

## BEFORE THE INDIAN CLAIMS COMMISSION

THE PRAIRIE BAND OF THE POTTAWATOMIE	)	Docket No. 15-C
TRIBE OF INDIANS, et al.,	)	
	)	
HANNAHVILLE INDIAN COMMUNITY, et al.,	)	Docket No. 29-A
	)	
CITIZEN BAND OF POTAWATOMIE INDIANS,	)	Docket No. 71
et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: May 4, 1978

FINDINGS OF FACT AND ORDER ALLOWING ATTORNEY FEES

UPON CONSIDERATION of the petition for award of attorney fees, filed January 9, 1978, by Jack Joseph, Robert S. Johnson, and Robert C. Bell, Jr., attorneys of record for the plaintiffs in these dockets, and the record herein, the Commission makes the following findings of fact:

1. Petition. On January 9, 1978, Robert S. Johnson, attorney for the plaintiffs in Docket 15-C, Robert C. Bell, Jr., attorney for the plaintiffs in Docket 29-A, and Jack Joseph, attorney for the plaintiffs in Docket 71, filed a petition pursuant to Section 15 of the Indian Claims Commission Act, 60 Stat. 1049, 1053 (1946), for the award of attorney fees in the amount of \$423,920.00. This sum represents an amount equal to ten percent (10%) of the final award entered in these consolidated dockets.

2. Award. On June 23, 1976, the Commission entered final judgment in Dockets 15-C, 29-A, and 71, entitling the plaintiffs, on behalf of the Potawatomi Tribe or Nation, to recover from the defendant the sum of \$4,239,200.00. 38 Ind. Cl. Comm. 34, 49. This award was affirmed by the Court of Claims on October 19, 1977. Funds to satisfy this award were made available by Title II of the Act of March 7, 1978, Public Law 95-240.

3. Attorney Contracts.

(a) Docket 15-C.

Prairie Band of Potawatomi Indians of Kansas

The Prairie Band of Potawatomi Indians entered into Contract No. I-1-ind. 26204, dated April 20, 1937, with Attorneys Stone, McClure, Webb, Johnson and Oman. The contract was approved May 20, 1937, for a ten-year period from the date of approval. Contract No. I-1-ind. 18372 was entered into by the same parties on October 22, 1947. The contract was conditionally approved December 19, 1947, for a ten-year period from the date of approval.

On November 15, 1947, the law firm of Stone, McClure, Webb, Johnson and Oman was dissolved and Attorney Robert Stone continued to represent the Prairie Band as its claims counsel. The association of Attorney O. R. McGuire with Attorney Stone was approved on January 19, 1948.

Three separate assignments, executed on different dates but approved on May 13, 1954, are as follows:

By an assignment dated February 9, 1953, Attorneys James A. McClure, Robert L. Webb, and Ralph W. Oman conveyed an 88 percent interest in fees to Attorney Robert Stone and a 12 percent interest to Attorney Beryl R. Johnson. This assignment also provided that Attorneys McClure, Webb and Oman claimed no interest in fees and reimbursable expenses relative to claims filed in original Docket 15.

An agreement executed February 10, 1953, by Attorney Robert Stone assigned 38 percent interest to Attorney Robert Stone Johnson.

Another assignment executed July 24, 1953, by Attorneys Robert Stone, Beryl R. Johnson and Robert Stone Johnson conveyed one-half interest in the attorney contract to Attorney O. R. McGuire.

Two two-year extensions of this contract were approved June 17, 1960, making the expiration date of the extended contract December 18, 1961.

Attorneys Robert Stone and O. R. McGuire died on June 24, 1957, and August 27, 1963, respectively.

On December 12, 1964, the Prairie Band of Potawatomi Indians entered into Contract No. 14-20-0200-1856, with Attorneys Robert S. Johnson and Beryl R. Johnson. The contract was approved December 29, 1964, for a period of five years from the date of approval. A ten-year extension of the contract was approved December 24, 1969. This contract is in full force and effect until December 29, 1979.

(b) Docket 29-A

Hannahville Indian Community

The Hannahville Indian Community entered into Contract No. I-1-ind. 42007 on January 5, 1948, with Attorneys Dorr E. Warner and Walter H. Maloney. The contract was approved March 8, 1948, for ten years from the date of its approval.

Contract Symbol 14-20-0650 No. 983 was entered into September 2, 1958, by the Hannahville Indian Community and Attorney Walter H. Maloney. The contract was conditionally approved January 14, 1959.

Attorney Maloney accepted the conditions on December 26, 1961, and the Hannahville Indian Community accepted the conditions by resolutions adopted March 1, 1959, and January 19, 1962.

An assignment of interest was approved April 26, 1963, conveying Attorney Maloney's interest in cases 29-B, C, G, L, M, O, and P to Attorney Robert C. Bell, Jr.

Another assignment of interest was approved March 24, 1964, conveying Attorney Walter H. Maloney's interest in Dockets 29-J and 29-K to Attorney Walter H. Maloney, Jr.

On November 15, 1964, Attorney Walter H. Maloney, Jr., assigned his interest in Dockets 29-K and 29-J to Attorney Robert C. Bell, Jr. This assignment was approved October 13, 1965.

Contract No. 983 was extended from March 7, 1968, to March 6, 1973.

The Forest County Potawatomi Community

The Forest County Potawatomi Community entered into contract Symbol No. I-1-ind. 42011 with Attorneys Dorr E. Warner and Walter H.

Maloney, Sr. on January 7, 1948. The contract was approved May 3, 1948, for a ten-year period beginning with the date of its approval.

On May 31, 1958, contract symbol 14-20-0650 No. 978 was entered into with Walter H. Maloney. The contract was conditionally approved August 13, 1958. Attorney Maloney accepted the conditions on December 26, 1961, and the Forest County Potawatomi Community accepted the conditions by resolutions dated May 13, 1959, and January 6, 1962.

An assignment of interest in contract No. 978 was approved April 26, 1963, conveying Attorney Maloney's interest in Dockets 29-B, C, G, L, M, O and P to Attorney Robert C. Bell, Jr. Another assignment of interest to Attorney Bell was approved November 13, 1963. This assignment involved Dockets 29-A, D, E, N and I.

On November 14, 1963, an assignment of interest was approved assigning Attorney Maloney's interest in Dockets 29-J and K to Attorney Walter H. Maloney, Jr. Thereafter, Attorney Walter H. Maloney, Jr., assigned his interest to Attorney Bell. This assignment was approved November 4, 1965.

Two five-year extensions were approved for contract 978, the last being from May 3, 1973, to May 2, 1978.

The Potawatomi Indian Nation, Inc.

The Potawatomi Indians of Indiana and Michigan, Incorporated, (now known as the Potawatomi Indian Nation, Inc.) entered into contract symbol 14-20-0350 No. 260 February 20, 1965, with Attorneys Robert C. Bell, Jr., and Walter H. Maloney, Sr. The contract was approved April 13, 1965, for the period February 6, 1952, to April 12, 1975.

Contract extensions were approved on May 21, 1976, for two years from April 13, 1975, and October 22, 1976, for five years from April 13, 1977.

(c) Docket 71

Citizen Band of Potawatomi Indians

Contract No. I-1-ind. 42065 was entered into April 17, 1948, by the Citizen Band of Potawatomi Indians and Attorneys Blake, Vorhees and Stewart of New York, and Adams, Moses and Culver of Chicago, Illinois. The contract was conditionally approved August 4, 1948, for a period of ten years from the date of approval. The contract provided that if a Joint Efforts Agreement was not approved by October 1, 1948, the contract would be void. The Joint Efforts Agreement was not approved by that date but a new Joint Efforts Agreement was approved December 17, 1948. The reinstatement of the original contract was approved December 24, 1948, subject to the same conditions. Thereafter, this contract was extended for five years from August 4, 1958. The extension was approved March 17, 1958.

Contract No. 14-20-0200-1837 was conditionally approved August 28, 1963. On January 7, 1966, a contract amendment was approved providing for the association of Attorney Louis L. Rochmes as of August 5, 1963. Another ten-year extension from August 5, 1968, was approved on December 16, 1968.

On February 7, 1973, the association of Attorney Jack Joseph was approved.

4. Contractual Provisions Relating to Compensation. The contract with the Citizen Band of Potawatomi provides that the compensation for attorney services shall be 10 percent of the amount recovered for the Indians. The contracts with the Prairie Band of Potawatomi, the Hannahville Indian Community, the Forest County Potawatomi Community, and the Potawatomi Indians of Michigan and Indiana, Inc., provide that the compensation for attorney services shall not exceed 10 percent of the amount recovered for the Indians.

5. Requested Fee. The petitioners pray for an award of \$423,920.00 or 10 percent of the award to the plaintiff tribes in Dockets 15-C, 29-A, and 71. The petitioners state that they have agreed that the fee should be apportioned 30 percent to Attorney Robert Bell, and 70 percent jointly to attorneys Jack Joseph and Robert S. Johnson.

6. Notice to the Parties. The Clerk of the Commission sent notice of the filing of the fee petition to the several plaintiff tribes, the Assistant Secretary of the Interior for Indian Affairs, and the Acting Assistant Attorney General in the Land and Natural Resources Division, Department of Justice.

7. Response of the Plaintiffs. The Commission has not received any comment concerning the fee petition from any of the plaintiff tribes.

8. Response of the Defendant. On April 7, 1978, the Department of Justice responded to the Commission's notice of the filing of the fee petition. The Department of Justice indicated that it takes no position with respect to the fee petition.

Included with the Justice Department letter was a copy of a letter from the Associate Solicitor of the Department of Interior, and a memorandum by the Assistant Secretary of the Interior for Indian Affairs. The Interior Department also takes no position with respect to the fee petition.

9. Attorney Services. The attorneys for the plaintiffs in Dockets 15-C, 29-A and 71 undertook serious responsibilities and complex litigation pursuant to agreement wherein, in all the above cases, the payment of compensation was contingent upon recovery. Considering the responsibilities assumed, the difficult problems of fact and law herein presented and resolved, the time and work involved in litigating the issues, the award obtained, and all appropriate factors pertinent to the determination of attorney fees under the standards established by the Indian Claims Commission Act, the Commission concludes the claims attorneys have rendered valuable legal services in prosecuting their clients' claims and ultimately obtaining a judgment. Pursuant to the contracts in force between the attorneys and the Indian plaintiffs and said standards, the attorneys herein have earned a gross fee of \$423,920.00 representing 10 percent of the award to the plaintiffs. Payment of these sums is in full and complete satisfaction of any and all claims for legal services rendered to the plaintiffs in Dockets 15-C, 29-A and 71.

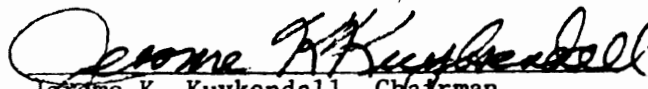
10. Distribution of Attorneys' Fees. The petitioners have agreed among themselves that the fee should be apportioned as follows: 30 percent to Robert C. Bell, Jr. as attorney of record for the plaintiffs in Docket 29-A, and 70 percent to Jack Joseph and Robert S. Johnson as



attorneys of record, respectively, for the plaintiffs in Dockets 71 and 15-C.

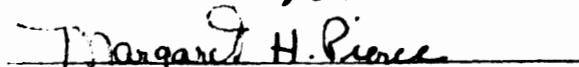
11. Conclusion. The Commission concludes that Robert C. Bell, Jr., as attorney of record in Docket 29-A, is entitled to receive \$127,176.00, and Robert S. Johnson and Jack Joseph, as attorneys of record in Dockets 15-C and 71, respectively, are entitled to receive \$296,744.00, or a total of \$423,920.00, as attorney fees in these dockets, to be distributed by them to all persons entitled to share therein.

IT IS THEREFORE ORDERED that Robert C. Bell, Jr., be awarded the sum of \$127,176.00, and that Robert S. Johnson and Jack Joseph be awarded the sum of \$296,744.00, to be distributed by them to all persons entitled to share in the fee. This sum shall be full payment for all legal services rendered in the prosecution of these claims.

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarborough, Commissioner

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner