

## BEFORE THE INDIAN CLAIMS COMMISSION

THE ASSINIBOINE TRIBES OF INDIANS,	)	
	)	
Intervenors,	)	
	)	
v.	)	Docket No. 279-A
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: February 3, 1971

FINDINGS OF FACT ON ATTORNEY'S FEES FOR SERVICES  
TO THE ASSINIBOINE TRIBES, INTERVENORS

The Commission having considered the petition for allowance of attorney's fees for services to the intervenor Assiniboine Tribes (hereinafter "intervenor Assiniboine"), filed on November 30, 1970, by Marvin J. Sonosky, Esquire, attorney of record for the said tribes; the response of the defendant filed on January 18, 1971; and the evidence in support of the petition, including the entire record and all proceedings in this case, makes the following findings of fact:

1. Award. On June 30, 1969, the Commission entered a final award herein in the amount of \$3,108,506.40 in favor of the intervenor Assiniboine (21 Ind. Cl. Comm. 310, 315). Funds to satisfy the award were appropriated by Public Law 91-665, approved January 8, 1971.

2. Contractual authority. Mr. Sonosky's services in prosecuting the claim of the intervenor Assiniboine in Docket No. 279-A were rendered under two contracts as follows:

a. Contract No. 14-20-0650-1136 between Marvin J. Sonosky on the one part and three distinct tribal entities, namely the intervenor Assiniboine, the Sioux Tribe of the Fort Peck Reservation and the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, acting through the Fort Peck Tribal Executive Board, on the other. The contract was duly approved December 19, 1962, by the Assistant Commissioner of Indian Affairs for a period of five years commencing on the date of approval.

Contract No. 14-20-0650-1136 was extended for two periods of two years each by extensions approved September 12, 1967, and November 27, 1970, respectively, by the Billings Area Office of the Bureau of Indian Affairs. The second extension expires on December 18, 1971.

b. Contract No. 14-20-0650-1137 between Marvin J. Sonosky on the one part and the Assiniboine Tribe of the Fort Belknap Reservation, Montana, and the Fort Belknap Indian Community acting through the Fort Belknap Community Council of the Fort Belknap Reservation, Montana, on the other. The contract was duly approved January 11, 1963, by the Associate Commissioner of Indian Affairs for a period of five years beginning with the date of approval.

Contract No. 14-20-0650-1137 was extended for two periods of two years each by extensions approved September 12, 1967, and November 27, 1970, respectively, by the Billings Area Office of the Bureau of Indian Affairs. The expiration date of the second extension is January 10, 1972.

3. Compensation under the contracts. Both contracts provide for a contingent fee of not to exceed 10 percent of the recovery for the Indians, and Contract No. 14-20-0650-1136 includes a provision for a retainer of \$2,500 chargeable against the contingent fee. The retainer of \$2,500 was paid to the petitioner attorney by the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation. The petitioner attorney has repaid the \$2,500 to the Assiniboine and Sioux Tribes of the Fort Peck Reservation, and the Fort Peck Indian Agency has advised that the \$2,500 has been credited to the trust account of those tribes (20 Ind. Cl. Comm. 435, 436, finding of fact 3 (1969)).

4. Prior contract with the Wilkinson firm. Prior to the aforementioned contracts, the intervenor Assiniboine entered into a contract with the law firm of Wilkinson, Cragun, Barker & Hawkins (now Wilkinson, Cragun and Barker, hereinafter referred to as the "Wilkinson firm"). This contract, assigned No. 14-20-0650-460, was approved on August 19, 1957. Under the terms of that contract, the Assiniboine and Sioux Tribes of the Fort Peck Reservation paid \$10,000 to the Wilkinson firm as a retainer deductible from any contingent fee earned under the contract. By agreement between Marvin J. Sonosky and the Wilkinson firm, the \$10,000 retainer is to be reimbursed to the Assiniboine and Sioux Tribes of the Fort Peck Reservation as follows: \$6,000 to be charged against any fees allowed to Marvin J. Sonosky, and \$4,000 to be paid by the Wilkinson firm. The agreement was approved by the Assiniboine and Sioux Tribes of the Fort Peck Reservation by resolution adopted

August 26, 1969, and by the Acting Commissioner of Indian Affairs on October 8, 1969. The Wilkinson firm has paid the \$4,000 to the Assiniboine and Sioux Tribes of the Fort Peck Reservation. That firm claims no part of the fees for the award to the intervenor Assiniboine.

5. Defendant's response. The defendant's response to Mr. Sonosky's petition reads in part as follows:

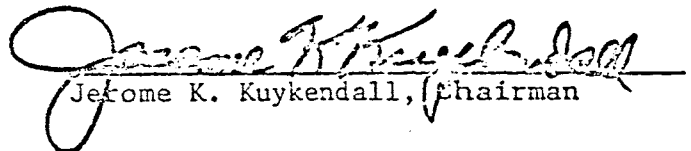
"We enclose a copy of a letter from the Associate Solicitor of the Department of the Interior dated January 13, 1971 with a memorandum dated December 30, 1970 from the Commissioner of Indian Affairs. The memorandum gives a helpful review of the pertinent contracts and transactions thereunder.

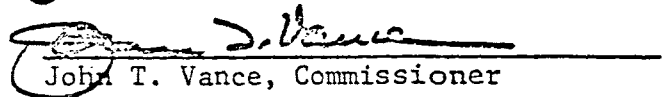
"The Solicitor states that the arrangements for crediting the retainer fees are satisfactory, but the Department of the Interior has insufficient information to make a recommendation as to the amount of the fees. This Department [United States Department of Justice] expresses no view as to the amount of the fees."

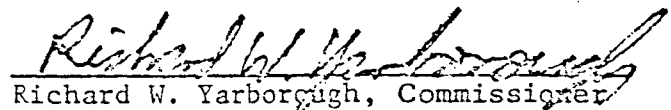
6. Notice to the intervenor tribes. Notices of the filing of Mr. Sonosky's petition for allowance of attorney's fees, which enclosed a copy of the said petition, were duly sent on December 1, 1970, to the Chairman of the Assiniboine Tribes of Indians and to the Chairman of the Assiniboine Treaty Claims Committee. No response to these notices has been received.

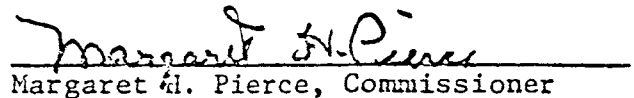
7. Services. The petitioner attorney has rendered valuable legal services in successfully establishing the right of the Assiniboine to intervene some six years after the time for filing claims under the Indian Claims Commission Act had expired and in successfully prosecuting the claim of the intervenor Assiniboine to an award without deduction

of any offsets. In addition to the proceedings before this Commission, this entailed two appeals before the United States Court of Claims. Tested by the standards fixed in section 15 of the Indian Claims Commission Act (25 U.S.C. 70n), including those obtaining for prosecuting similar claims in courts of law, and considering the complex and contingent nature of the claim and the result obtained, the petitioner attorney earned, and is entitled to, an attorney's fee of \$310,850.64, representing ten percent (10%) of the award to the intervenor Assiniboine, of which \$6,000 shall be credited to the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation and the balance of \$304,850.64 paid to Marvin J. Sonosky.

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarborough, Commissioner

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner