BEFORE THE INDIAN CLAIMS COMMISSION

THE CONFEDERATED BANDS OF UTE INDIANS Petitioner, v. THE UNITED STATES OF AMERICA, Defendant.	)	Docket No. 327

Decided: Aug 5 1965

FINDINGS OF FACT ON AWARD OF ATTORNEY FEE

1. The attorney of record, on behalf of the contract attorneys, has filed this petition for an award of an attorney fee for services in obtaining a judgment in the amount of $7,908,586.16 in favor of the Confederated Bands of Ute Indians. The judgment was entered on February 18, 1965, pursuant to the parties' joint stipulation for entry of judgment, 14 Ind. Cl. Comm. 679.

2. All of the contract attorneys, the law firm of Wilkinson, Cragun & Barker (formerly Wilkinson, Boyden & Cragun and Wilkinson, Boyden, Cragun & Barker), and Ernest L. Wilkinson join in the request for the award and consent to the award to the attorney of record.

3. Mr. Robert W. Barker, attorney of record, presented the application for attorney fees, and Findings 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18 contain some of the statements made by him to the Commission in his oral presentation; in the written statement filed in support of the petition; and also in suggested findings by Mr. Barker.

4. In 1935, Ernest L. Wilkinson, senior partner in the law firm of Wilkinson, Cragun & Barker, began the investigation and prosecution of the claims of the Ute Indians. At that time he was an associate of the New York City law firm then employed to investigate and prosecute all claims of the Ute Indians, the firm of Hughes, Schurman & Dwight. When in April of 1935 Mr. Wilkinson moved to Washington and opened his own office, by agreement with Hughes, Schurman & Dwight, he continued to work on the Ute claims.

In June of 1937, Hughes, Schurman & Dwight was dissolved and assigned their contracts to investigate and prosecute all of the Ute claims to Ernest L. Wilkinson.

5. In September, 1938, Ernest L. Wilkinson entered into a new contract with the Ute Indian Tribe of the Uintah and Ouray Reservation, replacing earlier contracts and requiring him to investigate and formulate any and all claims of the Tribe, or any of its bands, against the United States and to present and prosecute "any and all of said claims before the Congress of the United States, or the Court of Claims, or any Bureau, Department or Commission created by the United States, or the Supreme Court of the United States, or any other Court of /sic/ Tribunal which may have jurisdiction of the claim presented, . . ."

Paragraph 3 of this contract provided, in part, as follows:

> "In consideration of the services rendered and to be rendered under the terms of this agreement, The Attorney shall receive such compensation, which shall be wholly contingent upon recovery, as the Secretary of the Interior may find equitably due, if any matter be settled

> either in part or in whole without submission to a court or tribunal, or in the event any matter is submitted to a court or tribunal, then such sum as may be determined by said court or tribunal equitably to be due for the services theretofore rendered under this agreement, including services rendered before Committees of Congress and the Departments, but in no event shall the aggregate fee exceed ten per centum of any and all sums or of the value of all property recovered or procured for The Tribe or any Band thereof through the efforts, in whole or in part, of The Attorney and/or his predecessors, whether by suit, action or any department of the Government, or of the Congress of the United States or otherwise."

By two separate agreements entered into on the 30th day of August, 1938, one with the Southern Ute Tribe of the Southern Ute Reservation, and the other with the Ute Mountain Tribe, Ernest L. Wilkinson was employed to prosecute the claims of those two groups. Each of those contracts was approved by the Assistant Secretary of the Interior on January 17, 1939. Under each of the contracts, it was the duty of the attorney to perform the following duties:

> ". . . to investigate, formulate, and in his discretion, to present, and prosecute any and all claims . . . brought to his attention by The Tribe or discovered by himself, and to attempt to collect damages therefor from the United States or to obtain any other proper redress or relief. . . ."

Each of the latter contracts had the same provisions with respect to compensation as had been contained in the contract of the Ute Indian Tribe of the Uintah and Ouray Reservation.

As a partner in the law firm of Wilkinson, Cragun & Barker, all of Ernest L. Wilkinson's rights for fees and compensation under the aforesaid contract, so far as Docket No. 327 is concerned, inure to the law firm of

which Mr. Ernest L. Wilkinson is a partner, namely, Wilkinson, Cragun & Barker. Mr. Wilkinson has signed a joinder and consent requesting that the fee herein be awarded to Robert W. Barker, attorney of record.

After the claim which became Docket No. 327 had been fully investigated and formulated for filing under the Indian Claims Commission Act, the law firm of which Mr. Wilkinson was then a partner (Wilkinson, Boyden & Cragun - now named Wilkinson, Cragun & Barker) negotiated a new contract specifically covering the claim filed under Docket No. 327. The firm entered into contracts in July and August, 1951, with the Ute Indian Tribe, the Southern Ute Tribe and the Ute Mountain Tribe for the purpose of prosecuting the claim in Docket No. 327. Each of the three contracts provides as follows:

> "4. The compensation of The Attorneys for the services to be rendered under the terms and conditions of this contract, except as herein provided, shall be contingent upon the amount or amounts recovered for The Tribe. The Attorneys shall receive such compensation as the Commissioner of Indian Affairs may find equitably due if any claim is settled without submission to a court or other tribunal, or in the event it is submitted to a court or other tribunal, then such sum as the court or other tribunal finds to be adequate compensation in accordance with the standards obtaining for prosecuting similar contingent claims in courts of law, considering the contingent nature of the agreement, services rendered, and results obtained, but in no event shall the aggregate fee exceed ten per centum of any and all sums recovered or procured, whether by suit or settlement, of any claim asserted."

The contract with the Ute Indian Tribe of the Uintah and Ouray Reservation was entered into on July 16, 1951, and approved by Acting Commissioner of Indian Affairs, H. Rex Lee, on July 27, 1951 (Symbol I-1-ind. 42504). The contract with the Southern Ute Tribe or Band of Indians

was entered into on August 6, 1951, and approved by Mr. Lee on August 13, 1951 (Symbol I-1-ind. 42615). The contract with the Ute Mountain Tribe or Band of Indians was entered into August 7, 1951, and also approved by Mr. Lee on August 13, 1951 (Symbol I-1-ind. 42616).

The contracts have been extended from time to time and are still in force and effect with the successor law firm of Wilkinson, Cragun & Barker.

6. Unlike many Indian claims cases where suit is filed to seek redress of grievances long held by the Indians, the claim in this case was not known to the Indians until it was reported to them by the attorneys. The employment contracts required the attorneys to investigate the entire history of the Utes to ascertain and assert all of their claims. It was the attorneys, as required by those contracts, who discovered the claim in the first place. After a thorough investigation had been made of the history of the Ute Indians in Colorado, it became apparent that the Indians had been grossly underpaid for the cession of 3,776,876 acres in Colorado in 1874. Ultimately it was determined by the attorneys that the Indians had been paid only $500,000.00 (deposited in the Treasury at interest) for a large and very valuable mining district of Colorado.

7. After ascertaining the existence of a meritorious claim it was necessary to obtain a forum for the consideration of the claim. In every Congress from the 74th (1935) through the 81st (1950), and again in the 84th Congress, the attorneys were active in legislative efforts to obtain a forum. This legislative work was done on behalf of all Ute claims including Docket 327. Much time and effort was devoted by the

attorneys to the passage of the Indian Claims Commission Act. This claim could not have been prosecuted without the passage of the Act.

8. In its petition filed with the Commission on August 10, 1951, petitioner alleged in paragraph 6A as follows:

> "6A. United States Recognized Petitioners' Title to Land Involved. The lands involved in the claim asserted herein are hereinafter more fully described in paragraph 7 and contain 3,776,876 acres, more or less. Petitioners owned said property as part of an area set apart for their absolute and undisturbed use and occupation pursuant to a treaty entered into with petitioners by the United States on March 2, 1868, ratified July 25, 1868, and proclaimed November 6, 1868 (15 Stat. 619)."

In reply to said allegation the defendant in paragraph 7(b) of its answer stated the following:

> "(b) Defendant admits the allegations of paragraph 6 A, except that it denies that the area involved contains 3,776,876 acres, and alleges that the correct acreage thereof is in fact materially less."

Thus the question of title to the area involved, except as to the exact acreage, was not a contested issue in this case.

9. Through considerable effort the attorneys were able to persuade Colonel Gerald T. Hart, a well known and qualified appraiser, to accept the assignment as general appraiser, responsible for the overall planning of a large and difficult appraisal, and to arrange for the services of other qualified appraisers to assist him. The men selected were expecially experienced in Colorado land valuation.

10. Recognizing the importance of minerals in this case, the attorneys gave attention to the selection of the mineral appraisers. The attorneys sought out and obtained the services of Drs. John T. Vanderwilt and Ben H. Parker who were at that time the president and past

president, respectively, of the Colorado School of Mines. At the outset there was little known data upon which to make a mineral valuation. The exhaustive search and compilation of actual transactions in the subject area and comparable properties, possible only by experts well acquainted with the mining records and original sources on Colorado mineral properties, supplied a vast volume of data upon which a valuation could be based.

11. Much time and effort was spent by the attorneys in the actual litigation of the case. The actual trial of the case involved 9 days in Denver, Colorado, commencing on August 12, 1957, and a tenth day in Washington, D. C., on November 6, 1957. The transcript of the testimony filled 1,331 pages, and 157 exhibits were prepared and put in evidence for the petitioner. Petitioner's proposed findings, brief, objections to the defendant's proposed findings, and reply brief occupied 350 typewritten pages. The defendant's proposed findings and brief occupied 187 printed pages.

12. Of particular significance in this case is the amount of traveling that was required of the attorneys in preparing for and prosecuting the case before this Commission. The travel was done by seven attorneys for a total of 205 days and 135,000 miles.

13. In response to certain questions raised by the Commission and certain evidence added to the record by the Commission, the attorneys arranged for further factual investigations by their mineral experts and presented further evidence at another trial in Washington, D. C. This required considerable additional work on the part of counsel in investigating the matters involved, and preparing for and participating in the trial.

14. Even after the hearing, the attorneys spent much time and effort and supervised qualified specialists in attempting to locate more information concerning certain questioned transactions and events which if possible of clarification would have greatly enhanced their case. Their diligence in this search shows fidelity to their clients.

15. The attorneys negotiated a substantial reduction in the offsets asserted by the defendant against the Utes. After the Commission entered an interlocutory order in favor of the Indians for $7,992,337.16 on September 14, 1962, the defendant asserted offsets of at least $2,095,981 plus additional amounts left open that could have totaled in all $3,822,967. Through careful preparation and lengthy negotiations the attorneys were able to reduce the offsets to be deducted in this case to $83,751.00, a mere fraction of the amount first claimed in the government's amended answer. This disposition of the offsets without trial thus represented a substantial legal service to the Ute Indians.

16. Considerable time and effort was spent by the attorneys in presenting the proposed settlement to the Indians for their approval in accordance with our Omaha rule. Ten meetings were held with Indian groups--seven in Utah and three in Colorado.

17. Presentation of the settlement to the Indians was difficult because four groups of Utes had to approve the settlement and in addition to approval of releases by the Uncompahgre and White River Bands. The releases were required because the Uintah Band (not one of the Confederated Bands) was to share in the recovery pursuant to an inter-band agreement. Disputes had also arisen at the Uintah and Ouray Reservation concerning

the right of the so-called mixed-bloods, as to whom federal supervision had been terminated, to share in the judgments. These collateral disputes imposed greater burdens on the attorneys and required extreme skill in handling the meetings. The peculiar problems raised by the Uintah and Ouray Ute termination statute required the attorneys to make investigation and to hold conferences with officials of the Department of the Interior and the Department of Justice, beyond those required in the usual case, in order to assure that the settlement was presented to and approved by the groups with proper authority to act for the terminated members and the members over whom federal supervision continued.

18. Unusual problems developed as to division of the judgment among the groups composing the Confederated Bands, a necessary step under the circumstances of this case before settlement could be accomplished. It is claimed that prior agreements for division of judgments in other cases did not specifically apply to this case. Therefore, the attorneys had or assumed the additional burden of reviewing all prior action and precedents affecting the rights of the groups and division of their assets, in order to present and obtain approval of a division agreement for the judgment in this case.

19. As a result of the negotiations for a settlement of allowable offsets, mentioned in previous findings, the parties entered into a formal stipulation settling said offsets and agreeing to the terms of a final judgment to be entered, subject to the right of the parties to appeal to the Court of Claims on the question of value as determined by the Commission in its Interlocutory Order of September 14, 1962. The records of the Commission fail to disclose instruments announcing that there would be

no appeals from said interlocutory order. Under Sec. 20(b) of the Indian Claims Commission Act it is provided that an appeal can be taken,

> "(b)*** At any time within three months from the date of the filing of the determination of the Commission with the clerk ***"

Our records show that the time for appeal expired on May 18, 1965, and no appeal had been taken by either party to this case.

20. Based upon the entire record before us, the Commission finds the attorneys tried a difficult valuation case, including a reduction in offsets claimed, and recovered a substantial sum for their clients, and have earned and are entitled to the sum of $751,315.67 for their services.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner