BEFORE THE INDIAN CLAIMS COMMISSION

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

Decided: AUG 5 1965

Appearances:

Robert W. Barker and Claron C. Spencer, Attorneys for Petitioners.

W. Braxton Miller, with whom was Edwin L. Weisl, Assistant Attorney General, Attorneys for Defendant.

OPINION ON ATTORNEY FEE

PER CURIAM:

At the outset we believe it is worthy of note that the application now before us for attorney fees in Docket 327 marks the fourth case to have been successfully prosecuted for the so-called "Ute" Indians before this Commission by the petitioning firm of attorneys. Our files show that there remains only one more case to be disposed of for these Indians. Compared with the cases concluded, this last case can probably be regarded as minor in scope.

In considering these cases we have been made fully aware of the successful prosecution of four important cases for this same group of Ute Indians before the Court of Claims. We know of only one Ute case before that Court in which the attorneys were unsuccessful - whether there are other Ute cases pending there we are not informed.

The uniform success in eight cases disposed of indicates excellent service by the attorneys in behalf of their clients. This excellent preparation and presentation has been true of the four cases tried before this Commission and the Court of Claims has expressed the same opinion with respect to the attorneys' services in cases adjudicated by it.

It is evident that the Ute claims before the Court of Claims and those before this Commission have a common background, not only with respect to their origin and ownership, but also in the effort necessary to prepare the claims for prosecution and in the need for a forum or forums before which they could be prosecuted. Thus we have the same common claims for credit to some extent for background research and other services rendered in most of the eight cases disposed of. These claims seem to require us to take an overall look at the services rendered, which generally apply to all Ute claims, the sums awarded, the fees allowed, and other miscellaneous items of service which, it is urged, contributed to the successful outcome of the instant case. In addition, these previous decisions may be of some benefit as precedents.

The first case in the series was that of the Confederated Band of Ute Indians v. United States, 120 C. Cls. 609. The proceeding, when it reached the stage for the fixing of attorneys' fees consisted of Court of Claims numbers 45585, 46640, 47564, and 47566. The decision on the application for attorneys fees was made on November 6, 1951. In its findings of fact the Court declared:

> These cases were the subject of extended hearings before Commissioner W. Ney Evans of this court. Compromise

> settlements were then agreed upon between the plaintiffs and the Government, and judgments of this court were, on July 30, 1950, entered pursuant to those settlements. The total amount of the four judgments was $31,938,473.43. The cases involved the taking by the United States of more than six million acres of land, much of which contained valuable minerals. The jurisdictional act under which the cases came to this court provided that, if the plaintiffs obtained a judgment, the court should award such fees to the plaintiffs' attorney or attorneys as it thought they had earned, not to exceed ten percent of the amount of the recovery. The attorney of record had contracts with the plaintiff bands of Indians, approved by the Secretary of the Interior, providing for fees of not more than ten percent nor less than seven and one-half percent, except that in the case of one of the plaintiff bands, the contracts as to three of the cases provided for a fee of not more than ten percent but fixed no minimum percentage.

In the special Finding of Fact No. 1 it was pointed out that Ernest L. Wilkinson, attorney of record for the plaintiff bands, sought an attorney fee award of ten percent for each of the respective judgments entered and paid as follows:

Case No.	Amount of Judgments
45585	$24,445,452.29
46640	6,063,663.90
47564	625,530.76
47566	803,826.48
Totals	$31,938,473.43

These cases were all brought under a jurisdictional act. The securing of the jurisdictional act involved a great deal of work by the attorney and numerous other attorneys he employed, over a long period of time and was a very important item in fixing the attorney fee.

It was found that altogether 69 associate attorneys, including several nationally known law firms, were employed by Mr. Wilkinson, the contract attorney, to assist in the various stages of the development and prosecution of the Ute claims. Mr. Wilkinson was personally responsible for their compensation.

The Court awarded a fee of 8-3/4 percent of the recovery made, which grossed Mr. Wilkinson a fee of $2,800,000. In its explanatory statement as to why the full 10 percent request was not granted, the Court gave as one of its reasons:

> "*** we are impressed by the Government's argument that, as the cases turned out, it was not necessary for the attorney to carry them through to the last stages of litigation, though if he had been obliged to do that we could not have awarded him more than the ten percent maximum fixed by the jurisdictional act. Having, then, been relieved of a substantial amount of the work which he might have been required to perform, it is fair to reduce his compensation."

We now come to the Ute cases tried by the Commission. The first two are Docket Nos. 44 and 45. In Docket 44 we found that the Uintah Ute Indians of Utah had Indian title to a large area of land in central Utah and that the defendant was liable to the plaintiffs for the value of the lands taken. The value of the said land was to be determined in another proceeding.

With respect to Docket No. 45 we found recognized title existed in the Uintah Ute Indians of Utah to an undivided interest in lands of the Uintah and Ouray Indian Reservation and that the defendant had taken that interest without compensation. The next step would have been valuation proceedings in each of these dockets.

However, at this stage the parties effected a compromise settlement of both docket numbers for the sum of $7,700,000.00. Combined proceedings for the approval of the settlement were conducted under rules laid down in the Omaha case. Thus these cases were settled without the petitioner having to conduct difficult valuation proceedings in each docket number.

Upon application for a 10 percent attorney fee the Commission awarded a fee of $731,815.00, which is 9½ percent of the compromise settlement.

In another case, Docket No. 349, an award of $300,000.00 was made to the Ute Indian Tribe of the Uintah and Ouray Reservation on May 20, 1965, as a result of a compromise settlement. The claim was for damages suffered by the Indians because of the failure of defendant to create a reservation for the petitioner. This was a unique claim. The case was not tried on its merits, but a number of motions, including one for summary judgment, were heard, all of which were denied. Briefs were submitted on each motion. Compromise proceedings followed the pattern of the Omaha decision.

The Commission allowed an attorney fee of $30,000 or 10 percent of the award. This award is in keeping with the general practice of allowing a 10 percent fee where the award is comparatively small and where work required may be out of proportion to the maximum fee which can be allowed.

We shall not paraphrase our findings in the instant case. It is sufficient to say that these findings show that a part of the reservation which had been originally set aside by treaty between the Indians and the defendant for the Indians was ceded to the defendant in a written agreement approved by Congress. Ownership of the lands ceded was admitted to be in the petitioners by the defendant. Thus there was no issue raised on this point. Valuation proceedings were held and an interlocutory order was entered which awarded $7,992,337.16 to the petitioner subject to offsets. The matter of offsets was settled by a compromise stipulation

which resulted in a final award, subject to an appeal on the matter of value, in the sum of $7,908,586.16. The Commission based its award on the finding that the consideration paid the Ute Indians for the land cession was unconscionable.

For services rendered in this case we have found that the attorneys have earned and are entitled to a fee of $751,315.67, which is 9½ percent of the final award to their Indian clients.

The attorney fees in all these cases were substantial and we believe were fair and just compensation for the very efficient services rendered by Mr. Ernest L. Wilkinson, the original contract attorney, and the successor firm of Wilkinson, Cragun and Barker. The record shows that in the Court of Claims cases, although a large fee was awarded, Mr. Wilkinson had to pay his associate attorneys a large portion of the award. Heavy attorney expenses were incurred without doubt in the investigation and prosecution in all the other cases under discussion. But even so, the sum total of awards in this series of cases is large enough to amply reward the attorneys for services efficiently and faithfully rendered.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner