

BEFORE THE INDIAN CLAIMS COMMISSION

THE BOIS FORTE BAND, PETER SMITH,	)	
CALVIN KADUB, WILLIAM JOHNSON,	)	
and LAWRENCE A. CONNOR,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Docket No. 18-D
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: June 28, 1978

FINDINGS OF FACT ON ATTORNEYS' FEE

Upon consideration of the petition for an award of attorneys' fee in this case and the statement in support thereof, filed on December 23, 1977, by Rodney J. Edwards, attorney of record for the Bois Forte Band, et al., plaintiffs herein and upon consideration of the entire record in this docket, including the several contracts of employment of attorneys by the plaintiffs and assignments of interest in those contracts, the Commission makes the following findings of fact:

1. The Award. On January 28, 1977, the Commission entered a final award in this case awarding the sum of \$1,023,808.65 to the Bois Forte Band of Chippewa Indians. (39 Ind. Cl. Comm. 300, 325). Funds to satisfy the judgment were made available pursuant to Public Law 95-240, approved March 7, 1978.

2. The Petition. On December 23, 1977, Rodney J. Edwards, attorney of record in this case, filed a petition for an award of attorneys' fee on behalf of himself and all other contract attorneys having an interest in the fee in Docket 18-D. The petition requests the Commission to make an award of attorneys' fee in the amount of \$102,380.86, being ten percent of the final judgment of \$1,023,808.65, which was entered in this docket.

3. Attorneys' Contracts. Attorneys' services in this case were initially performed under a contract of October 13, 1949, identified as I-1-ind. 42241, between the Minnesota Chippewa Tribe and Austin L. Lathers, Jay H. Hoag, and Clarence G. Lindquist, effective January 26, 1950, the date of its approval by the Assistant Commissioner of Indian Affairs, U.S. Department of the Interior. The contract was for a term of 10 years at which time it became subject to a ten year extension, by approval of the Commissioner of Indian Affairs, in the event the claims of the Minnesota Chippewa Tribe had not then been finally disposed of.

At the expiration of the 1949 contract, a new contract, dated May 20, 1960, was entered into by the Minnesota Chippewa Tribe and attorneys Clarence G. Lindquist, Jay H. Hoag, Edward L. Gruber, and Rodney J. Edwards. The 1960 contract, identified as 14-20-0650, No. 854, was approved by the Deputy Solicitor, United States Department of the Interior on March 20, 1961, for a period of 10 years from the date of approval. Contract No. 854 has been subject to several extensions, the most recent being for a period of 1 year from March 20, 1977, by approval of the Interior Department.

The provisions for attorneys' fee in contract No. 854 are not identical with those in its predecessor contract of October 13, 1949, but the differences with respect to Indian Claims Commission work are not significant. Contract No. 854 under which Docket 18-D was completed provides in applicable part as follows:

In consideration of the services rendered and to be rendered under the terms of this contract and prior contract bearing symbol I-1-ind-42241, the parties of the second part shall be entitled to receive and shall be paid such compensation as the Secretary of the Interior or his authorized representative or if submitted to a Court, Tribunal or Commission, such Court, Tribunal or Commission may determine to be reasonable and equitable compensation for the services rendered herein, but in no event shall the aggregate fee exceed ten per centum (10%) of the sum or sums recovered or procured through their efforts in whole or in part for such Indians, whether by such action or act of any department of government or of Congress or otherwise.

Contract No. 854 limits the duties of the attorneys to advising, representing, and prosecuting claims for the Minnesota Chippewa Indians arising out of the Treaty of August 7, 1866 (14 Stat. 765), which treaty gave rise to the claim for compensation in Docket 18-D. The contract contains the following provision on the assignment of interests in attorneys' fees:

It is hereby agreed by the parties of the second part that this contract is subject to the terms and provisions of the applicable assignments of interest in the attorney fees which have heretofore been approved by the Commissioner of Indian Affairs.

4. Assignment of Interests in Attorneys' Contracts.

(a) By agreement of November 18, 1949, approved on January 27, 1950, by the Department of the Interior (the approval was given subject

to conditions which do not affect this proceeding), Austin L. Lathers, Jay H. Hoag, and Clarence G. Lindquist assigned the following interests in contract I-1-ind. 42241 of October 13, 1949:

G. Arthur Johnson	4.25
Verne R. Edwards )	
Rodney J. Edwards )	4.25
Ward Winton	3.06
Thomas L. St. Germain heirs	0.55 <sup>1/</sup>
Herschel B. Fryberger, Jr.	1.70
E. L. Gruber	2.102
Paul L. Adams )	
James J. Fenlon )	1.70
H. J. Grannis	1.70
Austin L. Lathers )	
Jay H. Hoag )	65.688
Clarence G. Lindquist)	
Preston Boyden )	
George E. McGrath )	15.00
Patrick A. Burke )	
	<u>100.00</u>

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<sup>1/</sup> The agreement of November 18, 1949, provided that the interests listed were subject to determination by the Court of Claims or Commission of the fees of Thomas L. St. Germain at the time of his decease. Commission findings in support of an order allowing attorneys' fee in Docket 18-B, Minnesota Chippewa Tribe, et al. v. United States, 16 Ind. Cl. Comm. 423, 424 (1965) state that none of the heirs of Thomas L. St. Germain executed the agreement of November 18, 1949, and that it is not an effective agreement as to them. The record in this proceeding contains no information regarding this interest.

The contract of November 18, 1949, provides that when approved by the Commissioner of Indian Affairs, it shall constitute and be an assignment in each of several contracts recited therein, including contract No. 42241 of October 13, 1949, predecessor of contract No. 854 involved in this proceeding. The November 18, 1949, contract also provides that it shall apply to renewal contracts of the parties thereto.

(b) By an agreement of April 18, 1950, approved July 13, 1950, Austin L. Lathers, Jay H. Hoag, and Clarence G. Lindquist, contracting attorneys in contract No. 42241 assigned an interest in the fees to be allowed and paid in several contracts, including contract No. 42241, to Denis McGinn and James A. Fitzharris, attorneys.

(c) By assignment intended to be retroactive to April 22, 1950, approved by the Deputy Commissioner of Indian Affairs on June 30, 1958, Preston Boyden and George E. McGrath (parties to the November 18, 1949 assignment) reassigned a portion of their interest in contract No. 42241 to attorneys Denis McGinn and James R. Fitzharris.

(d) By agreement dated February 15, 1954, approved May 27, 1955, Austin L. Lathers, Jay H. Hoag, Rodney J. Edwards and Clarence G. Lindquist assigned to Attorney Marvin J. Sonosky an interest in the fee to be allowed in Docket 18-D.

(e) By assignment of May 22, 1961, approved December 20, 1962, amending the agreement of February 15, 1954, approved May 27, 1955, (see (d), supra) Austin L. Lathers, Jay H. Hoag, Rodney J. Edwards, and

Clarence G. Lindquist, attorneys in contracts I-1-ind. 42241 and No. 854, increased the interest (assigned in 1954) in the fees to be allowed and paid in this docket to Marvin J. Sonosky. The following attorneys also agreed that their respective interests be charged with a proportionate share of the assignment to Marvin J. Sonosky: G. Arthur Johnson, Verne R. Edwards Estate by Rodney J. Edwards, Ward Winton, and Herschel B. Fryberger, Jr.

(f) By assignment dated February 25, 1965, approved June 28, 1965, Preston Boyden party to the agreement dated November 18, 1949 (see (a), supra), assigned all his interest under said agreement to Jay H. Hoag and Rodney J. Edwards.

(g) By assignment dated January 20, 1972, approved January 31, 1972, Patrick A. Burke, attorney named in the agreement dated November 18, 1949 (item (a), supra), assigned all his interest under said agreement in equal shares to Rodney J. Edwards and Marvin J. Sonosky.

(h) By an assignment dated and approved effective July 20, 1973, George E. McGarth assigned to Rodney J. Edwards all of his right, title, and interest in the assignment contract of November 18, 1949 (item (a), supra), which assignment agreement included the contracts under which this docket was presented.

5. Deceased Attorneys. The following attorneys who had an interest in the attorneys' fee allowable in this docket (at the time of their death) are now deceased: Austin L. Lathers, Jay H. Hoag, Clarence G. Lindquist, Edward L. Gruber, Denis McGinn, Vern R. Edwards, and H. J. Grannis.

6. Notice to Parties. By letter dated December 28, 1977, the Clerk of the Commission notified the appropriate parties including the tribal representatives, the United States Department of Justice, and the United States Department of the Interior of the filing of the subject petition for attorneys' fee in this docket. The Commission has received no reply from the Minnesota Chippewa Tribe representatives.

On May 31, 1978, the Commission received a reply from the Department of Justice wherein it is stated that the Department takes no position with reference to the amount of attorneys' fee provided that the combined fee to all counsel involved does not exceed 10 percent of the amount recovered and that the Commission determines that the fees allowed are reasonable for the services rendered. The Justice Department also forwarded to the Commission with its reply a copy each of a letter dated April 24, 1978, from the Associate Solicitor, Division of Indian Affairs, Department of the Interior, and a memorandum dated April 17, 1978, from the Assistant Secretary-Indian Affairs, Department of the Interior.

The memorandum report of the Assistant Secretary-Indian Affairs, in which the Solicitor's office concurred, found that the attorney contracts with the plaintiff tribe and assignments of interest were accurately described in the petition and concluded, with regard to the claimed fee, as follows:

While the total fee allowable in the case as compensation earned by the attorneys is not to exceed \$102,380.86, this Bureau did not participate in the litigation, thus, we do not have sufficient detailed information upon which to make a recommendation as to the amount of compensation earned by the claims attorneys.

7. Attorneys' Services. The attorneys who prosecuted the claim herein gave legal advice and representation in support of the tribe's position in the title proceeding, having prepared and presented legal arguments and factual data to support the Commission's findings and opinion on title which were favorable to the tribe. (21 Ind. Cl. Comm. 254 (1969)). Thereafter, the tribe's attorneys performed extensive legal services in preparing argument and evidence for the trial on value and in preparing the brief and proposed findings supporting the tribe's interest in the value proceeding. (See opinion and findings on value in this docket, 34 Ind. Cl. Comm. 157 (1974)). The attorneys performed additional legal services, including preparation for trial supporting the plaintiff's interest in connection with the Commission opinion and additional findings in the proceeding on the defendant's payments on the claim and the entry of the final award. (39 Ind. Cl. Comm. 300 (1977)).<sup>2/</sup>

Considering the responsibilities assumed, the difficult problems of law and fact herein presented, the time and work involved in successfully litigating this case, the award obtained, the contingent nature of the compensation, and all appropriate factors pertinent to the determination of attorney fees under Section 15 of the Indian Claims Commission Act, 60 Stat. 1049, and standards established pursuant thereto, the

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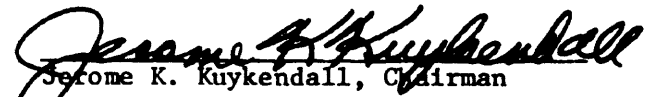
<sup>2/</sup> The defendant appealed the award in this case to the Court of Claims. The appeal related to certain issues on offsets. The tribes' attorneys filed a cross-appeal. After the Court of Claims rendered a decision in a case involving similar issues, both parties herein withdrew their appeals which withdrawals were allowed by the Court of Claims orders entered on December 2, 1977 (U.S. Ct. Cl. Appeal 3-77).



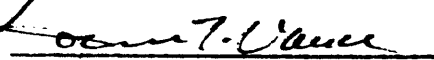
Commission finds that the claims attorneys have rendered valuable legal services to the plaintiff in this docket.

8. Conclusion. On the basis of the entire record in this docket, the services rendered by the attorneys in these proceedings, the results obtained, the contracts currently in force between the attorneys and the plaintiff tribe, Section 15 of our Act, and in accordance with standards obtaining for prosecuting similar claims in courts of law, the Commission finds that attorneys herein are entitled to receive the full 10 percent of the award as provided in Section 15 and in the above cited contracts of employment.

The Commission further finds that the attorneys for plaintiff tribe are entitled to an attorneys' fee in the gross amount of \$102,380.86, being 10 percent of the final judgment entered in this docket on January 28, 1977, and that payment to Rodney J. Edwards, attorney of record, of said fee out of funds made available to pay the aforementioned judgment, for appropriate distribution by him of the amounts due each of the participating attorneys pursuant to their respective contracts and assignments, will represent payment in full of all claims for legal services rendered in this docket. An appropriate order of the Commission will issue concurrently with the findings herein.

  
Jerome K. Kuykendall, Chairman

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Margaret H. Pierce, Commissioner

  
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John T. Vance, Commissioner

  
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Brantley Blue, Commissioner

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Richard W. Yarborough, Commissioner