

BEFORE THE INDIAN CLAIMS COMMISSION

THE NEZ PERCE TRIBE OF INDIANS)	
OR CHARLES E. WILLIAMS AND)	
JOSEPH REDTHUNDER, as repre-)	
sentatives of the NEZ PERCE)	
TRIBE OF INDIANS,)	
)	
Petitioner,)	
)	
v.)	Docket No. 175-A
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

ORDER ALLOWING FEES TO ATTORNEYS FOR THE NEZ
PERCE TRIBE OF INDIANS IN DOCKET NO. 175-A

Upon consideration of the petition of the attorneys for petitioner for allowance of an attorney fee in Docket No. 175-A, filed herein on February 16, 1962, and the defendant having had a copy of said petition served upon it, and no objection thereto was entered; and after a hearing held before the Commission on March 29, 1962, at which the petitioner and the defendant were represented by counsel; and the Commission having received evidence both oral and written, and the Commission having considered the entire record in the case, including said contracts of employment of said attorneys, the Commission finds:

1. That the attorneys' services for the petitioner in this case were performed pursuant to a contract between the Nez Perce Tribe of Indians and Kenneth R. L. Simmons, since deceased. Said contract was entered into on September 29, 1950, and was approved by the Commissioner of Indian Affairs on January 8, 1951, subject to certain conditions which were accepted by the parties. Said contract was to remain in effect for ten years, beginning with the date of its approval by the Commissioner of

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Indian Affairs and extending beyond June 10, 1960, the date when a final determination was made and entered in Docket No. 175-A. That on the 16th day of July, 1951, Mr. Simmons assigned a one-sixth interest in the attorneys' contract to Wilkinson, Boyden & Cragun (now Wilkinson, Cragun & Barker) and said assignment was approved by the acting Commissioner of Indian Affairs on November 16, 1951. That under the terms of said contract upon the death of Kenneth R. L. Simmons, which occurred on April 13, 1953, the said law firm of Wilkinson, Cragun & Barker became possessed of full authority to continue the prosecution of claims under the Simmons contract, subject to the right of the Simmons Estate to compensation. The said John S. Boyden has filed his sworn written consent to the awarding of attorneys' fees to the firm of Wilkinson, Cragun & Barker, agreeing that his interest therein be governed solely by agreement between himself and the firm.

2. That the attorneys' contract of September 29, 1950, as amended, provides in part that:

*** compensation shall be wholly contingent on the recovery of a money judgment or settlement for the tribe and shall not exceed ten per cent of such recovery ***."

3. That pursuant to the aforesaid contract of employment, as amended, the original petition was prepared and filed by Mr. Simmons on behalf of the Nez Perce Tribe, the petition alleged three claims, and was designated Docket No. 175.

4. That on July 30, 1951, a petition was prepared and filed by three individual Nez Perce Indians resident on the Colville Reservation in the State of Washington, as representatives of the Nez Perce Tribe of

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Indians, which was assigned Docket No. 180, and in which two of the same claims alleged in Docket No. 175 were also alleged in Docket No. 180. The petition in Docket No. 180 contained an additional claim, later severed as Docket No. 180-A by order of the Commission entered May 1, 1953. The attorneys for the petitioners in Docket No. 180 were the law firm of Cobb and Weissbrodt, James E. Curry, Lyle Keith and Patrick H. Winston.

5. That by order of the Commission entered September 24, 1954, Dockets Nos. 175 and 180 were consolidated for the purpose of trial. In March, 1956 the petitioners and their attorneys in Dockets Nos. 175 and 180 entered into an agreement as to responsibility in prosecuting said claims of the Nez Perce Tribe and the allowance of attorneys' fees. Under the terms of the agreement the firm of Wilkinson, Cragun & Barker was employed and give the exclusive right and responsibility of representing all Nez Perce Indians wherever situated as respects the claims pending under Docket Nos. 175 and 180, with the claims attorneys for the Confederated Tribes of the Colville Reservation to be "of counsel" therein, but in no event was the compensation of the Wilkinson firm to be increased in excess of the fees provided in the original attorney contract between that firm and the Nez Perce Tribe. The claims attorneys for the Confederated Tribes were employed to represent all Nez Perce Indians as respects the claims pending under Docket No. 180-A, with the Wilkinson firm to be "of counsel" therein, but with the provision that the compensation of the claims attorneys for the Confederated Tribes not be increased in excess of the fees provided in the original contract between them and the

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Confederated Tribes. This agreement was approved by the Commissioner of Indian Affairs on September 6, 1956. Subsequently in accordance with the agreement, on December 4, 1957, this Commission entered an order severing the claims in the original petitions in Dockets Nos. 175 and 180. It was ordered that the cause of action set forth in the original petitions in Nos. 175 and 180 involving the Treaty of June 9, 1863, 14 Stat. 647, be set forth in a separate petition to be given Docket No. 175-A, and is the claim in which final judgment has been entered and in which the attorneys here apply for a fee.

6. That hearings were held before the Commission on the valuation of the lands involved in Docket No. 175-A in December, 1957 and February, 1958. Proposed findings of fact and brief were filed by counsel for petitioner in May, 1958, and defendant's objections, proposed findings and brief were filed in November, 1958, and petitioner's reply thereto was filed in January, 1959. Oral argument was held on the merits of the case on June 5, 1959.

7. That on December 31, 1959, the Commission made and entered its findings of fact, opinion and an interlocutory order in said Docket No. 175-A, holding that petitioner was entitled to recover against the defendant in the amount of \$4,297,605.06, less offsets, if any.

8. That the issue of offsets was compromised by the parties for the amount of \$140,000.00, and a joint motion for entry of final judgment was filed with the Commission on June 10, 1960, based upon a stipulation for entry of final judgment in said Docket No. 175-A, with approvals attached thereto of the officials of the Indian organization representing

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the Nez Perce Tribe of Indians, petitioner in both Dockets Nos. 175-A and 180-A. The compromise of the offsets was also approved by the Solicitor, Department of Interior on June 14, 1960. That a hearing on the motion to have final judgment entered in accordance with said stipulation was held before the Indian Claims Commission on June 13, 1960, and on June 17, 1960, this Commission issued findings of fact and an opinion approving the compromise and entered final judgment in the amount of \$4,157,605.06. That the amount of the judgment was appropriated by Congress to the credit of the Indians on September 8, 1960.

9. That even though the defendant did not formally oppose the granting of said petition for attorneys' fees it did file with the Commission the views of the Department of Interior and the Bureau of Indian Affairs with respect to the subject matter of the petition, and these views have been fully considered by the Commission along with the balance of the record herein in the making of the award of attorneys' fees for services rendered herein.

10. That by resolution dated May 9, 1961, the Nez Perce Tribe of Idaho, petitioner herein, acting by and through the Nez Perce Tribal Executive Committee, consented to and approved the request of the attorneys for the tribe that they be awarded a full ten per cent of the final judgment as compensation for their services rendered in Docket No. 175-A.

11. Having considered the entire record of the claim concluded under Docket No. 175-A, and the circumstances surrounding that claim and the services of all the attorneys for petitioner, and since the Nez Perce

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Tribe is required to pay only one attorney fee for such services, the Commission now finds that a reasonable and proper attorney fee to be awarded the contract attorneys for the Nez Perce Tribe is ten per cent of the final judgment of \$4,157,605.06, or the sum of \$415,760.50, for all attorneys' services rendered on behalf of the petitioner in Docket No. 175-A, and pursuant to the contract under which said services were rendered.

IT IS THEREFORE ORDERED AND ADJUDGED that the law firm of Wilkinson, Cragun & Barker and Newton D. Simmons and Sara Simmons Hertz, heirs-at-law, and distributees of the estate of Kenneth R. L. Simmons, deceased, are hereby awarded and allowed the sum of \$415,760.50 which sum shall be in full compensation for all legal services rendered the Nez Perce Tribe of Indians in the prosecution of its said claim in Docket No. 175-A, and that said sum shall be paid out of the appropriation which the Congress has made to satisfy the final award to said Indian tribe made by this Commission on the 17th day of June, 1960.

Dated at Washington, D. C., this 30th day of April, 1962.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner