

BEFORE THE INDIAN CLAIMS COMMISSION

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

Decided: December 4, 1974

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 June 17, 1974, 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 November 7, 1973, the Commission entered a final award in Docket 18-C 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 \$9,027,559.60 in full satisfaction of all claims in Docket 18-C. (32 Ind. Cl. Comm. 215.)

2. The Petition for Attorneys' Fee

On June 17, 1974, 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-C for an award of attorneys' fee in the amount of \$902,755.96 being ten percent of the final judgment of \$9,027,559.60 which was entered in the subject docket.

3. Notice of Filing to Executive Agencies and Plaintiff

By letters of June 18, 1974, the Deputy Clerk of the Commission notified the Minnesota Chippewa Tribal Executive Committee, the St. Croix Tribal Council, the Red Cliff Tribal Council, the Bad River Tribal Council, the Keeweenaw Tribal Council, the Lac Courte O'Reilles Tribal Council, the Lac Du Flambeau Band, the Sokaogon Chippewa Tribal Council, 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 a memorandum from the Acting Deputy Commissioner of Indian Affairs to the Solicitor, Department of the Interior. The replies were noncommittal with respect to the amount of the attorneys' fee requested in subject petition.

The Commission has also received a reply from the Six Tribes of

Wisconsin Lake Superior Bands of Chippewa^{*/} in which they oppose the settlement or payment of fees to their attorney, before the bands are paid.

4. Attorneys' Contracts

Attorneys' services in this case were performed under the following contracts:

(a) Minnesota Chippewa Tribe: (1) contract dated October 13, 1949, approved January 26, 1950, bearing contract No. I-1-ind. 42241, with attorneys Austin L. Lathers, Jay H. Hoag and Clarence G. Lindquist, for a period of ten years from date of approval, and (2) contract dated May 20, 1960, approved March 20, 1961, bearing contract No. Symbol 14-20-0650-849, with attorneys Jay H. Hoag, Clarence G. Lindquist, Edward I. Gruber and Rodney J. Edwards for a period of ten years from the date of approval, which has been extended in accordance with its provisions by the Secretary of the Interior to March 20, 1975.

(b) St. Croix Band of Lake Superior Chippewa Indians: (1) contract dated June 13, 1949, approved November 4, 1949, bearing contract No. I-1-ind. 42231, with attorneys Austin L. Lathers, Jay H. Hoag and Clarence G. Lindquist for a period of ten years from date of approval, and (2) contract dated October 25, 1961, approved June 20, 1962, bearing contract No. Symbol 14-20-0650-1127, with attorneys Clarence G. Lindquist, Jay H. Hoag and Rodney J. Edwards for a period of ten years from date

^{*/} Comprised of the Indians of the Red Cliff Reservation, the Bad River Reservation, the Lac Courte O'Reilles Reservation, the Lac Du Flambeau Reservation, the Mole Lake Reservation, and the St. Croix Reservation.

of approval and retroactively to November 4, 1959, which has been extended in accordance with its provisions by the Secretary of the Interior to June 20, 1974.

(c) Red Cliff Band of Lake Superior Chippewa Indians: (1) contract dated May 26, 1949, approved January 26, 1950, bearing contract No. I-1-ind. 42243 with attorneys G. Arthur Johnson, Austin L. Lathers, Jay H. Hoag and Clarence G. Lindquist for a period of ten years from date of approval, and (2) contract dated June 6, 1960, approved May 16, 1961, bearing contract No. Symbol 14-20-0650-947, with attorneys Clarence G. Lindquist, Jay H. Hoag, Edward L. Gruber, Rodney J. Edwards and G. Arthur Johnson for a period of ten years from January 26, 1960, and (3) contract dated April 6, 1970, approved May 20, 1970, bearing contract No. F50C14200424, with attorneys Jay H. Hoag, Rodney J. Edwards and G. Arthur Johnson for a period of five years beginning January 25, 1970.

(d) Bad River Band of Lake Superior Chippewa Indians: (1) contract dated May 25, 1949, approved January 26, 1950, bearing contract No. I-1-ind. 42244, with attorneys G. Arthur Johnson, Austin L. Lathers, Jay H. Hoag and Clarence G. Lindquist for a period of ten years from date of approval, and (2) contract dated May 24, 1960, approved May 16, 1961, bearing contract No. Symbol 14-20-0650-914, with attorneys Clarence G. Lindquist, Jay H. Hoag, Edward L. Gruber, Rodney J. Edwards and G. Arthur Johnson for a period of ten years from January 26, 1960,

which has been extended in accordance with its provisions by the Secretary of the Interior to January 26, 1975.

(e) Lac Courte O'Reilles Band of Lake Superior Chippewa Indians:

(1) contract dated June 6, 1949, approved January 26, 1950, bearing contract No. I-1-ind. 42246, with attorneys Ward Winton, Jay H. Hoag and Vern R. Edwards, for a period of ten years from date of approval, and (2) contract dated August 31, 1959, approved November 6, 1959, bearing contract No. Symbol 14-20-0650-713, with attorneys Ward Winton, Warren Winton, Clarence G. Lindquist, Jay H. Hoag, Edward L. Gruber and Rodney J. Edwards for a period of ten years from date of approval, and (3) contract dated May 1, 1970, approved May 20, 1970, bearing contract No. F50C14200425, with attorneys Jay H. Hoag, Rodney J. Edwards, Ward Winton and Warren Winton for a period of five years beginning on November 5, 1969.

(f) Lac Du Flambeau Band of Lake Superior Chippewa Indians: (1) contract dated May 4, 1949, approved November 4, 1949, bearing contract No. I-1-ind. 42230, with attorneys Vern R. Edwards, Rodney J. Edwards, Austin Lathers, Jay H. Hoag and Clarence G. Lindquist for a period of ten years from date of approval, and (2) contract dated October 18, 1958, approved August 3, 1959, bearing contract No. Symbol 14-20-0650-692, with attorneys Jay H. Hoag, Edward L. Gruber, Rodney J. Edwards and Clarence G. Lindquist for a period of ten years from date of approval, and (3) contract dated March 11, 1970, approved April 13, 1970, bearing

contract No. F50C14200419, with attorneys Jay H. Hoag and Rodney J. Edwards for a period of five years beginning on August 2, 1969.

(g) Mole Lake Band of Chippewa Indians, incorporated as the Sokaogon Chippewa Community: (1) contract dated August 31, 1949, approved January 26, 1950, bearing contract No. I-1-ind. 42245, with attorneys H. B. Fryberger, Jr., Austin L. Lathers, Jay H. Hoag and Clarence G. Lindquist, for a period of ten years from date of approval, and (2) contract dated September 22, 1962, approved April 3, 1963, bearing contract No. Symbol 14-20-0350-211, with attorneys Clarence G. Lindquist, Jay H. Hoag, Rodney J. Edwards and Herschel B. Fryberger, Jr., for a period retroactively to January 26, 1960, and for a period of ten years beginning with date of approval, which contract has been extended in accordance with its provisions by the Secretary of the Interior to April 3, 1975.

(h) Keeweenaw Bay Indian Community of L'Anse Michigan (acting for and on behalf of the Lac Vieux Desert, L'Anse and Ontonagon Bands of Chippewa Indians): (1) contract dated April 7, 1949, approved November 4, 1949, bearing contract No. I-1-ind. 42232, with attorneys Austin L. Lathers, Jay H. Hoag and Clarence G. Lindquist, for a period of ten years from date of approval, and (2) contract dated April 14, 1962, approved October 16, 1962, bearing contract No. Symbol 14-20-0350-200, with attorneys Clarence G. Lindquist, Jay H. Hoag and Rodney J. Edwards, for a period retroactively to November 4, 1959, and for a period of

ten years beginning with date of approval, which contract has been extended in accordance with its provisions by the Secretary of the Interior to October 16, 1974.

5. Assignment of Interests in Attorneys' Contracts in Docket 18-C

By the following agreements, interest in the attorneys' fee herein awarded were assigned;

(a) By Agreement dated November 18, 1949, approved January 27, 1950, the attorneys named in contracts numbered I-1-ind. 42241, 42231, 42243, 42244, 42246, 42230, 42245 and 42232 identified in Paragraph 3 (a) through (h) above assigned interests in said contracts among themselves and with other attorneys namely: G. Arthur Johnson, Vern R. Edwards, Rodney J. Edwards, Ward Winton, Thomas L. St. Germain Heirs, Herschel B. Fryberger, Jr., E. L. Gruber, Paul L. Adams, James J. Fenlon, H. J. Grannis, Austin L. Lathers, Jay H. Hoag, Clarence G. Lindquist, 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 the Indian contracts identified in Paragraph 4 (a) above assigned an interest in said contracts to attorneys Dennis McGinn and James R. Fitzharris.

(c) By Assignment dated November 21, 1955, approved May 11, 1956, Austin L. Lathers, Jay H. Hoag and Clarence G. Lindquist, attorneys named in Indian contracts identified in Paragraph 4 (a) above assigned an interest in the attorneys' net fees to be received in Docket 18-C, to Henry Oakey.

(d) By Agreement dated February 15, 1954, approved July 27, 1955, Austin L. Lathers, Jay H. Hoag and Clarence G. Lindquist, attorneys named in Indian contracts identified in Paragraph 4 (a) above assigned to attorney Marvin J. Sonosky, an interest in the fee in Docket 18-C.

(e) 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.

(f) 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 numbered I-1-ind. 42241, 42231, 42243, 42244, 42246, 42230, 42245 and 42232, and Symbol 14-20-0650-Contract numbered 849, 1127, 947, 914, 713, 692 and Symbol 14-20-0350-Contract numbered 200, and 211, increased the interest in those contracts which had previously been assigned to attorney Marvin J. Sonosky.

(g) By Assignment dated February 25, 1965, approved June 28, 1965, Preston Boyden, attorney named in Agreement dated November 18, 1949, identified above, assigned all his interest under said Agreement to Jay H. Hoag and Rodney J. Edwards.

(h) By Assignment dated January 20, 1972, approved January 31, 1972, Patrick A. Burke, attorney named in Agreement dated November 18, 1949, identified above, assigned all his interest under said Agreement in equal shares to Rodney J. Edwards and Marvin J. Sonosky.

(1) By an Assignment dated and approved effective July 20, 1973; George E. McGrath, attorney named in Agreement dated November 18, 1949, identified above, assigned all his interest under said Agreement to Rodney J. Edwards.

6. Deceased attorneys.

The following attorneys who had an interest in the attorneys' fee in Docket 18-C at the time of their death, are now deceased: Austin L. Lathers, Jay H. Hoag, Clarence G. Lindquist, Edward L. Gruber, Denis McGinn, Vern R. Edwards and H. J. Grannis.

7. Contract provisions for Attorneys' Compensation.

The aforesaid attorneys' contracts and renewals identified in Paragraph 4 above, all provide for attorneys' compensation contingent upon recovery of such amount as the Commission may determine to be reasonable and equitable compensation for the services rendered, not to exceed ten per centum (10%) of recovery.

8. Attorneys' Services.

The attorneys for the plaintiff rendered valuable legal services in successfully prosecuting the claims and ultimately securing payment of the final award.

Petition on the claim involved in Docket 18-C and other claims was filed in January 1948 as Docket 18, pursuant to the Indian Claims Commission Act of August 13, 1946 (60 Stat. 1049).

Subsequently the claim involved in Docket 18-C which was alleged as one of the claims in Docket 18 was separated by Orders of the

Commission and proceeded with under Amended Petition (Complaint) filed in 1959.

The claims set forth in the Amended Petition sought recovery from the United States of compensation for the lands that were ceded by the Chippewa Indians of the Mississippi and Lake Superior by the treaty of July 29, 1837 (7 Stat. 536). The ceded lands consisted of 13,664,871 acres situated in the northwestern part of the present state of Wisconsin and in the eastern part of central Minnesota.

The claim was tried in three stages:

A trial was conducted to determine plaintiff's capacity and right to prosecute the claim and to determine the Indian title to the ceded area. Preparation for trial of this stage required research as to law and fact and preparation and presentation of proofs with respect to the establishment of either or both aboriginal and recognized Indian title. Upon plaintiff's motion for summary judgment and documentary evidence submitted, the Commission determined on October 10, 1968 (19 Ind. Cl. Comm. 514) that the plaintiff was the proper party to prosecute the claim and that the Chippewa Indians of the Mississippi and Lake Superior were the owners by recognized title of the entire area ceded by them to the United States by the treaty of July 29, 1837 (7 Stat. 536). The Commission directed that the case proceed to a determination of acreage, fair market value of the area as of June 15, 1838, proclamation date of the treaty, and also to a determination of the value of the consideration paid by the United States for the cession.

A second trial involved the treaty date value of the ceded lands. Preparation for trial of this stage required research as to law and fact, engaging and working with expert witnesses to testify as to the value and preparation and presentation of proofs to establish the value. After trial the Commission determined by decision dated July 21, 1971 (26 Ind. Cl. Comm. 22) that the fair market value of the ceded area as of valuation date of June 15, 1838, was \$9,875,000.00 and that the consideration for the cession recited in the treaty amounting to \$870,000.00 was so grossly inadequate as to render that consideration unconscionable within the meaning of Clause 3, Section 2, of the Indian Claims Commission Act.

A third trial related to the amount of credit to be allowed to the United States for treaty consideration payments and gratuitous offsets. Preparation for trial of this stage required research as to law and fact and the examination of the U. S. General Accounting Office report and supporting documentation in which the defendant claimed \$870,874.03 as credit on the claim. After trial the Commission determined by decision dated November 7, 1973 (32 Ind. Cl. Comm. 192) that the defendant was entitled to a credit of \$847,440.40 and entered the Final Award in the amount of \$9,027,559.60.

In trial of all stages of the case plaintiff's attorneys filed with the Commission briefs on the law and facts and requested findings of fact and reply briefs and objections to defendant's requested findings of fact, to assist the Commission in making its determinations. 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.

9. Payment to Plaintiff.

Pursuant to the Appropriations Act of June 8, 1974 (88 Stat. 195), the sum of \$9,027,559.60 was deposited into the United States Treasury, at interest, to be held in trust for the Lake Superior and Mississippi Bands of Chippewa Indians. Pursuant to the Act of October 19, 1973 (87 Stat. 466), this money, together with any interest earned, after payment of attorneys' fees and litigation expenses, will be disbursed to the Indians in accordance with a plan of distribution prepared by the Secretary of the Interior.

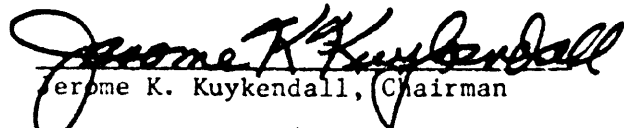
Since the funds to satisfy the award in this case have been deposited to the Indians' account, there does not appear to be reason for any further objection to the award of the attorneys' fee in this case. In accordance with the Act of October 19, 1973, supra, those fees are to be paid from the judgment funds before such funds are actually distributed. Accordingly, we conclude that the attorneys' fee should be allowed at this time.

10. Conclusion.

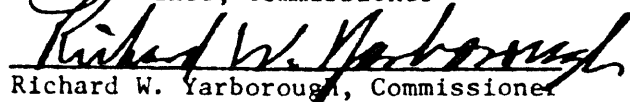
Considering the services rendered by the attorneys in these proceedings, the time involved in litigation, the results obtained, and

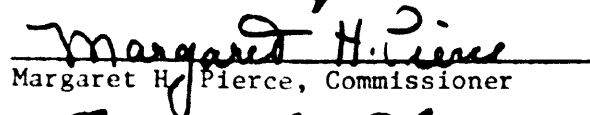
in accordance with standards obtaining for prosecuting similar claims in courts of law, the Commission finds that the attorneys for the plaintiff are entitled to receive the full ten percent of the award as provided in Section 15 of the Indian Claims Commission Act (60 Stat. 1049, 1053) and in their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

The Commission finds that the attorneys for the plaintiff are entitled to an attorneys' fee in the amount of \$902,755.96, being ten percent of the final judgment of \$9,027,559.60 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 T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner