

## BEFORE THE INDIAN CLAIMS COMMISSION

HANNAHVILLE INDIAN COMMUNITY, et al.,	)	
	)	
Plaintiffs,	)	
	)	
POTAWATOMI INDIANS OF INDIANA AND	)	
MICHIGAN, INC.,	)	
	)	
PRAIRIE BAND OF POTTAWATOMIE INDIANS,	)	
et al. [Plaintiffs in dismissed	)	
Docket Nos. 15-F and 15-G],	)	
	)	
CITIZEN BAND OF PCTAWATOMI INDIANS	)	
OF OKLAHOMA, et al. [Plaintiffs in	)	
dismissed Docket No. 307 (as	)	
amended)],	)	
	)	
Intervenors,	)	
	)	
v.	)	Docket No. 29-E
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: September 29, 1978

FINDINGS OF FACT AND ORDER ALLOWING ATTORNEY FEES

UPON CONSIDERATION of the petition for award of attorney fees, filed August 15, 1978, by Jack Joseph, Robert S. Johnson, and Robert C. Bell, Jr., attorneys of record for the plaintiffs and intervenors in this docket, and the record herein, the Commission makes the following findings of fact:

1. Petitioner. On August 15, 1978, Robert C. Bell, Jr., attorney in this docket for the Hannahville Indian Community and the Potawatomi, Inc., plaintiffs, Robert S. Johnson, attorney in this docket for the Prairie Band plaintiffs, and Jack Joseph, attorney in this docket for the Citizen Band plaintiffs, jointly filed a petition under Section 15 of our act for an award of attorney fees in the total amount of \$229,200.00. This sum

represents an amount equal to 10 percent of the final award entered in this case.

2. Award. On June 22, 1978, the Commission entered final judgment in Docket 29-E, entitling the plaintiffs and intervenors on behalf of the Potawatomi Tribe, as constituted in 1808, to recover from the defendant the sum of \$2,292,000.00. 42 Ind. Cl. Comm. 160. Funds to pay this award are authorized to be appropriated by Section 22 of the Indian Claims Commission Act (25 U.S.C. § 70u) and are included in funds appropriated under Section 1302 of the Supplemental Appropriation Act, 1957 (31 U.S.C. § 724a), as amended by Section 201 of Public Law 95-240, approved March 7, 1978 (92 Stat. 107, 116).

3. Attorney Contracts.

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.

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.

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. Notice to the Parties. On August 17, 1978, 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.

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

7. Response of the Defendant. On September 26, 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 dated September 20, 1978, from the Associate Solicitor of the Department of Interior with attached memorandum by the Assistant Secretary of the Interior for Indian Affairs dated September 19, 1978. The Interior Department did not take a position with respect to the fee petition but did note that the fee could not exceed 10 percent of the award.

8. Attorney Services. The attorneys for the plaintiffs herein 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 \$229,200 representing 10 percent of the award to the Potawatomi plaintiffs.

9. Distribution of Attorneys' Fees. The petitioners have agreed among themselves that the fee should be apportioned as follows: 60 percent, or \$137,520, to Robert C. Bell, Jr., as attorney of record for the plaintiffs in Docket 29-E for and on behalf of all counsel entitled to participate in the fees in that docket, and 40 percent, or \$91,680 to Jack Joseph and Robert S. Johnson, attorneys of record respectively for the Citizen Band plaintiffs (formerly plaintiffs in Docket 307 amended) and the Prairie Band plaintiffs (formerly plaintiffs in Dockets 15-F and 15-G), both of whom were granted leave to intervene with all rights of plaintiffs (38 Ind. Cl. Comm. 456, 467, 468) for and on behalf of all counsel entitled to participate in the fees for said groups.



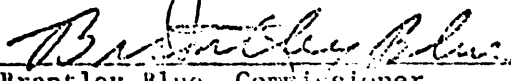
By further agreement dated August 23, 1967, the details of which are set out in the petition to apportion attorneys fee filed in this docket on September 7, 1978, Attorney Robert C. Bell, Jr., concluded an agreement with the late Walter H. Maloney, Sr., former attorney of record herein, for a division of attorneys' fees herein on an equal basis (50-50). Mr. Maloney died on November 14, 1967. This agreement is applicable to the 60 percent share of the fee apportioned to Robert C. Bell, Jr. (supra).

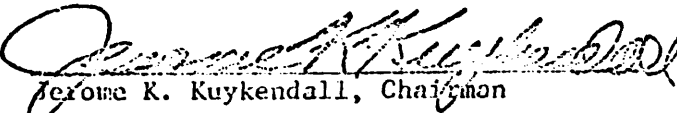
Conclusion. The Commission concludes that the total fee of \$229,200.00 awarded in this docket, said fee being 10 percent of the award herein, be distributed and apportioned as follows:

Robert C. Bell, Jr.:	\$68,760.00
Estate of Walter H. Maloney:	68,760.00
Jack Joseph and Robert S. Johnson:	91,680.00

IT IS THEREFORE ORDERED that Robert C. Bell, Jr., be awarded the sum of \$68,760.00, that the Estate of Walter H. Maloney be awarded the sum of \$68,760.00, and that Robert S. Johnson and Jack Joseph be awarded the sum of \$91,680.00. These sums, being full payment for all legal services rendered by said counsel in the prosecution of Docket No. 29-E, shall be distributed by them to all persons entitled to share in the fee.

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner

  
Jerome K. Kuykendall, Chairman

John T. Vance, Commissioner

  
Richard W. Yarbrough, Commissioner