attorney expenses incurred in this matter. On August 15, 1973, the matter was scheduled for hearing on August 20, 1973, and notice of such hearing was duly given to the petitioning attorneys and the Department of Justice.

A hearing was held on August 20, 1973, at which time Robert C. Bell, Jr., and Walter H. Maloney, Jr., directed their remarks and argument to the foregoing objections made by defendant. Pursuant to suggestion made at the hearing, various affidavits have been submitted in support of the claimed expenses, executed by Mr. Bell, Mr. Maloney, Jr., and

Mrs. Madeline Maloney, co-executors under the Will of the late Walter H. Maloney, Sr., the original counsel retained by the plaintiffs.

William H. Smith, attorney for the defendant, stated at the hearing that defendant had no objections to accepting affidavits and statements made at the hearing under oath to support the claimed expenses incurred prior to December 3, 1968, the date of the Commission's final decision; and that supporting evidence, if sufficient to satisfy the Commission in making its ruling, was acceptable to the defendant. However, Mr. Smith stated that the defendant took the position that expenses incurred not in prosecution of the claim, or after the Commission's final decision, were not compensable.

7. Denial of Expenses. In conformance with the entire record, including evidence received at or pursuant to the hearing of August 20, 1973, it is the determination of the Commission that the following claimed expenses be denied for the reasons stated hereafter:

I. Robert C. Bell, Jr.:

<u>Page No.</u>	<u>Date</u>	<u>Amount Claimed</u>	<u>Amount Rejected</u>	<u>Explanations</u>
1	Dec. 4, 1968 thru 1972	\$ 382.97	\$ 382.97	Telephone calls made subsequent to December 3, 1968, were incurred after the date of the final decision. See <u>Washoe Tribe v. United States</u> , Dkt. 288, 26 Ind. Cl. Comm. 319, 322 (1971).
2	July 23-25, 1967	20.21 32.52 18.38 50.00 7.21 12.76 29.37	20.21 20.21 18.38 50.00 7.21 12.76 29.37	These expenses, totaling \$170.45, are for two days in Muskogee to assist in the enrollment of the tribe. Such expenses are not connected with the litigation for plaintiff tribe, and therefore are not compensable.

<u>Page No.</u>	<u>Date</u>	<u>Amount Claimed</u>	<u>Amount Rejected</u>	<u>Explanations</u>
2	Aug. 17-23, 1967	\$ 31.11 109.04 16.48 15.00 7.00	\$ 31.11 109.04 16.48 15.00 7.00	These expenses, totaling \$178.63, are for a second trip to Muskogee to assist in the enrollment of the tribe, and are not reimbursable for the reason stated as to above first trip.
2	None	99.00	99.00	These expenses, for "Meals, taxis & misc. \$11 p.d. X 9 days", were incurred on enrollment trips above and are rejected for the same reason given above.
4	1969	395.11	395.11	All expenses in Dkt. 124-C to F for the year 1969 are rejected because they occur after the date of the Commission's final award, December 3, 1968, and are not shown to relate to a pending matter. See <u>Washoe, supra</u> .
4	1970	1,100.42	1,100.42	Expenses incurred after the date of Commission's final decision, i.e., December 3, 1968. These expenses were also incurred after July 22, 1969, the date when the Congressional appropriation placed the awards to the credit of the tribe. See <u>Cherokee Nation v. United States</u> , Dkt. 173, 13 Ind. Cl. Comm. 96, 139 (1964). Additionally, the expenses arose incident to litigation of disputed attorney fees, personal to the attorneys involved. See <u>Pottawatomie Tribe v. United States</u> , Dkts. 15-B and 111, 4 Ind. Cl. Comm. 540, 545 (1956).
5	1971	959.28	959.28	
5	1972	702.86	702.86	

II. The late Walter H. Maloney, Sr.:

<u>Page No.</u>	<u>Date</u>	<u>Amount Claimed</u>	<u>Amount Rejected</u>	<u>Explanations</u>
6	June 28, 1962	\$ 60.75	\$ 30.38	The supporting documents disclose that one-half of this claimed item was already reimbursed. Thus, this claimed item is reduced by one-half.
6	Oct. 20, 1962	9.00	9.00	Entry stating "Eva Bossley, Treas., Miami Indians (Mtg. Exp.)" is payment for a 3 volume Indian reference set. The books are in the library of the late W. H. Maloney, Sr., original counsel for the plaintiffs, and are not reimbursable because they are additions to an attorney's library.
6	Feb. 23, 1963	174.47	174.47	This entry, paid to Eva Bossley, tribal Treasurer, is explained as a trip expense for Mrs. Bossley to attend a Congressional meeting in Washington, D. C. It is rejected for the reason that it is not an expense connected with litigation before this Commission. It is further rejected because no supporting receipts, or other acceptable vouchers are included. <u>See Pawnee Tribe v. United States</u> , Dkt. 10, 12 Ind. Cl. Comm. 234, 249 (1963).

<u>Page No.</u>	<u>Date</u>	<u>Amount Claimed</u>	<u>Amount Rejected</u>	<u>Explanations</u>
6	Aug. 29, 1963	\$ 240.00	\$ 29.99	Miscalculation of expenses incurred in trip to Peru, Indiana, for a tribal meeting from August 29, 1963, through Sep. 4, 1963. The supporting evidence, explaining this claimed item, includes the statement that ". . . mileage for this trip was allowed." Thus, since the total claimed amount shown in the explanation is \$339.61 and the claim for mileage was previously paid, in the amount of \$129.60, the balance claimed herein should be \$210.01, rather than the amount asserted above in the amount of \$240.00.
6	Oct. 7, 1964	68.20	68.20	Expenses for tribal stationery and forms for tribal enrollment, not incident to prosecution of the claim.
7	May 28, 1972	4.48	4.48	Expenses incurred after the final decision.
7	1962-1969	584.88	9.60	Telephone calls made between April 15, 1969, and May 16, 1972, subsequent to the date of the final decision.

8. Recapitulation of the Claim. Accordingly, based on the entire record, the Commission has determined that of the total items claimed herein by the petitioning attorneys, the following sums have been hereby rejected or allowed, as follows:

RECAPITULATION

I. Robert C. Bell, Jr.:

<u>Claimed</u>	<u>Rejected</u>	<u>Allowed</u>
\$6,746.62 (Dkts. 124-CDEF)	\$3,988.72	\$2,757.90
484.88 (Dkt. 131)	None	484.88
<u>\$7,231.50</u>	<u>\$3,988.72</u>	<u>\$3,242.78</u>

II. D. L. Kiley - A. C. Harker:

<u>Claimed</u>	<u>Rejected</u>	<u>Allowed</u>
\$1,353.73	None	\$1,353.73

III. Estate of Walter H. Maloney, Sr.:

<u>Claimed, as corrected</u>	<u>Rejected</u>	<u>Allowed</u>
\$3,077.77 <u>2/</u>	\$ 326.12	\$2,751.65

9. Conclusion. In conclusion, the evidence of record establishes that counsel for plaintiffs expended certain sums, as listed hereinafter, and such expenses are supported by statements, receipts or satisfactory explanations in clarification and support of the claimed expenses. The Commission hereby allows the following sums as awards to the attorneys as reimbursement for their expenses in this matter:

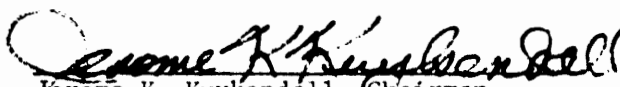
AWARDS


Robert C. Bell, Jr.	\$3,242.78
D. L. Kiley and A. C. Harker	1,353.73


2/ In addition of \$.60 was made in rectifying an error made by claimant in the addition of expenses in an Item, page 6, dated October 8, 1964.

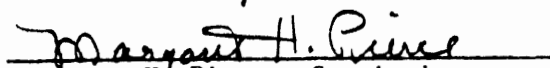
Walter H. Maloney, Jr., and
Madeline J. Maloney, Co-
Executors, Estate of
Walter H. Maloney, Sr.

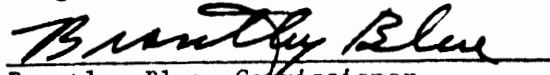
2,751.65


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarbrough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner