

BEFORE THE INDIAN CLAIMS COMMISSION

THE WINNEBAGO TRIBE AND NATION OF)
 INDIANS, THE WINNEBAGO TRIBE OF)
 NEBRASKA AND FRANK BEAVER, MOSES)
 WHITEBEAR, JOHN LITTLE WOLF, JAMES)
 SMOKE, AND JOSHUA SANFORD, EX REL.)
 WINNEBAGO TRIBE AND NATION AND)
 THE WINNEBAGO INDIANS OF WISCONSIN,)
 MINNESOTA, NEBRASKA AND THE)
 WINNEBAGO TRIBE OF NEBRASKA,)
)
 Plaintiffs,)
)
 v.)
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)
)
 Decided: November 19, 1975

Docket Nos. 243, 244 and 245

FINDINGS OF FACT AND ORDER ALLOWING ATTORNEYS' EXPENSES

Having considered the application for reimbursement of attorneys' expenses filed on May 20, 1974, by Rodney J. Edwards, attorney of record for the plaintiffs in these dockets, and the record in its entirety, the Commission finds as follows:

1. Award. On September 3, 1970, the Commission entered a final judgment approving a proposed compromise settlement in these dockets in favor of plaintiffs herein in the amount of \$4,600,000 (23 Ind. Cl. Comm. 482). Funds to satisfy the judgment were appropriated by Public Law 91-665, approved January 8, 1971 (84 Stat. 1981).

2. Application. The application for reimbursement of attorneys' expenses filed on May 20, 1974, by Mr. Edwards, attorney of record,

requests allowance of certain expenses, as indicated below, in the total amount of \$43,765.60^{1/} for distribution by him to each of the attorneys and the estates of deceased attorneys entitled to participate in the reimbursement. In this regard, the record indicates that attorneys Austin Lathers, Henry J. Grannis, Denis McGinn, Clarence G. Lindquist, Vern R. Edwards, and Jay H. Hoag are deceased.

The claimed expenses as set forth in the application are as follows:

A. Compensation And Expenses Of Experts.....	\$22,929.87
B. Duplication And Printing Of Documents, Briefs And Exhibits.....	4,471.09
C. Transcripts, Filing Fees, Meeting Expenses And Balance Of Approved Claim.....	1,681.86
D. Research, Stenographic, Typing And Clerical Services.....	1,604.92
E. Long Distance Telephone, Telegraph And Bulk Postage.....	664.84
F. Travel And Related Expenses Of Attorneys.....	<u>12,413.02</u>
TOTAL OF EXPENSES:	\$43,765.60

By letter dated October 24, 1975, the attorney of record herein withdrew certain items of expense totalling \$884.94. The withdrawn items are as follows:

(1) Duplication Expenses:	\$ 29.00
(2) Stenographic-Clerical Expenses:	77.58
(3) Travel Expenses (Mr. Edwards):	160.85
(4) Travel Expenses (Mr. Hoag):	491.20
(5) Travel Expenses (Mr. Lind):	.81
(6) Travel Expenses (Mr. Lindquist):	<u>125.50</u>
Total	<u>\$884.94</u>

^{1/} Amount stated in the application is \$43,767.60. Errors in addition account for the difference.

Accordingly, the application for reimbursement of attorneys' expenses filed herein is in the total amount of \$42,880.66 after deducting the foregoing withdrawn items.

3. Attorneys' Contracts.

(a) These claims were prosecuted under several contracts. Contract No. I-1-ind. 42482, dated October 28, 1950, was executed jointly by the representatives of the Winnebago Indians of Wisconsin and the Winnebago Tribe of Nebraska and between them and Attorneys Vern R. Edwards, Rodney J. Edwards, G. Arthur Johnson, Austin Lathers, Clarence G. Lindquist, and Jay H. Hoag. The contract was for a term of 10 years from March 8, 1951, the date of its approval by the Department of the Interior. By agreement dated May 22, 1953, and approved by the Commissioner of Indian Affairs on June 28, 1954, the said contract attorneys associated with them, attorneys J. Allan Lind, Denis McGinn, James R. Fitzharris, Henry J. Grannis and John B. Halloran.

With respect to the above contract, resolutions authorizing the engagement of the above-named attorneys for the purpose of prosecuting claims against the United States were adopted by the Wisconsin Band of Winnebago Indians at a meeting of its General Council on June 15, 1949, and by the Tribal Council for the Winnebago Tribe of Nebraska on October 2, 1950.

Contract No. 42482 provided that counsel may employ such technical and stenographic assistance in respect of their obligations under the

contract as they deem necessary, with the expenses of same recoverable as expenses incident to their employment under the contract. As to the general expenses of litigation, the contract provided as follows:

Parties of the first part, but not by way of limitation, agree that parties of the second part shall be compensated for expense items reasonably necessary, for example, stenographic, supplies, printing and travel items, whether by plane, train, motor vehicle or other conveyance. The parties of the second part are authorized to use automobiles, either personally owned, rented, or otherwise, but when personally owned automobiles are used, the rate shall be fixed (5) cents per mile; provided that when rail transportation, plus Pullman (lower berth) and when bus transportation facilities are available, the mileage claimed shall not exceed the amount of bus fare unless use of a bus or buses would entail greater expense for meals, lodging or other incidentals. The choice of travel mode shall be determined by what is advantageous to the parties of the first part. The mileage shall not include meals, lodging, and other items of expense incidental to travel or sojourn away from home, which items shall be separately recoverable.

(b) Contracts incorporating by reference contract No. 42482 were made on June 18, 1960, between the Winnebago Indians of Wisconsin and attorneys Clarence G. Lindquist, Jay H. Hoag, Edward L. Gruber, Rodney J. Edwards, and G. Arthur Johnson. These contracts, carrying Symbol 14-20-0650 and numbered 986, 987, 990, and 991 were approved by the Department of the Interior effective March 8, 1961. Tribal resolutions accepting said contracts were adopted on October 21, 1961.

Similar contracts were made on January 30, 1961, between the Winnebago Tribe of Nebraska and the above-named attorneys. These contracts carrying Symbol 14-20-0650 and numbered 917, 918, 921, and 922 were also approved by the Department of the Interior and made effective as of March 8, 1961. Resolutions approving said contracts

were adopted by the Tribal Council of the Winnebago Tribe of Nebraska on October 21, 1961.

The terms of these contracts respecting the employment of technical and stenographic assistance are identical to the terms contained in contract No. 42482, supra. The provisions of these contracts respecting general litigation expenses appear in each contract approved on March 8, 1961, as follows:

Parties of the first part, but not by way of limitation, agree that the parties of the second part be reimbursed for expenses reasonably necessary which have been paid or incurred and which may in the future be incurred in connection with the investigation, preparation for trial and prosecution of the claims of the parties of the first part, including stenographic, supplies, printing, travel by plane, train, automobile or other conveyance; if by personal automobile the rate of reimbursement shall be ten (10¢) cents per mile, not exceeding plane or train travel if such be available, the mode of travel to be determined by second parties. Such reimbursement shall include meals and lodging, or \$12.00 per diem in lieu of subsistence.

The difference to be noted between the contracts approved in 1961 and contract No. 42482 of 1951 is that the former increases the mileage rate from \$0.05 to \$0.10 and allows per diem in lieu of subsistence.

4. Contracts of Experts. By a resolution adopted June 30, 1960, the Winnebago Tribe of Wisconsin authorized a sum not to exceed \$30,000 for the engagement of experts for services (fees and expenses) in regard to the valuation of lands involved in these dockets. On January 30, 1961, the Winnebago Tribe of Nebraska adopted a resolution authorizing a sum

not to exceed \$30,000 for the same purpose. Pursuant to these resolutions, the following contracts were negotiated jointly by said tribes on January 30, 1961:

(a) Contract 14-20-0650, No. 1209, with J. William Trygg.

This contract, approved by the Department of Interior on July 9, 1962, was for a period of 10 years commencing on January 30, 1961.

(b) Contract 14-20-0650, No. 1210, with Vernon Carstensen and Alice Smith. This contract was approved on October 26, 1962, for a period of 10 years commencing on January 30, 1961.

(c) Contract 14-20-0650, No. 1211, with L. Donovan Clark.

This contract was approved on July 9, 1962, for a period of 10 years.

5. Notice to Parties.

(a) Pursuant to Rule 34b (c) of the Commission's General Rules of Procedure, the Clerk of the Commission timely notified the appropriate parties of the filing of the application in these dockets.

(b) On July 25, 1974, the Department of Justice filed a response to the application under consideration. That response included a copy of comments respecting the application made on July 1, 1974, by the Acting Deputy Commissioner of Indian Affairs, Department of the Interior. The Department of Justice noted that the comments included two small items which were regarded as questionable by the Interior Department. The improper items have been withdrawn by counsel.

(c) Response to this application were also filed by representatives of the tribal clients herein.

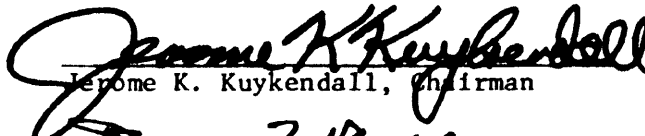
On June 13, 1974, Mr. Arnold R. Garvin, Chairman, Wisconsin Winnebago Business Committee filed a response stating that there are "questions regarding expert witness contracts" and that the tribe had litigation pending for the return of tribal records. Mr. Garvin requested an extension to June 30, 1974, to forward comments and more information on the matter. No further responses have been received by the Commission.

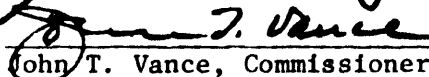
On June 19, 1974, Mr. Sam Tebo, Sr., Chairman of the Winnebago Tribal Council (Nebraska), filed a response to the application stating that it was the tribe's understanding that expenses were to be paid by the attorney of record from his fee. Mr. Tebo further stated that tribe can find "no contract which states that the noted expenses should be paid in addition to the settlement fee." Finally, Mr. Tebo stated that the tribe "strenuously object" to any further payment to the attorneys in excess of fees already received.

On the basis of the evidence of record, including the attorneys' and experts' contracts with plaintiff tribes and the terms thereof as set out in finding 3, supra, and pursuant to section 15 of the Indian Claims Commission Act, the Commission finds that the attorney of record herein is entitled to reimbursement for actual, reasonable expenses incurred in the prosecution of these claims and in the amount indicated.

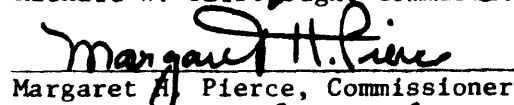
6. Determining of Expenses. Pursuant to section 15 of the Act, Rule 34(b) of the Commission's Rules of Procedure (25 CFR §503.34(b)), as amended, 39 Fed. Reg. 41173, (1974), the Commission's Policy Statement §102 issued July 15, 1968, and upon examination of the application, the supporting documentation, and the entire record of expenditures incurred in the prosecution of this claim, the Commission concludes that the claimed expenses in this application in the total amount of \$42,880.66 are reasonable and proper expenses of litigation and should be allowed.

IT IS THEREFORE ORDERED that out of the funds appropriated to pay the final award entered herein on September 3, 1970, there shall be disbursed to Rodney J. Edwards, attorney of record in these dockets, the sum of \$42,880.66 as reimbursement in full for expenditures incurred in the prosecution of these claims, said sum to be distributed by Rodney J. Edwards to all parties having an interest in this application.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner