

BEFORE THE INDIAN CLAIMS COMMISSION

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

ORDER ALLOWING ATTORNEY EXPENSES

HAVING CONSIDERED the application to fix attorney expenses filed June 1, 1976, 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 February 24, 1977, 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 March 17, 1976, the Commission entered a final award in favor of the plaintiff for \$3,200,000. 37 Ind. Cl. Comm. 502. Congress appropriated funds in payment of the award by the Act of June 1, 1976, 96 Stat. 629, 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 2 and 3 entered July 8, 1976, relating to attorney fees. 8 Ind. Cl. Comm. 432, 433. These findings are incorporated herein by reference. The current contract has been extended through June 30, 1978.
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, 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 \$2,184.72 as reimbursable expenses in this Docket. This total represents expenditures incurred in the prosecution of the claim between March 31, 1971, and March 31, 1976.

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 June 1, 1976, to:

- a. Mrs. Rose Crow Flies High, Chairperson, Fort Berthold Tribal Business Council, New Town, North Dakota 58763.
- b. Mr. Wayne Packineaux, Vice Chairman, Fort Berthold Business Council, New Town, North Dakota 58763.
- c. Honorable Morris Thompson, Commissioner, Bureau of Indian Affairs, Attn: Louise Perkins, Tribal Operations, U.S. Department of the Interior, 1951 Constitution Avenue, N.W. Washington, D. C. 21240.
- d. Honorable Peter R. Taft, 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. Response 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 February 22, 1977, 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 January 11, 1977, 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 January 7, 1977, from the Commissioner of Indian Affairs stating that the Bureau of Indian Affairs had no objection to the allowance of the expenses claimed.

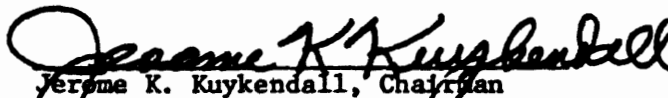
7. Determination of Reimbursable Expenses. The Commission, after an examination of the petition, schedules, and supporting vouchers attached to the petition, or furnished by the applicant separately, concluded that the applicant was to be reimbursed for the expenses claimed except for a total of \$2.00 which were found to be for other than expense of litigation in this docket.

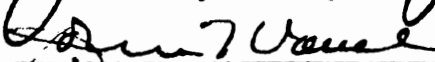
8. Conclusion. For the reasons stated above, the Commission fixes expenses in the amount of \$2,182.72 as reasonable and proper for reimbursement.


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

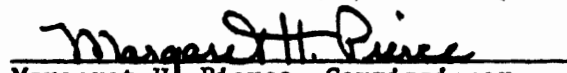
sum of \$2,182.72, and that that amount be disbursed to them from the funds appropriated to pay the final award in this Docket.


Dated at Washington, D. C., this 9th day of March 1977.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Farborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner