

BEFORE THE INDIAN CLAIMS COMMISSION

SHOSHONE-BANNOCK TRIBES, Fort Hall, Idaho,)	Docket Nos. 326-D, 326-E, 326-F, 326-G
)	
SHOSHONE TRIBE, represented by the Shoshone Tribe of Indians of the Wind River Reservation and the Shoshone-Bannock Tribes, Fort Hall, Idaho,)	Docket No. 326-H
)	
THE BANNACK TRIBE, on the relation of and represented by Russell Pokibro, a member of said Bannack Tribe,)	Docket No. 366
)	
SHOSHONE NATION OR TRIBE OF INDIANS, on the relation of and represented by Edward Queep Boyer, Joseph "Frank" Thorpe, Jr., and Jeannette Pocatello Lewis, members of the Shoshone Nation or Tribe of Indians,)	Docket No. 367
)	Consolidated
)	
Petitioners,)	
)	
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: July 24, 1968

FINDINGS OF FACT ON AWARD OF ATTORNEYS' FEES

On May 7, 1968, attorneys for the petitioners, various tribes, bands and groups of Shoshone and Bannock Indians, in the above-mentioned dockets, filed an application for allowance of attorneys' fees, together with affidavits relative to the services of the respective attorneys involved. The affidavits were made by Robert W. Barker, a partner in the firm of Wilkinson, Cragun & Barker, and George W. Becker, attorney for the Estate of George M. Tunison, deceased, former Attorney of Record for the Shoshone Tribe of Wind River, Wyoming. The response of defendant, dated February 17, 1967, with

attached letter and memorandum from the Office of the Solicitor of the Department of the Interior, was filed with the Commission. After due notice, a hearing on the application was held before the Commission on June 10, 1968. The Commission having considered the entire record in the case, including the contracts of employment of the attorneys, makes the following findings of fact:

1. The final judgment in these consolidated cases in favor of the Shoshone-Bannock Tribes, the Shoshone Tribe, the Bannack Tribe, and the Shoshone Nation or Tribe of Indians (hereinafter called the "Shoshone"), was entered on February 13, 1968, in the amount of \$15,700,000.00. (See 19 Ind. Cl. Comm. 3).

2. The Indian Claims Commission Act (60 Stat. 1049), under which the claim in this case was prosecuted, contains the following provisions pertaining to the allowance of attorneys' fees:

"Sec. 15 The fees of such attorney or attorneys for all services rendered in prosecuting the claim in question, whether before the Commission or otherwise, shall, unless the amount of such fees is stipulated in the approved contract between the attorney or attorneys and the claimant, be fixed by the Commission in such amount as the Commission, in accordance with standards obtaining for prosecuting similar contingent claims in courts of law, finds to be adequate compensation for services rendered and results obtained, considering the contingent nature of the case,; but the amount so fixed by the Commission, exclusive of reimbursements for actual expenses, shall not exceed 10 per centum of the amount recovered in any case." (p. 1053).

3. The attorneys' contracts are with four Indian groups:
- a. Northwestern Bands of Shoshone Indians;
 - b. Shoshone-Bannock Tribes, Fort Hall, Idaho;
 - c. Shoshone Tribe of Wind River Reservation, Wyoming; and
 - d. Four individual representatives of the Shoshone Tribe or Nation and the Bannack Tribe.

The contracts with the Northwestern Bands were entered into by Ernest L. Wilkinson and Joseph C. Chez and the law firm of Wilkinson, Cragun & Barker. Mr. Wilkinson assigned his interest to his law firm. Mr. Chez died on November 23, 1961. His widow, Jessie M. Chez, and his only other heirs and next of kin, Miriam Ray, Paul S. Chez, Richard Chez and Fred L. Chez, joined in the petition and consented to the award of the fees herein to Robert W. Barker, the Attorney of Record.

The contracts with the Shoshone-Bannock were by Ernest L. Wilkinson and Wilkinson, Cragun & Barker. Mr. Wilkinson assigned his interest to his law firm.

One contract with the Shoshone Tribe of the Wind River Reservation was by George M. Tunison, who died on December 3, 1964. The law firm of Wilkinson, Cragun & Barker thereafter entered into contracts with the Shoshone Tribe of the Wind River to complete the litigation for that Tribe. Compensation under the Tunison contract, but not the contract of the firm, was subject to deduction for certain payments made to Mr. Tunison during his lifetime.

Both the law firm; the Administratrix, C.T.A. of the Estate of George M. Tunison, Miss Nellie Manoli; and all the heirs and next of kin of Joseph C. Chez, namely Mrs. Jessie M. Chez, Miriam Ray, Paul S. Chez, Richard B. Chez, and Fred L. Chez, have joined in the application for the award of attorneys' fees, herein, and consented to the award being made to Robert W. Barker, the Attorney of Record, herein.

4. The applicant in this proceeding is Robert W. Barker, a partner in the firm of Wilkinson, Cragun & Barker and Attorney of Record in each of the above-mentioned dockets. He seeks an award of attorneys' fees on behalf of the Wilkinson, Cragun & Barker law firm, the Estate of George M. Tunison,

and the surviving heirs of Joseph C. Chez, deceased. The amount of the attorneys' fees for which they apply is \$1,570,000.00, less \$4,918.21, or a net fee award of \$1,565,081.79. This is based on ten per cent of the final judgment of \$15,700,000.00, less certain unreimbursed amounts paid periodically to Mr. Tunison under his contract as annual payments, which by the terms of the applicable contract are to be deducted from the fees awarded herein.

5. Any attorneys' fees in this case are payable to the following for the contract attorneys: Wilkinson, Cragun & Barker; Nellie Manoli, Administratrix with the Will annexed of the Estate of George M. Tunison; and Jessie M. Chez, Miriam Ray, Paul S. Chez, Richard B. Chez, and Fred L. Chez, heirs and next of kin of Joseph C. Chez, deceased. However, all interested parties have signed and filed with this Commission a formal request that the attorneys' fees in this case be paid to Robert W. Barker, the present attorney of Record.

6. The Shoshone Tribe of the Wind River Reservation engaged the services of George M. Tunison by contract dated July 10, 1947, which was approved on February 17, 1948, as Contract No. I-1-ind. 18374. Under that contract and a prior contract, No. I-1-ind. 12629, Mr. Tunison was paid \$36,095.19, according to a letter dated May 22, 1968, from the Deputy Assistant Commissioner of Indian Affairs to Wilkinson, Cragun & Barker, an exhibit in this proceeding. That letter stated, in part, as follows:

"Section 10 of claims contract No. I-1-ind. 18374, between the Shoshone Tribe of the Wind River Reservation and Attorney George M. Tunison provides for deduction of the amounts paid for his general counsel services from fees found due the Attorney for his services as claims counsel.

"The Indian Claims Commission allowed an attorneys' fee of \$43,301.00 on August 20, 1956, for services rendered in prosecution of Docket numbered 63. By Agreement, as stated on page 8 of your petition for fees filed in Docket Numbered 63, 72 percent of the fee was for the Tunison estate, 5 percent for the Kappler estate, and 23 percent for your firm. Accordingly, of the fee allowed, \$31,176.98 would be for the Tunison estate and the balance amounting to \$12,124.02 would be for your firm and the Kappler estate.

"Our ledger sheets for the fund '14X7145 Consolidated Funds, Shoshone Indians (General - Tribal Budget)' show a withdrawal of \$12,124.02 on October 6, 1958. No record was found of a withdrawal of \$31,176.98. We can reasonably assume that the reimbursement of \$31,176.98 as provided in Attorney Tunison's contract has been effected by the uncomplicated procedure of making no payment to the Tunison estate from the fund and eliminating the need for the estate to then repay the same amount to the Shoshone Indians of the Wind River Reservation. Thus, of the amount paid to Attorney Tunison for his general counsel services, there remains \$4,918.21 to be reimbursed to satisfy in full Section 10 of the contract No. I-1-ind. 18374."

The sum of \$4,918.21 remains due to the Shoshone Tribe of the Wind River Reservation, Wyoming, in satisfaction of Mr. Tunison's obligation under his contracts. That amount is to be deducted from the award made herein and credited to the Shoshone Tribe of the Wind River Reservation, Wyoming.

7. The details of the attorneys' contracts are summarized as follows:

Northwestern Shoshone Contracts

- (a) Chez-Wilkinson Contract of August 31, 1942.

An agreement (Contract No. I-1-ind. 18305), dated August 31, 1942, was entered into by Enos G. Pubigee, Jim J. Nieman and Hazel Timbimboo, acting for the Northwestern Bands of Shoshone Indians, and Ernest L. Wilkinson and Joseph Chez. It was for a 10-year term beginning on approval by the Secretary of the Interior. The contract was approved by the Assistant Commissioner of Indian Affairs on February 2, 1943, and by the Assistant Secretary of the Interior on February 19, 1943. This contract provided, in part:

"It shall be the duty of the said attorney to advise and represent the said tribe of Indians in connection with properly investigating, formulating and prosecuting any and all claims of said Indians against the United States including the claims authorized to be prosecuted against the United States under and by virtue of the Act of February 8, 1929 (45 Stat. 1407), entitled: 'An Act conferring jurisdiction upon the Court of Claims to hear, adjudicate, and render judgment in claims which the Northwestern Bands of Shoshone Indians may have against the United States.'"

The contract required duties before the courts, departments, Congress and other officers. With respect to compensation, it provided:

"It is agreed that the compensation of the parties of the second part [the attorneys] for the services to be rendered under the terms of this contract is to be wholly contingent upon a recovery for the Tribe. The parties of the second part shall receive such compensation as the Secretary of the Interior 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 said 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 contract, but in no event shall the aggregate fee exceed ten per centum of any and all sums recovered or procured, through efforts, in whole or in part, for the said Indians,"

(b) October 1, 1956, Wilkinson, Cragun & Barker Contract.

An agreement (Symbol 14-20-650, No. 473), dated October 1, 1956, was entered into by Frank L. Timbimboo and Melvin Alex, acting for the Northwestern Bands of Shoshone Indians, and Ernest L. Wilkinson, a partner in the firm of Wilkinson, Cragun, Barker and Hawkins. This contract, upon approval by the Commissioner of Indian Affairs, was effective February 20, 1953, for a 10-year term. It was approved by the Commissioner on May 9, 1957.

This contract specifically recognized the prior services of Mr. Wilkinson and his associates in prosecuting the prior case (M-107) in the Court of Claims and the Supreme Court. It required the attorneys to investigate, formulate, present and prosecute "any and all claims relative to its [Northwestern Bands of Shoshone] lands, or growing out of, or in reference to, annuities, installments or other monies, claims, demands, or things under law or treaties. . . ."

With respect to compensation and expenses, the contract, as entered into by the Indians and the attorneys, provided:

"7. In consideration of the services to be rendered under the terms of this agreement and for the services heretofore performed, as above recited, by said attorney and his associates, the party of the second part shall receive as compensation, which shall be wholly contingent upon recovery, such sum or sums as the Commissioner of Indian Affairs may find equitably due on a quantum meruit basis, if

any matter be settled without submission to a court, commission or other tribunal; or in the event any matter is submitted to a court, commission or other tribunal then such sum or sums as may be determined by said court, Commission or tribunal equitably to be due on a quantum meruit basis, for the services rendered under this agreement, but in no event shall the aggregate fee be less than eight per centum (8%) nor more than ten per centum (10%) of any and all sums or of the value of all property recovered or procured for the party of the first part or any band thereof through the efforts, in whole or in part, of the party of the second part and his associates, whether by suit, action of any commission or department of the government, or of the Congress of the United States, or otherwise."

At the time this contract was presented to the Commissioner of Indian Affairs for approval, he adopted a policy of approving no fixed percentage fee contracts in claims cases. The Commissioner, by letter of May 9, 1957, revised in part by letter of October 25, 1957, conditioned his approval of the contract to provide, among other things:

1. The fee should be entirely contingent, not to exceed 10% of recovery, to be fixed by the Indian Claims Commission.
2. The Indian Claims Commission should determine whether expenses in the prior Court of Claims and Supreme Court proceedings be reimbursed under the contract.

In disposing of the request of the attorneys for reconsideration of these limitations on the contract, the Commissioner, in his October 25, 1957, letter, stated:

"You object to Condition No. 3, which provides that the fee shall not exceed 10% of the amount recovered instead of being at not less than 8% nor more than 10% of the amount recovered. . . . I have further considered this matter and believe that the Indian Claims Commission should determine the fees due the attorneys. Therefore, I have included in the endorsement of approval a condition that the fees will be determined by the Indian Claims Commission in an amount not exceeding 10% of the recovery."

(c) April 29, 1963, Extension and Assignment.

By agreement, dated April 29, 1963 (approved September 13, 1963), Contract Symbol 14-20-650, No. 473, was assigned by Ernest L. Wilkinson to the firm and extended, without other change, for an additional 5-year period from and after February 20, 1963.

(d) February 20, 1968, Extension. This agreement was further extended for a period of two years from February 20, 1968, by the authorized representative of the Secretary of the Interior on March 1, 1968.

Shoshone-Bannock Contracts

(a) November 1, 1935. The first contract with the Shoshone-Bannock Tribes of Fort Hall, Idaho, was entered into by the law firm of Moyle & Wilkinson, of which Dr. Ernest L. Wilkinson was a partner (Symbol I-I-ind. Contract No. 12601). It was entered into by Willie George, Phillip E. Lavatta, and Ralph Dixey, for the Tribes, and Ernest L. Wilkinson, acting for his firm. The contract was for a term of ten years from date of its approval by the Secretary of the Interior. It was approved on January 7, 1937, by the Commissioner of Indian Affairs and on January 11, 1937, by the Assistant Secretary of the Interior.

This contract required the attorneys to investigate and formulate any and all claims of the Tribes against the United States, relative to their lands or monies. The following provision governed compensation:

"4. In consideration of the services to be rendered under the terms of this agreement, The Attorneys shall receive such compensation as the Secretary of the Interior may find equitably 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 may be determined by said court or tribunal equitably to be due for the services theretofore rendered under this agreement, 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 through the efforts, in whole or in part, of The Attorneys, whether by suit, action of any department of the Government or of the Congress of the United States, or otherwise."

The authorizing resolution of this contract inadvertently referred solely to the Bannock Tribe, instead of the Shoshone-Bannock Tribes. As a result, a correcting resolution of the General Council of the Shoshone-Bannock Tribes was adopted on September 13, 1938.

(b) February 11, 1947, Contract. The Shoshone-Bannock Tribes, acting through La Salle Pocatello, entered into a contract with Ernest L. Wilkinson on February 11, 1947, effective January 11, 1947, for a period of ten years (Symbol No. I-1-ind. 18348). It was approved by the Acting Commissioner of Indian Affairs on April 23, 1947. This contract recognized the prior services under the 1935 contract in Docket M-107, Northwestern Bands of Shoshone Indians, v. United States. The contract provided as follows:

"3. 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 on a quantum meruit basis, if any matter be settled either in part or in whole without submission to a court, commission or other tribunal, or in the event any matter is submitted to a court, commission or other tribunal, then such sum as may be determined by said court, commission or tribunal equitably to be due on a quantum meruit basis, for the services theretofore rendered under this agreement, and the prior agreement dated the 1st day of September, 1935, between the Shoshone and Bannock Tribe of Indians and the firm of Moyle & Wilkinson including without limitation services rendered in prosecuting the case entitled 'Northwestern Band of Shoshone Indians v. United States' in the Court of Claims and the Supreme Court of the United States and in obtaining the passage by Congress of the Indian Claims Commission Act, approved on August 13, 1946, but in no event shall the aggregate fee be less than seven nor more than 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 his associates, whether by suit, action or any Commission or department of the Government, or of the Congress of the United States or otherwise."

(c) Amendment and Extension of January 10, 1962. An agreement entered into on behalf of the Tribes by Edward Boyer and John Pokibro, and the firm extended the contract to January 10, 1967. It was approved by the Deputy Solicitor on September 10, 1962. Ernest L. Wilkinson also assigned his interest to the firm by this agreement.

(d) Extensions of December 16, 1967. The original claim, Docket No. 326, having been divided into separate dockets, on December 16, 1967, the Shoshone-Bannock Tribes adopted a resolution to extend for an additional five years the previous contract with the firm, in each of the separate cases. Pursuant to that authority, at a later date, the following contracts were entered into:

<u>Docket No.</u>	<u>Contract No.</u>
326-C	14-20-0500-2837
326-D	14-20-0500-2842
326-E	14-20-0500-2841
326-F	14-20-0500-2843
326-G	14-20-0500-2844
326-H	14-20-0500-2839
326-I	14-20-0500-2838
366	14-20-0500-2840

Each of these contracts was approved on October 11, 1967, by the Portland Area Director, Bureau of Indian Affairs, under delegated authority, for a period of five years after January 10, 1967, and was subject to extension by the authorized representative of the Secretary of the Interior for additional two-year periods until the case concerned is concluded. Each of the contracts provided for a continuation of the services of the firm as attorneys in the respective cases. All, except the contract applicable to the Shoshone Tribe aboriginal title claim (Docket No. 326-H), contain the following provisions with respect to compensation and reimbursement of expenses:

"3. In consideration of the services rendered and to be rendered under the terms of this Agreement, the Attorneys shall receive such compensation, which shall be wholly contingent upon recovery, as the Indian Claims Commission or other tribunal shall determine equitably to be due on a quantum meruit basis, for the services rendered under this Agreement (including the Agreement of February 11, 1947, as extended), but in no event shall the aggregate fee be less than seven nor more than ten per centum of any and all sums or of the value of all property recovered or procured for the Tribes, or any Band thereof, through the efforts, in whole or in part, of the Attorneys and their associates, whether by suit, action of any commission or department of the government, or of the Congress of the United States or otherwise."

Docket No. 326-H dealt with the Shoshone Tribe aboriginal possession claim (described in Finding No. 20 of the decision of the Commission entered on October 16, 1962, 11 Ind. Cl. Comm. 387, 412). The contract specifically recognized that in 1935 Ernest L. Wilkinson began rendering services to the Tribe in investigating, prosecuting and formulating their claims against the United States; that as a result of the investigation he had prosecuted the case of the Northwestern Bands of Shoshone Indians v. United States, in the United States Court of Claims (Docket M-107), and in the Supreme Court of the United States, as a test case for all of the various bands of Shoshone and Bannock Indians, having lost the case in the Supreme Court by a five-to-four decision, that he had sought a jurisdictional act to provide a forum for the prosecution of the other claims of the Tribes against the United States, culminating in the enactment of the Indian Claims Commission Act; that the con-

tinuation of those services had resulted in the prosecution of Docket No. 326 before the Indian Claims Commission and the entry of Finding No. 20 by the Commission. The contract recognized that the firm of Wilkinson, Cragun & Barker had assisted Dr. Wilkinson in his services and that the previous Wilkinson contracts had been assigned to the firm. Under these circumstances, specific recognition of these prior services was given in the contract, which provided, in part, as follows:

"3. In consideration of the services rendered and to be rendered under the terms of this Agreement, the Attorneys shall receive such compensation, which shall be wholly contingent upon recovery, as the Indian Claims Commission or other tribunal shall determine equitably to be due on a quantum meruit basis, for the services rendered under this Agreement (including the Agreement of February 11, 1947, as extended) and the prior Agreement dated the 1st day of September, 1935, between the Shoshone and Bannock Tribes of Indians and the firm of Moyle and Wilkinson, including, without limitation, services rendered in prosecuting the case entitled: Northwestern Bands of Shoshone Indians v. United States, in the Court of Claims and the Supreme Court of the United States, and in obtaining the passage by Congress of the Indian Claims Commission Act, approved on August 13, 1945, but in no event shall the aggregate fee be less than seven nor more than ten per centum of any and all sums or of the value of all property recovered or procured for the Tribes, or any Band thereof, through the efforts, in whole or in part, of the Attorneys and their associates, whether by suit, action of any commission or department of the government, or of the Congress of the United States or otherwise."

Shoshone Tribe of Wind River Reservation,
Wyoming, Contracts (Eastern Shoshone)

(a) Tunison Contract of July 10, 1947. As indicated in the affidavit of George W. Becker, filed herein, Mr. Tunison had rendered services under a prior contract for the Shoshone Tribe of the Wind River Reservation, Wyoming, resulting in a judgment in the Court of Claims, affirmed in the Supreme Court. On July 10, 1947, he entered into a new contract with the Shoshone Tribe of Indians of the Wind River Reservation, Wyoming, which authorized him to investigate claims of the Shoshone Indians and prosecute them under the Indian Claims Commission Act. That contract, Symbol I-1-ind. 18374, was duly approved by the Acting Commissioner of Indian Affairs on February 17, 1948. The contract was for a five-year term and could be extended for additional periods by the Secretary. The Tunison contract was in full force and effect on the date of his death, December 3, 1954.

Mr. Tunison's contract contained the following provisions with respect to compensation:

"4. In consideration of the services to be performed by the attorney, he shall receive a fee of ten per cent of any judgment or amount recovered. Said fee shall be paid out of the judgment or amount recovered. The attorney shall also be allowed and reimbursed from tribal funds standing to the credit of the tribe in the Treasury of the United States, such actual expenses as are necessary and proper in connection with the duties to be performed

by the attorney, including traveling, subsistence, telegraph and telephone, printing of briefs, court costs and proceedings, certified copies of records, witness fees, and other similar matters. PROVIDED: That all such expenditures shall be itemized and verified by the attorney, and shall be accompanied by proper vouchers, and shall be paid only upon approval of the Tribal Business Council and the Secretary of the Interior, or officer designated by him.

* * * * *

"10. This contract is supplemental to the existing contract between the tribe and the attorney. Any amounts which the tribe may pay the attorney under the existing contract and extensions thereof, from the time of the approval of this supplemental contract, shall be deducted from any amount which may become payable to the attorney under the ten per cent contingent compensation provided in this contract."

(b) Wilkinson, Cragun & Barker Contract. Following the death of Mr. Tunison, the Shoshone Tribe of the Wind River Reservation, Wyoming, entered into a contract, dated January 26, 1955, with Wilkinson, Boyden, Cragun & Barker (now Wilkinson, Cragun & Barker). This contract, approved April 1, 1955, by the Commissioner of Indian Affairs is Symbol 14-20-650, Contract No. 240. The contract was for a 5-year period, commencing January 26, 1955. Provision was made for its extension by the Commissioner of Indian Affairs upon the request of the attorneys and resolution of the Business Council of the Tribe. The claims filed under the contract had not been concluded. The contract was extended on July 30, 1959, by the Assistant Commissioner of Indian Affairs; on August 13, 1959, by the Commissioner; on June 1, 1962, by the Deputy Solicitor; on October 30, 1963, by the Acting Area Director, Billings Area Office, Bureau of Indian Affairs; by the Area

Director, Billings Area Office on December 15, 1965; and on February 9, 1968, by the Area Director. The contract is still in force and effect.

The provisions of the contract dealing with compensation are as follows:

"4. In consideration of the services rendered by The Attorneys with respect to the matters contemplated herein, The Attorneys shall receive such compensation, which shall be wholly contingent upon recovery, as the Commissioner of Indian Affairs may find equitably due, if the matter be 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 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, the services rendered and results obtained, but in no event shall the fee exceed ten percent (10%) of any and all sums recovered or procured, through the efforts of The Attorneys in whole or in part, for The Tribe, whether by suit, action of any department of the government or by Congress of the United States, or otherwise. The agreement for compensation herein referred to is subject to the just claims for services of claims' attorneys earlier engaged by The Tribe, it being the desire of The Tribe and The Attorneys that the Estate of the late George M. Tunison, Omaha, Nebraska, and that of the late Charles J. Kappler, of Washington, D. C., as interest may appear, shall be compensated in the event of recovery for work done for The Tribe on the claims identified as Docket Nos. 63, 157 and 326 before the Indian Claims Commission, from any compensation received from recovery in those claims. It is agreed that the said Estates shall receive such compensation as the Commissioner of Indian Affairs may find equitably due, if the matter be settled at any time before judgment in any of the said claims, or in the event a judgment is rendered pursuant to a ruling of court or other tribunal, then the said Estate shall be compensated in such sum as the court or tribunal finds to be adequate compensation for the services rendered prior to their deaths, respectively. In the event the Commissioner or the court or tribunal, respectively, shall refuse to determine the sums due, then the claims of the respective Estates shall be determined by any court of competent jurisdiction."

Other Contracts

By an agreement, dated August 11, 1951, Ernest L. Wilkinson entered into a contract with Edward Queep Boyer, Joseph "Frank" Thorpe, Jr., and Jeannette Pocatello Lewis, members of the Shoshone Tribe or Nation of Indians, and Russell Pokibro, a member of the Bannack Tribe of Indians. This contract was for the purpose of retaining Dr. Wilkinson and his associates to represent the named individuals in a representative capacity on behalf of the Shoshone Tribe or Nation and the Bannack Tribe. This contract was duly approved by the Acting Commissioner of Indian Affairs on August 13, 1951, and bears symbol I-1-ind.42618. The contract was for a 10-year period, commencing August 11, 1951. The contract provided for a quantum meruit fee of not to exceed ten per cent (10%) of the recovery and provided for reimbursement of expenses. In view of the decision of the Indian Claims Commission that the organized groups had authority to present the claims concerned, this contract was never renewed.

8. The seven cases involved in this settlement are each complicated and important claims. Five of the claims deal with the Shoshone-Bannock Tribes, Fort Hall Reservation, Idaho, suing on behalf of those Tribes or on behalf of their constituent members. Two of the claims are alternative statements of the aboriginal title claim found by the Commission to belong to the Shoshone Tribe. In the settlement, the petitioners attributed \$500,000.00 to the five Fort Hall claims and \$15,200,000.00 to the aboriginal title claim of the Shoshone Tribe. The nature of the claims are briefly summarized:

(a) Docket No. 326-D. This was a claim by the Shoshone-Bannock Tribes for the negligent or wrongful use of \$99,320.80 of the Tribes' interest-bearing funds for an irrigation project and for the failure of the United States to recoup or reimburse the Tribes these funds. The Tribes contended that the use of the funds for the irrigation project, under all of the circumstances, was improvident, that interest-bearing funds should not have been used for this purpose; that the funds should have been recovered for the Indians, but were not.

(b) Docket No. 326-E was a claim for additional compensation for the cession by the Tribes in 1898 of approximately 406,864 acres of Fort Hall land for \$525,000.00. Petitioners claimed that this consideration was unconscionably low.

(c) Docket No. 326-F was another unconscionable consideration claim. It involved a cession by the Tribes in 1889 of approximately 297,000 acres of Fort Hall land for \$120,000.00, which the Tribes claimed was grossly inadequate.

(d) Docket No. 326-G was a claim by the Tribes on behalf of the Bannack Tribe for the failure of the United States to provide the Bannack with a reservation as allegedly promised by the Treaty of July 13, 1868, ratified February 16, 1869 (15 Stat. 673).

(e) Docket No. 366 was a claim on behalf of the Bannack Tribe, pleaded individually by representatives of the Tribe, as an alternative pleading, as a precaution in the event Docket No. 326-G should prove to be erroneously or inadequately pleaded.

(f) Docket No. 326-H. This was the aboriginal title claim involving several groups of Shoshone and Bannock Indians. As originally pleaded, in an alternative manner, it embraced claims to a vast area of land in Wyoming, Colorado, southern Idaho, northern Utah, central Nevada, and eastern California. After hearing, the Commission determined that the claim involved in this settlement belonged to the Shoshone Tribe, composed of Indians in Wyoming, Idaho, Utah and Nevada, under Chief Washakie. The acreage involved in the area awarded by the Commission was approximately 38,300,000 acres, lying in western Wyoming, a small portion of northwestern Colorado, northern Utah, northeastern Nevada, and southern Idaho.

(g) Docket No. 367 was an alternative statement of the aboriginal title claim of the Shoshone Nation or Tribe brought by three individual representatives of the Tribe to protect it in the event Docket No. 326-H should prove to be inaccurately or insufficiently pleaded. As a result of the ultimate decision by the Commission, it became a duplicate of No. 326-H.

9. The aboriginal title claim of the Shoshone Tribe has a long history of litigation. After obtaining a special jurisdictional act, counsel tried the case before the Court of Claims. An adverse decision under the jurisdictional act (100 C. Cls. 455 (1944)) was affirmed by the Supreme Court of the United States (324 U.S. 335 (1945)) by a divided five-to-four decision. A motion for a rehearing was denied by the Supreme Court (324 U.S. 890 (1945)). A later motion to recall and amend the mandate and for other special relief was denied by the Supreme Court (325 U.S. 840 (1945)). After the enactment of the Indian Claims Commission Act, the case was presented to this Commission under that special jurisdictional legislation. After trial on the

issue of title, the Commission determined that the Shoshone Tribe exclusively used and occupied a substantial tract of land (11 Ind. Cl. Comm. 387 (1962)).

10. No trial was held before the Commission in Docket Nos. 326-D, 326-E, 326-F, 326-G and 367. However, counsel made extensive investigation of those claims, had substantially prepared them for trial, had employed appraisers in Docket Nos. 326-E and 326-F and supervised their work, had investigated the background of the irrigation project and the funds involved in Docket No. 326-D, and had made an extensive investigation of the factors pertaining to the Bannack Reservation involved in Docket Nos. 326-G and 366.

11. As a result of extensive investigation, study and negotiation, the parties entered into a stipulation for settlement of the seven cases and a compromise settlement thereof, for a consolidated final judgment in the amount of \$15,700,000.00, was approved by the Commission on February 13, 1968 (19 Ind. Cl. Comm. 3).

12. By a letter, dated May 31, 1968, the Deputy Solicitor of the Department of the Interior advised the Honorable Clyde O. Martz, Assistant Attorney General, Land and Natural Resources Division, Department of Justice, that the Department did not have enough information to have an opinion concerning the amount of fees earned by the attorneys. That letter enclosed a memorandum from the Commissioner of Indian Affairs to the Solicitor of the Department of the Interior which reads, as follows:

"The Indian Claims Commission sent to us on May 9, 1968, pursuant to 25 CFR 503.34b(b), copies of a petition for allowance of attorneys' fees in the

amount of \$1,570,000.00 for prosecution of the case of the Shoshone and Bannock Indians, Dockets numbered 326-D, 326-E, 326-F, 326-G, 326-H, 366, and 367 (Consolidated). A member of your staff informally requested our comments on the petition.

"The claims in the case were completed with the granting of an award of \$15,700,000.00 by the Indian Claims Commission on February 13, 1968, in favor of the petitioners, the Shoshone, Bannock, and Shoshone-Bannock tribes.

"An examination has been made of the petition for allowance of attorneys' fees, supporting statements, and records of this Bureau pertaining to the attorney contracts involved. The information regarding the attorneys involved, the contracts, and the provision in each contract regarding attorneys' fees as set out in Part III of the attorneys' petition (pages 8 through 26) is correct.

"The last two paragraphs in Section C-1 of Part III of the attorneys' petition (page 23) state that \$4,918.21 remains unreimbursed to the Shoshone Tribe of the Wind River Reservation. The amounts paid by the Tribe to Attorney George M. Tunison under the provisions of his general council [sic] contract numbered I-1-ind. 12629 were to be reimbursed under Section 10 of his claims contract numbered I-1-ind. 18374 from fees due him for services rendered as claims attorney for the Shoshone Tribe of the Wind River Reservation. A review of our records indicates that the sum of \$4,918.21 remains unreimbursed.

"As this Bureau did not participate in the litigation of the claims in the subject case, we do not have sufficient detailed information to make a recommendation as to the amount of fees earned by the attorneys."

13. The attorneys, including the law firm of Wilkinson, Cragun & Barker, who participated in the successful prosecution of the claims were attorneys of great experience and high repute in the field of Indian affairs, or public law. The Commission has heretofore noted the general competence of Mr. Tunison and of the firm of Wilkinson, Cragun & Barker

in other proceedings which they have handled before this Commission. We note that the Honorable Joseph C. Chez was a distinguished lawyer who for eight years was Attorney General of the State of Utah. He also was assisted by competent associates.

14. At the outset of the employment, no forum existed for the prosecution of the claims. The attorneys first obtained a jurisdictional act and prosecuted the claims before the Court of Claims and the Supreme Court of the United States. When it was held that the jurisdiction of that Court was not broad enough to embrace the claims involved in the subject settlement, the attorneys continued their efforts and contributed materially to the enactment of the Indian Claims Commission Act.

15. In addition to rendering services in litigation and in legislation directly concerning the claims involved in the dockets now under consideration, the attorneys engaged in collateral litigation and legislative efforts to protect the principles involved in the subject litigation. They substantially assisted counsel for the Department of the Interior in protecting the right of Indian Tribes in lands held by aboriginal title in the Mexican Cession (United States v. Santa Fe Pacific Railroad Company, 314 U.S. 339 (1941)). Their amicus curiae brief in Alcea Band of Tillamooks v. United States, 329 U.S. 40, also contributed to the protection of the principle of compensability of Indian title. Similar efforts for the benefit of their clients were made in an important amicus brief filed in Polk v. United States, 323 U.S. 1. They also filed other amicus curiae briefs protecting the principle of compensability of Indian title and other areas of jurisdiction of the Commission under the Indian Claims

Commission Act. See Pawnee Tribe of Oklahoma v. United States, 124 C. Cls. 324; Tee-Hit-Ton Indians v. United States, 128 C. Cls. 82, 348 U.S. 272; Osage Nation of Indians v. United States, 119 C. Cls. 592 (1951), cert. den., 342 U.S. 876; Kiowa, Comanche and Apache Tribes of Indians v. United States, 5 Ind. Cl. Comm. 72, 5 Ind. Cl. Comm. 297; Otoe and Missouriia Tribe of Indians v. United States, 131 C. Cls. 593, cert. den., 350 U.S. 848. They also contributed materially to oppose legislation which would have eliminated compensability of Indian title from the jurisdiction of this Commission.

16. There were a variety of important factors and circumstances, which at the time of the employment of the attorneys established that the cases involved were highly contingent in nature and had peculiar hazards and risks. Included among them are:

(a) At the time of employment, no forum existed for the prosecution of the claims.

(b) After getting a jurisdictional act, it was interpreted not to embrace claims for compensation for original Indian title or unconscionable consideration. It did not permit prosecution of claims based upon revision of treaties or agreements.

(c) After the Indian Claims Commission Act was obtained, it was not judicially established finally that aboriginal title was compensable under the terms of the Indian Claims Commission Act, until the Supreme Court of the United States denied certiorari in Otoe and Missouriia Tribe v. United States, 350 U.S. 848, in October of 1955. Even after that, the attorneys found it necessary to appear before Congressional committees and present reasons why the Indian Claims Commission Act should not be

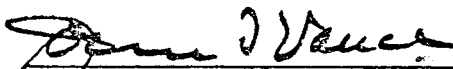
amended to deny compensation for the taking of aboriginal title.

(d) The historical treatment of the Shoshone and Bannock Indians had been very confusing and there were severe risks that unless the cases were carefully pleaded and handled that improper representatives would institute the suit; that identifiable groups could not be established as entitled to compensation for the lands aboriginally used, occupied and possessed; that technical formalities might bar the recovery in the claim.

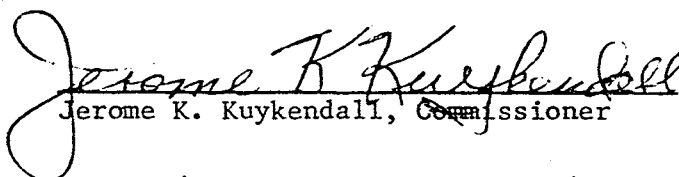
(e) Because of the complicated nature of the cases and the jurisdictional legislation required that the passage of time would lead to death of the attorneys prior to the completion of the litigation.

17. We find that the attorneys acted with due diligence, with great fidelity to the interests of their clients and in the best interest of those clients. Based upon the entire record in the cases and considering the facts peculiar to the seven cases involved, as well as all appropriate factors pertinent to the determination of reasonable attorneys' fees under the standards established by the Indian Claims Commission Act, the Commission finds that the law firm of Wilkinson, Cragun and Barker; Miss Nellie Manoli, Administratrix, C.T.A. of the Estate of George M. Tunison; and Mrs. Jessie M. Chez, Miriam Ray, Paul S. Chez, Richard B. Chez, and Fred L. Chez, the heirs and next of kin of Joseph C. Chez, deceased, are entitled to an attorneys' fee of \$1,491,500.00, less \$4,918.21 as a deduction for a reimbursement due to the Shoshone Tribe of the Wind River Reservation under the contract of Mr. George M. Tunison, or the net sum of \$1,486,581.79. In accordance with the request and consent of each and all of the contract.

attorneys, their estates, or heirs, this sum is to be paid to Robert W. Barker for distribution of the amounts due each of the participating attorneys.



John T. Vance, Chairman



Jerome K. Kuykendall, Commissioner



Richard W. Yarborough, Commissioner