

BEFORE THE INDIAN CLAIMS COMMISSION

THE MUCKLESHOOT TRIBE OF INDIANS,)	
)	
Petitioner,)	
)	
v.)	Docket No. 98
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: Mar. 31, 1967

FINDINGS OF FACT IN THE MATTER OF APPLICATION FOR ALLOWANCE OF ATTORNEYS' FEES AND EXPENSES INCURRED IN THE PROSECUTION OF THE CLAIM

The Commission makes the following findings of fact:

1. We have for consideration the application filed herein on February 23, 1967, for the allowance of attorneys' fees and reimbursable expenses incurred in the prosecution of the claim.

Attorneys' Fees

2. The attorneys' contract, dated December 10, 1949, between the Muckleshoot Tribe of Indians and Attorneys Kenneth J. Selander, Frederick W. Post and Kenneth R. L. Simmons was approved by the Commissioner of Indian Affairs on February 21, 1950, for a period of seven years beginning with the date of approval. The contract was extended four times with the approval of an authorized representative of the Secretary of the Interior. The last extension was for a period of three years beginning on February 20, 1966, and the contract is currently in effect. On September 25, 1950, Kenneth Selander assigned all of his right, title and interest in and to said contract to Frederick W. Post with the approval thereof by the Commissioner of Indian Affairs on January 22, 1951. The said Kenneth R. L. Simmons died intestate on April 13, 1953,

leaving as his sole heirs at law his wife, Hazel Day Simmons, and his two children, Newton Day Simmons and Sara Simmons Hertz, and his estate was closed February 4, 1955. The said Hazel Day Simmons died testate on December 31, 1958, leaving all her property to the two children, Newton Day Simmons and Sara Simmons Hertz, and her estate was closed on March 25, 1960. The said Newton Day Simmons and Sara Simmons Hertz, the two aforesaid children of Kenneth R. L. and Hazel Day Simmons, are sole heirs at law and distributees of Kenneth R. L. Simmons, and are jointly entitled to any interest the Kenneth R. L. Simmons estate may have in attorneys' fees realized from the Muckleshoot Tribe's claim.

3. The approved attorneys' contract, as extended, provides that the compensation to be received by the attorneys for services rendered shall be wholly contingent upon a recovery by the Muckleshoot Tribe, and shall not exceed ten percent of such recovery.

4. The attorneys' contract imposed upon the attorneys the responsibility of investigating and prosecuting to a final conclusion the claim of the Muckleshoot Tribe against the United States. The claim which was instituted and prosecuted by the attorneys in this case was for payment for lands of the tribe in the present State of Washington ceded to the United States.

5. The litigation in this case has covered a period of at least seventeen years. The first phase of the claim was the trial and determination with respect to the issue of the extent and boundaries of the lands aboriginally owned by petitioner tribe, and other hearings and

determinations with respect to the value of such lands and the consideration paid therefor by defendant. At each of these trials numerous exhibits were received in evidence and the testimony of expert witnesses was taken. The issue of offsets was resolved by an approved compromise settlement. On October 18, 1963, a final judgment in favor of the petitioner and against the defendant was entered in the sum of \$80,377.00. The petitioner prosecuted an appeal to the U. S. Court of Claims which Court affirmed the Commission's decision. The petitioner then applied for a writ of certiorari which was denied by the United States Supreme Court.

6. The Commission having considered the services performed by the attorneys, the amount of the recovery, the time spent on the case, and the contingent character of the fee, finds that the attorneys have earned and are entitled to the full sum allowed by the attorneys' contract with the Muckleshoot Tribe, namely, ten percent of the recovery in this case, or \$8,037.70.

Reimbursable Expenses Incurred by Attorney Frederick W. Post

7. The attorneys' contract provides that the attorneys shall also be allowed and reimbursed from the amount of any judgment received such actual expenses incurred by them as may be fixed by the Indian Claims Commission pursuant to Section 15 of the Act of August 13, 1946. Section 15 of the Act provides for the payment of "all reasonable expenses incurred in the prosecution of the claim."

8. The attorney, Frederick W. Post, seeks an allowance for items of expense incurred by him in the prosecution of the case which he paid from his personal funds totaling \$1,699.49. We find these items of expense incurred by Mr. Post in the prosecution of the claim are allowable as reimbursable expenses.

9. The attorneys' contract with the petitioner tribe of December 10, 1949, provides that the attorneys "may employ such technical or stenographic assistance in respect of their obligations under this contract as they may deem necessary, same to be paid as expenses incidental to their employment thereunder."

10. The attorney, Frederick W. Post, employed Arthur C. Ballard as an expert witness and anthropologist to research the history of the Muckleshoot Tribe and give testimony before the Commission at the trial establishing the petitioner's Indian title to the subject lands. Mr. Post testified at the hearing before the Commission for payment of attorneys' fees and expenses on March 17, 1967, that he had agreed to pay Mr. Ballard \$1,500.00 for his services as an expert, irrespective of the outcome of the case; that he has paid him \$350.00 and was reimbursed for this amount by the petitioner tribe and is personally committed to pay Mr. Ballard the additional sum of \$1,200.00.

Mr. Post also employed Dr. James E. Crutchfield, a Professor of Economics at the University of Washington, as an expert witness to prepare a report and give testimony before the Commission on the issue of value of the subject lands, which he did. Mr. Post testified at the March 17, 1967 hearing that he had agreed to pay Dr. Crutchfield \$1,000.00 for his

services as an expert in said case irrespective of the outcome of said case; that he had paid him \$250.00 and was reimbursed for this amount by the petitioner tribe and he is personally committed to pay Dr. Crutchfield the additional sum of \$750.00.

11. The Commission is familiar with the services rendered by both Mr. Ballard and Dr. Crutchfield in this case and we consider the compensation agreed to be paid by Mr. Post to Mr. Ballard of \$1,500.00 and to Dr. Crutchfield of \$1,000.00 for such services are reasonable expenses incurred in the prosecution of the claim. We find that attorney Post's claim for the balance due Mr. Ballard of \$1,200.00 and Dr. Crutchfield of \$750.00 should be approved and allowed.

12. Accordingly, Frederick W. Post and Newton Day Simmons and Sara Simmons Hertz, as heirs at law of the estate of Kenneth R. L. Simmons, deceased, and distributees of the estate of Hazel Day Simmons, deceased, are entitled to an attorneys' fee of \$8,037.70. That in addition thereto, the said Frederick W. Post is entitled to the sum of \$3,649.49 as reimbursable expenses incurred by him in the prosecution of the claim, and it will be so ordered.

(Signed) Arthur V. Watkins
Chief Commissioner

(Signed) Wm. M. Holt
Associate Commissioner

(Signed) T. Harold Scott
Associate Commissioner