

BEFORE THE INDIAN CLAIMS COMMISSION

MINNESOTA CHIPPEWA TRIBE, et. al.,)	
ON BEHALF OF THE CHIPPEWAS OF)	
LAKE SUPERIOR,)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 18-U
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: September 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 July 17, 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 March 30, 1978, the Commission entered a final award in this case awarding the sum of \$2,621,174.58 to the plaintiffs in this case. (41 Ind. Cl. Comm. 249, 293). Funds to satisfy the judgment were made available pursuant to Public Law 95-240, approved March 7, 1978.
2. The Petition. On July 17, 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-U. The petition requests the Commission to make an award of attorneys' fee in the amount of \$262,117.45, being 10 percent of the final judgment of \$2,621,174.58, which was entered in this docket.

3. Attorneys' Contracts. Attorneys services in this case were performed under the following contracts and extensions of contract which were approved by the Secretary of the Interior or his duly authorized representative:

(a) Minnesota Chippewa Tribe. (1) Contract dated October 13, 1949, approved January 26, 1950, identified as I-1-ind. 42241 with attorneys Austin L. Lathers, Jay H. Hoag and Clarence G. Lindquist, for a period of 10 years from date of approval, and (2) contract No. 14-20-0650 No. 852, dated May 20, 1960, approved March 20, 1961, with attorneys Jay H. Hoag, Clarence G. Lindquist, Edward L. Gruber and Rodney J. Edwards for a period of 10 years from the date of approval, which has been extended in accordance with its provisions to March 20, 1979.

(b) St. Croix Band of Lake Superior Chippewa Indians. (1) Contract dated June 13, 1949, approved November 4, 1949, bearing No. I-1-ind. 42231, with attorneys Austin L. Lathers, Jay H. Hoag and Clarence G. Lindquist for a period of 10 years from date of approval, and (2) contract dated October 25, 1961, approved June 20, 1962, bearing contract No. Symbol 14-20-0650-Cont. 1125, with attorneys Clarence G. Lindquist, Jay H. Hoag and Rodney J. Edwards for a period of 10 years from date of approval and retroactively to November 4, 1959, which has been extended in accordance with its provisions 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 10 years from date of approval, and (2) Contract dated June 6, 1960, approved May 16, 1961, bearing contract No. Symbol 14-20-0650-Cont. 945, with attorneys Clarence G. Lindquist, Jay H. Hoag, Edward L. Gruber, Rodney J. Edwards and G. Arthur Johnson for a period of 10 years from January 26, 1960, and (3) Contract dated April 6, 1970, approved May 20, 1970, bearing contract No. F50C14200422, with attorneys Jay H. Hoag, Rodney J. Edwards and G. Arthur Johnson for a period of 5 years beginning January 25, 1970, which has been extended in accordance with its provisions 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 10 years from date of approval, and (2) Contract dated May 24, 1960, approved May 16, 1961, bearing contract No. Symbol 14-20-0650-Cont. 912, with attorneys Clarence G. Lindquist, Jay H. Hoag, Edward L. Gruber, Rodney J. Edwards and G. Arthur Johnson for a period of 10 years from January 26, 1960, which has been extended in accordance with its provisions 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 10 years from date of approval, and (2) Contract dated August 31, 1959, approved November 6, 1959, bearing contract No. Symbol 14-20-0650-Cont. 714, with attorneys Ward Winton, Warren Winton, Clarence G. Lindquist, Jay H. Hoag, Edward L. Gruber and Rodney J. Edwards for a period of 10 years from date of approval, and (3) Contract dated May 1, 1970, bearing contract No. F50C14200427, with attorneys Jay H. Hoag, Rodney J. Edwards, Ward Winton and Warren Winton for a period of 5 years beginning on November 5, 1969, which has been extended in accordance with its provisions to May 1, 1979.

(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 10 years from date of approval, and (2) Contract dated October 18, 1958, approved August 3, 1959, bearing contract No. Symbol 14-20-0650-Cont. 694, with attorneys Jay H. Hoag, Edward L. Gruber, Rodney J. Edwards and Clarence G. Lindquist for a period of 10 years from date of approval, and (3) Contract dated March 11, 1970, approved April 13, 1970, bearing contract No. F50C14200417, with attorneys Jay H. Hoag and Rodney J. Edwards for a period of 5 years beginning on August 2, 1969, which contract has been extended in accordance with its terms to March 11, 1979.

(g) Mole Lake Band of Chippewa Indians, incorporated as the Sokaogan 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 10 years from date of approval, and (2) Contract dated September 22, 1962, approved April 3, 1963, bearing contract No. Symbol 14-20-0350-Cont. 213, with attorneys Clarence G. Lindquist, Jay H. Hoag, Rodney J. Edwards and Herschel B. Fryberger, Jr., for a period retroactive to January 26, 1960, and for a period of 10 years beginning with date of approval which contract has been extended in accordance with its provisions to April 3, 1979.

(h) Kéeweenaw 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 10 years from date of approval, and (2) Contract dated April 14, 1962, approved October 16, 1962, bearing contract No. Symbol 14-20-0350-Cont. 202, with attorneys Clarence G. Lindquist, Jay H. Hoag and Rodney J. Edwards, for a period retroactive to November 4, 1959, and for a period of 10 years beginning with the date of approval, which contract has been extended in accordance with its provisions to October 16, 1978.

4. Assignments of Interest in Attorneys' Contract.

(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 paragraph 3 (a) through (h) above, assigned interest in said contracts amongst themselves and with other attorneys, namely; G. Arthur Johnson, Vern R. Edwards, Rodney J. Edwards, Ward Winton, Thomas L. St. Germain, Heirs, ^{1/} 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.

(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 referred to in paragraph 4 (a) above assigned an interest in said contracts to attorneys Dennis 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 the Indian contracts referred to in paragraph 4 (a) above assigned an interest in the attorneys net fees to be received in Docket 18-U, to Henry Oakey.

^{1/} The agreement of November 18, 1949, provided that the interests listed were subject to determination by the Court of Claims or the Commission with respect to 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.

(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 referred to in paragraph 4 (a) above assigned to attorney Marvin J. Sonosky, an interest in the fee in Docket 18-U.

(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 the agreement to attorneys Dennis McGinn and James Fitzharris.

(f) By agreement dated 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 852, 1125, 945, 912, 714, 694, and Symbol 14-20-0350-Cont. 213, 201, 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, referred to 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, referred to above, assigned all his interest under said agreement in equal shares to Rodney J. Edwards and Marvin J. Sonosky.

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

5. Deceased Attorneys. The following attorneys had an interest in the attorneys' fee in Docket 18-U at the time of their death and are now deceased: Austin L. Lathers, Jay H. Hoag, Clarence G. Lindquist, Edward L. Gruber, Dennis McGinn, Vern R. Edwards and H. J. Grannis.

6. Notice to Parties. By letter dated July 17, 1978, 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 petition for attorneys' fee in this docket. The Commission has received no reply from the tribal representatives.

On September 18, 1978, the Commission received a reply from the Department of Justice which states that the Department of Justice takes no position on the amount of the fee to be awarded. The Justice Department attached to its reply a copy of a memorandum dated September 14, 1978, from the Deputy Assistant Secretary, Indian Affairs to the Solicitor, United States Department of the Interior. The memorandum states that:

The history of the claims attorney contracts with the various Chippewa groups and the assignments of interest are accurately described by Attorney Edwards except that contract No. 852 with the Minnesota Chippewa Tribe is extended until March 20, 1979, and the agreement dated February 15, 1954, cited on page 6 of the petition was approved May 27, 1955.

All of the contracts with the various groups provide for attorneys' compensation contingent upon recovery as such amount as the Commission may determine to be reasonable and equitable compensation for the services rendered, not to exceed ten per centum (10%) of recovery.

The memorandum further states that the Department of the Interior makes no recommendation as to the amount earned by the attorneys.

7. Attorneys' Services. The attorneys who prosecuted this claim performed extensive and valuable legal services for the plaintiffs. The attorneys assembled and presented evidence in three trials before the Commission to establish the right and capacity of the plaintiffs to prosecute this claim, to prove the aboriginal Indian title to the land and the value of the 5,867,435.81 acres ceded by the Treaty of September 30, 1854 (10 Stat. 1109) and the payments and offsets claimed by the United States. In all of these trials the attorneys filed briefs on the law and facts, Requested Findings of Fact and Reply Briefs and Objections to Defendants Requested Findings of Fact.

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 claim attorneys have rendered valuable legal services to the plaintiffs 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 effect 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 the attorneys herein are entitled to receive the full 10 percent of the award as provided in section 15 and the above cited contracts of employment.

The Commission further finds that the attorneys for the plaintiff tribes are entitled to an attorneys' fee in the gross amount of \$262,117.45, being 10 percent of the final judgment entered in this docket on March 30, 1978, and that payment to Rodney J. Edwards, attorney of record, 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.

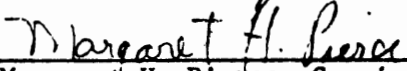
Funds to pay the award are included in funds appropriated under Section 1302 of the Supplemental Appropriation Act, 1957, 31 U.S.C. §724a, as amended by Title II, Section 201, of the Supplemental Appropriations Act, 1978 (92 Stat. 107, 116-117).

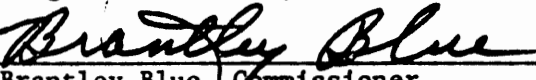
An appropriate order of the Commission will issue concurrently with the findings herein.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner