

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

FINDINGS OF FACT

The Commission, having considered the applications for allowance of attorneys' fees filed herein on August 18, 1969, and on October 7, 1969, and all the evidence received at the hearing on February 27, 1970, makes the following findings of fact:

1. On December 3, 1968, the Commission entered a final judgment approving a proposed compromise settlement in Docket Nos. 255 and 124-C (consolidated). The judgment, in the amount of \$66,966.00, was in favor

of the Miami Tribe of Oklahoma, et al. and the Miami Indians of Indiana jointly as representatives of the Miami Tribe (20 Ind. Cl. Comm. 97). On that same date the Commission entered a final judgment approving a proposed settlement in Docket Nos. 256 and 124-D, E and F (consolidated). The judgment, in the amount of \$1,373,000.00, was likewise in favor of the Miami Tribe of Oklahoma, et al. and the Miami Indians of Indiana jointly as representatives of the Miami Tribe. (20 Ind. Cl. Comm. 113).

This Commission has determined in Miami Tribe v. United States, 17 Ind. Cl. Comm. 427, 431-432 (1966), that neither of the plaintiffs in Docket Nos. 256 and 124-D, E and F is the full successor to the original tribe, although both are entitled to represent it. As a result, the award in Docket Nos. 256 and 124-D, E and F was made to both tribes jointly as representatives of the Miami Tribe as it existed on the effective dates of the pertinent treaties. By the same reasoning, the judgment in Docket Nos. 255 and 124-C was awarded jointly to the same plaintiffs as representatives of the Miami Tribe.

2. The claims of the Miami Tribe of Oklahoma and the Miami Indians of Indiana in all of the above entitled claims were prosecuted by attorneys pursuant to the following contracts:

Miami Indians of Indiana

(a) On October 31, 1949, Contract No. 950, Symbol No. I-1-ind. 42496, was entered into between the Miami Indians of Indiana and attorneys Walter H. Maloney, Sr. and Albert M. Sullivan. On June 10, 1950, prior to the Bureau of Indian Affairs' approval of said contract, Mr. Sullivan

withdrew as attorney under said contract. The Bureau of Indian Affairs approved the contract on June 7, 1951, for a period of ten years. The term of the contract was extended several times. The last extension, which was approved on August 17, 1970, was for five years beginning April 20, 1970.

On April 4, 1963, Mr. Walter H. Maloney, Sr., assigned his interest in the contract to Mr. Walter H. Maloney, Jr., but he retained his interest therein to remain as "of Counsel." The Commissioner of Indian Affairs approved the assignment on April 23, 1963. Mr. Walter H. Maloney, Jr. reassigned his interest in the contract to Mr. Walter H. Maloney, Sr. effective November 27, 1964. The reassignment was approved by the Commissioner of Indian Affairs on May 10, 1965. By approval of the Commissioner of Indian Affairs, also on May 10, 1965, Mr. Walter H. Maloney, Sr. then assigned his interest in the contract to the firm of Kiley, Osborn, Kiley and Harker, effective March 25, 1965. At the request of Kiley, Osborn, Kiley and Harker on April 23, 1968, the Commissioner of Indian Affairs approved the firm's association with Mr. Robert C. Bell, Jr. in connection with said contract.

Mr. Walter H. Maloney, Sr. died testate on November 14, 1967. His wife, Mrs. Madeline F. Maloney and his son, Mr. Walter H. Maloney, Jr., were appointed co-executors under the will which was admitted to probate in the United States District Court for the District of Columbia on December 14, 1967.

Miami Tribe of Oklahoma

(b) Contract No. 42017, Symbol No. I-1-ind. between the Miami Tribe of Oklahoma and the law firm, then known as Sonnenschein, Berkson, Lautmann, Levinson and Morse, dated January 28, 1947, was approved by the Bureau of Indian Affairs May 10, 1948, for a period of ten years beginning with the date of approval, but subject to certain modifications. One modification required that changes in the firm by reason of admission of new partners, withdrawals, deaths and changes in the partnership would require the approval of the Commissioner of Indian Affairs. The approval by the Bureau was also made subject to a so-called Joint Efforts Agreement between the Sonnenschein firm and other firms, including the firm of Riegelmann, Strasser, Schwartz and Speigelberg, to provide for associate attorneys, if and when necessary, to assist in the prosecution of the claims. The principal contract was extended several times. The last extension was approved on April 18, 1963, for a period of ten years beginning May 10, 1963.

Mr. Edward P. Morse was designated by the Sonnenschein firm as attorney of record for the Oklahoma Miami clients. On January 1, 1957, Mr. Morse resigned as a general partner in the firm, but remained as a limited partner for the purpose of retaining his representation of the Indian clients. At that time the firm name was changed to Sonnenschein, Lautmann, Levinson, Reiser, Carlin and Nath. Mr. Morse continued to act as attorney of record for the Miami clients until his death on April 6, 1961. By order of this Commission dated April 27, 1961, Mr. Edwin Rothschild of the Sonnenschein firm became attorney of record on behalf of the Miami clients.

On April 18, 1963, the Area Director of the Bureau of Indian Affairs agreed to the change of the firm name to Sonnenschein, Levinson, Carlin, Nath and Rosenthal. With the approval of the same date, the Area Director eliminated the provision from said contract which required the approval of the Commissioner of Indian Affairs, with respect to further changes in the firm name.

Pursuant to the Joint Efforts Agreement, the Reigelmann firm established a Washington office to assist in the preparation and prosecution of the claims on behalf of the Miami Indians. Mr. Louis L. Rochmes, then an associate of the Riegelmann firm, was designated to assist in this work. While Mr. Rochmes has discontinued his association with the Reigelmann firm, he has continued to assist in the representation of the Miami Tribe of Oklahoma under the supervision and direction of the tribal attorneys.

3. Contract No. 950 between Mr. Maloney, his successors, and the Miami Indians of Indiana provides that the compensation for attorneys' services should not exceed ten percent of the amount recovered. Upon examination of the record of proceedings before this Commission in the claims under Docket Nos. 124-C, D, E, and F, we find that the attorneys for the Indiana Miamis have rendered valuable services in the successful prosecution of the 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 (1964). 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 was entered on December 3, 1968 (20 Ind. Cl. Comm. 113). All of the issues involved in the claim under Docket Nos. 255 and 124-C were resolved by a compromise settlement and final judgment was entered on December 3, 1968 (20 Ind. Cl. Comm. 97). The attorneys for the Indiana Miamis participated in the required settlement procedures, as set forth in detail in the Commission's findings of fact on the compromise settlements in both cases.

4. The Oklahoma Miamis contract (No. 42017) with the Sonnenschein firm provides that the compensation for attorneys' services shall be ten percent of the amount recovered.

5. In response to the Commission's request for comments on the August 18, 1969, fee application of the attorneys for Docket Nos. 124-C, D, E and F, the Department of Justice took no position with respect to the amount of the fee, provided that the fees did not exceed the statutory 10% of the awards. Enclosed with the letter from the Justice Department with respect to the same application was a memorandum from the Commissioner of Indian Affairs, dated September 10, 1969, to the Solicitor of the Department of Interior in which he did not make any recommendation with respect to the fee application. After the attorneys in Docket Nos. 255 and 256 filed their fee application on October 7, 1969, the same comments by the Department of Justice and the Commissioner of Indian Affairs were made respecting that fee application.

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

The attorneys for the Miami Tribe of Oklahoma are entitled to a fee of ten percent as compensation for services rendered in the prosecution of the claims under Docket Nos. 255 and 256.

7. Since both sets of attorneys have been found to be entitled to a fee of 10% for their respective services rendered, 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

8. The attorneys have not agreed as to the proper division of the fee awards but have submitted the question to the Commission for determination.

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 value, which was the issue at the trial, 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 awards. The Sonnenschein firm presented the plaintiffs' expert

testimony on value and handled the cross examination of defendant's witnesses.

Upon consideration of the services rendered by each set of attorneys in these cases and the relative contribution which each made to the final results in these cases, we conclude 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 H. Maloney, Jr.; and the law firm of Kiley, Osborn, Kiley and Harker.

9. The Commission finds that the below named parties are entitled to the indicated sums as payment in full of the attorneys' fees for services rendered in the prosecution of the claims in the matter of the subject cases:

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

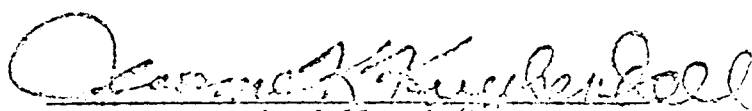
Docket Nos. 255 and 124-C (consolidated) \$ 2,008.98

Docket Nos. 256 and 124-D, E, and F
(consolidated) \$41,190.00

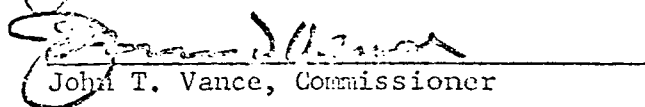
2. To the law firm of Sonnenschein,
Levinson, Carlin, Nath and
Rosenthal

Docket Nos. 255 and
124-C (consolidated) \$ 4,687.62

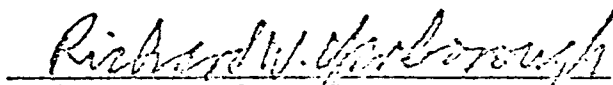
Docket Nos. 256 and 124-D,
E, and F (consolidated) \$96,110.00



Jerome K. Kuykendall, Chairman



John T. Vance, Commissioner



Richard W. Yarborough, Commissioner



Margaret H. Pierce, Commissioner



Brantley Blue, Commissioner