

BEFORE THE INDIAN CLAIMS COMMISSION

THE CONFEDERATED TRIBES OF THE COLVILLE)	
RESERVATION as the representative of the)	
JOSEPH BAND OF THE NEZ PERCE TRIBE,)	
)	
CHARLES E. WILLIAMS, JOSEPH REDTHUNDER AND)	
HARRY OWHI, as the representatives of)	
the JOSEPH BAND OF THE NEZ PERCE TRIBE,)	
)	
THE CONFEDERATED TRIBES OF THE COLVILLE)	
RESERVATION, as successor to the claims)	
of the JOSEPH BAND OF THE NEZ PERCE TRIBE,)	
)	
)	Docket No. 179
)	
)	
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	Defendant,
)	
THE NEZ PERCE TRIBE OF INDIANS OF THE)	
NEZ PERCE RESERVATION, IDAHO,)	
)	Intervenor.

Decided: August 20, 1970

FINDINGS OF FACT ON AWARD OF ATTORNEYS' FEE

On June 2, 1970, I. S. Weissbrodt, Esquire, attorney of record for the above-named plaintiffs, and Angelo A. Iadarola, Esquire, of the law firm of Wilkinson, Cragun & Barker, attorney of record for the above-named intervenor, filed an application in this docket for award of attorneys' fee. Having considered the said application, the defendant's response of July 13, 1970, the contracts of employment of the attorneys, and the remainder of the record herein, the Commission makes the following findings of fact:

1. On April 29, 1970, in consonance with a settlement agreement by the parties, a final judgment in the amount of \$1,119,071.78 was entered herein in favor of the Confederated Tribes of the Colville

Reservation, as the representative of the Joseph Band of the Nez Perce Tribe, and the Nez Perce Tribe of Idaho (23 Ind. Cl. Comm. 39, 68). Funds to satisfy the judgment were appropriated by the Act of July 6, 1970 (84 Stat. 376).

2. The suit herein in behalf of the plaintiffs was instituted and prosecuted pursuant to contract No. I-1-ind. 42442 that the Confederated Tribes of the Colville Reservation entered into on November 28, 1949, with James E. Curry and I. S. Weissbrodt of Washington, D. C., and Lyle Keith of Spokane, Washington. The contract was approved on April 13, 1959, and initially had a term of 10 years commencing with its date of execution. It was subsequently amended and extended by approved agreements of the parties. Under an amendment approved on October 3, 1969, its term was continued from August 18, 1969, until August 18, 1974, and Lyle Keith and Patrick H. Winston of Spokane, Washington, and I. S. Weissbrodt and Abe W. Weissbrodt of Washington, D. C. were indicated as the attorneys parties thereto.

3. Said contract with the Confederated Tribes of the Colville Reservation fixes the amount of the attorneys' fee at 10 per cent of the net amount recovered on behalf of the tribes as a result of the prosecution of their claims. It also provides that there shall be deducted from the fee so calculated the amount of annual retainers paid to the attorneys under the contract.

4. From inception of contract No. I-1-ind. 42442 to March 1, 1960, retainer fees were paid to the attorneys in the total amount of \$30,000.00, which amount was deducted from the fee awarded to them in Docket No. 181

on March 1, 1960. A retainer fee of \$3,000.00 paid to the attorneys under the contract during the ensuing period ending on July 12, 1961, was deducted from the fee awarded to them in Docket No. 180-A on that date. The attorneys were paid \$12,000.00 in retainer fees during the subsequent period ending on July 9, 1965. These retainer fees were deducted from the fee awarded the attorneys in Docket Nos. 161, 222, and 224 on July 9, 1965. The sum of \$6,000.00 in retainer fees thereafter paid to the attorneys during the period ending on September 29, 1967, was deducted from the fee awarded to them in Docket Nos. 181-A and 181-B on that date. Since September 29, 1967, additional retainer fees have been paid to the attorneys totaling \$9,000.00 which have not as yet been deducted from any fee awarded to them.

5. The Commission has received from the Clerk of the United States District Court for the District of Columbia an order of that Court dated February 11, 1969, entered in the case of Ceal Bryson Cohen, Ancillary Executrix of the Estate of Henry Cohen, Deceased, v. James E. Curry, Civil Action No. 86-69. Inter alia, the order provides that any share of the attorney fees in this docket that is payable by I. S. Weissbrodt to James E. Curry shall be deposited by I. S. Weissbrodt, pursuant to an escrow agreement between the parties to said case, in an account in a depository mutually satisfactory to the parties.

6. The representation herein of the Nez Perce Tribe, the intervenor, was pursuant to contract, Symbol 14-20-0650, Contract No. 977, that the tribe entered into with the law firm of Wilkinson, Cragun & Barker on January 7, 1961. This contract was approved on October 16, 1961, and

has a specified initial term of 10 years that commenced on January 7, 1961. Paragraph 4 of the contract provides for an attorneys' fee contingent upon recovery for the tribe in an amount not to exceed 10 percent of such recovery.

7. The application by the attorneys of record, I. S. Weissbrodt and Angelo A. Iadarola, is made on behalf of themselves and all other contract attorneys having an interest in the fee in this docket. The application requests an award of an attorneys' fee in the amount of \$111,907.18, being 10 percent of the final judgment entered herein on April 29, 1970, subject to deduction of the \$9,000.00 in retainer fees heretofore paid to the attorneys for the plaintiffs, or the net sum of \$102,907.18.

8. The response of the defendant to the said application enclosed a copy of a letter dated July 6, 1970, from the Associate Solicitor, Indian Affairs, Department of the Interior, and a copy of an accompanying memorandum, dated June 19, 1970, from the Associate Commissioner, Bureau of Indian Affairs, and advised, in line with the views expressed in the letter and memorandum, that the Department of Justice "takes no position with reference to the amount claimed as attorneys' fees."

9. An appropriate notice of the filing of the attorneys' application was duly sent, on June 4, 1970, to the Chairman of the Nez Perce Tribe of Idaho and to the Chairman of the Confederated Tribes of the Colville Reservation. No response to this notice has been received.

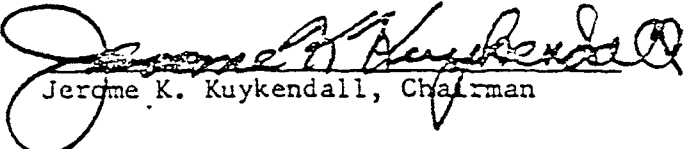
10. The Indians' claim herein was for a general accounting by the defendant of its administration and management of the lands, funds, and

other property of the Nez Perce Tribe which the defendant held in trust for the Nez Perce Tribe, including the Joseph Band of that tribe. Initially the government denied that it was liable to the plaintiffs on the ground that most of the claim belonged to the Nez Perce Tribe. The attorneys, the plaintiffs, and the Nez Perce Tribe of Idaho cooperated in a successful effort to have the Nez Perce Tribe made a party to the litigation. After accomplishing this, the attorneys for the plaintiffs and the Nez Perce intervenor had to make a complete study of the accounting report submitted by the government to determine what properties of the plaintiffs and intervenor had been mismanaged. As a result of this study and many meetings with the government's attorneys in attempts to negotiate a compromise, the claim was eventually settled by stipulation.

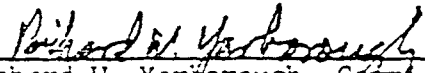
Mr. I. S. Weissbrodt is the attorney of record primarily responsible for the prosecution of the claim on behalf of the plaintiffs. He was assisted by Abe W. Weissbrodt and other members of his law firm. Mr. Angelo A. Iadarola is the attorney of record primarily responsible for the prosecution of the claim on behalf of the intervenor. He was assisted by several members of the law firm of Wilkinson, Cragun and Barker, primarily by Mrs. Frances L. Horn and Kenneth F. Tworoger.

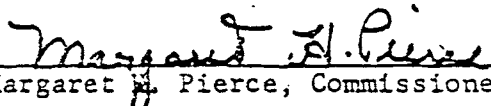
11. The attorneys for the plaintiffs and the intervenor have rendered valuable legal services in successfully prosecuting their clients' claim and ultimately obtaining its settlement. Under the terms of the aforementioned contracts and pertinent standards fixed by section 15 of the Indian Claims Commission Act (25 U.S.C. 70n), including those obtaining for prosecuting similar claims in courts of law, and considering the

complex and contingent nature of the claim and the beneficial results obtained for the Indian claimants, the attorneys have earned a fee of \$111,907.18, representing 10 per cent of the above mentioned award, and they are entitled to receive a fee in that amount less the \$9,000.00 heretofore paid to the attorneys for the plaintiffs as a retainer.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret A. Pierce, Commissioner

Brantley Blue, Commissioner