

BEFORE THE INDIAN CLAIMS COMMISSION

THE UPPER SKAGIT TRIBE OF INDIANS,)
)
Petitioner,)

v.)

Docket No. 92

THE UNITED STATES OF AMERICA,)
)
Defendant.)

Decided: April 2, 1969

FINDINGS OF FACT ON ATTORNEYS' FEES

1. The original petition (claim) was filed on January 29, 1951, by Mr. Kenneth R. L. Simmons, the original contract attorney for the Skagit Tribe. Wilkinson, Cragun & Barker (formerly Wilkinson, Boyden, Cragun & Barker, hereafter referred to as "the Firm") became associated with Mr. Simmons in the prosecution of this claim on July 16, 1951, when Mr. Simmons formally assigned a one-sixth interest of the Skagit contract to the Firm. Following the death of Mr. Simmons, a new contract, which fully protected the interest of Mr. Simmons in any fee, was entered into between the Skagit Tribe and the Firm.

A portion of the fee is payable to the heirs and distributees of the estates of Kenneth R. L. Simmons and of his widow, Hazel Day Simmons, viz., Newton Day Simmons and Sara Simmons Hertz, who approved the Stipulation For Compromise Settlement And Entry Of Final Judgment. Mr. Charles A. Hobbs, Attorney of Record for petitioner, states that the Firm and the heirs have

agreed to the precise amount of the fee payable to the heirs. Mr. Hobbs also states that prior to his death, Mr. Simmons was assisted in his work on behalf of the Skagit Tribe by other attorneys, none of whom had an assigned interest in the contract, and all of whom will be compensated in agreed amounts by the Simmons heirs. Since the death of Mr. Simmons on April 13, 1953, all work involved in the prosecution of the claim has been carried on by members or full-time associates of the Firm. No other attorneys are entitled to compensation attributable to work done during that period.

2. The pertinent contracts are as follows: Contract No. I-1-ind. 42135, dated November 5, 1948, between the Skagit Tribe of Indians and Kenneth R. L. Simmons was approved by the Acting Commissioner of Indian Affairs on February 8, 1949. The contract extended for five (5) years from the date of approval. By assignment approved by the Bureau of Indian Affairs on November 19, 1951, the firm of Wilkinson, Boyden & Cragun (now Wilkinson, Cragun & Barker) acquired a one-sixth interest in the contract between Mr. Simmons and the Skagit Tribe. Upon the death of Kenneth R. L. Simmons on April 13, 1953, the Firm became the surviving contract attorneys for the Skagit Tribe. It became obligated to continue with prosecution of the subject claim.

A new claims contract, Contract No. 14-20-650-332, was drawn up with the Skagit Tribe upon expiration of the contract between the Skagit Tribe and Mr. Simmons. It was dated March 25, 1954, and ran for five (5) years from that date, and was subject to further two-year extensions. Paragraph

4 of the contract between the Skagit Tribe and Wilkinson, Boyden, Cragun & Barker (now Wilkinson, Cragun & Barker) approved by the Acting Commissioner of Indian Affairs on August 16, 1955, provides:

"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, services rendered and results obtained, but in no event shall the fee exceed ten per centum (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 of the Congress of the United States, or otherwise; provided, it being the desire of The Tribe and The Attorneys to compensate the Estate of the late Kenneth R. L. Simmons, Billings, Montana, for work done for the tribe on the claim identified as Docket No. 92 before the Indian Claims Commission out of any compensation received from a recovery in that claim, it is agreed that the Estate of Kenneth R. L. Simmons shall receive such compensation as the Commissioner of Indian Affairs may find equitably due him, if the matter be settled at any time before judgment in Docket No. 92, or in the event a judgment is rendered pursuant to a ruling of a court or other tribunal, then his estate shall be compensated in such sum as the court or tribunal finds to be adequate compensation for the services rendered prior to his death on April 13, 1953." (Emphasis supplied.)

Two-year extensions of the contract have been periodically granted by the Commissioner of Indian Affairs.

3. Mr. Simmons was retained by the Skagit Tribe during 1948, and the Skagit contract was approved by the Acting Commissioner of Indian Affairs on

February 8, 1949. Mr. Hobbs states that Mr. Simmons and his associates immediately began research on the background of all treaties and statutes involving the Skagit Tribe, and that they also undertook research in the records of the Department of the Interior and the United States Archives to gain the necessary background to prepare the petition. The petition was filed on January 29, 1951. The claim was based on the theory that the United States had, under the Treaty of Point Elliott, ratified in 1859, obtained a cession of the Upper Skagit aboriginal areas for an unconscionable consideration.

4. Mr. Hobbs relates that prior to and after the death of Mr. Simmons, considerable attention was given to the choice of an expert witness or witnesses to appear on behalf of the Skagit Tribe. Dr. Verne F. Ray, an anthropologist who has appeared before the Commission in several proceedings, assisted the Firm in preparing for trial. After an extensive search for an appropriate expert witness, the Firm used Dr. June M. Collins, an anthropologist, as its only expert witness at the hearings before the Commission. Dr. Collins' professional credentials included six months of field work among the Upper Skagit Tribe as well as published and unpublished papers about the Skagit Tribe. All of Dr. Collins' experience was prior to her being asked to testify for petitioner.

5. Mr. Hobbs reports that prior to the hearings at the Indian Claims Commission which were held on September 10, 1958 through September 12, 1958,

the Firm was involved in a great deal of preparation which included extensive travel and many conferences with those concerned with the case. He summarizes this activity as follows: In July, 1956, the attorneys traveled to Seattle, Washington for a General Council meeting with the Skagit Tribe. Then the attorneys conferred with Dr. Ray at the University of Washington in Seattle concerning the upcoming hearings. Again, in August, 1958, the attorneys went to Seattle to confer with Dr. Ray, the concern this time was to get the Suiattle-Sauk Indians represented by the Skagit Tribe. Immediately preceding the hearings, the attorneys conferred with their expert witness, Dr. Collins, at Penn State University in State College, Pennsylvania, where Dr. Collins was teaching. Later, in Washington, D. C., the attorneys spent many hours with Dr. Collins going over the exhibits and testimony to be used at the hearings.

6. On September 12, 1958, petitioner moved to amend the petition to conform to the evidence. Petitioner, by this motion, wanted to change the caption throughout the petition from "Skagit Tribe" to "Upper Skagit Tribe" and also to have the Suiattle-Sauk Indians included with Upper Skagit. Defense counsel objected, but on October 15, 1958, the Commission handed down its order allowing petitioner to amend the petition. After the hearings, the Firm worked on petitioner's draft of proposed findings which included all of the pertinent exhibits. These findings and petitioner's brief were filed on May 27, 1959. As soon as the Government had filed its proposed findings, the Firm concentrated on a reply brief and objections to the

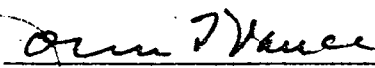
Government's findings. The Commission issued its findings, 8 Ind. Cl. Comm. 475, and opinion, 8 Ind. Cl. Comm. 492, on March 25, 1960.

7. Although the Commission's decision was favorable to petitioner, several other issues had to be resolved. Early in 1962, the Government filed a motion to determine the consideration which would be allocable to each petitioner. Many pending cases involving Puget Sound tribes were consolidated to determine this issue. Much preparation was required before the hearing on this motion was held on April 23, 1963. On August 13, 1964, the Commission handed down its order concerning the consideration issue, 13 Ind. Cl. Comm. 583, and the case was removed from the trial calendar. Mr. Hobbs states that the settlement negotiations with the Government, were, on several occasions, either stalled or broken off and then reopened, and that prior to reaching a settlement, the attorneys again went to Seattle for meetings with the Upper Skagit Tribe concerning possible settlement. Settlement was finally reached, and a final judgment was entered for petitioner on September 23, 1968 in the amount of \$385,471.42.

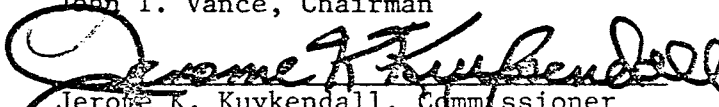
8. A hearing on the Petition for Attorney Fee was held before the Commission on February 13, 1969. The Tribal Petitioner and Superintendent of the Western Washington agency had been notified by the Commission of the hearing. No communication was forthcoming from either. At the hearing, the attorney for the Department of Justice stated that the Department would take no position on the fee award, and a similar position was reported for the Bureau of Indian Affairs.

9. We find that the attorneys for the Upper Skagit Tribe undertook serious responsibilities in complex litigation under contracts which made the payment of compensation entirely contingent, that they rendered services for approximately 21 years, that they have been burdened with substantial administrative responsibilities in addition to litigation, and that they achieved results which were beneficial to the Tribe. Accordingly, the Commission finds that the contract attorneys should be awarded, and are hereby awarded an attorney fee of \$38,547.14, to be paid to Wilkinson, Cragun & Barker and Newton Day Simmons and Sara Simmons Hertz, jointly.

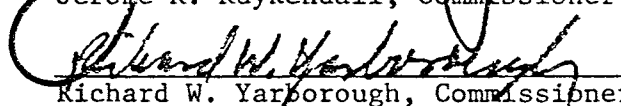
An order will be entered to that effect.



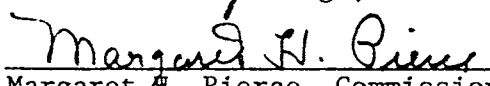
John T. Vance, Chairman



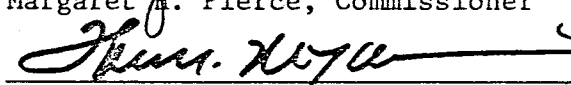
Jerome K. Kuykendall, Commissioner



Richard W. Yarborough, Commissioner



Margaret H. Pierce, Commissioner



Theodore R. McKeldin, Commissioner