

BEFORE THE INDIAN CLAIMS COMMISSION

THE SENECA NATION OF INDIANS,)	Docket Nos. 342-B, C, F, & I
)	
Plaintiff,)	
)	
THE TONAWANDA BAND OF SENECA)	Docket No. 368
INDIANS,)	
)	
Plaintiff,)	
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

ORDER ALLOWING ATTORNEYS' FEE

HAVING CONSIDERED the application for attorneys' fee filed in Dockets 342-B, 342-C, and 368 on April 16, 1974, and the applications filed in Dockets 342-F and 342-I on April 17, 1974, all filed by Paul G. Reilly, Attorney of Record for the plaintiffs in these dockets; the response of the defendant; the claims contracts under which the attorneys served the plaintiffs; and the remainder of the record herein, the Commission finds as follows:

1. Awards. On March 13, 1974, the Commission entered final awards on the plaintiffs' claims in these dockets, 33 Ind. Cl. Comm. 390-93, in these amounts:

Dockets 342-B, 342-C, and 368	\$101,000
Docket 342-F	2,650
Docket 342-I	79,320

2. Attorney Contracts.

A. The Seneca Nation of Indians, plaintiff in Dockets 342-B, C, F, and I, was represented in these claims by the law firm of Earle and Reilly under Contract No. I-1-ind. 42260, dated December 5, 1949. It was approved January 27, 1950, for 10 years from that date. This contract was first extended for five years, and then an extension for 10 years beyond January 27, 1965, was approved May 28, 1969. The present termination date is January 27, 1975. This contract provides that the attorneys shall advise and represent the plaintiff in investigating, formulating, filing, and prosecuting all claims against the United States, and that their compensation shall be 10% of all amounts recovered.

B. The Tonawanda Band of Seneca Indians, plaintiff in Docket 368, 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 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 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.

This contract provides that the attorneys shall advise and represent the plaintiffs in investigating, formulating, filing, and prosecuting all claims against the United States, and that their compensation shall be 10% of all amounts recovered.

3. The Requested Fee. The applications for attorneys' fees request an allowance of fees of 10% of the awards on the plaintiffs' claims, as provided by the relevant contracts, as compensation for services rendered in connection with the awards. The fees requested are:

<u>Dockets</u>	<u>Awards</u>	<u>Fees Requested</u>
342-B and C, and 368	\$101,000	\$10,100
342-F	2,650	265
342-I	<u>79,320</u>	<u>7,932</u>
Total	\$182,970	\$18,297

4. Notice to Parties. Notice of the filing of the applications for attorneys' fees was mailed by the Deputy Clerk of the Commission to:

- a. April 17, 1974; Dockets 342-B, 342-C, and 368; Notice to Ellsworth George, Chief, The Tonawanda Band of Seneca Indians, 6993 Council House Road, Basom, New York 14013
- b. April 17, 1974; All five dockets; Notice to Dean Williams, President, The Seneca Nation of Indians, Box 231, Salmonca, New York 14779
- c. April 18, 1974; All five dockets; Notice to Honorable Morris Thompson, Commissioner, Bureau of Indian Affairs, U. S. Department of the Interior, 1951 Constitution Avenue, N.W., Washington, D. C. 20240
- d. April 18, 1974; All five dockets; Notice to Honorable Wallace H. Johnson, Assistant Attorney General, Land and Natural Resources Division U. S. Department of Justice, Washington, D. C. 20530

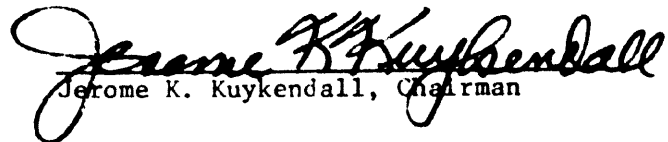
5. Response of Parties. Neither of the plaintiffs responded to the notice. The Department of Justice responded to the notice by letter filed June 13, 1974. They took no position as to the amount of the fee, provided it does not exceed 10% of the awards and the Commission determines it is reasonable. Transmitted with the Department of Justice's response was a copy of a letter dated June 5, 1974, from the Associate Solicitor for Indian Affairs of the Department of the Interior, and a copy of a memorandum dated May 11, 1974, from the Acting Deputy Commissioner of Indian Affairs. Both of these documents stated that the officials involved did not object to the allowance of the requested fees because they were in accord with the 10% fee provision in the contracts.

6. Attorneys' Services. Pursuant to their contracts with the plaintiffs, the attorneys investigated, filed, and prosecuted the claims in these dockets on which plaintiffs have been awarded the total sum of \$182,970. For services rendered in connection with those awards the attorneys are entitled, under the terms of their contracts with the plaintiffs, to attorneys' fees in the requested total sum of \$18,297, being ten per cent of the final awards.

IT IS THEREFORE ORDERED that out of the funds appropriated (or to be appropriated) to pay the final awards entered herein on March 13, 1974, there shall be disbursed to Paul G. Reilly the amount of \$18,297 for

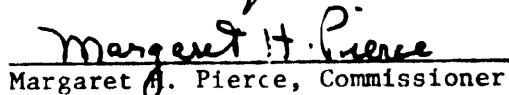
distribution by him to the participating attorneys in accordance with their respective interests therein. This amount shall be payment in full for all services rendered in the prosecution of these claims.

Dated at Washington, D. C., this 10th day of July 1974.


Jerome K. Kuykendall, Chairman

John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner