

BEFORE THE INDIAN CLAIMS COMMISSION

THE YANKTON SIOUX TRIBE,)
)
 Plaintiff,)
)
 v.)
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Docket No. 332-B

ORDER ALLOWING ATTORNEYS' FEE

HAVING CONSIDERED the petition for attorneys' fee filed on November 17, 1972, on behalf of the law firm of Wilkinson, Cragun & Barker by Angelo A. Iadarola, Esquire, a partner in said firm and attorney of record for the plaintiff; the accompanying statements in support of the petition; the defendant's response to the petition, filed on December 4, 1972; the contract under which the attorneys served the plaintiff; and the entire record and all proceedings in this case, the Commission finds as follows:

1. Award. On September 8, 1972, in consonance with an approved compromise settlement agreement between the parties, the Commission entered a final award in this docket in the sum of \$4,750,000.00 in favor of the Yankton Sioux Tribe (28 Ind. Cl. Comm. 367, 385). Funds to satisfy the award were appropriated by Public Law 92-607, approved October 31, 1972 (86 Stat. 1498).
2. Contractual Authority. The suit herein on behalf of the plaintiff was instituted and prosecuted pursuant to contract No. I-1-ind. 17495 entered into on November 1, 1940, by the Yankton Sioux Tribe with Ernest L. Wilkinson. The contract was approved on January 17, 1941, for a term of 10 years commencing on its date of approval. It was subsequently amended and extended pursuant to agreements of the parties. The last extension was approved on February 8, 1972, effective for a period of two years commencing on September 17, 1971, and extending through September 16, 1973. An assignment by Ernest L. Wilkinson of his interest in the contract to Wilkinson, Cragun & Barker effective as of January 31, 1964, was approved on August 4, 1964.
3. Compensation under the Contract and Requested Attorneys' Fee. The contract provides that the attorneys shall receive fees to be determined by the Commission on a quantum meruit basis, in no event to exceed 10 percent of the award recovered for the tribe. The application by the attorney of record requests allowance of an attorneys' fee in this case in the amount of \$475,000.00, representing 10 percent of the aforementioned award.
4. Response of the Defendant. The defendant's response to the petition for attorneys' fee enclosed a letter dated December 1, 1972, from

the Associate Solicitor, Indian Affairs, Department of the Interior, and concluded with the advice that the Department of Justice "takes no position with respect to the amount of fee which should be awarded." The letter from the Associate Solicitor mentions advice from the Bureau of Indian Affairs that the recitations in the petition relative to the pertinent tribal claims attorney contracts are accurate and indicated that the Department of the Interior has "no basis on which to make a recommendation as to the amount of attorneys' fee which should be awarded."

5. Notice to the Plaintiff. A notice of the filing of the petition for attorneys' fee was duly sent on November 17, 1972, to the Chairman of the Yankton Sioux Tribe. The notice requested the chairman to file a response with the Commission if the tribe had any comments or information that the Commission should consider. No response to the notice was received.

6. Attorneys' Services. The plaintiff's claim in this case was for the amount shown to be due under a general accounting by the defendant of its administration and management of the lands, funds, and properties of the Yankton Sioux Tribe which the defendant controlled and administered on behalf of the tribe. Originally included in the plaintiff's petition filed in Docket No. 332 on August 10, 1951, this claim was severed from that petition and set forth in a separate amended petition filed in Docket No. 332-B on February 13, 1958, pursuant to the Commission's order of that date permitting severance of claims in Docket No. 332.

The Defendant's accounting report was completed on August 25, 1965, and ran through June 30, 1951. After receiving and examining the report, the attorneys for the plaintiff concluded that a settlement of the case was possible and should be pursued. They contracted the attorneys for the defendant and discussed the possibility of settlement.

The attorneys prepared a detailed set of exceptions to the defendant's accounting report that was filed for the plaintiff on February 18, 1972. The production of these exceptions involved much research, both legal and factual, and, among other things, the services of several experts that the attorneys arranged for the tribe to employ, under approved contracts, to work under the attorneys' direction on the case.

While the attorneys were developing the accounting exceptions and preparing for trial, they were also negotiating with defendant's counsel on a possible settlement of the plaintiff's case. A settlement proposal formulated in conjunction with their work on the accounting exceptions and preparations for trial was submitted to the Acting Attorney General on the eve of the date set for the trial. This proposal became the basis of the approved compromise settlement of this case by entry of the aforementioned final award in the sum of \$4,750,000.00. Two claims not disposed of in the settlement have been severed from this accounting case and designated

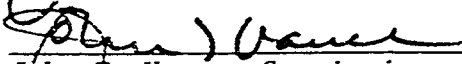
as Docket No. 332-D. They are a claim for an accounting commencing July 1, 1951, and claims arising from the defendant's sale of plaintiff's lands pursuant to the Agreement of December 31, 1892 (28 Stat. 314).


John W. Cragun, Angelo A. Iadarola and Jerry C. Straus were the attorneys primarily responsible for the prosecution of the claim on behalf of the plaintiff. They were assisted by members of the law firm of Wilkinson, Cragun & Barker, including Frances L. Horn and Patricia L. Brown. The attorneys for the plaintiff have rendered valuable legal services in successfully prosecuting their client's claim and ultimately obtaining its settlement. Under the terms of the aforementioned contract and the pertinent standards fixed by Section 15 of the Indian Claims Commission Act, including those obtaining in the prosecution of similar claims in courts of law, and considering the complex and contingent nature of the claim and the beneficial results obtained for the tribal claimant, the attorneys have earned a fee of \$475,000.00, representing 10 percent of the award to the plaintiff, and they are entitled to receive a fee in that amount.


IT IS THEREFORE ORDERED that out of the funds appropriated to pay the final award entered in this docket on September 8, 1972, in favor of the Yankton Sioux Tribe of Indians, there shall be disbursed to the law firm of Wilkinson, Cragun & Barker of Washington, D. C., contract claims attorneys for the said tribe, the sum of \$475,000.00 as payment in full for legal services rendered in the litigation of this case.

Dated at Washington, D. C., this 7th day of December 1972.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret A. Pierce, Commissioner

Brantley Blue, Commissioner