

BEFORE THE INDIAN CLAIMS COMMISSION

THE SPOKANE TRIBE OF INDIANS	)	
suing on its own behalf and on	)	
behalf of THE UPPER, MIDDLE AND	)	
LOWER BANDS OF SPOKANE INDIANS	)	
or THE UPPER SPOKANE, MIDDLE SPOKANE,	)	
or LOWER SPOKANE BAND OF INDIANS, or	)	
any one or two of them alternatively,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket Nos. 331 and 331-A
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

FINDINGS OF FACT ON AWARD  
OF ATTORNEY FEE

On April 27, 1967, the attorneys for the Spokane Tribe of Indians, petitioner in Docket Nos. 331 and 331-A, filed a petition for award of an attorney fee, together with a statement in support of the petition. The response of defendant, dated May 11, 1967, with attached letter and memorandum from the Office of the Solicitor of the Department of the Interior, has been filed with the Commission. A hearing on the application was held before the Commission on May 11, 1967, having considered the entire record in the case, including the contract of employment of the attorneys, the Commission makes the following findings of fact:

1. The final judgment in the subject cases in favor of the Spokane Tribe of Indians (hereafter the "Spokane Tribe") was entered on February 21, 1967, in the amount of \$6,700,000. The item to satisfy the judgment is included in a supplemental appropriation act which is likely to be approved by Congress and signed by the President this month. The

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judgment will then be held in the United States Treasury for the benefit of the Spokane Tribe.

2. The contract between the Spokane Tribe and Ernest L. Wilkinson, a partner in Wilkinson, Cragun & Barker, resulted from negotiations commencing in 1949. Its final execution was delayed because of some restrictive contract policies then being advocated by the Commissioner of Indian Affairs, and also by the necessity for the attorneys to investigate potential Spokane tribal claims, but it was conditionally approved by the Commissioner of Indian Affairs on April 13, 1951. Minor conditions were imposed by the Commissioner of Indian Affairs, and they were accepted by the tribe and the contract attorney. It provided for a term of ten years with a provision for extension for additional periods of two years each at the request of the attorneys.<sup>1/</sup> It has been extended by the appropriate officials of the Department of the Interior at regular intervals and is now in full force and effect.

3. As to compensation, it provides (paragraph 4, page 2):

"... The Attorney shall receive such compensation as the Commissioner of Indian Affairs may find equitably to be due, if the matter be settled without submission to a court or tribunal, or in the event it is submitted to a court of tribunal, then such sum as the court or tribunal finds to be adequate compensation in accordance with 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 ...."

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<sup>1/</sup> An assignment of the contract from Ernest L. Wilkinson to the firm of Wilkinson, Cragun & Barker was approved by the Area Director, Bureau of Indian Affairs, Portland, Oregon, on March 5, 1963.

4. The applicant in this proceeding is Glen A. Wilkinson, a partner in the firm of Wilkinson, Cragun & Barker and Attorney of Record in Docket Nos. 331 and 331-A. He seeks an award of an attorney fee on behalf of Wilkinson, Cragun & Barker. The amount of the attorney fee applied for is \$670,000, being ten percent (10%) of the final judgment of \$6,700,000.

5. The attorney fee in this case is payable to the contract attorneys, Wilkinson, Cragun & Barker. The interested partners of that firm have signed and filed with this Commission a formal request that the fee be paid to Glen A. Wilkinson.

6. By letter dated May 11, 1967, the Assistant Attorney General forwarded to the Commission a copy of a letter dated May 10, 1967, from Edward Weinberg, Deputy Solicitor, Department of the Interior, together with a copy of a memorandum dated May 5, 1967, from the Commissioner of Indian Affairs commenting on the request for fees filed herein.

The Deputy Solicitor's letter reads as follows:

"Hon. Edwin L. Weisl, Jr.  
Assistant Attorney General  
Land and Natural Resources Division  
Department of Justice  
Washington, D. C. 20530

"Dear Mr. Weisl:

"There are enclosed two copies of a memorandum dated May 5 from the Commissioner of Indian Affairs concerning the petition for award of attorneys' fee in the case entitled Spokane Tribe of Indians v. United States, Docket Nos. 331 and 331-A, before the Indian Claims Commission.

"We concur in the Commissioner's view that we do not have sufficient detailed information to make a recommendation

relative to the request of the tribal claims attorney for an allowance of a fee of \$670,000, which is 10 percent of the award granted the Spokane Tribe of Indians.

"Sincerely yours,

/s/ Edward Weinberg  
Deputy Solicitor"

The Assistant Commissioner's memorandum reads as follows:

"Memorandum

"To: Solicitor

"From: Commissioner of Indian Affairs

"Subject: Petition for award of attorneys' fee in the case of the Spokane Tribe of Indians, Dockets Nos. 331 and 331-A, before the Indian Claims Commission

"The Indian Claims Commission sent to us on April 27, pursuant to 25 CFR 503.34b(b), a copy of a petition filed by Glen A. Wilkinson, on behalf of the law firm of Wilkinson, Cragun and Barker, for allowance of an attorney fee of \$670,000.00. A member of your staff informally requested our comments on the petition.

"An award in the sum of \$6,700,000.00 was granted on February 21, 1967, to the petitioner, the Spokane Tribe of Indians, in settlement of claims in Indian Claims Commission Dockets Nos. 331 and 331-A. Funds to cover the award have not yet been appropriated by Congress.

"Authority to prosecute the case is governed by one contract. Contract No. I-1-ind. 42444, dated March 9, 1951, between the Spokane Tribe and Attorney Ernest L. Wilkinson was approved April 13, 1951, for a period of ten years beginning with the date of approval. It was extended several times, the last being for a period of one year beginning April 12, 1967.

"Association of Attorneys John W. Cragun, Glen A. Wilkinson, Robert W. Barker, Carl S. Hawkins, Francis M. Goodwin, Donald C. Gormley, and John W. Murray with Attorney Ernest L. Wilkinson was approved April 8, 1954. Association of Attorneys Lawrence Garrett, Jr. and Frances L. Horn with Attorney Ernest L.

Wilkinson was approved April 16, 1957. An assignment by Attorney Ernest L. Wilkinson of his obligations to perform duties as provided by the contract to the law firm of Wilkinson, Cragun and Barker was approved March 5, 1963.

"The contract provides that: 'The compensation of the Attorney for the services to be rendered under the terms of the contract shall be wholly contingent upon a recovery for the tribe. The Attorney shall receive such compensation as the Commissioner of Indian Affairs may find equitably to be due, if the matter be settled without submission to a court or tribunal, or in the event it is submitted to a court or tribunal, then such sum as the court or tribunal finds to be adequate compensation in accordance with standards obtaining for prosecution 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, ....'

"The Attorney requests allowance of a fee of \$670,000.00 or 10% of the final judgment of \$6,700,000.00. The Bureau did not participate in the litigation of the claims in Docket Nos. 331 and 331-A and does not have sufficient detailed information to make a recommendation as to the amount of fees earned by the Attorneys prosecuting the cases under the approved contract.

"(SGD.) ROBERT L. BENNETT  
"Commissioner"

7. All of the attorneys who have participated in the successful prosecution of these claims are lawyers of considerable experience and high standing in the field of Indian tribal claims.<sup>2/</sup>

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<sup>2/</sup> All attorneys participating in prosecution of the claims are partners and associates of Wilkinson, Cragun & Barker except for Robert D. Dellwo, Esq., a partner of Dellwo, Rudolf & Grant, Spokane, Washington, general counsel for the Spokane Tribe, who has assisted in keeping the tribal officials advised of the status of the claims as they have progressed. The late Francis M. Goodwin, formerly an Assistant Secretary of the Interior and later counsel to Wilkinson, Cragun & Barker, participated in the early stages of the litigation. Mr. Dellwo and the estate of Mr. Goodwin will share in the fee through arrangements with Wilkinson, Cragun & Barker, not as contract attorneys.

8. As indicated above, the attorneys undertook an intensive investigation of the dealings between the Spokane Tribe and the United States prior to entering into a contract to represent the Spokane Tribe. This work was done during the latter part of 1949, during 1950 and continuing until the contract to represent the Spokane Tribe was negotiated. It was determined that two claims would be filed. One is identified as Docket No. 331. This was a claim that the Spokane Tribe, prior to the Agreement of March 18, 1887, had exclusively used and occupied an area of as much as 4,000,000 acres in the east central portion of what became the State of Washington, and that said lands (excepting the present Spokane Reservation) were ceded to the United States for a consideration which was grossly inadequate and unconscionable, and that the conduct of the United States in negotiating and executing such agreement was not in accordance with fair and honorable dealings. The other is identified as Docket No. 331-A, in which a demand was made for an accounting of all lands, moneys and other properties of the Spokane Tribe, and rents, royalties, income or interest collected by the defendant, or which should have been collected by the defendant and credited to petitioner.

9. The attorneys faced and met several difficult issues in bringing Docket No. 331 to a successful conclusion. These included: (1) proof of the area used and occupied by the Spokane Tribe prior to and at the time of the Agreement of 1887; (2) whether the land involved was land occupied by all members of the Spokane Tribe and not members of Upper, Middle and Lower Bands of Spokane Indians; (3) whether the Spokane Tribe

in 1887 was a single entity with a central government; (4) whether Indian title was compensable; and (5) whether areas which the Spokane Tribe claimed it occupied were occupied exclusive of the use or occupancy by neighboring tribes. All of these issues were resolved favorably for the Spokane Tribe.

10. The trial on the issue of title was completed in 1955. After a period of proposed findings and briefing, the Commission issued an order and opinion on August 17, 1961. The Spokane Tribe moved for rehearing on three issues: (1) the area which the Commission found was occupied by the Spokane Tribe was too limited; (2) any award should be made on behalf of the Spokane Tribe as presently constituted, not as it existed in 1887 or 1892; and (3) the date of taking was July 13, 1892.

11. The attorneys were successful in persuading the Commission to reverse itself on only one point - to indicate that the taking date was July 13, 1892. An appeal to the United States Court of Claims was undertaken. It resulted in an opinion by the Court of Claims that the judgment should go to the Spokane Tribe, and that the Spokane Tribe had occupied an area somewhat larger than indicated by this Commission.

12. While the Spokane appeal was pending before the Court of Claims, the attorneys became aware that the so-called "descendancy" issue was involved in Minnesota Chippewa Tribe v. United States, then pending on appeal before the Court of Claims.<sup>3/</sup> In order to protect their client, the Spokane Tribe, the attorneys prepared and filed a brief amicus

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<sup>3/</sup> 161 C. Cls. 258

curiae in the Minnesota Chippewa case. The Court of Claims adopted the legal position advanced by the attorneys and the issue was decided favorably to the tribe in that case. This paved the way to a ruling in favor of the Spokane Tribe on this issue by the Court of Claims.

13. There had been sporadic settlement conferences between attorneys for both parties even prior to the determination by the Court of Claims. These conferences were intensified thereafter. As usual in cases of this type, the parties had vastly differing views as to the value of the case, and many conferences were required.

14. Docket No. 331-A was the other claim filed on behalf of the Spokane Tribe. It was an accounting claim, a demand for an accounting of all lands, moneys and other property of the Spokane Tribe, and rents, royalties, income or interest collected by the United States, or which should have been collected by the United States and credited to petitioner. When negotiations on settlement were proceeding with respect to Docket No. 331, attorneys for the United States requested that consideration be given to Docket No. 331-A for settlement purposes so that it might be possible to arrange a package settlement of both Spokane claims. Attorneys for the Spokane Tribe and the United States cooperated in expediting preparation of General Accounting Office and Department of the Interior material as a basis to aid in the analysis. This made it possible to reach agreement on a settlement figure of \$6,700,000 for both cases.

15. The attorneys were also responsible for reaching agreement with attorneys for the United States whereby the total offsets asserted

(in excess of \$200,000) were settled for \$60,000, and it was agreed that consideration expended by the United States pursuant to the Agreement of 1887 totalled \$127,000. These figures were agreed upon fairly early in the negotiation process.

16. Following the agreement of counsel, the attorneys undertook to present the proposal to the tribe, received its acceptance of the offer, presented it to the Secretary of the Interior, received approval of his authorized representative, and then made a presentation before this Commission. The Commission approved the settlement by issuance of an order, findings and opinion dated February 21, 1967.

17. We find that the attorneys for the Spokane Tribe, with respect to Docket Nos. 331 and 331-A, undertook serious responsibilities in complex litigation, that they achieved results which were extremely beneficial to the tribe, that they have rendered services for approximately 17 years without the payment of any compensation, that they have been burdened with unusual administrative responsibilities in addition to the litigation, that they have advanced fairly sizeable sums of money for the convenience of their client, and that all of this was done under a contract which made the payment of compensation entirely contingent.

Considering the record as a whole, the Commission finds that the contract attorneys should be awarded, and they are hereby awarded,

a fee of \$670,000, to be paid to Glen A. Wilkinson, attorney of record,  
in accordance with the request and consent of all the contract attorneys.

Arthur V. Watkins  
Commissioner

Wm. M. Holt  
Commissioner

T. Harold Scott  
Commissioner