

BEFORE THE INDIAN CLAIMS COMMISSION

SAGINAW CHIPPEWA INDIAN TRIBE)	
OF MICHIGAN, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 57
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: July 10, 1974

FINDINGS OF FACT ON ATTORNEYS' FEE

Upon consideration of the petition for award of attorneys' fee, filed March 11, 1974, by James R. Fitzharris, attorney of record for the plaintiffs herein, the documentation submitted in support of the application and the record in its entirety, the Commission makes the following findings of fact:

1. The Award.

A final award was entered herein on August 1, 1973 (31 Ind. Cl. Comm. 67), in the amount of \$8,117,608.00, in favor of the plaintiffs, the Saginaw Chippewa Indian Tribe of Michigan and the Saginaw, Swan Creek and Black River Bands of Chippewa Indians, in full satisfaction of all claims against the defendant, the United States, arising out of the Treaty of September 24, 1819. Payment of the judgment was made pursuant to Public Law 93-245, of January 3, 1974.

2. The Petition.

On March 11, 1974, James R. Fitzharris, the attorney of record

for the plaintiffs, on behalf of himself and all other contract attorneys having an interest in the fee, petitioned pursuant to Section 15 of the Indian Claims Commission Act, 60 Stat. 1049, for the allowance of attorneys' fee in the amount of \$811,760.80, the same being ten per cent of the final award heretofore granted in the case.

3. The Contracts.

The claims in Docket 57 were prosecuted under three contracts. Initially, the plaintiffs were represented by Charles B. Rogers and Arthur B. Honnold under Contract I-1-ind. 18357, made between the attorneys and the plaintiffs, dated June 3, 1947, and effective for a ten-year period beginning July 30, 1947, the date of approval. Subsequently, the obligations and benefits of this agreement were assigned to Attorneys Jay H. Hoag, Rodney J. Edwards, Clarence G. Lindquist, Denis McGinn, James R. Fitzharris and O. R. McGuire under an agreement dated August 10, 1953, and approved May 27, 1955.

On November 14, 1959, the plaintiffs entered into an agreement with Jay H. Hoag, Rodney J. Edwards, Clarence G. Lindquist, Denis McGinn, James R. Fitzharris and O. R. McGuire for the prosecution of the matters in contest herein. The agreement, Contract No. 14-20-0650-1019, was approved September 27, 1961, for a period of ten years beginning July 30, 1957, the expiration date of the previously existing contract.

A contract, dated January 26, 1969, was executed by the plaintiffs with Jay H. Hoag, Rodney J. Edwards, and James R. Fitzharris.

This agreement, Contract No. F50C14200411, was approved October 30, 1969, for a ten-year period beginning July 30, 1967.

4. Pertinent Contract Provisions.

The agreements between the parties provided, inter alia, that:

(a) The attorneys' compensation was contingent upon recovery at such amount as the Commission should determine to be reasonable and equitable for all the services rendered since June 3, 1947, but in no event to exceed ten per centum (10%) of the amount recovered.

(b) In fixing and determining the fee for services, the services previously rendered by attorneys now deceased should be considered and compensation therefor included in the amount awarded.

(c) The compensation for services rendered by attorneys now deceased is to be paid to their estates by the surviving attorneys.

5. Attorneys Now Deceased.

The following attorneys named in the contracts with the plaintiffs or in the assignment of an interest in said contracts are reported deceased: Charles B. Rogers, Arthur B. Honnold, Jay H. Hoag, Clarence G. Lindquist, Denis McGinn and O. R. McGuire.

6. Notices of Application.

On March 12, 1974, notice of the filing of the application for attorneys' fee was forwarded by the Deputy Clerk of the Commission to Mr. Willis Jackson, Chairman of the Saginaw Chippewa Indian Tribe of Michigan, inviting comments and information for the Commission's consideration in determining the amount of attorneys' fee. No reply to this communication has been received.

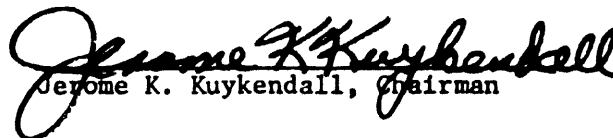
The Department of the Interior and the Justice Department were also informed of the filing of the application for attorneys' fee. In its reply, dated May 22, 1974, the Justice Department enclosed a letter from the Associate Solicitor for Indian Affairs, Department of the Interior, incorporating a memorandum of the Acting Deputy Commissioner, Bureau of Indian Affairs, wherein it was professed the Bureau was without sufficient detailed information upon which to make a determination as to the amount of compensation earned by the attorneys. The Associate Solicitor for Indian Affairs and the Justice Department concurred in this conclusion.

7. Attorneys' Services.

The record in this case attests that the services performed by the attorneys were substantial and were of material importance in the successful prosecution and resolution of the plaintiffs' claim. The issues involved required the attorneys to secure and present proof of the plaintiffs' capacity and right to prosecute the claim, to determine and establish the existence and nature of plaintiffs' title to the land, to determine the amount of land ceded to the Government and the treaty consideration and the amount of any gratuities the Government was entitled to offset against the award. The attorneys' services, as reflected in the record before the Commission, required research as to the law and the facts, the procurement and preparation of documentary proofs and exhibits, the securing of expert witnesses, the preparation of proposed findings of fact and briefs and appearances before the Commission as the course of the case required.

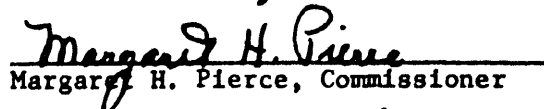
8. Conclusion.

On the basis of the record in its entirety 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' fee 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 are entitled to a fee in the sum of \$811,760.80, which sum shall be full compensation for all services rendered to the plaintiffs herein in the prosecution of the claims in Docket 57.


Jerome K. Kuykendall, Chairman

John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner