

BEFORE THE INDIAN CLAIMS COMMISSION

THE DUWAMISH TRIBE OF INDIANS,)	
)	
Petitioner,)	
)	
v.)	Docket No. 109
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: APR 29 1964

FINDINGS OF FACT IN THE MATTER OF APPLICATION BY ATTORNEY
FOR ALLOWANCE OF COMPENSATION AND EXPENSES INCURRED
IN THE PROSECUTION OF THE CLAIM

The Commission makes the following findings of fact:

1. The contract attorney for the petitioner tribe seeks an award by the Commission of compensation in the amount of \$6,200.00 based on ten percent of the final judgment of \$62,000.00 entered in the above-entitled case; and also an allowance of \$1,610.77 in reimbursable expenses incurred by him in the prosecution of the claim. A hearing on this matter was held before the Commission on December 11, 1963.

2. As pertinent in this case to attorney fees and expenses, Section 15 of the Indian Claims Commission Act provides as follows:

Sec. 15. Each such tribe, band, or other identifiable group of Indians may retain to represent its interests in the presentation of claims before the Commission an attorney or attorneys at law, of its own selection, whose practice before the Commission shall be regulated by its adopted procedure. 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, 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 per centum of the amount recovered in any case. * * *

3. The approved attorney contract, as amended and extended, between the petitioner and its attorney in this case, provides that the compensation to be received by the attorney shall be wholly contingent upon the recovery of a money judgment or settlement for the tribe and shall not exceed ten percent of such recovery. This contract also provides for the reimbursement to the attorney of expenses incurred by him in the prosecution of the tribe's claim.

4. The contract of employment of attorneys for the petitioner tribe, together with the approval and extension thereof to November 12, 1965, by the Commissioner of Indian Affairs acting for the Secretary of the Interior, are on file with the Commission. These show that Kenneth J. Selander and Frederick W. Post were the original attorneys for petitioner in this case, however, on September 25, 1950, all interest of Mr. Selander in said contract was assigned with the approval of the Commissioner of Indian Affairs to Frederick W. Post who assumed the sole representation of petitioner and he is now the sole contract attorney for petitioner and entitled to the attorney fee in this case.

5. The attorney contract imposed upon the attorneys the responsibility for investigating, formulating and prosecuting to a final conclusion the claims of the tribe against the United States. The claim

which was instituted and prosecuted by the attorney in this case was based upon unconscionable consideration for lands of the petitioner tribe in the present State of Washington which it ceded under the Point Elliott Treaty of January 22, 1855.

6. The litigation in this case, from the commencement of suit to the entry of final judgment, consumed over twelve years. Three hearings were held before the Commission with respect to the issue of the extent and boundaries of the lands aboriginally owned by the tribe and two other hearings with respect to issues of value were also held. At each of these trials numerous exhibits were received in evidence and the testimony by expert witnesses was taken. The issues of defendant's claimed counter-claims and offsets were resolved based upon a stipulation of compromise settlement negotiated by the attorney, entered into by the parties, approved by the Bureau of Indian Affairs, and approved and adopted by the Indian Claims Commission.

7. A final judgment was entered in the case on July 20, 1962, adjudging that the petitioner tribe should recover from the defendant the sum of \$62,000.00. Petitioner appealed the case to the Court of Claims. However, after that Court affirmed this Commission's decision on July 12, 1963, in the case of the Nooksack Tribe v. United States, 3 Ind. Cl. Comm. 479, which involved a claim similar to petitioner's claim for lands in the present State of Washington, petitioner's attorney decided it was not advisable to continue with such appeal and was authorized by petitioner tribe and the Commissioner of Indian Affairs to dismiss said appeal. On December 10, 1963, the Court of Claims dismissed said appeal on motion of petitioner.

8. The amended final judgment which was entered in the case on December 11, 1963, adjudged that the petitioner tribe should recover from the defendant the sum of \$62,000.00.

9. The petition for allowance of attorney's fee and expenses incurred in the prosecution of the claim, as amended and supplemented by a letter addressed to the Commission by the attorney on December 20, 1963, together with supporting documents, have been examined by the Bureau of Indian Affairs and Office of the Solicitor, Department of the Interior. A memorandum of the Associate Commissioner of Indian Affairs which is a part of the record in this case states that "explanation was made by Mr. Post in support of allowance of fees at full 10 per cent of \$62,000.00, or \$6,200.00. In the light of the explanation and other available information, we find no reason to object to allowance of attorney fees in the amount claimed."

10. The Commission having considered the services performed by the attorney, the amount of recovery, and the contingent character of the fee, finds that the attorney has earned and is entitled to the full sum allowed by his contract with said petitioner tribe, namely, ten percent of the recovery in this case, or \$6,200.00.

11. The attorney's contract provided that petitioner should pay to the attorney the sum of \$750.00 towards the expenses of the litigation. The attorney incurred expenses on the case up to and including August 6, 1955 in the sum of \$796.20, which were presented by voucher under date of May 13, 1957, for payment by the petitioner tribe. The payment of \$750.00 by the tribe to the attorney was approved by the Bureau of Indian Affairs on June 19, 1957. Of the remaining \$46.20, the sum of \$25.09 was approved but to be paid when final judgment was obtained; and approval of \$21.11 was suspended pending further explanation of a

pro-rata charge made by a court reporter. The attorney has satisfactorily explained that the reporter made the pro-ration of his appearance charge to three tribes, one of which was the petitioner tribe. The \$46.20 is allowed the attorney as a proper reimbursable expense.

12. The attorney requests payment for additional expenses of \$764.57 incurred by him in the prosecution of the claim between 1955 and 1963. In the memorandum referred to in Finding 9, the Associate Commissioner of Indian Affairs approved the allowance of all the items of expenses totaling \$764.57 except two items of expense not supported by receipts, bill or itemized statements. The first is a charge of \$25.00 incurred during a period of five days in Washington, D. C. for hearings which began on January 9, 1959. The other charge is for \$20.00 for a period of four days in Washington, D. C. for hearings beginning on April 23, 1963. These two items of expense are supported only by a general itemization based upon the attorney's estimates.

The Commission finds that the two items totaling \$45.00 referred to above are not allowable as reimbursable expenses. The remaining \$719.57 is allowed.

13. The attorney for the tribe employed Arthur C. Ballard as an expert witness in anthropology who did considerable research in connection with the case. The attorney testified at the hearing on December 11, 1963 that he was personally committed to pay Mr. Ballard a fair and reasonable fee for his services which he considered to be five hundred dollars. Mr. Ballard has received payments totaling \$150.00 as part of his fee which was paid out of the \$750.00 the petitioner tribe advanced for

costs, referred to in Finding 11. We consider the fee of \$500.00 for Mr. Ballard reasonable and the balance of \$350.00 due thereon is therefore allowed.

14. The attorney also employed Dr. June McCormick Collins, an anthropologist, who did much research in connection with the case and testified as a witness. The attorney also testified at the hearing on December 11, 1963, that he was personally committed to pay Dr. Collins a fair and reasonable fee for her services which he considered to be five hundred dollars. Dr. Collins has received \$50.00 as part of her witness fee which was paid out of the \$750.00 the petitioner tribe advanced for costs. We consider the fee of \$500.00 for Dr. Collins reasonable and the balance of \$450.00 due thereon is therefore allowed.

15. Accordingly, the attorney Frederick W. Post is entitled to an attorney fee of \$6,200.00 and in addition thereto, the sum of \$1,565.77 as reimbursable expenses incurred in the prosecution of petitioner's claim, and it will be so ordered.

Caroline V. Matthews
Chief Commissioner

Wm M. Holt
Associate Commissioner

Charles Scott
Associate Commissioner