

## BEFORE THE INDIAN CLAIMS COMMISSION

HANNAHVILLE INDIAN COMMUNITY OF	)	
WILSON, MICHIGAN;	)	
	)	
FOREST COUNTY POTAWATOMI COMMUNITY	)	
OF GRANDON, WISCONSIN;	)	
	)	
POTAWATOMI INDIANS OF INDIANA AND	)	
MICHIGAN, INC., a Michigan	)	
Corporation,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Docket No. 29-K
	)	(Consolidated with Dockets
THE UNITED STATES OF AMERICA,	)	146 and 15-M)
	)	
Defendant.	)	

Decided: August 3, 1977

FINDINGS OF FACT AND ORDER ON REIMBURSEMENT OF ATTORNEY EXPENSES

HAVING CONSIDERED the application for reimbursement of attorney expenses, filed September 18, 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-K; and the entire record regarding the application, the Commission finds as follows:

1. The Award. On April 19, 1974, we entered a final award in this docket (consolidated with Dockets 146 and 15-M) for \$2,296,870.70. 34

Ind. Cl. Comm. 1. On December 27, 1974, Congress appropriated funds crediting the award to the consolidated plaintiffs on behalf of the Potawatomi Tribe or Nation as it existed between 1795 and 1833. 88 Stat. 177.

2. The Application. The application alleged that the late Walter H. Maloney incurred \$1,038,14 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, 1948, 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 Docket 29-K was concerned, to his son Walter H. Maloney, Jr. In November 1964, Mr. Walter H. Maloney, Jr., assigned his interests in the contract to Mr. Robert C. Bell, Jr. 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 Docket 29-K was concerned, to his son Walter H. Maloney, Jr. In November 1964, Mr. Maloney, Jr., assigned his interests in the contract to Mr. Robert C. Bell, Jr. 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 litigating the clients' claims before this Commission. The Hannahville and Forest County contracts had identical provisions on expenses. In sum, these were that the attorney was to be reimbursed from the amount of any judgment received such actual expenses incurred as may be fixed by this Commission pursuant to Section 15 of our act. It was also specifically provided that the attorney had authority to employ "such technical or stenographic assistance--as they deem necessary, same to be paid as expenses incidental to their employment."

The contract with the Potawatomi Indians of Indiana and Michigan, Incorporated, contained a provision which in sum stated that the attorney was entitled to be reimbursed out of any award such actual and necessary expenses incurred by him as were proper, "including among other things, court costs, printing of pleadings, briefs, transcripts and records, deposition, interpreting, clerical hire and stenographic charges while in travel status, auditing and accounting, telegraph and telephone bills; and other similar items, properly chargeable, arising out of the investigation, preparation or prosecution of the claims of the said Indians including automobile travel, as may be incurred for self, associate counsel, stenographer and interpreter, all bills for expenses to be itemized and verified by the attorneys, and paid upon the order of the Indian Claims Commission."

4. Notices. By letters dated September 24, 1974, the Commission notified the three tribal clients named above, and the defendant, of the filing of the application. No response was received from any of the tribal clients.

The Department of Justice responded by letter dated November 12, 1974, which enclosed a copy of a letter dated October 29, 1974, from the Associate Solicitor for Indian Affairs, and a memorandum dated October 11, 1974, to the Solicitor from the Acting Deputy Commissioner of Indian Affairs. The memorandum noted that in general the expenses

claimed by Attorney Maloney were reasonably supported. However, it did not appear clear that two travel expense items were incurred exclusively for the subject case or that certain office supplies or stenographic services were not a part of the attorney's usual office expenses.

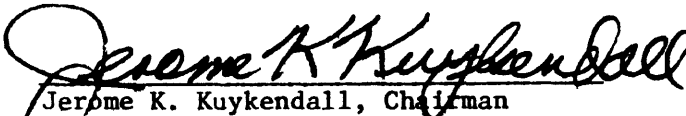
5. Determination of Reimbursable Expenses. Pursuant to section 15 of the Act, Rule 34(b) of the Commission's Rules of Procedure (25 C.F.R. §503.34(b)), as amended, 39 Fed. Reg. 41173 (1974), the Commission's Policy Statement §102, issued July 15, 1968, the foregoing findings, and upon examination of 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 one item. Item 1 listed the amount of \$48.40 as a payment for printing costs made on December 9, 1953, to Wilson-Epes Printing Co. As noted on the application this was one of three printing charges in Dockets 29-I, 29-K, and 29-J. The check evidencing payment of the total bill was submitted with the expense application in the Docket 29-J case. Since those printing expenses were allowed in full in that case, the \$48.40 item will be deducted from the allowed expenses in this case.

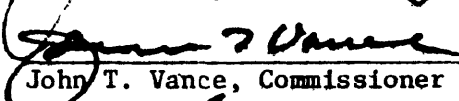
The two travel expense items referred to in the Commissioner of Indian Affairs memorandum did involve expenditures for the tribal clients in this case and were related to the prosecution of the claims in the

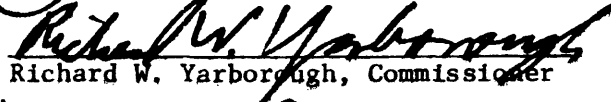
Docket 29 series, including the claim in Docket 29-K. The claimed expenses for stencils were for reproducing briefs in this case. Such expenditures, as well as those for stenographic services, were authorized for reimbursement under provisions of the attorney contracts.

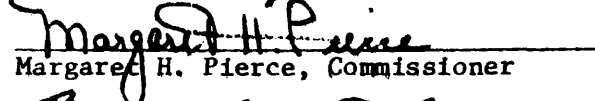
Expenses in the amount of \$989.74 are reasonable and proper and are allowed for reimbursement from the award in this case.


IT IS THEREFORE ORDERED that out of the funds appropriated to pay the final award entered April 19, 1974, there shall be disbursed to Robert C. Bell, Jr., attorney of record in Docket 29-K, for distribution by him to the Estate of Walter H. Maloney, the sum of \$989.74 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