

BEFORE THE INDIAN CLAIMS COMMISSION

THE SNOQUALMIE TRIBE OF INDIANS,)
 on its own behalf, and on)
 relation of the Skykomish)
 Tribe of Indians,)
)
 Petitioner,)
)
 v.)
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Docket No. 93

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 Snoqualmie 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 Snoqualmie 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 Snoqualmie 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 Snoqualmie 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 contracts relevant to this docket are as follows: Contract No. I-1-ind. 42134, dated November 5, 1948, between the Snoqualmie Tribe of Indians and Kenneth R. L. Simmons (approved by the Acting Commissioner on February 8, 1949) extended for five (5) years from the date of approval. By assignment approved by the Bureau of Indian Affairs on November 16, 1951, the firm of Wilkinson, Boyden & Cragun (now Wilkinson, Cragun & Barker) acquired a one-sixth interest in the contract between Mr. Simmons and the Snoqualmie Tribe. Upon the death of Kenneth R. L. Simmons on April 13, 1953, the Firm became the surviving contract attorneys for the Snoqualmie Tribe. It became obligated to continue with prosecution of the subject claim.

A new claims contract, Contract No. 14-20-650 Contract 334, was drawn up with the Snoqualmie Tribe upon expiration of the contract between the Snoqualmie Tribe and Mr. Simmons. The Contract was dated March 25, 1954, ran for a period of five years from March 25, 1954, and was subject to

further two year extensions. Paragraph 4 of the Contract between the Snoqualmie 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. 93 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. 93, 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 added)

Extensions of the Contract have been periodically granted by the Commissioner of Indian Affairs.

3. Mr. Simmons was retained by the Snoqualmie Tribe during 1948. Mr. Hobbs states that Mr. Simmons and his associates immediately began research on the background of all treaties and statutes involving the Snoqualmie 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. This 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 Snoqualmie aboriginal areas for an unconscionable consideration.

4. Mr. Hobbs states 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 Snoqualmie 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 Snoqualmie Tribe as well as published and unpublished papers about the Snoqualmie Tribe. All of Dr. Collins' experience was prior to her being asked to testify for petitioner.

5. Mr. Hobbs reports that prior to the hearing at the Indian Claims Commission, which was held on 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 of the Firm traveled to Seattle, Washington for a general council meeting with the Snoqualmie Tribe. Then, the attorneys conferred with Dr. Ray at the University of Washington in Seattle concerning the upcoming hearings. 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 at the close of the hearing on title, petitioner moved to amend the petition to conform to the evidence. Petitioner, by this motion, sought to have the claim on behalf of the Skykomish Tribe of Indians included in the case. Defense counsel objected and continuously opposed inclusion of the Skykomish claim. The Commission allowed petitioner to amend the petition.

7. After the hearings, the attorneys worked on petitioner's draft of proposed findings which included all of the pertinent exhibits. These findings were filed in August 1959. As soon as the Government had filed its proposed findings, the attorneys concentrated on a reply brief and objections to the Government's findings. The Commission handed down its findings and opinion on June 30, 1960, 9 Ind. Cl. Comm. 25. The Commission ruled against petitioner on the Skykomish claim because of lack of proof of the existence of living descendants of the Skykomish Tribe. While studying

the Commission's opinion, the attorneys traveled to Portland and Seattle for conferences and field trips concerning the Skykomish issue with the idea of obtaining a rehearing.

8. On September 30, 1960, petitioner moved to modify the Commission's findings and interlocutory order of June 30, 1960, so far as concerns the Skykomish Indians, or in the alternative for leave to reopen the record to prove the existence of descendants of the Skykomish Indians. A rehearing was held on December 16, 1960, and on June 6, 1961 the Commission ordered the record to be opened for the limited purposes. In June 1961 attorneys went to Seattle to take the depositions of nine Indians for use in the Skykomish issue.

9. While the Skykomish issue was being contested, the Government on February 16, 1962, moved for determination of 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, which 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, while additional oral argument was heard on October 26, 1964, concerning the Skykomish issue.

10. On March 24, 1965, petitioner moved for summary disposition of right of Snoqualmie Tribe to recover on its own behalf and on behalf of the Skykomish Indians. The Commission, on May 7, 1965, denied petitioner's motion, modified its prior findings to more fully reflect its position

that the Snoqualmie Tribe could not recover on behalf of the Skykomish Tribe, and ordered the case to proceed on value, 15 Ind. Cl. Comm. 267. Petitioner gave notice of its appeal on July 29, 1965, and prepared its appeal which was filed in the United States Court of Claims on August 27, 1965.

11. The attorneys spent a great deal of time preparing for oral argument before the Court of Claims which was held on October 31, 1966. On February 17, 1967, the Court of Claims handed down its decision, 178 Ct. Cl. 570, 372 F.2d 951, reversing the Indian Claims Commission on the Skykomish issue. Shortly thereafter, settlement negotiations with the Government began which finally culminated in a settlement, and final judgment was entered for petitioner on September 23, 1968, in the amount of \$257,698.29.

12. 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.

13. We find that the attorneys for the Snoqualmie 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

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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 \$25,769.83, to be paid to Wilkinson, Cragun & Barker and Newton Day Simmons and Sara Simmons Hertz, jointly.

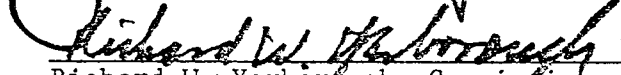
An order will be entered to that effect.




John T. Vance, Chairman



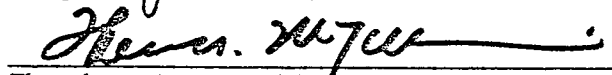
Jerome K. Kuykendall, Commissioner



Richard W. Yarbrough, Commissioner



Margaret H. Pierce, Commissioner



Theodore R. McKeldin, Commissioner

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