

BEFORE THE INDIAN CLAIMS COMMISSION

HANNAHVILLE INDIAN COMMUNITY,)	
et al.,)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 29-J
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: May 19, 1977

FINDINGS OF FACT AND ORDER ON ATTORNEY EXPENSES

HAVING CONSIDERED the application for reimbursement of attorney expenses, filed March 1, 1974, on behalf of the estate of Walter H. Maloney, a deceased attorney of record for the Hannahville Indian Community, the Forest County Potawatomi Community, and the Potawatomi Indians of Indiana and Michigan, Incorporated, three of the plaintiffs in Docket 29-J; and the entire record regarding the application, the Commission finds as follows:

1. The Award. On April 25, 1973, the Commission entered a final award in Dockets 217, 15-K and 29-J for \$4,104,818.98 in favor of the consolidated plaintiffs on behalf of the Potawatomi Tribe or Nation as it existed between 1795 and 1833, 30 Ind. Cl. Comm. 144, 204. Funds to satisfy the award were appropriated by the Congress on January 3, 1974, 87 Stat. 1071.

2. The Application. The application alleged that the late Walter H. Maloney incurred \$8,334.85 in reimbursable expenses in litigating his clients' claims before this Commission and the appellate courts.

3. The Attorney Contracts. The claims in this matter were prosecuted by the deceased attorney under five contracts, described as follows:

a. On January 5, 1948, the Hannahville Indian Community and Attorneys Dorr E. Warner and Walter H. Maloney, Sr., entered into an initial contract that was approved by the Bureau of Indian Affairs on March 8, 1848, and was designated as Contract No. I-1-ind. 42007. The contract was for a period of ten years beginning with the date of approval.

b. On September 2, 1958, a new contract was entered into between the Hannahville Indian Community and Attorney Walter H. Maloney, Sr. That contract was approved on January 14, 1959, and was designated as Symbol 14-20-0650 No. 983. The contract was for a period of ten years beginning on March 8, 1958. On March 24, 1964, the Bureau of Indian Affairs approved an assignment by Mr. Maloney, Sr., of his interests in this claims contract, insofar as Dockets 29-J and 29-K were concerned, to his son Walter H. Maloney, Jr. In November 1964, Mr. Walter H. Maloney, Jr., assigned his interests in the contract to Mr. Bell. The 1958 contract, with the approval of the Bureau of Indian Affairs, has been extended twice since 1968 and is valid until March 7, 1978.

c. On January 7, 1948, the Forest County Potawatomi Community and Attorneys Dorr E. Warner and Walter H. Maloney, Sr., entered into an initial contract for representation that was approved on May 3, 1948, by the Bureau of Indian Affairs for a period of ten years beginning with the date of approval. It was identified as Contract No. I-1-ind. 42011.

d. On May 31, 1958, a new contract was entered into between the Forest County Potawatomi Community and Attorney Walter H. Maloney, Sr. This contract was approved on August 13, 1958, by the Bureau of Indian Affairs for a period of ten years beginning on May 3, 1958, and was designated as Symbol 14-20-0650 No. 978. In November 1963, Mr. Maloney, Sr., assigned his interests in the contract, insofar as Dockets 29-J and 29-K were concerned, to his son Walter H. Maloney,

Jr. In November 1964, Mr. Maloney, Jr., assigned his interests in the contract to Mr. Bell. This 1958 contract has been extended twice since 1968, with the approval of the Bureau of Indian Affairs, and is valid until May 3, 1978.

e. On February 20, 1965, the Potawatomi Indians of Indiana and Michigan, Inc., Attorneys Walter H. Maloney, Sr., and Robert C. Bell, Jr., entered into an initial contract for representation that was approved on April 13, 1965, by the Bureau of Indian Affairs for a term of ten years beginning with the date of approval. This contract was identified as No. 14-20-0350-260. The contract, with the approval of the Bureau of Indian Affairs, has been extended to April 13, 1977.

Walter H. Maloney, Sr., made other assignments of his interests in the foregoing contracts but never assigned all of his contractual interests. He participated actively in the litigation of his clients' claims until shortly before his death on November 14, 1967.

All of the contracts provided for the recovery of actual and necessary expenses incurred in litigation the clients' claims before this Commission.

4. Notices. By letters dated March 4, 1974, the Commission notified the three tribal clients named above, and the defendant, of the filing of the application, sending them appropriate copies of the filings. No responses were received from the tribal clients. The defendant responded by letter dated May 24, 1974, wherein it reported that the Department of the Interior regarded as ambiguous a number of specific expenses alleged in the application, and that additional evidence was needed to sustain such items. The response of the defendant included an attachment in the form of a memorandum from the Commissioner of

Indian Affairs to the Solicitor of the Department of the Interior which, among other things, outlined several objections to specific items of expense alleged in the application.

On August 12, 1974, the co-executor of the Estate of Walter H. Maloney filed additional documents and explanations concerning the claimed expenses. That response met most of the objections which had been raised.

5. Determination of Reimbursable Expenses. Pursuant to section 15 of the Act, Rule 34(b) of the Commission's Rules of Procedure (25 C.F.R. §503.34(b)), as amended, 39 Fed. Reg. 41173 (1974), the Commission's Policy Statement §102, issued July 15, 1968, the foregoing findings, and upon examination of the application herein, the supporting record, the attorney's contracts with the plaintiffs, and the entire record of expenditures incurred in the prosecution of these consolidated claims, the Commission concludes that claimed expenses in the application are reasonable and proper expenses of litigation and should be allowed with the exception of the following items:

Exhibit 3, 3(c), May 9, 1950	\$ 10.00
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Purchase of a reference book (Bureau of Ethnology 18th Report) is not a claim expense.

Exhibit 5(a), August 21, 1951	37.74
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Exhibit indicates this expenditure was in the Docket 28 case.

Exhibit 6, July 10, 1952 \$ 8.67

This unidentified purchase from Brentano's has not been shown to be a claim expense.

Exhibit 14, 14 (a), August 7, 1953 6.00

Expense of rebinding a volume of Royce maps is not a claim expense.

Exhibit 17, 17c, October 30, 1953 48.80

This item is a duplication of a charge included in the expense listed for December 8, 1953, (\$146.40) which is allowed in full.

Exhibit 20, September 3, 1954 4.40

This item was listed twice.

Exhibit 69(c), June 20, 1963 25.87

Exhibit 69(d) indicates that \$25.87 of the total payment of \$51.75 was allocated to the Miami case, Docket 124-B.

Total \$141.48

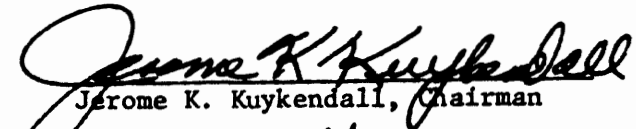
Amount claimed \$8,334.85

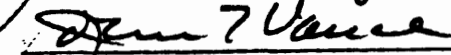
Amount disallowed 141.48

Net allowable \$8,193.37

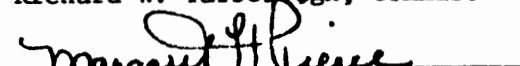
IT IS THEREFORE ORDERED that out of the funds appropriated to pay the final award entered April 25, 1973, there shall be disbursed to Robert C. Bell, Jr., attorney of record in Docket 29-J, for distribution by him to the Estate of Walter H. Maloney, the sum of \$8,193.37 as reimbursement

in full for all expenditures made by Walter H. Maloney in the prosecution
of this case.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner