

BEFORE THE INDIAN CLAIMS COMMISSION

|                                   |   |                 |
|-----------------------------------|---|-----------------|
| MINNESOTA CHIPPEWA TRIBE, ET AL., | ) |                 |
|                                   | ) |                 |
| Plaintiffs,                       | ) |                 |
|                                   | ) |                 |
| v.                                | ) | Docket No. 18-B |
|                                   | ) |                 |
| THE UNITED STATES OF AMERICA,     | ) |                 |
|                                   | ) |                 |
| Defendant.                        | ) |                 |

FINDINGS OF FACT ON ATTORNEYS' FEES

On October 8, 1965, a hearing was held before the Commission on the petition for allowance of attorneys' fees in the above-entitled case, and submitted to the Commission. The Commission having considered the entire record, including the various contracts of employment of said attorneys and certain assignments of interests, makes the following findings of fact:

1. The Awards. On July 27, 1965 the Commission entered awards in this case as follows:

(A) To the Minnesota Chippewa Tribe on behalf of the Mississippi Bands of Chippewa Indians in the sum of \$1,671,262.18;

(B) To the Minnesota Chippewa Tribe on behalf of the Pillager and Lake Winnibigoshish Bands of Chippewa Indians in the sum of \$2,260,942.90.

2. Attorneys' Contracts. This case was prosecuted (1) pursuant to a contract dated October 13, 1949 (Symbol 1-1-Ind. 42241) between the Minnesota Chippewa Tribe and Austin L. Lathers, Jay H. Hoag and Clarence G. Lindquist, duly approved by the Assistant Commissioner of Indian Affairs on January 26, 1950, for a period of ten years from the date of approval,

and (2) under a renewal of Contract No. 42241, with amendments, as expressed in a contract dated May 20, 1960 (Symbol 14-20-0650, Contract No. 853), between the Minnesota Chippewa Tribe and Clarence G. Lindquist, Jay H. Hoag, Edward L. Gruber, and Rodney J. Edwards, duly approved March 20, 1961 by the Secretary of the Interior, effective as of January 26, 1960, for a period of ten years from the date of approval.

Contract No. 853 provided that the compensation for attorneys' services under Contract Nos. 42241 and 853 should not exceed ten percent of the amount recovered, wholly contingent on recovery.

3. Assignment of Interest in Attorneys' Contracts in Docket No. 18-B.

(a) An agreement dated November 18, 1949, duly approved January 27, 1950 by the Assistant Commissioner of Indian Affairs, and signed and executed by each of the persons named below before a Judge of a Court of Record, provided for assignments of interests in the net fees in Contract No. 42241, identified above, and any renewal of that contract:

|                            |                       |
|----------------------------|-----------------------|
| G. Arthur Johnson          | Verne R. Edwards      |
| Rodney J. Edwards          | Ward Winton           |
| 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     |
| Patrick A. Burke           |                       |

The body of the agreement dated November 18, 1949, lists "Thomas L. St. Germain Heirs" as one of the parties, but none of such heirs executed the agreement, and it is not effective as to them.

The said agreement dated November 18, 1949 designated and appointed Jay H. Hoag and Patrick A. Burke as attorneys for the signatories with

power to receive fees paid for services under all contracts listed in the agreement and the renewal of any and all such contracts and to give proper discharge therefor, to pay the necessary expenses and to distribute the fees in accordance with the agreement. The power so conferred on Jay H. Hoag and Patrick A. Burke applies to fees awarded under Contract No. 42241, and the renewal thereof by Contract No. 853.

The pertinent provisions of the November 18, 1949 agreement relating to the power of attorney to Jay H. Hoag and Patrick A. Burke reads as follows:

Further, know all men that in order to facilitate the collection and distribution of the fees which may be paid, the undersigned by these presents do appoint Jay H. Hoag and Patrick A. Burke as our attorneys for us and in our names to receive such fees as may be paid for the services rendered under the aforesaid contracts and give the proper discharge therefor, to pay the necessary expenses in connection with the investigation and prosecution of said claims and to make the distribution of the net fees in accordance with this agreement. The undersigned hereby ratify the acts of said attorneys performed in accordance herewith as fully and effectually in all respects as could we do ourselves if personally present \* \* \*

This contract shall apply to the renewal of any and all contracts which may be made by any of the parties to the aforesaid contracts.

(b) By assignment dated April 18, 1950, and approved July 13, 1950 by the Commissioner of Indian Affairs, Austin L. Lathers, Jay H. Hoag and Clarence G. Lindquist assigned an interest in Contract No. 42241 with the Minnesota Chippewa Tribe to Denis McGinn and James R. Fitzharris.

(c) By assignment dated July 12, 1954 and approved by the Deputy Commissioner of Indian Affairs on June 5, 1958, Austin L. Lathers, Jay H. Hoag and Clarence G. Lindquist assigned an interest in Contract

No. 42241 with the Minnesota Chippewa Tribe to Ward Winton and Warren Winton.

(d) By assignment entered into during November, 1956, and approved by the Department of Interior on May 11, 1956, Austin L. Lathers, Jay H. Hoag and Clarence G. Lindquist assigned an interest in the net fees allowed in Docket 18-B to Henry C. Oakey.

(e) By assignment dated May 28, 1956, and approved June 30, 1958 by the Deputy Commissioner of Indian Affairs, Preston Boyden and George E. McGrath assigned part of their interest in the fees allowed in Docket 18-B to Denis McGinn and James R. Fitzharris.

(f) By agreement dated February 15, 1954, approved May 27, 1955 by the Commissioner of Indian Affairs, and amended by agreement dated May 22, 1961, duly approved December 22, 1962 by the authorized officials of the Department of the Interior, Austin L. Lathers, Jay H. Hoag, Rodney J. Edwards and Clarence G. Lindquist, the contract attorneys under Contract Nos. 42241 and 853 assigned to Marvin J. Sonosky twenty percent of the fees to be allowed and paid in Docket No. 18-B. In addition, in the agreement dated May 22, 1961, the attorneys, or their legal representatives, listed below, consented to said agreement and agreed that their respective interests be charged with the proportionate share of the assignment to Marvin J. Sonosky:

G. Arthur Johnson  
Verne R. Edwards Estate by Rodney J. Edwards  
Ward Winton  
Herschel B. Fryberger, Jr.

4. Deceased Attorneys. The following attorneys named in Contract Nos. 42241 and 853, and those attorneys having assigned interests in those contracts, are now deceased:

(a) Henry J. Grannis, named as an attorney in contract No. 42241, died testate June 24, 1956, a resident of St. Louis County, Minnesota. By the final decree entered in the Probate Court of St. Louis County, Minnesota, his interest in the fees in Docket No. 18-B passed to Margaret Grannis Gaylord, Laurence C. Grannis and Frank H. Grannis.

(b) Edward L. Gruber (E. L. Gruber) named as attorney in Contract No. 853, died testate September 11, 1960, a resident of St. Louis County, Minnesota. Mabel L. Gruber is the duly qualified and acting executrix of the decedent's estate, appointed by the Probate Court of St. Louis County, Minnesota.

(c) Clarence G. Lindquist, named as an attorney in Contracts Nos. 42241 and 853, died testate on April 11, 1964, a resident of St. Louis County, Minnesota. A. Blake MacDonald is the duly qualified and acting executor of the decedent's estate, appointed by the Probate Court of St. Louis County, Minnesota.

(d) Verne R. Edwards, one of the parties to the agreement of November 18, 1949, died testate, a resident of Douglas County, Wisconsin. Rodney J. Edwards is the duly qualified and acting executor of decedent's estate appointed by the County Court of Douglas County, Wisconsin.

(e) Denis McGinn, named in the assignment of April 18, 1950, and the assignment of May 28, 1956, died testate, a resident of Escanaba, Michigan. Catherine McGinn is the duly qualified and acting executrix

of decedent's estate appointed by the Probate Court of Delta County, Michigan.

5. Consent to Payment of Award

(a) The attorneys named in the agreement dated November 18, 1949, (see Finding 3, supra) including the attorneys named in Contracts Nos. 42241 and 853 have appointed Jay H. Hoag and Patrick A. Burke as their attorneys to receive for them and in their name such fees as may be paid for services rendered in Docket 18-B, and to give appropriate discharge therefor. Also, for those of said attorneys who are now deceased, Mabel L. Gruber, Executrix of the Estate of Edward L. Gruber, deceased; A. Blake MacDonald, Executor of the Estate of Clarence G. Lindquist, deceased; Rodney J. Edwards, Executor of the Estate of Verne R. Edwards, deceased; and Margaret Grannis Gaylord, Laurence C. Grannis and Frank H. Grannis, Heirs of the Estate of Henry J. Grannis, deceased, have each filed in this case a written consent and authorization, duly acknowledged, consenting and requesting that all fees allowed as compensation for attorneys' services rendered in Docket 18-B be awarded and paid to Jay H. Hoag and Patrick A. Burke, authorizing them to receive such fees and to give appropriate discharge therefor.

(b) Marvin J. Sonosky, James R. Fitzharris, Ward Winton, Warren Winton, Henry C. Oakey, and Cathering McGinn, executrix of the Estate of Denis McGinn, deceased, each of whom has an interest in attorneys' fees under assignments executed subsequent to the agreement of November 18, 1949, have each filed in this case a written consent and authorization,

duly acknowledged, consenting and requesting that all fees allowed as compensation for attorneys' services rendered in Docket 18-B, including their respective shares in such fees, be awarded and paid to Jay H. Hoag and Patrick A. Burke, and have authorized Jay H. Hoag and Patrick A. Burke to receive such fees and to give appropriate discharge therefor.

6. Services. In view of the services rendered by the attorneys in Docket No. 18-B, the long period of litigation, the results obtained, and in accordance with standards obtaining for prosecuting similar claims in courts of law, the Commission finds that the said attorneys are entitled to receive the full ten percent of the awards as provided in Section 15 of the Indian Claims Commission Act and their respective attorneys' contracts.

7. Fees, Mississippi Bands. The Commission finds that the sum of \$167,126.21, constituting ten percent (10%) of the award to the Minnesota Chippewa Tribe for the Mississippi Bands be awarded to Jay H. Hoag and Patrick A. Burke as compensation for services rendered by the contract attorneys and the assignees named in Finding 3.

8. Fees, Pillager and Lake Winnibigoshish Bands. The Commission finds that the sum of \$226,094.29, constituting ten percent (10%) of the award to the Minnesota Chippewa Tribe for the Pillager and Lake Winnibigoshish Bands, be awarded to Jay H. Hoag and Patrick A. Burke as compensation for services rendered by the contract attorneys and the assignees named in Finding 3.

Therefore, said sums so awarded as attorneys' fees are to be paid to Jay H. Hoag and Patrick A. Burke in accordance with the consent and authorization of each and all the contract attorneys and assignees or their legal representatives.

Arthur V. Watkins  
Chief Commissioner

Wm. M. Holt  
Associate Commissioner

T. Harold Scott  
Associate Commissioner