

BEFORE THE INDIAN CLAIMS COMMISSION

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| THE MINNESOTA CHIPPEWA TRIBE, |) | |
| et al., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | Docket No. 18-S |
| |) | |
| THE UNITED STATES OF AMERICA, |) | |
| |) | |
| Defendant. |) | |

Decided: July 7, 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 March 22, 1978, by Rodney J. Edwards, attorney of record for the Minnesota Chippewa Tribe, 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 November 23, 1977, the Commission entered a final award in this docket awarding the sum of \$8,516,128.32 to the plaintiffs (41 Ind. Cl. Comm. 102, 129), said sum to be divided as follows:

- (a) On behalf of and for the benefit of the Chippewas of Lake Superior: \$5,677,418.88
- (b) On behalf of and for the benefit of the Chippewas of the Mississippi: \$2,838,709.44

Funds to satisfy the judgment were made available pursuant to Public Law 95-240, approved on March 7, 1978.

2. The Petition. On March 22, 1978, 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-S. The petition requests the Commission to make an award of attorneys' fee in the amount of \$851,612.83, being 10 percent of the final judgment of \$8,516,128.32, which was entered in this docket.

3. Notice of Filing to Executive Agencies and Plaintiffs. By letters of March 22, 1978, enclosing a copy of the petition for attorneys' fees, the Clerk of the Commission notified the head officers of plaintiffs (the Minnesota Chippewa Tribe, the St. Croix Band, the Red Cliff Band, the Bad River Band, the Keweenaw Bay Indian Community, the Lac Courte O'Reilles Band, the Lac De Flambeau Band, the Sokaogon Chippewa Community), the United States Department of the Interior, and the United States Department of Justice of the filing of subject petition for attorneys' fee in this docket. No response has been received from any of the plaintiff Indian tribes or bands.

On June 15, 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 in this case. The Justice Department also forwarded to the Commission with its reply a copy each of a letter dated June 14, 1978, from the Associate Solicitor, Division of Indian Affairs, Department of the Interior, and a memorandum dated June 5, 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 Chippewa Tribe and groups 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 \$851,612.83, 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.

4. Attorneys' Contracts. Attorneys' services in this case were performed 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 No. 850, 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, 1978.

(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-Cont. 1126, 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, 1978.

(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 14-20-0650-Cont. 946, 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. F50C14200423, with attorneys Jay H. Hoag, Rodney J. Edwards, and G. Arthur Johnson for a period of five years beginning January 25, 1970, which has been extended in accordance with its provisions by the Secretary of the Interior to January 25, 1979.

(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-Cont. 913, 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, 1979.

(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-Cont. 715, 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. F50C14200426, with attorneys Jay H. Hoag, Rodney J. Edwards, Ward Winton, and Warren Winton for a period of five years beginning on November 5, 1969, which has been extended in accordance with its provisions by the Secretary of Interior to May 1, 1978.

(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 14-20-0650-Cont. 693, 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. F50C14200418, with attorneys Jay H. Hoag and Rodney J. Edwards for a period of five years beginning on August 2, 1969, which contract has been extended in accordance with its provisions by the Secretary of Interior to March 11, 1979.

(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 14-20-0650-Cont. 212, 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, 1979.

(h) Keweenaw 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-Cont. 201, 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, 1978.

5. Assignment of Interests in Attorneys' Contracts in Docket 18-S.

By the following agreements, interest in the attorneys' fee herein awarded were assigned:

(a) By agreement dated November 18, 1949, approved January 27, 1950, the attorneys named in contracts numbered I-1-ind. 42241, 42231, 42243, 42244, 42246, 42230, 42245, and 42232 identified in finding 4 (a) through (h), supra, assigned interests in said contracts among themselves and with other attorneys, namely: G. Arthur Johnson, Vern R. Edwards, Rodney J. Edwards, Ward Winton, Thomas L. St. Germain heirs, ^{*/} Herschel B. Fryberger, Jr., E. L. Gruber, Paul L. Adams, James J. Fenlon, H. J. Grannis, Austin L. Lathers, Jay H. Hoag, Clarence G. Lindquist, Preston Boyden, George E. McGrath, and Patrick A. Burke.

The assignment contract of November 18, 1949, provides that when approved by the Commissioner of Indian Affairs, it shall constitute and

*/ The agreement of November 18, 1949, provided that the interests listed were subject to determination by the Court of Claims or the 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.

be an assignment in each of several contracts recited therein, including the contracts numbered above and involved in this proceeding. The November 18, 1949, contract also provides that it shall apply to renewal contracts of the parties thereto.

(b) By assignment dated April 18, 1950, approved July 13, 1950, Austin L. Lathers, Jay H. Hoag, and Clarence G. Lindquist, attorneys named in the Indian contracts identified in paragraph (a) above assigned an interest in said contracts to attorneys Denis McGinn and James R. Fitzharris.

(c) By assignment dated November 21, 1955, approved May 11, 1956, Austin L. Lathers, Jay H. Hoag, and Clarence G. Lindquist, attorneys named in Indian contracts identified in paragraph (a) above assigned an interest in the attorneys' net fees to be received in Docket 18-S to Henry Oakey.

(d) By agreement dated February 15, 1954, approved May 27, 1955, Austin L. Lathers, Jay H. Hoag, and Clarence G. Lindquist, attorneys named in Indian contracts identified in paragraph (a) above assigned to attorney Marvin J. Sonosky an interest in the fee to be allowed in Docket 18-S.

(e) By an undated assignment approved June 30, 1958, Preston Boyden and George E. McGrath, attorneys named in the agreement dated November 18, 1949, identified above, reassigned a portion of their interest under this agreement to attorneys Denis McGinn and James R. Fitzharris.

(f) By agreement of May 22, 1961, approved December 20, 1962, Austin L. Lathers, Jay H. Hoag, Rodney J. Edwards, and Clarence G. Lindquist, attorneys named in contracts numbered I-1-ind. 42241, 42231, 42243, 42244, 42246, 42230, 42245, and 42232, and Symbol 14-20-0650-Cont. numbers 850, 1126, 946, 913, 715, 693, and Symbol 14-20-0350-Cont. 201 and 212 increased the interest in those contracts which had previously been assigned to attorney Marvin J. Sonosky.

(g) By assignment dated February 25, 1965, approved June 28, 1965, Preston Boyden, attorney named in agreement dated November 18, 1949, identified above, assigned all his interest under said agreement to Jay H. Hoag and Rodney J. Edwards.

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

(i) By an assignment dated and approved effective July 20, 1973, George E. McGrath, attorney named in agreement dated November 18, 1949, identified above, assigned all his interest under said agreement to Rodney J. Edwards.

6. Deceased Attorneys. The following attorneys who had an interest in the attorneys' fee in Docket 18-S (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.

7. Contract Provisions for Attorneys' Compensation. The aforesaid attorneys' contracts and renewals identified in finding 4, supra, all provide for attorneys' compensation contingent upon recovery of such amount as the Commission may determine to be reasonable and equitable compensation for the services rendered, not to exceed 10 percent of recovery.

8. Attorneys' Services. The attorneys who prosecuted the claim herein gave legal advice and representation in support of the plaintiffs' 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 (19 Ind. Cl. Comm. 319 (1968)). Thereafter, the tribe's attorneys performed extensive legal services in preparing argument and evidence, and providing expert witnesses, for the trial on value and in preparing the brief and proposed findings supporting the plaintiffs' interest in the value proceeding. (See opinion and findings on value in this docket, 37 Ind. Cl. Comm. 146 (1976)). The attorneys performed additional legal services, including preparation for trial supporting the plaintiffs' 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. (41 Ind. Cl. Comm. 102 (1977)).


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

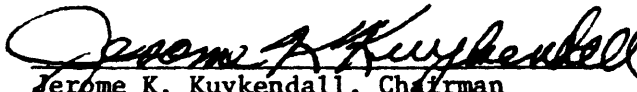
of attorney fees under Section 15 of the Indian Claims Commission Act, 60 Stat. 1049, and standards established pursuant thereto, the Commission finds that the claims attorneys have rendered valuable legal services to the plaintiffs in this docket.

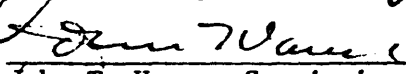
9. Conclusion. On the basis of the entire record in this docket, the services rendered by the attorneys in these proceedings, the results obtained, the contracts currently in force between the attorneys and the plaintiffs, section 15 of our act, and in accordance with standards obtaining for prosecuting 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 plaintiffs are entitled to an attorneys' fee in the gross amount of \$851,612.83, being 10 percent of the final judgment entered in this docket on November 23, 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.


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner