

BEFORE THE INDIAN CLAIMS COMMISSION

OTOE AND MISSOURIA TRIBE	)	
OF INDIANS,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 11-A
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

ORDER ALLOWING ATTORNEYS' FEES

Upon consideration of the petition of the attorneys for the Otoe and Missouri Tribe for an allowance of attorneys' fees upon the final judgment entered herein on April 14, 1964, in favor of the Otoe and Missouri Tribe, the defendant having had a copy of said petition served upon it and no objection thereto was entered; and hearing having been held before the Commission on July 14, 1964; and the Commission having received documentary evidence and having considered the entire record in the case, including the contracts of employment of the attorneys, finds:

1. That the petitioner, Otoe and Missouri Tribe of Indians, is also known as and has transacted business under each of the following names, to wit: Otoe - Missouri Tribe of Indians in Oklahoma; Otoe and Missouri Indians of the State of Oklahoma, and Otoe and Missouri Tribe of Indians in Oklahoma.

2. The attorney contract with the petitioner tribe which is currently in force and effect is the contract entered into with the Otoe and Missouri Tribe which was conditionally approved by the Associate

Commissioner of Indian Affairs on June 26, 1963, the conditions having been accepted by the attorney on July 1, 1963, and by the Tribe on July 9, 1963 (Bureau of Indian Affairs Symbol 14-20-0650, Contract No. 1218). Bert Barefoot, Jr., is the sole attorney party under this contract. By virtue of assignments executed by Bert Barefoot, Jr., and approved by the Bureau of Indian Affairs, Edward H. Moler, Esq., of Oklahoma City, and I. S. Weissbrodt, Abe W. Weissbrodt, and Morton Liftin, Esqs., partners of the law firm of Weissbrodt, Weissbrodt & Liftin of Washington, D. C., hold an interest in the attorney compensation under said contract.

3. Prior to the making of the aforesaid contract, services were performed in connection with the investigation and prosecution of the Tribe's claim pursuant to earlier approved attorney contracts, namely (1) a contract made by the petitioner tribe in October, 1958, with attorneys Luther Bohanon of Oklahoma City, Oklahoma, and Marvin J. Sonosky of Washington, D. C. (Bureau of Indian Affairs Contract No. 685) and (2) a contract made by petitioner tribe in 1947 with Bat Shunatona and Luther Bohanon of Oklahoma City, Oklahoma. During the period that said earlier contracts were in force, Bert Barefoot, Jr., was associated with Luther Bohanon and performed services in the prosecution of the claims under the contracts. By instrument executed September 1961 and approved by the Deputy Commissioner of Indian Affairs on June 26, 1963, Luther Bohanon assigned to Bert Barefoot, Jr., all his right, title and interest in said attorney contracts.

4. The aforesaid contracts contain provisions pertaining to attorneys' compensation which expressly made such compensation wholly contingent on a recovery for the Indians and provide that such compensation shall not exceed ten percent (10%) of the sum or sums recovered for the Indians. Section 4 of the attorney contract which is presently in force and effect contains the following provision:

"The compensation of the ATTORNEY for the services to be rendered under the terms of this contract is to be wholly contingent upon recovery for the TRIBE. The ATTORNEY shall receive such compensation as the court of tribunal awarding a recovery to the TRIBE shall determine to be equitably due the ATTORNEY or, if the matter be settled without submission to a court or tribunal resulting in a recovery for the TRIBE, as the Secretary of the Interior or his authorized representative may find to be equitably due the ATTORNEY. In no event shall the aggregate fee awarded the ATTORNEY exceed ten per centum of any and all sums recovered or procured, through efforts, in whole or in part, for the TRIBE, whether by suit, action of any department of the Government or of the Congress of the United States or otherwise, the above compensation together with any that may be due under the agreements listed in Section 1 shall not in total exceed ten per centum of any and all sums recovered for the TRIBE."

5. The claim which is the subject matter of the Commission's final judgment entered April 14, 1964, in this Docket No. 11-A was originally filed on September 2, 1947, as the "first cause of action" in the petition filed in Docket No. 11. After trial on the merits on title and other issues of liability, the Commission entered its determination dismissing said "first cause of action." Upon appeal by the attorneys for the Tribe the Court of Claims vacated this determination of the Commission and remanded the claim for further proceedings. Thereafter, upon motion made by the attorneys for the Tribe, the Commission entered an order on November 22, 1955, severing said "first cause of action" set forth in

Docket No. 11, and permitting it to be filed in a separate docket designated as Docket No. 11-A. In the further proceedings in Docket No. 11-A, additional evidence was received on title and other issues of liability.

6. On July 31, 1957, the Commission entered its Findings of Fact (Nos. 1 through 51), Opinion and Interlocutory Order applicable to each of Docket Nos. 11-A and 138. On November 29, 1957, the Commission entered its Order amending its Findings No. 49 and 50 and its Interlocutory Order issued July 31, 1957. On November 25, 1959, the Commission entered its order amending Finding No. 2. (See also Commission's per curiam opinion dated November 18, 1959, 13 Ind. Cl. Comm. 25). By these findings, as amended, orders and opinions, the Commission held that by virtue of the treaty of August 19, 1825 (7 Stat. 272) and the treaty of July 15, 1830 (7 Stat. 328), four tribes, namely the Otoe and Missouri Tribe, the Omaha Tribe, the Iowa Tribe, and the Sac and Fox Tribe received in common a certain area (being the greater part of a tract known as Royce Tract 151) located east of the Missouri River in what is now western Iowa and northwestern Missouri, and that each of said four tribes had an undivided one-fourth interest in said area. (Finding No. 2 issued July 31, 1957, as amended by Order entered November 25, 1959, and Finding No. 50 issued July 31, 1957 as amended by Order entered November 29, 1957).

7. By subparagraph (4) of its Finding No. 49 issued July 31, 1957, as amended by Order entered November 29, 1957, the Commission found that the interest of the Otoe and Missouri Tribe in that part of said area situate in northwest Missouri passed to the United States on

October 15, 1836, by cession under the treaty of October 15, 1836 (7 Stat. 524). With respect to that part of said area situate in western Iowa, the Commission found that the interest of the Otoe and Missouri Tribe passed to the United States on April 17, 1854, the date of the ratification of the treaty of March 15, 1854 (10 Stat. 1038).

8. In May 1961, a consolidated trial was held in Docket Nos. 11-A and 138 with respect to the value of the interest of each of the four said tribes in the lands involved in this case as of the dates such interest passed to the United States.

9. On March 11, 1964, the petitioner, the Otoe and Missouri Tribe, and the defendant filed a joint motion in Docket No. 11-A for approval of a proposed compromise settlement of the Otoe and Missouri claim, and for entry of final judgment, in that docket, based upon a stipulation made and executed by Bert Barefoot, Jr., Attorney of Record for the Otoe and Missouri Tribe, and Ramsey Clark, Assistant Attorney General and Ralph A. Barney, attorneys for defendant. Said stipulation provided for the entry of a final judgment in favor of the Tribe in the net amount of \$1,750,000, subject to the condition that \$150,000 of the \$1,750,000 final judgment, together with any interest which may accrue thereon, shall not be subject to disbursement for the Treasury of the United States unless and until a final determination is entered in Docket No. 332-A before the Commission, denying a certain conflicting claim of the Yankton Sioux Tribe, petitioner in said Docket No. 332-A, to compensation for land within the area (known as Royce Cession 151) lying south of the land described in Article 2 of the Treaty of August 19, 1825 (7 Stat. 272)

as found by the Commission in its order entered herein on November 25, 1959.

10. The said stipulation and the compromise settlement which it involved was approved by the Tribe; and hearing on the motion to have final judgment entered on the above described claim in accordance with the stipulation was held before the Commission; and findings of fact, opinion and final judgment in accordance with the stipulation were duly made and entered by the Commission on April 14, 1964. The said final judgment provided for the recovery by the Tribe of the net amount of \$1,750,000 subject to the condition for the withholding of \$150,000 of said \$1,750,000 as provided in the stipulation.

11. At the hearing held on July 14, 1964, on the petition of the attorneys for the Tribe for an allowance of attorneys' fees, the Commission received in evidence a certified copy of the minutes of a special meeting of the Tribal Council at which a resolution was adopted approving and consenting to the award to the attorneys of a fee of 10% of the total recovery. Said resolution provided as follows:

RESOLVED, That in recognition of the long years of faithful and diligent services of the claims attorneys, approval and consent is hereby given to the award to such attorneys in Docket No. 11-A before the Indian Claims Commission of a fee of 10% of the total recovery for their services and efforts in obtaining such recovery and,

BE IT FURTHER RESOLVED, That the Indian Claims Commission is hereby requested to approve and award to the claims attorney compensation in said amount, with the understanding that any obligations he has to other attorneys are to be paid by him out of the 10% award.

12. Having considered the entire record of the case, the Commission now finds that reasonable and proper attorneys' fees to be awarded the contract attorneys holding an interest in the fees in ten per cent (10%)

of the \$1,750,000 or the sum of \$175,000, for their services in the prosecution of said claim and pursuant to said contracts of employment executed during 1963, 1958, and 1947.

13. No approved assignment of an interest in the attorney contracts under which these proceedings were conducted appears to have been made Lynn Adams as is required by the terms of such contracts in order that an associate attorney may acquire an interest in compensation awarded under such contracts. The obligation to compensate the said Lynn Adams is, therefore, a personal obligation of the said Bert Barefoot, Jr., and not one of which this Commission may take cognizance in the present proceedings.

IT IS THEREFORE ORDERED AND ADJUDGED that Bert Barefoot, Jr., Bat Shunatona, Edward H. Moler, Marvin J. Sonošky and I. S. Weissbrodt, Abe W. Weissbrodt, and Mortin Liftin are hereby awarded the sum of \$175,000 for attorney services in the prosecution of the said claim of the Otoe and Missouri Tribe, subject to the condition that (a) \$160,000 of this amount of attorneys' fees shall be paid out of \$1,600,000 of the said final award of \$1,750,000, or out of interest which may accrue on said \$1,600,000, and that the remaining \$15,000 of the attorneys' fees shall be withheld from disbursement and payment pending the final determination (including any appeal or review as provided by law) of the conflicting claim of the Yankton Sioux Tribe, petitioner in Docket No. 332-A, to compensate for land within the area (known as Royce Cession 151) lying south of the line described in Article 2 of the Treaty of August 19,

1825 (7 Stat. 272) found by the Commission in its order entered herein on November 25, 1959; and (b) subject to the further condition that said sum of \$15,000 shall not, in any event, be disbursed and paid unless and until a final determination (including any appeal or review as provided by law) is entered in said Docket No. 332-A denying said conflicting claim of the Yankton Sioux Tribe, petitioner in Docket No. 332-A.

Dated at Washington, D. C., this 22nd day of July, 1964.

/s/ Arthur V. Watkins  
Chief Commissioner

/s/ Wm. M. Holt  
Associate Commissioner

/s/ T. Harold Scott  
Associate Commissioner