

BEFORE THE INDIAN CLAIMS COMMISSION

LEMHI TRIBE, REPRESENTED BY THE	)	
SHOSHONE-BANNOCK TRIBES,	)	
FORT HALL,	)	
	)	
Plaintiffs,	)	
	)	Docket No. 326-I
v.	)	
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: August 5, 1971

FINDINGS OF FACT ON AWARD OF ATTORNEYS' FEES

On May 7, 1971, the attorneys for the plaintiffs in the above-mentioned docket filed a petition for allowance of attorneys' fees, together with a statement setting out the extent and nature of the services rendered by said attorneys. Having considered the said petition and statement; the defendant's response to the petition, filed on June 2, 1971; the contracts of employment under which the attorneys performed their services; and the evidence in support of the petition, including the entire record and all proceedings in this docket, the Commission makes the following findings of fact:

1. Award. On March 8, 1971, the Commission entered a final judgment approving a proposed compromise settlement in this case in favor of the Lemhi Tribe, represented by the Shoshone-Bannock Tribes, Fort Hall, in the amount of \$4,500,000 (24 Ind. Cl. Comm. 498). Funds

to satisfy the judgment were appropriated by Public Law 92-18 (May 25, 1971).

2. Contractual Authority and Compensation Thereunder. The attorneys entered into a series of contracts with the Shoshone-Bannock Tribes, Fort Hall, Idaho, beginning on November 1, 1935, and continuing under various other contracts and extensions until the present. All of the contract attorneys have joined in the petition that the award be made to the Attorney of Record.

(a) The first contract was entered into by the law firm of Moyle & Wilkinson, of which Dr. Ernest L. Wilkinson was a partner (Symbol I-1-ind. Contract No. 12601). It was for a term of ten years from its approval on January 7, 1937, by the Commissioner of Indian Affairs and on January 11, 1937, by the Assistant Secretary of the Interior. The 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. It provided with respect to compensation that the attorneys should be paid:

\* \* \* such sum as may be determined \* \* \* equitably to be due for services theretofore rendered under [the] agreement, but in no event shall the aggregate fee exceed ten per centum of any and all sums \* \* \* recovered \* \* \*.

(b) Subsequent to the passage of the Indian Claims Commission Act (60 Stat. 1049) the Shoshone-Bannock Tribes entered into a contract with Ernest L. Wilkinson on February 11, 1947, effective January 11, 1947, for a period of ten years (Symbol I-1-ind. Contract No. 18348). It was approved by the Acting Commissioner of Indian Affairs on

April 23, 1947. This contract provided that compensation should be wholly contingent and be such sum as may be determined "equitably \* \* \* due on a quantum meruit basis" under that contract and the prior contract. An agreement dated January 10, 1957, and approved on June 8, 1957, extended this contract for a period of five years beginning January 11, 1957.

(c) An agreement between the tribes and the law firm of Wilkinson, Cragun and Barker, dated January 10, 1962, extending the contract to January 10, 1967, was approved by the Deputy Solicitor on September 10, 1962. Ernest L. Wilkinson also assigned his interest to his law firm by this agreement.

(d) When the Commission divided the claim in Docket No. 326 into separate dockets, the Shoshone-Bannock Tribes, on December 16, 1967, adopted a resolution to extend the attorneys' contract for an additional five years. Subsequently, a new contract was entered into in Docket No. 326-I, being No. 14-20-0500-2838. It 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 was concluded. The contract contained the following provisions with respect to compensation:

\* \* \*

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, \* \* \* but in no event shall the aggregate fee be less than seven nor more than ten per centum of any and all sums \* \* \* recovered \* \* \*.

3. Statutory Provisions on Fees. The Indian Claims Commission Act (60 Stat. 1049, 1053), 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 at 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. \* \* \*

4. Requested Fee. The attorneys' petition has requested allowance of an attorneys' fee in the amount of \$450,000, representing 10 per cent of the amount of the final judgment.

5. Response of Defendant. The defendant's response was in the form of a letter dated June 2, 1971, which reads in part as follows:

Re: Lemhi Tribe, Represented by the Shoshone-Bann[o]ck Tribes, Fort Hall Reservation v. United States, Docket No. 326-I, before the Indian Claims Commission.

---

In response to the petition for award of attorneys' fees filed in the above-entitled case on May 11, 1971, we asked the Solicitor of the Department of the Interior for an expression of his views in connection with the application for attorneys' fees.

There are enclosed a copy of the letter dated June 1, 1971 from the Associate Solicitor of Indian Affairs with a memorandum from the Acting Associate Commissioner of Indian Affairs dated May 21, 1971.

You are also advised that this Department takes no position with reference to the amount claimed as attorneys' fees.

The letter referred to from the Associate Solicitor of Indian Affairs stated that the Department of the Interior did not have sufficient detailed knowledge to make a recommendation as to the amount of compensation earned by the attorneys in this case.

6. Notice to Tribes. A notice of the filing of the attorneys' application for allowance of their fees was mailed to Mr. Kesley Edmo, Chairman, Fort Hall Business Council, on May 11, 1971, by the Deputy Clerk of the Commission. No response to this notice was received.

7. Services. In the preparation and prosecution of this case the attorneys did extensive research to establish the identity of the plaintiffs and to distinguish them from other Shoshone and Bannock Indian groups, as to which historical materials were confusing. They did extensive study of patterns and facts of aboriginal use and occupancy of such groups. The petition was filed with the Commission on August 10, 1951. The question

of aboriginal title was tried before the Commission in 1957 as part of Docket No. 326, at which time several expert witnesses testified and an extensive record was adduced.

After establishing plaintiffs' aboriginal title to lands in Idaho, the attorneys made an investigation of the 1875 market value of the tract, including mineral values. They then negotiated for settlement of the case for their clients. The settlement negotiations involved not only the question of the value of the subject land but an investigation and analysis of substantial offsets and consideration claimed by defendant. The negotiated \$4,500,000 settlement concluded all such disputes.

The attorneys rendered the usual administrative and legal services in gaining approval of the settlement by the Tribes, the Department of the Interior and this Commission. Despite strong opposition to the settlement by one group within the Tribes, the facts marshalled and presented by the attorneys convinced the Tribes, the Department of the Interior and this Commission that the settlement was in the interest of the Tribes. The attorneys also played an active role in assuring prompt appropriation of funds to pay the judgment herein.

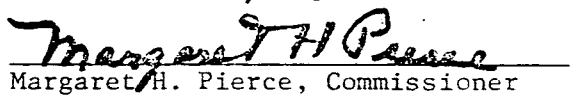
The attorneys successfully dealt with many contingencies in this case. They rendered extensive services in collateral litigation and in legislative and administrative proceedings to protect their clients in this case.

On the basis of the entire record herein and considering the responsibilities undertaken, the difficult problems of fact and law involved in this case, the contingent nature of the compensation, the substantial award obtained for the benefit of the plaintiffs herein, all appropriate factors pertinent to the determination of attorneys' fees under the standards established by the Indian Claims Commission Act, and the foregoing findings, the Commission finds that the attorneys for the plaintiffs herein, the law firm of Wilkinson, Cragun and Barker, is entitled to an attorneys' fee in the amount of \$450,000, and that the payment to Robert W. Barker, Attorney of Record and partner in the law firm of Wilkinson, Cragun and Barker, of this sum out of the funds appropriated to pay the aforementioned award, for appropriate distribution among the participating attorneys, will represent payment in full of all claims for legal services rendered in this docket by said law firm.

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarbrough, Commissioner

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner