

BEFORE THE INDIAN CLAIMS COMMISSION

THE THREE AFFILIATED TRIBES OF THE)	
FORT BERTHOLD RESERVATION,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 350-F
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

ORDER ALLOWING ATTORNEY EXPENSES

HAVING CONSIDERED the application to fix attorney expenses filed April 18, 1975, by Charles A. Hobbs, Esq., attorney of record for the plaintiff in this docket, on behalf of the firm of Wilkinson, Cragun & Barker, contract attorneys for the plaintiff, pursuant to Section 15 of the Indian Claims Commission Act; the response of the Department of Justice filed April 16, 1976; the attorney contracts on file with the Commission; and the entire record of these proceedings; the Commission finds and determines as follows:

1. The Award. On August 23, 1972, the Commission entered a final award in favor of the plaintiff for \$8,809,057, plus interest. 28 Ind. Cl. Comm. 352. Congress appropriated funds in payment of the award by Public Law 94-32, approved June 12, 1975, and the funds were subsequently deposited in the United States Treasury to the credit of the plaintiff.

2. The Attorney Contracts. The contracts between the applicant and the plaintiff are fully described and identified in our findings 3 and 4 entered June 18, 1975, relating to attorney fees. 36 Ind. Cl. Comm. 206. These findings are incorporated herein by reference.

3. Contract Provisions on Expenses. In the original contract with plaintiff, approved by the Commissioner of Indian affairs on July 10, 1951, paragraph 5 provided for the reimbursement of actual expenses incurred by applicant as follows:

5. The Attorneys, during the period of this agreement, shall be paid from tribal funds, regardless of the outcome of any claims prosecuted hereunder, any and all proper and reasonable expenses incurred by The

Attorneys in investigating, preparing and prosecuting such claims, including but without limitation technical, professional (not lawyers' fees, except to the extent provided in paragraph 3 above), unusual stenographic assistance, traveling expenses, printing of briefs, court costs, and the like; Provided, that such expenditures shall be itemized and verified by The Attorneys and shall be accompanied by proper vouchers and shall be paid only upon the approval of the Commissioner of Indian Affairs, or his duly authorized representative; Provided further, that approximately every six (6) months during the term of this agreement, The Attorneys shall present to The Tribe for its approval an over-all estimate of all such costs and expenses to be incurred during the subsequent six-month period, which estimate as approved by The Tribe and the Commissioner of Indian Affairs shall not be exceeded during such period without the consent of The Tribe and the Commissioner of Indian Affairs; Provided further, that neither The Tribe nor the Commissioner of Indian Affairs shall be liable for said expenses, except to the extent funds have been or shall be made available therefor. In the event The Attorneys in the prosecution of any claim choose to have any of the aforesaid expenses paid directly out of tribal funds, the party to whom such expenses are due shall submit a voucher of such expenses, through The Attorneys, who shall certify that such expenses were incurred by him and are properly due, to the Commissioner of Indian Affairs, who shall pay the same out of tribal funds.

In subsequent extensions, or renewals, of the contract, paragraph 5 remained the same except that, in its approval of a renewal of the contract insofar as it affected this docket, the Bureau of Indian Affairs required, in its approval letter of September 9, 1967, that the word "unusual" before the word "stenographic" in paragraph 5 be deleted. The paragraph, as amended, is currently in effect.

4. The Application. In the application the Wilkinson firm requested that we fix a total of \$5,630.85 as reimbursable expenses in this Docket. This total represents expenditures incurred in the prosecution of the claim between December 12, 1967, and December 31, 1974, but does not include any expenses for the period between April 1, 1969, and March 31, 1971, which were paid directly to applicant by the plaintiff out of funds other than those awarded in this docket.

5. Notice to Parties. Notices of the filing of the application, with copies of the petition attached, were mailed by the Clerk of the Commission on April 21, 1975, to:

- a. Mrs. Rose Crow Flies High, Chairperson, Tribal Business Council, Three Affiliated Tribes of the Fort Berthold Reservation, New Town, North Dakota 58763.
- b. Honorable Morris Thompson, Commissioner, Bureau of Indian Affairs, Attn: Guy W. Lovell, Tribal Operations, U. S. Department of the Interior, 1951 Constitution Avenue, N. W. Washington, D. C. 21240.
- c. Honorable Wallace H. Johnson, Assistant Attorney General, Land and Natural Resources Division, Attn: A. Donald Mileur, Chief, Indian Claims Section, U. S. Department of Justice, Washington, D. C. 20530.

6. Responses of Those Notified. Neither the chairperson nor the tribal business council of plaintiff tribe has responded or made objection to the reimbursable expenses alleged by the applicant. The Assistant Attorney General, by letter dated April 14, 1976, to the Clerk of the Commission, responded and took no position with respect to the application. Attached to the response was a copy of a letter dated March 29, 1976, from an Assistant Solicitor, Division of Indian Affairs, in the Solicitor's Office of the Department of the Interior; and a copy of a memorandum dated March 23, 1976, from the Commissioner of Indian Affairs stating that the Bureau of Indian Affairs had no objection to the allowance of the expenses claimed.

7. Determination of Reimbursable Expenses. The Commission, after an examination of the petition, schedules, and supporting vouchers attached to the petition, or furnished by the applicant separately, concluded that the applicant was to be reimbursed for the expenses claimed except for a total of \$22.50 which were found to be for other than expense of litigation in this docket.


8. Conclusion. For the reasons stated above, the Commission fixes expenses in the amount of \$5,608.35 as reasonable and proper for reimbursement.

IT IS THEREFORE ORDERED that reimbursable expenses for the firm of Wilkinson, Cragun & Barker be, and the same hereby are, fixed in the


sum of \$5,608.35, and that that amount be disbursed to them from the funds appropriated to pay the final award in this Docket.

Dated at Washington, D. C., this 3rd day of June 1976.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner