

1. Award. On November 5, 1975, the Commission entered a final award in the amount of \$7,300,000.00 in favor of the plaintiffs, 37 Ind. Cl. Comm. 58. This final award was entered upon the joint motion of the parties for entry of final judgment under Dockets 326-B and 326-J, pursuant to a stipulation between the parties for settlement and entry of final judgment. Funds to satisfy the judgment were appropriated by Public Law 94-157, approved December 18, 1975 (89 Stat. 826).

2. Contractual Authority and Compensation. The claims herein were originally prosecuted pursuant to a contract between the plaintiffs in these cases and Messrs. John S. Boyden and Ernest L. Wilkinson, designated Contract No. I-1-ind. 42003, dated September 1, 1947. This contract was approved by the Acting Commissioner of Indian Affairs on February 12, 1948, for a term of ten years.

The original contract was followed by a second contract, Symbol 14-20-0650 - Contract No. 812, dated February 12, 1958, and approved on June 9, 1960, by the Solicitor, Department of the Interior, acting on behalf of the Secretary of the Interior. This contract constituted a continuation and extension of the original contract. The attorneys parties to this contract were John S. Boyden and the firm of Wilkinson, Cragun & Barker, which succeeded to the interest of Ernest L. Wilkinson, a partner in the firm. This contract was extended for successive periods of two years each through February 10, 1976.

3. Contractual Provisions as to Compensation. The current contract provides as follows with respect to attorneys' fees:

In consideration of the services to be rendered under the terms of this agreement, The Attorneys shall receive as compensation, which shall be wholly contingent upon recovery, such sum or sums as the Commissioner of Indian Affairs may find equitably to be due on a quantum meruit basis, if any matter be settled without submission to a court, commission or other tribunal; or in the event any matter is submitted to a court, commission or other tribunal, then such sum or sums as may be determined by said court, commission or tribunal equitably to be due on a quantum meruit basis, for the services rendered under this agreement, but in no event shall the aggregate fee be less than seven nor more than ten per centum of any and all sums or of the value of all property recovered or procured for The Tribe or any band thereof through the efforts in whole or in part, of The Attorneys and their associates, whether by suit, action of any Commission or department of the Government, or of the Congress of the United States, or otherwise. It is understood and agreed that The Attorneys will agree among themselves as to the division of any fees payable under this contract and such agreement will provide for the division of said fees in the event of death or incapacity or resignation of one or more of said Attorneys.

4. Requested Fee. The petition is for an award of an attorneys' fee of \$730,000.00, which is ten percent (10%) of the award of \$7,300,000.00.

5. Statutory Provision on Fees. The authority to make the requested award in the amount of ten percent (10%) of the judgment is set forth in Section 15 of the Indian Claims Commission Act, 60 Stat. 1049, 1053, as follows:

The fees of . . . 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, plus all reasonable expenses incurred in the prosecution of the claim; but the amount so fixed by the Commission, exclusive of reimbursements for actual expenses, shall not exceed 10 percentum of the amount recovered in any case. . . .

6. Derendant's Response. The defendant responded to the notice of the petition by letter dated February 3, 1976, from the Department of Justice. That letter stated that the defendant takes no position as to allowance of attorneys' fees.

7. Notices to Plaintiffs. On January 8, 1976, copies of the petition for attorneys' fees were forwarded to Mr. Robert Steele, Chairman of the Confederated Tribes of Goshutes, and Mr. Richard Bear, Chairman of the Skull Valley Band of Goshutes, requesting comments and information for the Commission's consideration in determining the amount of attorneys' fees to be allowed. No response has been received from the Goshute Indians.

8. Attorneys' Services in Prosecution of the Claims. The original petition herein was filed on August 10, 1951, as Docket 326. It was filed by plaintiffs and other Shoshone Indian tribes, bands and groups and asserted several claims. Claims on behalf of the Goshutes included two claims for compensation for (1) an accounting by the United States for funds of the Goshute Indians held by the United States for their benefit, and (2) additional compensation for the taking of land previously held by the Goshutes under aboriginal title until such title was extinguished

without adequate compensation and for damages for minerals removed from these lands prior to the extinguishment of Indian title.

Prior to filing the initial petition in Docket 326, the attorneys did extensive research of records in the various Indian agencies, the National Archives, the annual reports of the Commissioner of Indian Affairs, as well as of many anthropological materials. Conferences were also held with anthropologists. In 1962, the Commission entered its opinion on identity of the claimants, Indian title and extinguishment of Indian title. 11 Ind. Cl. Comm. 387 (1962). After deciding these questions of liability in favor of the plaintiffs, the Commission entered two orders allowing severance of the accounting claim and the land claim, allowing these respective claims to proceed as separate dockets. The order allowing severance and filing of a separate petition in Docket 326-B (the accounting claim) was entered on July 5, 1967. The order allowing severance of the land claim (Docket 326-J) was entered on August 6, 1967.

The attorneys spent considerable time in pursuing the accounting claim in Docket 326-B, particularly after the General Services Administration Report was filed in 1968. Extensive time was spent in studying and analyzing the GSA Report and in employing accounting experts to assist in this analysis. Substantial time was spent coordinating with these experts and in filing exceptions and motions for supplemental accountings, and in analyzing the supplemental accountings and preparing exhibits and testimony of expert witnesses for trial.

At the same time, the attorneys undertook further extensive research in the United States Archives, the Library of Congress and elsewhere to establish the legislative history of Congressional acts pertaining to Indian trust funds. The research was submitted to the Commission together with a brief urging a legislative basis for the Commission's awarding judgment based upon damages for the government's failure to invest Indian Monies Proceeds of Labor. Briefs were filed and argued before the Commission, as well as on appeal to the United States Court of Claims. The overall conduct of this litigation caused the attorneys to research many legal precedents, prepare and file many memoranda of law, briefs, proposed findings of fact, objections, exceptions, motions and reply briefs. Additionally, they presented oral argument to the Commission and the Court of Claims. Finally, in May of 1975, defendant filed a motion to suspend further proceedings in the case, pending settlement negotiations. These negotiations led to the consolidation of Docket 326-B with Docket 326-J for settlement purposes.

The attorneys also spent extensive amounts of time in pursuing the claims in Docket 326-J. The attorneys researched for and interviewed witnesses; collected and analyzed documents preparatory to the filing of a petition in the Commission; evaluated and organized evidence; employed experts and prepared for a hearing on the issue of original Indian title. They tried the issue of title before the Commission; digested and indexed the massive record in preparation for filing of

proposed findings of fact and a brief on the issue of title; litigated a separate trial on the date of taking issue; investigated and researched for documentary evidence, witnesses and experts for the purpose of the evaluation proceedings after the date of valuation was determined by the Commission; tried the valuation hearing before the Commission; indexed and digested the record in preparation and filing of proposed findings of fact and brief on the issue of value; prepared proposed findings of fact and brief on the value; litigated a motion for rehearing by defendant; participated as amicus curiae in another case on the issue of damages for minerals removed prior to the date of taking; litigated their own appeal in this case to the Court of Claims on this issue; prepared for a hearing on offsets asserted by defendant; negotiated and consummated a compromise settlement on offsets; obtained a final judgment and saw that the judgment was appropriated by the Congress and credited to the plaintiffs in the United States Treasury.

Throughout the litigation of this claim, the attorneys spent extensive time procuring and conferring with expert witnesses, anthropologists and historians, and analyzing with them the voluminous evidence collected on the difficult issues involved. In addition, extensive services were rendered in researching and analyzing the legal issues involved and in preparing numerous motions, briefs, oral arguments, memoranda of law, proposed findings of fact, etc. The

value proceeding followed earlier trials on title and date of extinguishment of Indian title.

On August 9, 1973, the Commission entered its order, finding and opinion on value. After this decision, plaintiffs' attorneys spent considerable time and effort opposing government motions for rehearing and appeal to the Court of Claims. On March 10, 1975, the Court of Claims affirmed the Commission's valuation holding.

Following these successful efforts in the land case, the attorneys turned their efforts to an attempt to conclude both the land case and the accounting case by compromise settlement. After considerable negotiation with the government attorneys and review of experts' reports on the accounting issue, the attorneys negotiated a final settlement of these cases. The settlement proceedings involved many meetings, development of data and reports and expenditure of much time in meetings with the two groups of the Goshute Tribe, the dealing with dissenting groups, the processing of settlement papers through the Tribe and the Department of the Interior, as well as the proceedings before this Commission. The continuing efforts of the attorneys culminated in decision by the Commission awarding the plaintiffs a judgment as aforementioned.

9. Conclusion. On the basis of the entire record in these dockets and considering the responsibilities undertaken, the difficult problems of fact and law involved, the contingent nature of the compensation, the award obtained, and all appropriate factors pertinent to the

determination of attorneys' fees under the standards established by the Indian Claims Commission Act, the Commission concludes that the contract attorneys have rendered valuable legal services in successfully prosecuting their clients' claims and ultimately obtaining judgment. Under the terms of the attorneys' contract and the above-enumerated standards, including those standards obtaining in the prosecution of similar claims in courts of law, the contract attorneys have earned an attorney fee of \$730,000, representing ten percent (10%) of the award to plaintiffs. Accordingly, payment of this amount to Robert W. Barker, attorney of record, on behalf of the contract attorneys, the firm of Wilkinson, Cragun & Barker, and John S. Boyden, for distribution by him to said contract attorneys in accordance with their respective interests, will represent payment in full of all claims for legal services in these consolidated dockets. Such payment will be out of funds appropriated to pay the award.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner