

BEFORE THE INDIAN CLAIMS COMMISSION

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

Decided: July 21, 1976

FINDINGS OF FACT AND ORDER
ALLOWING ATTORNEYS' EXPENSES

1. Preliminary Statement. On November 7, 1973, the Commission entered a final award directing that the Minnesota Chippewa Tribe on behalf of and for the benefit of the Chippewa Indians of the Mississippi and Lake Superior, plaintiffs, recover from the defendant the amount of \$9,027,559.60 in full satisfaction of all claims in Docket 18-C (32 Ind. Cl. Comm. 215). Funds to satisfy this judgment were appropriated by the Act of June 8, 1974, 88 Stat. 195. An order allowing attorneys' fees in this docket was issued by the Commission on December 4, 1974 (35 Ind. Cl. Comm. 250).

2. Expense Application. Rodney J. Edwards, attorney of record, applied on June 25, 1974, for reimbursement of expenses on behalf of all attorneys interested in this docket. He amended this petition with a letter filed March 22, 1976, in which he deleted certain items. The amended application requests allowance of reimbursable expenses in the amount of \$10,221.25 to Mr. Edwards for distribution by him of any amounts

of said total expenses due to each of the attorneys and the estates of deceased attorneys entitled to participate in the sharing of the reimbursement.

3. Attorneys Contracts. This claim was prosecuted 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 L. 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 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, 1976.

(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 14-20-0650947, 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 14-20-650-692, 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, 1975.

4. Notice to Parties. The Clerk of the Commission notified the parties of this application, including officials of the plaintiff tribe and bands and the United States Departments of Justice and Interior.

Officials of the Six Tribes of the Wisconsin Lake Superior Bands of Chippewa, by letter dated June 25, 1974, objected to the payment of fees and expenses to their attorneys, the tribal chairmen noting that they had not had an opportunity to review the expense schedule. The expense petition, which was not filed until June 25, 1974, was mailed to the tribal chairmen on July 2, 1974, and no objections or comments have been filed with respect to the expense schedule.

By letter dated July 5, 1974, the Chairman of the Lac Courte Oreilles Tribal Governing Board objected to payment of any claims money to anyone until such time that a distribution is made to the Indian people. As we noted in our decision on the award of attorneys' fees in this case (35 Ind. Cl. Comm. 237), the judgment awarded in this case, \$9,027,559.60, was appropriated by the Act of June 8, 1974 (88 Stat. 195) and deposited in 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 all interest earned, and after payment of the attorneys' fees and litigation expense, will be disbursed to the Indians in accordance with a plan of distribution prepared by the Secretary of the Interior.

On October 15, 1974, the Department of Justice responded to this application, and included comments by the Acting Deputy Commissioner of Indian Affairs dated September 10, 1974. The Department of Justice took no position regarding the application except to note several questions raised by the Department of the Interior. These questions, which relate to certain travel expenses and other items which were related to other

dockets before the Commission, have been resolved by Mr. Edwards' March 22, 1976, amendment to the petition.

5. Claimed Expenses. The schedule of claimed expenses lists the expenses in several categories, as follows:

(a) Compensation and Expenses of Experts	\$ 3,000.00
(b) Travel Expenses of Attorneys	3,058.59
(c) Long Distance Telephone and Telegraph	390.89
(d) Extra Postage and Express	122.90
(e) Transcripts and Special Stenographic Hire	908.69
(f) Printing and Reproduction of Documents and Exhibits	1,829.59
(g) Expenses Advance by Marvin J. Sonosky, Associate Attorney	<u>910.59</u>

Total of Expenses Claimed \$10,221.25

6. Determination 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 are reasonable and proper expenses of litigation and should be allowed with the exception of the following item:

Compensation and Expenses of Experts

The petitioner requests the allowance of \$3,000.00 which he asserts is still due and owing to Dr. Omer C. Stewart for his services as an

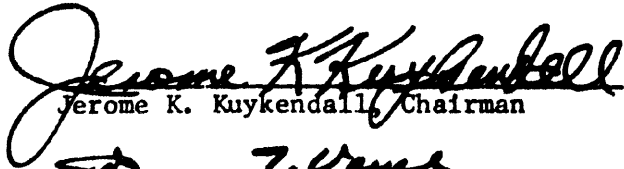
expert witness. Dr. Stewart, an anthropologist and historian, was employed by the attorneys to conduct a study and to testify as to the aboriginal use and occupancy of lands involved in this case. The agreement with Dr. Stewart is set forth in his letter of February 22, 1961, to Mr. Rodney Edwards. It was agreed that Dr. Stewart was to be paid \$600.00 per year as a consultant fee (to be paid at the rate of \$50.00 a month). In addition Dr. Stewart stated that he ". . . would expect to be paid at the rate of \$70.00 per seven-hour day for time spent in research, preparation of exhibits for case and for testifying, up to a total of \$5,000.00" The letter went on to state that ". . . the payment to me for research and preparation of exhibits and for testifying to a total of \$5,000 may be contingent upon recovery in the case." However, the \$50.00 per month payments and all costs were to be paid as they occurred. In 1959 the Lac du Flambeau Band of Lake Superior Chippewa Indians made available from its funds a sum of \$10,000.00 to be used for the reimbursement of expenses incurred in the prosecution of this case. Of this sum a total of \$6,585.14 was used to pay Dr. Stewart's expenses and compensation. Since Dr. Stewart did not testify in the case, the \$5,000.00 to be paid from the recovery was reduced to \$3,000.00.

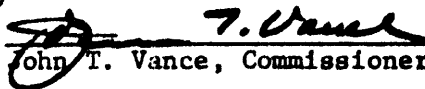
Although Mr. Edwards has not paid any part of the \$3,000.00 to Dr. Stewart, he claims it as an item of expense for which he should be reimbursed. His claim is based on the assertion that he is obligated to pay the \$3,000.00 fee and that the agreement for such payment was made prior to the enactment of Section 70n-7 of the Indian Claims Commission Act, which prohibits contracts making compensation payable to a witness contingent

upon recovery of a judgment in the case. However, such a contingent witness fee arrangement has generally been held to be invalid or unenforceable as being contrary to public policy. The Commission does not consider such a claim for reimbursement of a contingent witness fee to be a proper item of reimbursable attorney's expense for which recovery is provided under Section 701 of the Indian Claims Commission Act. See Crow Tribe v. United States, 12 Ind. Cl. Comm. 24 (1962). The claim for \$3,000.00 is disallowed.

7. Conclusion. On the basis of all the evidence of record, the Commission finds that all claimed expenses not specifically treated in finding of fact No. 6, above, are reasonable and proper expenses of litigation and should be allowed. Accordingly, the Commission concludes that, after deducting the disallowed item of \$3,000 discussed in finding 6 above, the sum of \$7,221.25 is reasonable and proper for reimbursement.

IT IS THEREFORE ORDERED that out of the funds appropriated to pay the final award entered herein on November 7, 1973, there shall be disbursed to Rodney J. Edwards, attorney of record, the amount of \$7,221.25 as reimbursement in full for expenditures made in the prosecution of this claim, 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