

BEFORE THE INDIAN CLAIMS COMMISSION

THE CONFEDERATED TRIBES OF THE	)	
COLVILLE RESERVATION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Docket No. 178
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

ORDER ALLOWING ATTORNEYS' FEE

HAVING CONSIDERED the application for allowance of attorneys' fee filed on December 28, 1970, by I. S. Weissbrodt, Esquire, attorney of record for the above-named plaintiff in Docket No. 178, in behalf of himself and all other contract attorneys having an interest in the attorneys' fee in this docket; the contract under which the attorneys served the said plaintiff; the defendant's response to said application filed on February 10, 1971; and the remainder of the record herein, the Commission finds as follows:

1. On September 17, 1970, in consonance with an approved settlement agreement between the parties, the Commission entered a final judgment in this docket in the amount of \$5,540,598.00 on the claims for an accounting for the period extending to and including June 30, 1951, in favor of the Confederated Tribes of the Colville Reservation (23 Ind. Cl. Comm. 493, 507). Funds to satisfy this judgment were appropriated by the Act of January 8, 1971 (84 Stat. 1981, 1998).

2. The attorneys' services in behalf of the plaintiff were rendered under contract No. I-1-ind. 42442 dated November 28, 1949 between the Confederated Tribes of the Colville Reservation and Attorneys James E. Curry and I. S. Weissbrodt, with Lyle Keith, Esquire, as Associate Attorney. The contract was approved on April 13, 1951, and had a specified initial term of ten years beginning with the date of execution. The contract has been extended several times. The last extension agreement, approved on October 3, 1969, provided for the continuance of the contract until August 18, 1974. An amendment to the contract relieving Mr. Curry of any obligations and responsibilities under the contract and adding Attorneys David Cobb and Patrick H. Winston was approved on December 23, 1955. An agreement to add Attorney Abe W. Weissbrodt to the contract and to permit the engagement of Attorney Rella R. Shwartz (now deceased) was approved on December 31, 1959.

A later agreement to add Attorney Morton Liftin as an additional attorney under the contract and to relieve Mr. Cobb of further duties and obligations was approved on January 4, 1965. The aforementioned agreement approved on October 3, 1969, included provisions relieving Mr. Liftin of any further duties and obligations under the contract.

3. Said contract, as extended and amended, fixes the compensation of the attorneys at 10 percent of the amount recovered for the Indians, less the amount of retainers paid. The contract provides for the payment to the attorneys of a retainer of \$3,000 per year. Of the entire amount of retainer fees so paid, all except the \$3,000 paid for the last annual period has been deducted from fees awarded to the attorneys by the Commission in other cases.

4. 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 Cecil 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 attorneys' fee 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.

5. The application by the attorney of record requests an award of an attorneys' fee in the amount of \$554,059.80, being 10 percent of the aforementioned final judgment, subject to the deduction of \$3,000.00 in annual retainer fee, leaving a net balance payable in the sum of \$551,059.80.

6. The defendant's response to the application enclosed a copy of a letter dated February 1, 1971, from the Associate Solicitor, Indian Affairs, Department of the Interior, and a copy of an accompanying memorandum dated January 26, 1971, from the Acting Associate Commissioner of Indian Affairs and concluded with the advice that the Department of Justice "takes no position with reference to the amount claimed as attorneys' fees." The letter from the Associate Solicitor refers to the memorandum from the Acting Associate Commissioner of Indian Affairs and indicates that this memorandum advises that the applicable tribal claims attorney contract provides that the attorneys shall receive as compensation a fee of 10 percent of the amount recovered for the tribes less the amount of retainers paid and that the Bureau of Indian Affairs "has no objection to the allowance of the fee being sought since it is in the amount provided in the contract" and concludes by stating: "We concur."

7. An appropriate notice of the filing of the attorneys' application for allowance of attorneys' fees was duly mailed to the Chairman of

the Business Council of the Confederated Tribes of the Colville Reservation on December 30, 1970. No response to this notice was received.

8. The attorneys have rendered valuable services in their successful prosecution of the plaintiff's claims in this docket and they are entitled under the terms of the aforementioned contract to an award of fees in the requested net sum of \$551,059.80.

IT IS THEREFORE ORDERED that out of the funds appropriated to pay the aforementioned judgment in favor of the Confederated Tribes of the Colville Reservation there shall be disbursed to I. S. Weissbrodt, the attorney of record, the sum of \$551,059.80, for such distribution by him as is proper, as payment in full of the balance of the attorneys' fee owed for legal services rendered herein for the said tribes.

Dated at Washington, D. C., this 17<sup>th</sup> day of February 1971.

Jerome K. Kuykendall  
Jerome K. Kuykendall, Chairman

John T. Vance  
John T. Vance, Commissioner

Richard W. Yarborough  
Richard W. Yarborough, Commissioner

Margaret H. Pierce  
Margaret H. Pierce, Commissioner

Brantley Blue  
Brantley Blue, Commissioner