

BEFORE THE INDIAN CLAIMS COMMISSION

THE MIAMI TRIBE OF OKLAHOMA, et al.,)
 IRA S. GODFROY, et al., THE MIAMI)
 INDIANS OF INDIANA,)
)
 Plaintiffs,)
)
 v.) Docket No. 255
) Docket No. 124-C
) (Consolidated)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

THE MIAMI TRIBE OF OKLAHOMA, et al.,)
 IRA S. GODFROY, et al., THE MIAMI)
 INDIANS OF INDIANA,)
)
 Plaintiffs,)
)
 v.) Docket No. 256
) Docket Nos. 124-D, 124-E
) and 124-F
) (Consolidated)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Decided: February 18, 1971

Appearances:

Louis L. Rochmes, Attorney
 for Sommenschein, Levinson,
 Carlin, Nath and Rosenthal
 (Docket Nos. 255 and 256)

Robert C. Bell, Jr. Attorney
 for Kiley, Osborn, Kiley and
 Harker, Walter H. Maloney, Jr.
 and the Estate of Walter H.
 Maloney, Sr. (Docket Nos. 124-C,
 D, E and F)

W. Braxton Miller, with whom
 was Mr. Assistant Attorney
 General Clyde O. Martz, Attorneys
 for Defendant.

THE AWARD AND APPORTIONMENT OF ATTORNEYS' FEES

Pierce, Commissioner, delivered the opinion of the Commission.

This matter is now before the Commission for the purpose of awarding and apportioning attorneys' fees. Two different cases are involved, although the plaintiffs are the same in each. And two separate sets of contract attorneys have been engaged in the prosecution of each case.

The first case consisting of one cause of action involved the consolidated Docket Nos. 255 and 124-C. Final judgment in that case was entered on December 3, 1968, in the amount of \$66,966.00 (20 Ind. Cl. Comm. 97).

The second case involved three causes of action in consolidated Docket Nos. 256 and 124-D, E, and F. Final judgment in that case was also entered on December 3, 1968, but in the amount of \$1,373,000.00 (20 Ind. Cl. Comm. 113).

Both of the judgments were entered in favor of the Miami Tribe of Oklahoma and the Miami Indians of Indiana jointly as representatives of the Miami Tribe.^{1/} Each of the Miami plaintiffs was represented by its own contract attorney. The Miami Indians of Indiana were represented successively by Walter H. Maloney, Sr. (now deceased),^{2/} Walter H. Maloney, Jr., and the firm of Kiley, Osborn, Kiley and Harker. The Miami Tribe of Oklahoma

^{1/} The Commission determined in Miami Tribe v. United States, 17 Ind. Cl. Comm. 427 (1966), that neither the Oklahoma Miamis nor the Indiana Miamis was the full successor to the original Miami Tribe, although both are entitled to represent it.

^{2/} Mr. Walter H. Maloney, Sr., died on November 14, 1967. His wife, Mrs. Madeline F. Maloney, and his son, Mr. Walter H. Maloney, Jr., are co-executors under the will which has been admitted to probate in the United States District Court for the District of Columbia.

was represented, under a separate contract, by a law firm now known as Sonnenschein, Levinson, Carlin, Nath and Rosenthal. The above named attorneys were also assisted from time to time by other associated counsel, as set forth in detail in our findings of fact entered herein.

The Indiana Miami's contract (No. 950) with Mr. Maloney and his successors provides that the compensation for attorney services shall not exceed ten percent of the amount recovered. The attorneys for the Indiana Miamis have rendered valuable services in the successful prosecution of their clients' claims. The attorneys participated in the trial, briefing and argument before the Commission in the claims involved in Docket Nos. 124-D, E, and F. On December 18, 1964, the Commission entered an interlocutory order determining defendant's liability, in part. Miami Tribe v. United States, 14 Ind. Cl. Comm. 374. The Commission on April 1, 1965, entered a partial final judgment with respect to claims under two of the treaties involved. Thereafter the parties reached a compromise settlement of the remaining issues and final judgment in Dockets 124-D, E and F was entered on December 3, 1968. All of the issues involved in the claim under Docket No. 124-C were resolved without a trial by a compromise settlement, and final judgment was entered on December 3, 1968. While the end result in the latter claim was achieved through settlement, it appears that no greater award would have resulted if the matter had been litigated. Settlement of that claim, and the remaining issues in the Docket Nos. 124-D, E, and F claims, resulted in a distinct and immediate benefit to the Indians while at the same time eliminating the delays and possible hazards of further

litigation. The Commission concludes that the attorneys for the Miami Indians of Indiana are entitled to a fee of ten percent for their services rendered in the prosecution of the claims under Docket Nos. 124-C, D, E, and F.

The Oklahoma Miamis' contract (No. 42017) with the Sonnenschein firm provides that the compensation for attorney services shall be ten percent of the amount recovered. Accordingly, the attorneys for the Miami Tribe of Oklahoma are entitled to a fee of ten percent for their services rendered in the prosecution of the claims under Docket Nos. 255 and 256.

The fees which are allowed in these cases are as follows:

| <u>Case</u> | <u>Judgment</u> | <u>Fee</u> |
|---|-----------------|-------------------|
| Docket Nos. 255, and 124-C | \$ 66,966.00 | \$ 6,696.60 |
| Docket Nos. 256, and 124-D, E, and F | 1,373,000.00 | <u>137,300.00</u> |
| Total | | \$143,996.60 |

Since the attorneys have not agreed as to the proper division of their collective fees, they have presented the matter of apportionment to the Commission for determination. Following the rationale of the Court of Claims in The Sisseton and Wahpeton Bands or Tribes v. United States, 191 Ct. Cl. 459, 423 F. 2d 1386 (1970), it is clear that this Commission has jurisdiction to make such an apportionment.

The attorneys for the Indiana Miamis claim that the fees should be awarded in proportion to the amounts which they believe will be paid to their clients. Accordingly they contend that since there are 3,066 Indiana Miamis and 1,230 Oklahoma Miamis, the fees to be awarded to them should be \$4,779.28

in Docket Nos. 255 and 124-C and \$97,989.25 in Docket Nos. 256, 124-D, E and F. This would result in the remaining \$1,917.32 in Dockets 255 and 124-C and the remaining \$39,310.75 in Docket Nos. 256 and 124-D, E and F being awarded to the attorneys for the Oklahoma Miamis. There was, however, no division of the awards in these cases. The judgments were entered in favor of the Miami Tribe of Oklahoma and the Miami Indians of Indiana jointly as representatives of the Miami Tribe. It is a matter for Congress to determine how the awards are to be paid and how, if at all, any division of the moneys is to be achieved. By seeking to apportion their fees in accordance with what they believe will be the division of the awards, the attorneys for the Indiana Miamis are guessing at what might be the final benefit to their clients. Clearly an apportionment of fees cannot be made on such a speculative basis.

The attorneys for the Oklahoma Indians contend that the whole 10% fee should be awarded to them alleging that the sole effective legal work in the claims pertinent here was done by them. Alternatively, they argue that they are entitled to 85% of the fee and the Indiana Miami attorneys are entitled only to 15%. The latter proposal is based on a fee division agreement dated November 5, 1952, between the late Mr. Walter H. Maloney, Sr. and the late Mr. Edwin Morse of the Sonnenschein firm with respect to the award in consolidated cases in Dockets Nos. 67 and 124. That agreement is not pertinent here. It relates to work performed by the competing attorneys in Docket Nos. 67 and 124, which are different claims and are not involved with these cases. In addition we have no knowledge of any of the events

surrounding the execution of the 1952 agreement. The Sonnenschein firm by seeking the entire award, ignores the fact that the attorneys for the Indiana Miamis contributed legal services for which they should be compensated. See Red Lake and Pembina Tribe of Indians v. Little Shell Band, 173 Ct. Cl. 928, 355 F. 2d, 936 (1965).

Counsel for both Miami groups were diligent in representing and protecting the interests of their respective clients. However, the Sonnenschein firm carried the burden of the trial of the claims in Docket Nos. 256 and 124-D, E, and F. All of the exhibits on land value, which was the issue at the only trial held, were prepared and introduced into evidence by the Sonnenschein firm. The 19 exhibits introduced by Mr. Maloney concerned the relationship of his clients to the Miami Tribe as it existed on the treaty dates and other matters relating to a possible distribution of the prospective award. The Sonnenschein firm presented the plaintiffs' expert testimony on value and handled the cross examination of defendant's witnesses.

We have examined the records of the proceedings in the above-entitled cases and we have considered all of the matters which have been submitted by counsel in support of their fee applications. We have evaluated the services which each of the attorneys rendered, and we have considered the relative contribution which each set of lawyers made to the final results in these cases. We have concluded that the awarded fees should be apportioned on a basis of 70% of each fee to the law firm of Sonnenschein, Levinson, Carlin, Nath and Rosenthal and 30% of each fee to Madeline F. Maloney and

Walter H. Maloney, Jr., co-executors under the will of Walter H. Maloney, Sr., deceased; Walter F. Maloney, Jr.; and the law firm of Kiley, Osborn, Kiley and Harker.

The resulting fees are computed as follows:

Docket Nos. 255 and 124-C

| | |
|-------------------|------------|
| Maloney et al. | \$2,008.98 |
| Sonnenschein firm | \$4,687.62 |

Docket Nos. 256 and 124-D, E, and F

| | |
|-------------------|-------------|
| Maloney et al. | \$41,190.00 |
| Sonnenschein firm | \$96,110.00 |

Margaret H. Pierce
 Margaret H. Pierce, Commissioner

We concur:

Jerome K. Kuykendall
 Jerome K. Kuykendall, Chairman

John T. Vance
 John T. Vance, Commissioner

Richard W. Yarborough
 Richard W. Yarborough, Commissioner

Brantley Blue
 Brantley Blue, Commissioner