BEFORE THE INDIAN CLAIMS COMMISSION

CITIZEN BAND OF POTAWATOMI INDIANS OF OKLAHOMA, et al., Plaintiffs,	)	Docket No. 146
THE PRAIRIE BAND OF THE POTTAWATOMIE TRIBE OF INDIANS, et al., Plaintiffs,	)	Docket No. 15-M
HANNAHVILLE INDIAN COMMUNITY, et al., Plaintiffs,	)	Docket No. 29-K
v.	)	
THE UNITED STATES OF AMERICA, Defendant.	)	

Decided: February 25, 1976

FINDINGS OF FACT ON AWARD AND
APPORTIONMENT OF ATTORNEYS' FEES

On the basis of the entire record in the proceedings involving Dockets 146, 15-M and 29-K, the Commission makes the following findings of fact:

THE FINAL JUDGMENT

1. On April 19, 1974, the Commission entered a final award of $2,296,870.70 in these three consolidated dockets, 146, 15-M and 29-K, jointly, on behalf of the Potawatomi Tribe or Nation. 34 Ind. Cl. Comm. 1. This award was not appealed, and funds to satisfy the judgment were appropriated by Public Law 93-554, approved December 27, 1974, 88 Stat. 1771. The award represented additional compensation for land which was ceded to the United States under the Treaty of August 29, 1821,

7 Stat. 203, for a consideration which the Commission held to be unconscionable within the meaning of the Indian Claims Commission Act. The land involved is approximately the southern two-thirds of Royce Area 117 in southern Michigan and northern Indiana.

ATTORNEY CONTRACTS AND PROVISION FOR FEES

2. Docket 146. The plaintiffs in Docket 146 are the Citizen Band of Potawatomi Indians of Oklahoma, the Potawatomi Nation, and certain named individuals, suing in their representative capacities. The first attorney contract was between the Citizen Band of Potawatomi Indians of Oklahoma and two law firms, i.e., Blake, Voorhees & Stewart of New York, N. Y., and Adams, Moses & Culver of Chicago, Illinois. This original contract, No. I-1-Ind. 42065, signed April 17, 1948, approved August 4, 1948, was for 10 years, later extended 5 years to August 4, 1963. In May of 1963, Louis L. Rochmes was added to the contract by an amendment. On July 27, 1963, a new 5-year contract was entered into between the plaintiffs and the Chicago and New York law firms, i.e., Contract 14-20-0200 No. 1837. This contract was approved August 28, 1963, and extended by amendments to August 5, 1978. The addition of Louis L. Rochmes as a party to this contract was approved January 7, 1966, and an amendment to the same contract was approved February 7, 1973, adding the law firm of Joseph and Friedman of Chicago as counsel. All contracts and amendments thereto had the approval of the plaintiffs and the Bureau of Indian Affairs.

The compensation for attorneys stipulated in the contracts was to be wholly contingent upon a recovery by the plaintiffs and in an amount equal

to 10% of any and all sums recovered for the plaintiffs. Mr. Louis L. Rochmes is attorney of record in this docket.

3. Docket No. 15-M. The plaintiffs in Docket 15-M are the Prairie Band of the Potawatomi Tribe of Indians, the Potawatomi Nation and certain named individuals suing in their representative capacities. The claim originally given Docket No. 15 was subsequently severed and refiled as 15-C and later, pursuant to Commission order, again severed and designated Docket No. 15-M.

On October 22, 1947, the Prairie Band entered into a 10-year contract, No. I-1-Ind. 18372, with the law firm of Stone, McClure, Webb, Johnson, and Oman of Topeka, Kansas. On November 15, 1947, the firm was dissolved and Robert Stone continued to represent the Prairie Band as its claims counsel. The contract was approved by the Bureau of Indian Affairs on December 19, 1947. On January 19, 1948, the association of O. R. McGuire as claims attorneys for the Prairie Band on the above contract, was approved. By assignments dated February 9, 1953, approved May 13, 1954, James A. McClure, Robert L. Webb and Ralph W. Oman conveyed an interest in the attorney fees to Robert Stone and an interest to Beryl R. Johnson. Under another agreement approved May 13, 1954, Robert Stone assigned an interest in the fees to Robert Stone Johnson, the present attorney of record for the Prairie Band. The assignments of interest approved on May 13, 1954, were as follows: O. R. Mcguire, 50%; Robert Stone, 19%; Robert S. Johnson, 19%; and Beryl L. Johnson, 12%. On June 17, 1960,

two 2-year periods of extension of Contract No. I-1-Ind. 18372 were approved beginning as of December 19, 1957. On December 12, 1964, the Prairie Band entered into contract No. 14-20-0200-1856 with Robert Stone Johnson and Beryl R. Johnson for a period of 5 years beginning on December 29, 1964. On December 24, 1969 a 10-year extension of this contract was approved to begin on December 29, 1969. All contracts and extensions had the requisite tribal and Bureau of Indian Affairs approval.

Contract No. 14-20-0200-1856 recited that Robert Stone and O. R. McGuire had died and provided, among other things, that the estates of the deceased attorneys should be allowed compensation in such sum as the "tribunal * * * awarding a judgment to the TRIBE may find equitably to be due for the services heretofore rendered under said contracts".

The above Prairie Band contracts provided that any compensation for the attorneys would be wholly contingent upon a recovery by the plaintiffs, that the amount of such fee should be determined by the Commission, and that in no event would the fee exceed 10% of the award to the plaintiffs.

Robert Stone Johnson is the attorney of record in Docket 15-M.

4. Docket 29-K. The plaintiffs in Docket 29-K are the Hannahville Indian Community, the Forest County Potawatomi Community, the Potawatomi Indians of Michigan, Inc., and certain individuals suing in a representative capacity.

On January 5, 1948, the Hannahville Indian Community entered into a 10 year contract with attorneys Dorr E. Warner of Cleveland, Ohio, and Walter H. Maloney, Sr. of Washington, D. C., designated No. I-1-Ind. 42007. The contract was approved on March 8, 1948, by the Department of the Interior, Office of Indian Affairs.

After Mr. Warner's death on a date not disclosed by the record, the Hannahville Indian Community entered into a new 10 year contract of employment with Walter H. Maloney, Sr. effective March 8, 1948, designated Contract 14-20-0650 No. 983. On March 24, 1964, the Bureau of Indian Affairs approved an assignment by Mr. Maloney, Sr. of his interest in this claims contract to his son, Walter H. Maloney, Jr. In November, 1964, Mr. Walter H. Maloney, Jr. made a similar assignment of his interests in the same claims contract to Mr. Robert C. Bell, Jr. Contract 14-20-0650 No. 983 has been extended twice since 1968 and is valid until March 7, 1978. All of the above actions had the requisite approval of plaintiffs and the Bureau of Indian Affairs.

On January 7, 1948, the Forest County Potawatomi Community entered into a claims employment contract No. I-1-Ind. 42011, effective May 3, 1948, for a period of 10 years, with Mr. Dorr Warner of Cleveland, Ohio, and Mr. Walter H. Maloney, Sr. After Mr. Warner's death on a date not disclosed by the record, the plaintiffs entered into a new 10 year contract No. 14-20-0650 No. 978, with Mr. Maloney, Sr. This contract was approved by the Bureau on August 13, 1958, and made effective as

of May 3, 1958. In 1963, Mr. Maloney, Sr. assigned his interest in the contract to his son Walter H. Maloney, Jr. In November, 1964 Mr. Maloney, Jr., made a similar assignment of his interest in the employment contract to Robert C. Bell, Jr. This contract has been extended twice since 1968 and is valid until May 2, 1978. All of the above contracts and assignments had the requisite approval by plaintiffs and the Bureau of Indian Affairs.

Each of the above contracts provided that in the event of the death of either or both of the attorneys, the estate of the deceased attorney or the estates of the deceased attorneys, would be allowed compensation in such sum as the Commissioner of Indian Affairs or an appropriate court or tribunal might find equitably due for the services rendered by the deceased attorney or attorneys, and that the death of one of the attorneys, leaving the other surviving, would not terminate the contract.

Mr. Robert C. Bell, Jr., attorney of record for the Hannahville Indian Community and the Forest County Potawatomi Community, is petitioning for a share of the attorneys' fee which may be awarded, for himself and for the estate of Walter H. Maloney, Sr.

On February 20, 1965, the Potawatomi Indians of Indiana and Michigan, Inc., entered into a ten year contract, No. 14-20-0350 No. 260, with Robert C. Bell, Jr. and Walter H. Maloney, Sr. No extensions of this contract are on record with the Commission. On July 16, 1965, the plaintiff corporation petitioned for the right to intervene as a party

plaintiff in Docket 29-K and other dockets and on March 28, 1972, the petition was approved by the Commission. 27 Ind. Cl. Comm. 187, 326 and 327.

The compensation for attorneys under all of the above contracts was made contingent upon a recovery by the plaintiffs, was to be fixed in amount by the Commission, and the amount was in no event to exceed 10% of any and all sums recovered by the plaintiffs.

Mr. Robert C. Bell, Jr., is the attorney of record in Docket 29-K.

5. Deceased Counsel. The attorneys who represented plaintiff in these claims, now deceased, are:

Dkt. 146 - All members of the law firm of Adams, Moses and Culver.
All members of the law firm of Blake, Voorhees and Stewart.

Dkt. 15-M - Robert Stone
O. R. McGuire

Dkt. 29-K - Dorr E. Warner
Walter H. Maloney, Sr.

6. Statutory Fee Provision. The Indian Claims Commission Act (60 Stat. 1049), under which the claims herein were prosecuted, contains the following provisions (at page 1053) pertaining to the allowance of attorneys' fees:

> Sec. 15 . . . The fees of such attorney or attorneys for all services rendered in prosecuting the claim in question whether before the Commission or otherwise, shall unless the amount of such fees is stipulated in the approved contract between the attorney or attorneys and the claimant, be fixed by the Commission at such amount as the Commission, in accordance with standards obtaining for prosecuting similar contingent claims in courts of law, finds to be

> adequate compensation for services rendered and results obtained, considering the contingent nature of the case, plus all reasonable expenses incurred in the prosecuting of the claim; but the amount so fixed by the Commission, exclusive of reimbursement of actual expenses, shall not exceed 10 per centum of the amount recovered in any case . . .

7. Notice to the Parties.

On July 9, 1974, copies of Mr. Bell's application for attorneys' fees were sent to the following persons with an invitation to comment within two weeks if they desired to do so:

Jake McCullough, Chairman
Hannahville Indian Community
Rt. 1, Wilson, Michigan 49896

Harvey Tucker, Tribal Chieftain
Hannahville Indian Community
Rt. 1, Wabeno, Wisconsin 54566

Hon. Wallace A. Johnson, Jr.
Assistant Attorney General
U. S. Department of Justice
Washington, D. C. 20035

BIA, Tribal Operations
Attn: Guy W. Lovell
Washington, D. C. 20240

On July 12, 1974, copies of Mr. Bell's application for attorneys' fees were sent to the following persons with an invitation to comment within two weeks if they desired to do so:

Sally Halfaday, Chairwoman
Hannahville Indian Community
Rt. 1, Wilson, Michigan 49896

Harvey L. Tucker, Chairman
Forest County Potawatomi Community
Rt. 1, Wabeno, Wisconsin 54566

Mrs. Michael Williams, Co-Chairwoman
Potawatomi Indians of Indiana and
Michigan, Inc.
1520 Ontario Street
Niles, Michigan 49120

Howard Starrett, Co-Chairman
Potawatomi Indians of Indiana and
Michigan, Inc.
419 West Railroad Street
Dowagiac, Michigan 49047

Michael Wilson, Recording Secretary
Potawatomi Indians of Indiana and
Michigan, Inc.
Box 406
Dowagiac, Michigan 49047

Lester Jessepe, Chairman
The Prairie Band of the Potawatomi
Tribe of Indians
616 W. St. John
Topeka, Kansas 66608

Jerry Fox, Chairman
Citizen Band of Potawatomi of Oklahoma
R. 5, Box 79-C
Shawnee, Oklahoma 74801

On August 2, 1974, copies of Mr. Johnson's and Mr. Rochmes' joint application for attorneys' fees were sent to the following persons, with an invitation to comment within two weeks if they desired to do so:

Jerry Fox, Chairman
Business Committee
Citizen Band of Potawatomi Indians
of Oklahoma
R. 5, Box 79-C
Shawnee, Oklahoma 74801

Lester Jessepe, Chairman
The Prairie Band of the Potawatomi
Tribe of Indians
616 W. St. John
Topeka, Kansas 66608

Honorable Morris Thompson, Commissioner
Bureau of Indian Affairs
U. S. Department of the Interior
Washington, D. C. 20240

8. Response of Parties. None of the plaintiffs or their officers, as distinguished from their counsel, has responded to any of the notices of application for attorneys' fees.

The defendant responded by letter from the Department of Justice dated August 21, 1974, to the petitions for fees in these three dockets. Attached were letters from the Commissioner of Indian Affairs and from the Associate Solicitor Indian Affairs, Department of Interior. They took no position regarding the fee except to note that it should not exceed 10% of the award.

SERVICES OF COUNSEL

9. Pre-Title Phase. On July 17, 1951, counsel for plaintiffs in Docket 146 filed a petition stating a claim for the lands ceded by the Treaty of August 29, 1821, located in Michigan and Indiana.

On November 14, 1947, counsel for plaintiffs in Docket 15-M filed a petition which included this claim. This petition was received by the Commission as Docket 15. This claim was severed and refiled as Docket 15-C by the same attorneys on September 23, 1949. On September 30, 1953, the Commission ordered that this claim be refiled as Docket 15-M, and it was so refiled on November 30, 1953.

On May 18, 1948, counsel for plaintiffs in Docket 29-K filed a petition designated Docket No. 29, which included this claim. By order

of the Commission, this claim along with several others was subsequently refiled as Docket 29-A, On September 30, 1953, the Commission ordered the 4th cause of action (claim under the Treaty of 1821) in Docket 29-A to be separated and filed as Docket 29-K. The petition in Docket 29-K was so filed on October 30, 1953.

The Commission's order of September 30, 1953, which directed the refiling of these claims under the present docket numbers also consolidated those dockets for trial with dockets 13-M, 18-Q, and 40-K. The three additional dockets involved claims of Chippewas and Ottawas to the same land. Plaintiffs in those dockets were represented by separate counsel who are not involved in this fee apportionment proceeding.

TITLE PHASE

10. On September 11 and 12, 1956, a hearing was held on the issue of title to Royce Area 117 in southern Michigan and northern Indiana. Defendant took the position at the trial that plaintiffs in the six consolidated dockets had neither recognized nor aboriginal title to any portion of Royce Area 117. Defendant vigorously maintained this position throughout the trial by cross examination of plaintiffs' expert witnesses and through the testimony of defendant's own expert witness.

11. Counsel for dockets 146 and 15-M (Citizen Band of Potawatomi and Prairie Band, respectively) acted cooperatively, introducing 109 exhibits and the testimony of an expert witness, Dr. Anthony Wallace, an anthropologist. In his testimony and through the documents introduced in evidence, Dr. Wallace sought to establish that in the area south of the Kalamazoo River, Potawatomi Indians exerted exclusive use and

occupancy for many years prior to the treaty date in 1821 and that the Ottawas probably controlled the northern part of the area. Defendant's counsel cross examined Dr. Wallace in an attempt to show that Potawatomi use and occupancy of any part of Royce Area 117 was non-exclusive.

12. Counsel in Docket 29-K did not have an expert witness but introduced 36 exhibits. Counsel for defendant objected to the admission of the exhibits on the ground that, in violation of Commission rules, counsel for Docket 29-K had not submitted his exhibits in advance of the trial day thus depriving defense counsel of an opportunity of examining them for the purpose of making possible objections to their admission on substantive grounds. The Commission admitted the exhibits, giving defendant's counsel and counsel for the other dockets 30 days in which to examine the exhibits and make any objections they felt proper. The exhibits consisted of documents relative to the 1821 treaty of cession, several maps, congressional reports concerning private legislation conferring on the Court of Claims jurisdiction to adjudicate the claims of Potawatomi Indians in Wisconsin for their alleged share of unpaid annuities, and other material intended to establish counsel's position that his clients were proper parties and that at the time of the 1821 Treaty the Potawatomis were a single land-owning entity and not broken up into five separate land-owning bands. Counsel offered no evidence on the issue of Potawatomi aboriginal use and occupancy of the area in suit.

13. Counsel for dockets 13-M, 18-Q, and 40-K introduced 113 exhibits in evidence and the testimony of Dr. Omer C. Stewart, an anthropologist.

In the course of his testimony, Dr. Stewart stated that he was in substantial agreement with Dr. Wallace concerning the extent of Potawatomi and Ottawa occupancy of Royce Area 117, and that he had found no evidence in his research of the existence of a permanent continuing nation of Potawatomis at the time of the 1821 Treaty or prior thereto. Defendant's counsel cross-examined Dr. Stewart at some length, particularly regarding his location of certain Ottawa villages on the Kalamazoo River at the time of the cession. Counsel for Docket 29-K examined Dr. Stewart solely for the purpose of testing his conclusion that the Potawatomis were not a single land owning political entity in 1821. On redirect examination by counsel for the Ottawas, counsel attempted to justify Dr. Stewart's use of what defendant's counsel had criticized as "secondary sources", in locating Ottawa villages in the cession area.

14. Defendant's counsel introduced 65 exhibits and the testimony of Dr. Erminie Wheeler Voegelin, an anthropologist and historian from the University of Indiana and Director of the Ohio Great Lakes Research Project. Dr. Voegelin testified to Indian occupancy on the ceded area during the French period which ended in 1763, the British period extending from 1763 to 1783, and the period of American sovereignty from 1783 up to the time of the 1821 Treaty. Her written report contained nothing about events after 1821. In response to questions of defendant's counsel, Dr. Voegelin testified that although Potawatomi and Ottawa Indians were found in the subject area at various times, their use and occupancy was at best joint because she could not find any "rigid boundaries" between the two groups of Indians. She also testified that

in her opinion and on the basis of the evidence she had collected, the three groups of Potawatomis who used and occupied the area were politically autonomous.

In response to a number of questions from Chief Commissioner Witt, Dr. Voegelin conceded that the Ottawas occupied the northern part of the subject area and the Potawatomis used and occupied the southern portion and that such occupation was not, in fact, joint. Probably as a result of her answers to Commissioner Witt's questions, none of the counsel for plaintiffs cross examined Dr. Voegelin, and her report was admitted in evidence as Defendant's Exhibit No. 1.

15. On December 5, 1956, counsel for plaintiffs in dockets 146 and 15-M jointly filed proposed findings of fact and a brief, Findings 1 through 9 were addressed to the matter of the real parties in interest and in support of their contention that the 29-K plaintiffs did not represent the descendants of any Potawatomis who participated in the 1821 Treaty. Findings 10 through 16 dealt with the issue of whether or not the treaty lands were held by recognized title based on the Treaty of Greenville. Findings 17 through 29 dealt with the evidence of exclusive use and occupancy of the ceded area, including the testimony of Dr. Wallace and Dr. Stewart and the documents in support of that testimony, with an ultimate proposed finding that the Potawatomis exclusively used and occupied for a long time prior to 1821 the southern portion of Royce Area 117, whereas the Ottawas used and occupied the northern portion. In the accompanying brief, the Potawatomi entity question was not discussed and the issue of aboriginal use and occupancy, being a purely factual

matter, was discussed only briefly on the basis of the evidence and the reports of the expert witnesses.

16. On February 1, 1957, counsel for plaintiffs in Docket 29-K filed proposed findings of fact and brief, and objections to the proposed findings of petitioners in dockets 146 and 15-M. Of the 22 proposed findings of fact, only one, No. XVIII, dealt with the issue of exclusive use and occupancy of the ceded area by the claimant tribes, and was in the nature of an ultimate finding concluding that the Potawatomi tribe or nation was the predominant land owner, the most numerous in numbers of the Indians of the three different nations living in the area, and that the record did not support Chippewa ownership of any of the ceded lands. The proposed finding concluded that the Ottawa tribe occupied not more than one third of the ceded area in the northern part thereof just south of the Grand River. Proposed Finding XVIV stated that the price paid for the land was unconscionable when compared with the then Government minimum price of $2.00 per acre for public lands. Finding XX gave the location of the lands and stated that the United States had recognized title in the Potawatomi Nation, subject to an interest of the Ottawa Tribe of Indians. Finding XXI stated that plaintiffs in dockets 29-K, 146 and 15-M were the owners of two-thirds of the ceded land and were entitled to file the claim under the Indian Claims Commission Act of 1946. All of the other findings dealt with the issue of whether or not the Potawatomis were a single land owning entity at the time of the 1821 Treaty as contended by counsel for Docket 29-K, or were several separate autonomous bands of Potawatomi

Indians as contended by counsel in dockets 146 and 15-M and by defendant. Counsel objected to the proposed findings of dockets 146 and 15-M which asserted that the land was owned by only a part of the Potawatomi Nation or Tribe whereas in the view of counsel for Docket 29-K the land was owned by a single entity, the Potawatomi Tribe or Nation. Proposed Finding 20 was also objected to in that counsel for dockets 146 and 15-M claimed exclusive use and occupancy of "somewhat more than half the ceded area in the southern portion thereof", whereas counsel for Docket 29-K insisted that the record supported a finding that the Potawatomi Indian Tribe owned a major portion of the ceded lands as evidenced by the division of the consideration between the Ottawas and the Potawatomi treaty parties. The brief was almost solely devoted to arguing the entity issue.

17. On March 22, 1957, counsel for plaintiffs in dockets 13-M,40-K and 18-Q filed proposed findings of fact and a brief. The findings dealt with the issue of the Ottawa and Chippewa Indians as proper parties to the suit, the issue of recognized title to the lands in the parties plaintiff, and finally (Findings 11-31) the exclusive use and occupancy of the northern part of the ceded area by the Ottawa and Chippewas.

18. On May 20, 1957, defendant filed extensive findings of fact, objections to the findings of all the plaintiffs, and a brief. Defendant asserted that only plaintiffs in dockets 146 and 15-M were proper parties in interest in this litigation; that no definable part of Royce Area 117 in Michigan and Indiana was exclusively used and occupied by those

parties, and that there had been no United States recognition of title in the parties. The proposed findings also rejected the single entity theory of counsel in Docket 29-K.

19. On September 20, 1957, counsel for plaintiffs in 146 and 15-M filed a reply brief and objections to defendant's proposed findings of fact On the Potawatomi entity issue which was the primary subject of the proposed findings and brief in Docket 29-K, counsel for dockets 146 and 15-M merely stated that the entity issues had been litigated before the Commission in dockets 15-J and 71-A and that the matter was pending on appeal before the Court of Claims. The brief also noted that the Commission's decision in the Miami Tribe, et al., v. United States, 5 Ind. Cls. Comm. 180, had been issued since the filing of defendant's brief of May 20, 1957, and had held that the Treaty of Greenville of 1795 recognized tribal ownership in the treaty Indians to certain lands in the Northwest Territory. On the matter of exclusive use and occupancy, counsel found much to support their cause and to refute defendant's contentions, in the report of defendant's expert witness, Dr. Voegelin.

20. On September 20, 1957, counsel for plaintiff in Docket 29-K filed a reply brief again asserting recognized title to the ceded area by virtue of the Treaty of Greenville as supplemented by the 1821 cession Treaty, and devoted most of the rest of the brief to arguing the single entity theory of ownership of Potawatomi lands in the Northwest Territory.

21. On June 2, 1957, the Commission ordered the dismissal of the petition in Docket 18-Q in which the Red Lake Band of Chippewas and

other Chippewas were plaintiffs. On January 28, 1958, the other five petitioners filed a joint statement that their proposed findings be considered amended to resolve the overlapping claims between the Potawatomis and the Ottawas and Chippewas, suggesting a dividing line between the two groups. Defendant objected at length to this proposal invoking a large amount of legal authority to which plaintiffs did not respond.

22. On June 30, 1958, the Commission issued its decision on title to Royce Area 117, 6 Ind. Cl. Comm. 414. The Commission noted that it did not need to decide the recognized title issue inasmuch as the parties had adequately established that they had exclusive use and occupancy or Indian title to definable areas of the ceded tract. Based on the evidence and expert testimony furnished by counsel in dockets 146 and 15-M, and also to a large extent on the testimony and report of defendant's expert witness, Dr. Voegelin, the Commission found that for at least 100 years prior to the 1821 treaty the Potawatomi Indians and the Ottawas used and occupied the ceded tract, and that for 35 years prior to the 1821 treaty their use and occupancy of separate portions of the tract was exclusive. The Commission did not find particularly shocking the proposed agreement of the five plaintiffs relative to the division between the Ottawas and Potawatomis land holdings in Royce Area 117, and found no reason why the parties could not amend their proposed findings. In Finding 24 defining Ottawa occupancy and use and Finding 25 defining Potawatomi use and occupancy, the Commission arrived at approximately the same division of land, based upon the record. In its

primary findings on aboriginal use and occupancy of the ceded area, the Commission relied on one of the exhibits introduced by counsel in Docket 29-K, i.e., Exhibit 19, a letter from Schoolcraft to the Secretary of war. (This letter was also introduced by defendant as its Exhibit 55.)

In its 1958 title opinion, the Commission held that the Potawatomis were divided into five autonomous bands as of 1821; that the ancestors of the three groups of Potawatomi parties to the litigation exclusively used and occupied the southern two-thirds of the ceded area as descendants of the St. Joseph Band, and the Ottawas had Indian title to the northern one-third. The Commission concluded that there was no Chippewa exclusive use and occupancy in the ceded area in 1821.

23. On August 15, 1961, counsel for Docket 29-K filed a motion asking the Commission to amend its June 30, 1958, findings of fact on the single vs. multiple entity issue, and asked permission to submit in evidence in the title proceeding newly discovered evidence in support of the requested amendments. On August 24, 1961, defendant responded to the motion as untimely. On August 29, 1961, counsel for plaintiffs in Docket 146 responded to the motion noting that the entity issue raised again by counsel for Docket 29-K was first raised and decided adversely by the Commission in 4 Ind. Cl. Comm. 473, affirmed, 143 Ct. Cl. 131 (1958), cert. denied, 359 U.S. 908 (1959), and moved that the Commission separate the "parties issue" from the main issues in the Potawatomi cases. On September 5, 1961, counsel for Docket 29-K filed papers explaining why he had not previously submitted the evidence he then wished to introduce in the title proceedings, and objected to the motion of counsel

in Docket 146 for separate handling of the "parties issue". Counsel for Docket 29-K also noted that the case referred to as having already decided the entity issue adversely to his single entity theory, was a case involving the Potawatomi lands located west of the Mississippi River, whereas the instant case involved lands east of the Mississippi before the tribe was broken up and part of it forced to move west. On January 26, 1962, the Commission admitted Exhibits 52-105 inclusive submitted by counsel for Docket 29-K and also defendant's additional Exhibit 86-V. On December 2, 1964, the motion of Docket 29-K to amend the Commission's 1958 findings of fact on the entity issue was denied.

24. With regard to the primary issue in the title phase of this case, i.e., what Indians exclusively used and occupied definable areas of the ceded land to an extent necessary to establish in them aboriginal or Indian title, an issue which was vigorously contested by defendant throughout the trial and thereafter, counsel for dockets 146 and 15-M contributed nearly all of the work which resulted in the favorable decision that the Potawatomi Indians exclusively used and occupied a definable area in the southern two-thirds of Royce Area 117. The efforts of counsel for Docket 29-K were devoted exclusively to establishing the fact that the Potawatomi Indians were at that time a single land owning entity. Counsel for dockets 146 and 15-M not only submitted excellent evidence of Potawatomi exclusive use and occupancy of a definable portion of the ceded area, but, from the report of defendant's expert witness, Dr. Voegelin, they culled valuable material in support of such exclusive use and occupancy. Counsel for Docket 29-K ignored Dr.

Voegelin's report except to dispute her conclusion that the Potawatomis, in 1821, were not a single land owning entity.

VALUE PHASE

24. Hearings on the value of the lands in Royce Area 117 were held on September 5 through 8, 1961. Acting jointly at the trial, counsel for plaintiffs in dockets 146, 15-M and 40-K, introduced 174 exhibits including detailed reports of two expert witnesses and two researchers. At the commencement of the trial, they called as a witness for the Ottawa, Mrs. Mabel Pryor Hoag to testify concerning abstracts of public land sales in the Ottawa part of the treaty area (joint Exhibit 652) copied by her from the records of the General Land Office. Her report included dates of sales, amounts of land sold, locations of such land, and the sales' prices. A similar report on Potawatomi lands was prepared for counsel for dockets 146 and 15-M by Thelma Williams Whitehouse whose deposition concerning her work was introduced in evidence along with her report.

25. The first expert to testify for dockets 146 and 15-M was Dr. Helen Knuth, a historian specializing in American history. Her report and her testimony thereon, both on direct examination and on extensive cross examination by counsel for defendant, dealt with all of the usual factors which the Commission and the Court of Claims usually consider in valuing land areas in which there have been no sales on which to base a market value at the time of cession. Those factors included, among others, location from the standpoint of accessibility by land or water transportation, the kind of transportation available

at the time of cession and for a period thereafter, population data for the area generally, the climate, soil conditions, mineral content of the soil, the nature of all nearby settlements, the history of public land surveys in and around the cession area, the public land policy of the United States as it might affect the value of these and other public lands at that time, the topography of the land, its timber resources, the kind of settlers who came to live in the area, the publicity which the land received in the press, the prices paid for school lands and for lands granted to universities in the area, and the financial conditions in the United States during the entire period covered by her report.

26. Dr. J. W. Trygg, a real estate appraiser and a forestry expert, testified concerning his report which made use of Dr. Knuth's historical material, data from the Bureau of Land Management surveyors' original survey plats and field notes of each township in the area, figures on public and private land sales in and outside the area, statistics on climate, natural resources, topography, native vegetation, physical characteristics of the area including its waterways, prairie, timbered regions, swamp and marsh lands. His report concluded that the land in suit was worth $2.00 per acre on the average. The depositions of two men who had recorded private land sales data used in his report, were introduced in evidence.

27. Dr. Trygg was cross examined by counsel for defendant at considerable length. He also testified on redirect and again on re-cross.

28. Defendant offered the testimony and a written report of its expert, Mr. Paul Starrett, a real estate appraiser from Indianapolis, Indiana. The cross examination of Mr. Starrett was conducted by Mr. Johnson for dockets 146, 15-M and 40-K. Mr. Starrett was of the opinion that the ceded lands were worth no more than 20 cents per acre in 1822 when the treaty was proclaimed. On cross examination by Mr. Johnson, Mr. Starrett admitted that in reaching this value he had used sales of land which had occurred 35 years prior to the valuation date but none which occurred after 1822.

29. Counsel for Docket 29-K did not offer any evidence on value either by way of documents or expert witness testimony, and he did not cross examine the expert witness for defendant. Counsel did move for the introduction in evidence of a number of exhibits having to do with his single land owning entity theory respecting Potawatomi treaty cessions of land from 1795 through 1833, but these exhibits were not received in evidence at that time. Many of these exhibits had already been admitted in other Potawatomi cases then pending.

30. On February 19, 1962, counsel for plaintiffs in dockets 146, 15-M and 40-K filed proposed findings of fact and a brief on value. The proposed findings were well organized and contained the necessary references to the exhibits on which they were based. In the accompanying brief, counsel cited the decision of the Court of Claims in the case of Miami Tribe, et al., v. United States, 146 Ct. Cl. 421 (1959), as authority for the Commission's reaching an "estimated" or "imputed" value for the

land under the circumstances present in this case.

31. On April 13, 1962, counsel for Docket 29-K filed a document entitled "Amended and Proposed Findings of Fact in Support of Plaintiffs' (29-K) Motion to Amend Commission's Findings (6 I.C.C. 414); Objections to Defendant's Requested Findings of Fact (6 I.C.C. 414); Objections to Proposed Finding of Fact No. 48 on Value (Claimants, Dockets 146 and 15-M) and Supporting Brief". The requested amendments to the findings of fact originally proposed by Docket 29-K in the title proceedings, and the objections to defendant's proposed findings of fact in that same title proceedings (defendant had not yet filed proposed findings of fact in the value phase of the case), all related to the political structure of the Potawatomi Indians as a single land-owning entity from 1795 through 1833 rather than as several separate bands each owning its own lands. Proposed new findings XII-A and XII-B also involved the political structure of the Potawatomi Indians. Proposed Finding XXIV related to the amount and distribution by the Government of the treaty consideration. Proposed Finding XXV, entitled "Unconscionable Consideration" stated that the Potawatomi Indians were paid approximately 4 cents per acre for the 1821 cession; that defendant's own expert witness on value, Mr. Starrett, had given as his opinion, that the lands were worth 20 cents per acre; and that if defendant's 20 cent per acre figure be assumed accurate, then a treaty consideration of less than 25% of that figure had to be unconscionable. Proposed Finding XXVI stated that in 1822 the minimum sale price for public land was $1.25 per acre; that the

treaty lands were not near any lands which had been sold up to the time of the treaty; that the record contained no evidence of "fair market value" on the basis of comparable sales in the locality of, or for the type of, land ceded; that there was no open market for these lands in 1822 and the only possible purchaser was the Government. The proposed finding stated that under these circumstances the Commission must consider $1.25 as the minimum price or value of these lands. Citing the report of Dr. Knuth, the expert witness for dockets 146 and 15-M, the proposed finding also stated that the land was located in the direct path of commercial progress, was nearly free of swamp areas, had good potential for water transportation east and west, had available overland transportation, had high quality soil, and that by the admission of defendant's own expert witness, 82% of the land was of the first and second class. The proposed finding also stated that the "other" expert witness (identified in a footnote as Dr. Knuth) had testified that 92% of the cession area was land of the first and second class. This proposed finding concluded that under the circumstances of the case it would be fair and reasonable for the Commission to conclude that the value of the land in 1822 was $1.75 per acre. Proposed findings XXVII and XXVIII related to the Potawatomi Indian parties who would be entitled to share in any award made by the Commission and stated that the plaintiffs in Docket 29-K were so entitled. Proposed finding 48 of plaintiffs in dockets 146 and 15-M was objected to insofar as the finding purported to exclude plaintiffs in Docket 29-K from participating in the award. As for defendant's proposed findings of fact on value, which proposed findings had <u>not</u>

yet been filed with the Commission or with the parties, counsel for Docket 29-K objected in advance to all such proposed findings that defendant might thereafter file to the extent that they were inconsistent with the proposed findings of Docket 29-K. The brief filed by counsel for Docket 29-K in support of the proposed findings, etc., contained nothing on the subject of the value of the ceded lands. On the matter of the number of acres to be valued, counsel argued that the land granted or reserved to individual Potawatomis under Article 3 of the 1821 treaty should not be deducted from the acreage to be valued because, according to counsel for Docket 29-K, the individuals in question never received the land.

32. On May 24, 1962, defendant filed proposed findings of fact on value and lengthy objections to the proposed findings of counsel for dockets 146, 15-M and 40-K. Defendant also objected to the amendments to the title phase findings of fact proposed by counsel for Docket 29-K, on the ground that they were not based on newly discovered evidence, had already been proposed by the same counsel in dockets 71-A and 15-J, and were clearly out of time. Defendant also noted that the proposed amended findings dealt with the single entity land owning theory. Defendant did not respond to the proposed findings of Docket 29-K on the matter of value.

33. On August 31, 1962, counsel for Docket 29-K filed objections to defendant's requested findings of fact on value, a reply to defendant's

objections to plaintiff's proposed amended findings of fact, and a brief. On the issue of value, counsel pointed out that defendant had not made any objection to Docket 29-K's finding of fact No. XXVI which related to the value of Area 117, and repeated his argument that because of defendant's own calculation of what the Government had paid for the land in 1821 (approximately 4 cents per acre) and the 20 cents per acre defendant's expert witness said the land was then worth, the consideration paid had to be unconscionable. Counsel's objections to defendant's primary findings of fact on value were very general, and his response to defendant's arguments on the entity issue added nothing new.

34. On September 3, 1962, counsel for dockets 146, 15-M and 40-K filed objections to defendant's requested findings of fact, a reply to defendant's objections to plaintiffs' requested findings of fact, and a reply brief, all on the issue of value. The objections to defendant's proposed findings were specific, giving record reference in support of each objection. The thrust of the objections had to do with whether or not the record established the fact that the land ceded had possibilities of great desirability and future productivity which prospective purchasers in 1822 could reasonably have anticipated both for settlement and for development of the lumber industry. Plaintiffs noted that defendant's proposed findings did not deal with this subject. They objected to defendant's use of land sales which took place more than 30 years prior to the treaty date and at times when many purchases were made by speculators, stating that defendant had made no attempt to show the comparability of such sales with the prospective sale of the land in Area 117. Another area of dispute was whether a typical purchase of the land would be

guided by speculative possibilities or whether the people who would be expected to and did buy the land were farmers who came to Michigan and northern Indiana to acquire land and to stay on it. Plaintiffs pointed out that few large tracts were purchased in 117. Counsel answered in detail defendant's objections to the proposed findings of plaintiffs in these three dockets, supported by references to the record. In the brief counsel again argued, among other things, that the 84,480 acres of land in Area 117 which, under Article 3 of the 1821 treaty, were granted to individuals, should not be deducted from the acreage to be valued because those grants were made for the purpose of inducing the individuals to bring about the signing of the treaty by the Indians and were therefore made for the sole benefit of the Government.

35. On October 11, 1962, the Commission heard oral argument on the issue of the value of the land in 1822 at the time of the proclamation of the 1821 treaty. Counsel for Docket 29-K did not at any time address himself to the value issue but instead urged the Commission to take a new look at the arguments he had previously advanced on the single entity ownership theory which he claimed was applicable to all Potawatomi treaty cessions of land from 1795 through 1833. He argued that the 1958 decision of the Court of Claims in the Potawatomi case on appeal (143 Ct. Cl. 131, cert. denied 359 U.S. 905 (1959)), dealt only with the right of Potawatomi Indians who had remained east of the Mississippi to share in awards for Potawatomi lands acquired west of the Mississippi, and that its decision in the negative was not a bar to the litigation of the single vs. multiple

entity structure of the Potawatomi Indians between 1795 and 1834 in connection with ownership and cessions of eastern Potawatomi lands.

Counsel for Docket 40-K made the principal argument on value for plaintiffs in that docket and in dockets 15-M and 146. Counsel for Docket 15-M on behalf of the other cooperating dockets (not including Docket 29-K) argued that the grants of land to individual Indians, half-breeds, chiefs and persons of importance, under the Treaty of 1821, were made solely to persuade them to influence the other Indians to consent to the treaty disposing of their lands, and that therefore the 84,480 acres so granted should not be deducted from the amount of land to be valued. Reference was made by counsel to the Court of Claims decision in the Miami case, 146 Ct. Cl. 421, and to the subsequent action of the Commission, when the case reached it on remand, of raising its original valuation of the land in Royce Area 99 (Indiana) from 75 cents per acre to $1.15 per acre as of the 1818 treaty date. He argued that the land in Royce Area 117 in 1822 was shown by the record to be far more desirable and more valuable than the Miami lands.

36. On December 2, 1964, the Commission issued an order dismissing the petition in Docket 29-K. In the order the Commission amended its title findings entered in 1958 to conclude that the Hannahville Indian Community and the Forest County Potawatomi Community had no connection with the St. Joseph Band, as would entitle them to maintain or participate in claims brought on behalf of the St. Joseph Band of Potawatomis. The Commission also amended paragraph 2 of its 1958 opinion and instead held that the plaintiffs in Docket 29-K were descendants of Wisconsin

Indians who had remained east without permission when the rest of the Potawatomis had moved west. In another order of the same date, the Commission denied the motion of Docket 29-K to amend the June 30, 1958, findings of the Commission. A per curiam opinion was issued in support of the order with Commissioner Scott dissenting on the ground that the political structure of the Potawatomi Indians as a land-owning entity prior to the move west had not been decided in the Court of Claims decision reported in 143 Ct. Cl. 131, affirming a decision of the Commission adverse to the single entity theory urged by the eastern Potawatomis.

37. On December 23, 1964, the Commission issued its findings of fact and opinion on value in Dockets 146, 15-M and 40-K. In arriving at a value of 85 cents per acre for the ceded land in 1822, the Commission adopted many of the findings and arguments of counsel in Dockets 146, 15-M and 40-K and rejected much of defendant's approach to valuing the area. Conceding that the land had the potentials claimed for it by plaintiffs as of 1822, the Commission did not think that a prospective 1822 purchaser could reasonably have been aware of how valuable the land would become in 20 or 25 years. While the Commission agreed that the area was accessible to settlers and traders in 1822, it did not believe the record supported plaintiffs' contention that it was easily accessible, particularly when compared to Indian lands which had been previously ceded in Indiana and Ohio. The Commission agreed with plaintiffs that 92% of the lands were of the first and second class. As for the lumber value to which Mr. Trygg had

testifed and which accounted for a good portion of the value plaintiffs assigned to the land, the Commission concluded that the lumber was of potential value in 1822 but did not contribute to the 1822 utilization of the area as far as commercial lumbering was concerned.

The Commission held that the highest and best use of the cession area was for farming and that the land was excellent for that purpose, providing a farmer with practically everything he would need to subsist. The Commission agreed that the "Tiffin" survey report on Michigan lands, which was derogatory and misleading when published several years before the cession, was in error in most respects, but the Commission was persuaded that the report, which resulted in the relocation of some 2,000,000 acres of military bounty lands from Michigan to other areas, had the unfortunate effect of discouraging settlement for a fairly long time. The Commission also concluded that the treaty right of the Indians to continue their use of the ceded area for hunting as long as it remained public land, was a further deterrent to quick settlement. The Commission accepted the plaintiffs' theory of arriving at an "estimated" or "imputed" market value in this case where there was no actual market at the time of the cession or for several years thereafter. It rejected the argument of counsel for Docket 29-K that the $1.25 minimum price for public lands in 1822 must be given a great deal of weight in the absence of a market at the time of cession, because the Commission was of the opinion that the record contained abundant evidence from which an estimated or imputed value could be arrived at. In rejecting the argument of all plaintiffs that the 84,480 acres granted to individuals should be included in the acreage to be valued, the Commission concluded that these grants

were part of the overall agreement embodied in the treaty and that in the absence of a clear showing of wrongdoing by defendant in making such grants, there was no reason not to exclude the granted land from the area to be valued. The Commission found the consideration paid unconscionable and made an interlocutory award based on 85 cents per acre, subject to allowable offsets.

38. In the value phase of this case counsel for dockets 146 and 15-M did all of the significant work in establishing the value of the lands ceded by the Potawatomi Indians. Counsel for Docket 29-K did nothing at the trial which was helpful in the matter of the value of the lands, and in his proposed findings of fact, the few which could be described as findings relating to value were ultimate rather than primary findings and were based on conclusions reached by one of the expert witnesses (Dr. Knuth) produced by the counsel for dockets 146 and 15-M. The brief filed by counsel for Docket 29-K at this phase of the case related to matters concerned with the "parties issue" of this and other Potawatomi dockets not consolidated in this proceeding, and were of no assistance to the Commission in reaching its decision on the value of the ceded lands.

ENTITY ISSUE

39. In late 1964, Mr. Robert C. Bell, Jr., became attorney of record for Docket 29-K. He filed motions for rehearing of the Commission's orders denying motions of Docket 29-K to admit additional exhibits and to amend the Docket 29-K petition to add other parties plaintiff. The motions were denied on December 1, 1964. On March 1, 1965, counsel filed a notice of appeal to the Court of Claims from the two orders of the Commission of December 2, 1964, which denied plaintiffs' motion to amend the

1958 title findings with respect to the political organization of the Potawatomi Indians as a single land-owning entity, and dismissed the petition in Docket 29-K. The Citizen Band and the Prairie Band of Potawatomi Indians were, together with the United States, appellees in this proceeding (appeal No. 5-65). The appellants included several other dockets in which the eastern Potawatomi Indians were plaintiffs.

On June 9, 1967, the Court of Claims rendered a decision (180 Ct. Cl. 477) reversing the Commission on the holding that the decision of the Commission affirmed by the Court of Claims (143 Ct. Cl. 131, supra,) and involving the western Potawatomi lands, was a bar to the litigation of the entity question in cases relative to eastern Potawatomi lands ceded between 1895 and 1834, and remanded the cases for a new trial on the entity issue.

40. Hearings on the political structure of the Potawatomis from 1795 through 1833 were held January 18 and December 6, 1968. The three groups of plaintiffs and the three groups of counsel involved in this proceeding participated in the entity remand. All parties presented evidence, briefs and argued orally.

On March 28, 1972, 27 Ind. Cl. Comm. 187, the Commission issued an opinion and order which, among other things, required that plaintiffs in Docket 29-K be reinstated in these proceedings for the purpose of sharing in the final award. The Commission ruled that from 1795 through 1833, Potawatomi lands were owned and ceded by a single land-owning entity, i.e., the Potawatomi Tribe or Nation. The order reinstating Docket 29-K as a party in this proceeding was not appealed to the Court of

Claims, but several other plaintiffs in the consolidated dockets affected by this decision did appeal and the rulings of the Commission on the entity question were affirmed. 205 Ct. CL. 765 (1974), 507 F.2d 852, 206 Ct. Cl. 867 (Order of March 7, 1975).

41. Although the position of counsel in Docket 29-K persuaded the majority of the Commission, attorneys for each docket contributed equally to this phase of the litigation. The record indicates that counsel for Docket 29-K spent far more time on the entity issue than did counsel for the other dockets, but a great deal of the work done by counsel for Docket 29-K was duplicative of work done by the same counsel in other Potawatomi dockets. Furthermore, much of the time counsel was merely repeating the same arguments over and over again in writing and orally. In finding that all counsel made an equal contribution to this phase of the proceeding, the Commission takes into consideration the amount and quality of the work which was actually necessary and productive in assisting the Commission in resolving the conflicting arguments on this issue.

43. On February 19, 1968, the Commission severed the claim of plaintiffs in Docket 40-K, and on March 28, 1968, entered a final award in their favor, 19 Ind. Cls. Comm. 95. The fee for the attorneys in that docket is not in issue here.

OFFSET PHASE

43. On June 7, 1972, defendant filed an amended answer alleging a total of $1,566,432.05 in allowable offsets to be deducted from the award for the Potawatomi plaintiffs. Dockets 146 and 15-M joined

in filing objections to such offsets, and Docket 29-K filed separate objections. In this phase of the case, as in the entity appeal, Mr. Robert C. Bell, Jr., acted as attorney of record for plaintiffs in Docket 29-K. On March 1, 1973, counsel for Docket 29-K moved the Commission to enter summary judgment disallowing all claimed offsets on the ground that the payments asserted were made gratuitously by the Government from public funds and were all unrelated to the Government's liability to the plaintiffs in the instant case. Noting that the final award of $2,320,370.70 had been entered eight years previously, counsel in Docket 29-K argued that the issue of the allowability of these gratuitous payments as offsets should not be tried by the Commission because to do so would further delay the payment of the award the Commission had found to be due the plaintiffs.

In a response filed March 26, 1973, to the motion for summary judgment, defendant pointed out that there need be no connection between the facts supporting the judgment for the plaintiffs and the nature of the alleged offsets and that the lack of such connection should not deprive the defendant of the right to a trial on offsets. Defendant also alleged that there existed material issues of fact to be tried in connection with the allowability of the alleged offsets which precluded the granting of Docket 29-K's motion for summary judgment. In a reply filed April 8, 1973, counsel for Docket 29-K again cited the long delay since the final award as a ground for denying defendant an opportunity to have a trial on its claim of allowable offsets. On April 12, 1973,

the Commission issued an order denying the motion of Docket 29-K for summary judgment.

44. On May 29, 1973, counsel for plaintiffs in dockets 15-M and 146 moved the Commission for an order setting a pretrial conference on the matter of offsets. Counsel pointed out that many of the claimed offsets asserted in defendant's amended answer had already been adjudicated in other dockets and therefore should not have been asserted in these dockets. On June 21, 1973, counsel for dockets 15-M and 146 filed a pretrial memorandum in accordance with the direction of the Commission. Counsel pointed out in the memorandum that the judgment in this case was based upon the Treaty of August 29, 1821, effective March 25, 1822, but that the defendant had included in its amended answer expenditures made prior to the effective date of the treaty. Counsel noted that three offset proceedings had already been adjudicated in the Potawatomi cases, specifying proceedings and stating that defendant's amended answer ignored the prior litigation and was claiming offsets expressly identified in prior decisions as allowed or disallowed, as well as other offsets which must have been comprehended within the claims litigated and therefore not the proper subject of litigation at this time. Counsel specified the paragraphs in the amended answer in which such items appeared. Finally, counsel for dockets 15-M and 146 noted that offsets had been allowed against the judgment for the Citizen and Prairie Potawatomis in the western lands case, but that in spite of this defendant had included in its amended answer offset claims based on expenditures made for the

benefit of the Potawatomi Indians who remained east after the Citizen and Prairie Bands had moved west. Counsel urged that whether or not those claims were otherwise valid, they should not be offset against the amount of the award going to the Citizen and Prairie Potawatomis who have already been charged for the expenditures made for their special benefit.

45. On June 25, 1973, counsel for Docket 29-K filed a pretrial memorandum relative to defendant's claims for offsets. Counsel questioned many of the claims for offsets contained in the defendant's amended answer contending they were clearly not allowable under the terms of the Indian Claims Commission Act and that others were not allowable because unidentified portions of certain expenditures went to Indians other than Potawatomis.

46. On June 29, 1973, defendant filed its pretrial statement on offsets. On July 3, 1973, a pretrial conference was held with counsel for all parties present and participating. At the conference, with a reporter present, counsel for Docket 146 referred to defendant's amended answer and the supporting exhibits and pointed out a number of expenditures which were claimed as allowable offsets although they occurred prior to the treaty date. As the conference progressed it became apparent that the amended answer should have eliminated many of the expenditures listed in the GAO report on which it was based, and that the pretrial statement of defendant should have eliminated those expenditures asserted in the amended answer but clearly not allowable as offsets. Finally it was

agreed that the trial on offsets would take place on November 15, 1973, with the Government serving its representative vouchers with backup records on the parties by October 15, 1973.

47. On November 15, 1973, the trial on offsets was held. The Government's exhibits in support of claimed offsets were introduced in evidence and the accountant who was responsible for preparing the exhibits was cross examined by attorneys for all three dockets. Defendant's amended answer of June 7, 1972, had alleged offsets in the sum of $1,566,432.05 against the interlocutory award of $2,320,370.70 entered December 23, 1964. At the trial defendant's claimed offsets had been reduced to a total of $26,484.42. On January 30, 1974, the briefing time of the parties was set by order of the Commission. Defendant was required to file requested findings of fact and brief on offsets on or before March 14, 1974. On March 13, 1974, defendant requested an extension of time for the filing of the requested findings of fact and brief and counsel for both groups of plaintiffs objected, pointing out that the loss of interest on the total award already amounted to more than the total amount of offsets claimed by defendant. Counsel for plaintiffs all advised the Commission that efforts to arrive at a compromise on the amount of allowable offsets had been going on between counsel for plaintiffs and defendant. The reason for the requested extension of time was that these dockets were being reassigned to another attorney in the Department of Justice. On March 29, 1974, counsel for all parties appeared before the Commissioner to whom the case was assigned and, with a reporter present, they discussed the progress which had been made

toward settling the matter of the amount of allowable offsets.

48. As a result of the above conference, defendant's counsel proposed a finding of fact that defendant was entitled to offsets totaling $23,500.00 representing expenditures for the Potawatomis in the three dockets between March 25, 1822, and June 30, 1956, to which proposed finding counsel for plaintiffs made no objection. On April 19, 1974, the Comission entered a final award in which it found and concluded as a matter of law, that $23,500.00 was properly allowable as an offset under Section 2 of the Indian Claims Commission Act, and that a final award of $2,296,870.70 was due plaintiffs in satisfaction of all claims presented in the three dockets.

49. At the offset phase of this case counsel for all three dockets contributed equally in reducing the claimed offsets from $1,566,432.05 to $23,500.00.

TIME EXPENDED

50. Counsel for Docket 29-J produced time records for Walter H. Maloney, Sr., one of the original attorneys of record, now deceased, in Docket 29-J. These records indicate that he and associated counsel (not in-including Mr. Robert C. Bell, Jr., who became associated as counsel in these cases in 1964) devoted some 16,475 hours between 1948 and 1964 to dockets 29-J and 29-K. This time record does not allocate the hours of work between dockets 29-J and 29-K. Counsel for dockets 146 and 15-M did not submit time records.

PARTIES, NUMBER OF MEMBERS

51. As of December 1, 1960, the Prairie Band of Potawatomi Indians had 2,101 members living in Topeka, Kansas and in Wisconsin. The Citizen Band of Potawatomi Indians of Oklahoma has a tribal population of more than 11,000 persons most of whom live in the vicinity of Shawnee, Oklahoma. Approximately 279 live in Illinois, Wisconsin, Michigan and Indiana. The record does not contain evidence on which it is possible to estimate the number of Potawatomi Indians who are presently members of the Hannahville Indian Community, the Forest County Potawatomi Community and the Potawatomi Indians of Michigan, Inc.

FEE AWARD

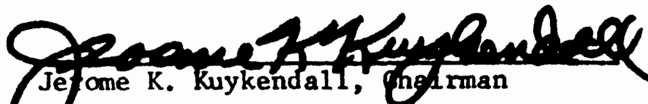
52. The attorney contracts in Docket 146 provided for a fee of 10% of the final award. In dockets 15-M and 29-K, the contracts provided that the fee for attorney services should be determined by the Commission in an amount not to exceed 10% of the final award. On the basis of the entire record of the proceedings in all of these dockets, and in the light of the responsibilities undertaken by counsel, the difficult problems of fact and law, the appeal on the entity issue, the extensive briefings, oral arguments and pretrial conferences, and based on the foregoing findings of fact herein, the Commission finds that the attorney fee should be 10% of the final award, or $229,687.07.

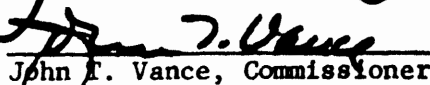
CONCLUSION ON APPORTIONMENT OF FEE

53. For the services rendered in prosecuting these claims, the Commission finds that the gross attorney fee of $229,687.07 should be apportioned as follows:

> To Louis L. Rochmes and Robert S. Johnson, attorneys of record in dockets 146 and 15-M, respectively, on their own behalf and on behalf of all contract attorneys having an interest in the fee in these cases (dockets 146 and 15-M), for distribution by the attorneys of record to such attorneys or their representatives in accord with their respective interests $195,234.01
>
> To Robert C. Bell, Jr., attorney of record in Docket 29-K, on his own behalf and on behalf of all contract attorneys having an interest in the fee in this case (Docket 29-K), for distribution by him to such attorneys or their representatives in accord with their respective interests.....................................$ 34,453.06

The payment of these sums are in full satisfaction for legal services rendered to the plaintiffs in dockets 146, 15-M and 29-K.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner

Richard W. Yarborough, Commissioner

Margaret H. Pierce, Commissioner

Brantley Blue, Commissioner