

BEFORE THE INDIAN CLAIMS COMMISSION

THE CREEK NATION OF OKLAHOMA,)	
)	
Plaintiff,)	
)	
THE CREEK NATION EAST OF THE)	
MISSISSIPPI,)	
)	
Intervenor,)	
)	
v.)	Docket No. 21
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

ORDER ALLOWING ATTORNEYS' FEE

Upon consideration of the joint application of the attorney of record for the Creek Nation of Oklahoma, plaintiff, and the attorneys for the Creek Nation East of the Mississippi, intervenor, for the allowance of an attorneys' fee in this case, the defendant having had 4 copies of the petition served on it and no objection thereto was entered, and having considered the entire record in this case, the Commission finds:

1. The final judgment was entered herein on September 10, 1962 (11 Ind. Cls. Comm. 53), awarding to the Creek Nation of Oklahoma, plaintiff, and the Creek Nation East of the Mississippi, intervenor, the sum of \$3,913,000.00. The amount of the judgment has been appropriated by the Act of April 30, 1965 (P.L. 89-16), and is now held in the United States Treasury to the credit of the parties hereto.

2. The original attorney's contract between the Creek Nation of Oklahoma and attorney Paul M. Niebell of Washington, D.C., was entered into on August 28, 1946, and approved on November 12, 1947, for a ten year period beginning from date of approval thereof. This contract was supplemented by another contract, dated October 30, 1957, between the same parties, approved on January 8, 1958, for a 10 year period beginning November 12, 1957, and providing for extensions for periods of 5 years each. This contract provides for an attorney fee to be fixed in an amount not to exceed 10% of the amount of recovery.

3. The original contract between the Perdido Friendly Creek Indian Band of Northwest Florida Indians, later called the Creek Nation East of the Mississippi, and C. LeNoir Thompson, Bay Minette, Alabama, Frank G. Horne, Sr., and Hugh Rozelle, of Atmore, Alabama, was entered into on January 29, 1951, and approved by the Commissioner of Indian Affairs on February 8, 1951, for a 5 year period, beginning from date of approval, with the right to extend said contract for periods of one year each.

This contract was extended each year from 1956 through 1966, the last extension being approved on January 15, 1965, a copy of which is on file with the Commission.

An assignment of a 25 percent undivided interest in said contract, dated March 12, 1951 to Claude Pepper, Miami, Florida, was duly approved by the Commissioner of Indian Affairs on April 4, 1951. Another assignment of an additional 15 per cent undivided interest in said original contract, dated April 6, 1953, to said Claude Pepper, was approved by the Commissioner of Indian Affairs on March 9, 1955. On May 23, 1958 the Commissioner of Indian Affairs on application of Claude Pepper, approved the association of Charles Bragman with him under the above contract from 1953. An assignment of said 40 per cent undivided interest was made by Claude Pepper to Charles Bragman, dated August 13, 1963, reserving his legal rights, and was duly approved by the Commissioner of Indian Affairs on October 17, 1963. Copies of these assignments as approved are on file with the Commission.

4. One of the attorneys for said Creek Nation East of the Mississippi, Frank G. Horne, Sr., is now deceased, and the duly appointed co-executors of his Estate, by the Court of Probate, Escambia County, Alabama, have signed this application for and on behalf of said Estate. Copy of the letters testamentary granted to said co-executors, Douglas S. Webb and J. R. Tucker, is attached to the application.

5. The claim of the Creek Nation of Oklahoma in this case concerned lands in the States of Georgia, Alabama and Mississippi, which the United States had solemnly guaranteed to the Creek Nation of 1814 under the Creek Treaty of August 7, 1790, 7 Stat. 35, but which were subsequently lost to the Creek Nation under the Creek Treaty of August 9, 1814, 7 Stat. 120, executed by it under duress.

6. Many novel and complicated issues of fact and law on liability and value were litigated in the prosecution of this case. The vast extent of the services performed by counsel which culminated in the final judgment of \$3,913,000.00 is reflected in the facts that in the litigation in Dockets 21 and 172, from 1948 to 1965, said counsel prosecuted 7 formal and extended hearings before the Commission, including two valuation hearings, 3 appeals to the United States Court of Claims, and 3 petitions for writs of certiorari to the United States Supreme Court. In the performances of their services counsel for the parties exhausted every reasonable and available legal remedy.

7. The application for attorney fees is made by Paul M. Niebell, attorney of record for the Creek Nation of Oklahoma, petitioner, and C. LeNoir Thompson, Claude Pepper, Charles Bragman, Hugh Rozelle, and Douglas S. Webb and J. R. Tucker, the duly appointed and qualified co-executors of the Estate of Frank G. Horne, Sr., the deceased attorney, attorneys for the Creek Nation East of the Mississippi. An award of attorneys' fee is requested in the amount of \$391,300.00, being ten (10) per cent of the

judgment recovered. The Commission finds that said ten (10) per cent is a reasonable attorneys' fee for the services rendered and the results obtained, and that said attorneys have by efficient and faithful service well earned said sum awarded.

8. The application filed with the Commission and signed by each of the Contract attorneys, and the co-executors of the Estate of Frank G. Horne, Sr., deceased, states that the contract attorneys have reached among themselves an amicable understanding as to the division of the fee, and request and consent that the amount of \$250,000.00 be paid directly to Paul M. Niebell for services contracted under his contract with the Creek Nation of Oklahoma and the balance of \$141,300.00 be paid to Charles Bragman, of Washington, for and in behalf of himself, C. LeNoir Thompson, Clause Pepper, Hugh Rozelle, and Douglas S. Webb and J. R. Tucker, co-executors of the late Frank G. Horne, Sr., deceased, the latter having consented before the Commission to said Charles Bragman being so paid, for their services under their contract with the Creek Nation of Mississippi.

9. Attorney Aaron Bennett of the Department of Justice appeared at the hearing and stated to the Commission that,

"We are authorized by Mr. Guy Lovell of the Bureau of Indian Affairs, to say that the Bureau has no objection to the allowance of such fee as the Commission finds is reasonable, not to exceed ten percent (10%)."

IT IS THEREFORE ORDERED AND ADJUDGED that from the appropriation of \$3,913,000.00 made by Congress to satisfy the final award of this Commission in like amount in this case on September 10, 1962, there shall be paid to Paul M. Niebell the sum of \$250,000.00, and \$141,300.00 to Charles Bragman on behalf of all of the attorneys for the Creek Nation East of the Mississippi.

Dated at Washington, D. C., this 16th day of August, 1965.

/s/ Arthur V. Watkins
Chief Commissioner

/s/ Wm. M. Holt
Associate Commissioner

/s/ T. Harold Scott
Associate Commissioner