

BEFORE THE INDIAN CLAIMS COMMISSION

THE WINNEBAGO TRIBE AND NATION OF)	
INDIANS, THE WINNEBAGO TRIBE OF)	
NEBRASKA AND FRANK BEAVER, MOSES)	
WHITEBEAR, JOHN LITTLE WOLF, JAMES)	
SMOKE, AND JOSHUA SANFORD, EX REL.)	
WINNEBAGO TRIBE AND NATION AND THE)	
WINNEBAGO INDIANS OF WISCONSIN,)	
MINNESOTA, NEBRASKA AND THE)	
WINNEBAGO TRIBE OF NEBRASKA,)	
)	
Plaintiffs,)	
)	Docket Nos. 243, 244 and 245
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: June 16, 1971

FINDINGS OF FACT ON AWARD OF ATTORNEYS' FEES

On November 16, 1970, Rodney J. Edwards, Attorney of Record for the plaintiffs in the above-mentioned dockets, filed a petition on behalf of himself and all other participating attorneys herein for allowance of attorneys' fees, together with a statement setting out the extent and nature of the services rendered by said attorneys. Having considered the said petition and statement; the defendant's response to the petition, filed on January 20, 1971; the contracts of employment under which the attorneys performed their services; and the evidence in support of the petition, including the entire record and all proceedings in these dockets, the Commission makes the following findings of fact:

1. Award. On September 3, 1970, the Commission entered a final judgment approving a proposed compromise settlement in these dockets in favor of the plaintiffs herein in the amount of \$4,600,000 (23 Ind. Cl. Comm. 482). Funds to satisfy the judgment were appropriated by Public Law 91-665, approved January 8, 1971 (84 Stat. 1981).

2. Contractual Authority and Compensation Thereunder. The representation herein of the plaintiffs was initially under Contract No. I-1-42482, dated October 28, 1950, between the Winnebago Tribe of Nebraska and the Winnebago Indians of Wisconsin and Attorneys Vern R. Edwards, Rodney J. Edwards, G. Arthur Johnson, Austin Lathers, Clarence G. Lindquist and Jay H. Hoag, approved by the Acting Commissioner of Indian Affairs on March 8, 1951, for a period of 10 years beginning with the date of approval. By agreement dated May 22, 1953, and approved by the Commissioner of Indian Affairs on June 28, 1954, the said contract attorneys associated with them attorneys J. Allan Lind, Denis McGinn, James R. Fitzharris, Henry J. Grannis and John B. Halloran. On January 30, 1961, the Winnebago Tribe of Nebraska entered into contracts 14-20-0650 - No. 917, 14-20-0650 - No. 918, 14-20-0650 - No. 921, and 14-20-0650 - No. 922, with attorneys Jay H. Hoag, Rodney J. Edwards, Clarence G. Lindquist and G. Arthur Johnson, each approved on September 12, 1961, continuing their services to represent plaintiffs herein for an additional period of 10 years from March 8, 1961. On June 18, 1960, the Winnebago Indians of Wisconsin entered into contracts 14-20-0650 - No. 986, 14-20-0650 - No. 987, 14-20-0650 - No. 990, and 12-20-0650 - No.

991, with attorneys Jay H. Hoag, Edward L. Gruber, Rodney J. Edwards, Clarence G. Lindquist and G. Arthur Johnson, each approved on August 25, 1961, continuing their services to represent plaintiffs herein for an additional period of 10 years from March 8, 1961.

All of the aforementioned contracts provide for compensation of the attorneys not to exceed 10 per cent of any and all sums recovered by them for the Indians.

3. Statutory Provisions on Fees. The Indian Claims Commission Act (60 Stat. 1049, 1053), under which the claim in this case was prosecuted, contains the following provisions pertaining to the allowance of attorneys' fees:

* * *

Sec. 15 * * * The fees of such attorney or attorneys for all services rendered in prosecuting the claim in question, whether before the Commission or otherwise, shall, unless the amount of such fees is stipulated in the approved contract between the attorney or attorneys and the claimant, be fixed by the Commission at such amount as the Commission, in accordance with standards obtaining for prosecuting similar contingent claims in courts of law, finds to be adequate compensation for services rendered and results obtained, considering the contingent nature of the case, * * *; but the amount so fixed by the Commission, exclusive of reimbursements for actual expenses, shall not exceed 10 per centum of the amount recovered in any case. * * *

4. Requested Fee. The attorneys' petition has requested allowance of an attorneys' fee in the amount of \$460,000, representing 10 per cent of the amount of the final judgment.

5. Response of Defendant. The defendant's response was in the form of a letter dated January 20, 1971, which reads in part as follows:

On November 17, 1970 we requested the Department of the Interior to report whether there was any objection to the petition for award for attorneys' fees of \$460,000 filed by Rodney J. Edwards, Esquire, on November 16, 1970 in Winnebago Tribe of Indians, et al. v. United States, Docket Nos. 243, 244 and 245, before the Indian Claims Commission.

On January 19, 1971 we received a letter dated January 15, 1971 from the Associate Solicitor for Indian Affairs of the Department of the Interior, to which was attached copy of a memorandum dated December 14, 1970 to the Solicitor from the Acting Associate Commissioner of Indian Affairs. We enclose a copy of the letter and of the memorandum.

As the enclosures indicate, the Bureau of Indian Affairs feels that it lacks sufficient information to make any recommendation regarding the claimed attorneys' fees. Accordingly, the Department of Justice takes no position in regard to the amounts claimed for fees by the attorneys other than to point out that the contracts with the various attorneys in the Winnebago cases provide that their fees shall not exceed 10 percent of the award, which 10 percent constitutes the \$460,000 requested in Mr. Edwards' petition for award of fees.

6. Notice to Tribes. On November 17, 1970, the Deputy Clerk of the Commission sent notices of the filing of the Attorney of Record's application for allowance of attorneys' fees to Mr. Myron Lowe, Chairman, Winnebago Business Committee, Wisconsin Dells, Wisconsin, and Mr. Gordon Beaver, Chairman, Winnebago Tribal Council, Winnebago, Nebraska. No response to either notice has been received.

7. Claims Involved. The petitions filed in 1951 by the attorneys for the plaintiffs set forth claims for compensation of lands (Royce Area 174) ceded by the Treaty of September 15, 1832 (7 Stat. 370), compensation for lands (Royce Area 149) ceded by the Treaty of August 1,

1829 (7 Stat. 323), compensation for lands (Royce Area 245) ceded by the Treaty of November 1, 1837 (7 Stat. 544), compensation for lands (Royce Area 267) ceded by the Treaty of October 13, 1846 (9 Stat. 878), compensation for lands (Royce Area 361) ceded by the Treaty of February 27, 1855 (10 Stat. 1172), compensation for a portion of the reservation (Royce Area 416) sold by the defendant pursuant to the Treaty of April 15, 1859 (12 Stat. 1101), compensation for a portion of the reservation (Royce Area 439) directed sold by Act of Congress of February 21, 1863 (12 Stat. 658) and compensation for lands (Royce Area 468) ceded by the Treaty of March 8, 1865. The petitions further claimed that the defendant should make a general accounting with respect to the considerations paid under the treaties and the management and disposition of plaintiffs' funds and other property, and that plaintiffs be compensated for amounts found to be due and damages resulting from the methods used by the defendant in removal of plaintiffs from areas they occupied and possessed.

8. Services. The claims presented involved the determination of plaintiffs' capacity and right to prosecute the claims, aboriginal and recognized title issues, valuation of lands at several dates of taking, determination of value of mineral resources and of timber, the credit to the United States for reservations given as consideration for aboriginal title lands and for cessions of reservations, examination and review of General Accounting Office Reports and supporting documents with respect to treaty consideration payments and offsets, examination

and review of General Accounting Office Reports and supporting documents with respect to accounting by the United States for receipt and disbursement of tribal funds, negotiations with the Department of Justice with respect to settlement, and submission of the settlement to the members of the Winnebago Tribe and Nation, the Commissioner of Indian Affairs and the Indian Claims Commission for approval.

In the prosecution of the claims, evidence was submitted and trial held on the issue of plaintiffs' capacity to sue and determination of the Winnebago Tribe's aboriginal and recognized title to Royce Areas 149, 174 and 245, which resulted in a decision of the Commission dated August 10, 1959 (8 Ind. Cl. Comm. 78), that determined plaintiffs had the capacity to sue and the Winnebago Tribe was the owner of all of Royce Area 149, consisting of 2,702,444 acres; all of Royce Area 174, consisting of 2,101,455 acres; and major portion of Royce Area 245, consisting of 2,981,303 acres.

Trial and submission of evidence on proof of value of the awarded acreages of Royce Areas 149, 174 and 245 was then held and resulted in a decision of the Commission dated October 13, 1965 (16 Ind. Cl. Comm. 81), determining that, as of the effective treaty dates, the value of the 2,702,444 acres of Royce Area 149 was \$2,025,000.00, the value of the 2,101,455 acres of Royce Area 174 was \$1,575,000.00, and the value of the 2,981,303 acres of Royce Area 245 was \$1,500,000.00.

On May 18, 1966, plaintiffs' attorneys filed an appeal to the United States Court of Claims for review of the value found by the

Commission for Royce Area 149. After a hearing on December 18, 1967, the Court of Claims entered its decision affirming the Commission (181 Ct. Cl. 1202). On October 30, 31 and November 1, 1967, trial was held before the Commission and plaintiffs' attorneys submitted evidence on the valuation of the Winnebago Reservation ceded by the Treaty of October 13, 1846 (Royce Area 267), consisting of 2,178,000 acres. A decision was pending when the settlement was approved.


The accounting reports and supporting documentation of defendant with respect to treaty consideration payments, gratuitous offsets and handling by defendant of Winnebago tribal funds were scrutinized and analyzed by plaintiffs' attorneys; valuations of reservation lands ceded that were undetermined by decision of the Commission at the time of approval of settlement herein were researched and analyzed by plaintiffs' attorneys for the purpose of the negotiations and consummation of approval of the compromise settlement herein.

The approvals of the compromise settlement required the calling for and attendance at several meetings in Wisconsin and Nebraska of members of the Winnebago Tribe and at tribal council meetings of the organized Tribal Council of the Winnebago Tribe of Nebraska and the Executive Committee of the Wisconsin Winnebago Tribe; reports to the Secretary of the Interior for his required approval; and presentation of evaluation of the claims at a hearing held before the Commission on August 10, 1970.

The record disclosed that voluminous documentary evidence was presented by plaintiffs' attorneys with respect to the issues tried before the Commission; that plaintiffs' attorneys procured and consulted with expert witnesses who testified on behalf of the plaintiffs; and that documented requested findings of fact and briefs on the issues of law and fact were filed by plaintiffs' attorneys.


The attorneys for the plaintiffs have rendered valuable legal services in successfully prosecuting their clients' claims and ultimately securing the entry of final judgment. On the basis of the entire record herein and considering the responsibilities undertaken, the difficult problems of fact and law involved in this case, the contingent nature of the compensation, the substantial award obtained for the benefit of the plaintiffs herein, all appropriate factors pertinent to the determination of attorneys' fees under the standards established by the Indian Claims Commission Act, and the foregoing findings, the Commission finds that the attorneys for the plaintiffs herein are entitled to an attorneys' fee in the amount of \$460,000, and that the payment to Rodney J. Edwards, Attorney of Record, of this sum out of the funds appropriated to pay the aforementioned award, for appropriate distribution by him of the amounts due each of the participating

attorneys, will represent payment in full of all claims for legal services rendered in the dockets herein.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner

Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner