

## BEFORE THE INDIAN CLAIMS COMMISSION

THE CREEK NATION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Docket No. 275
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

ORDER ALLOWING ATTORNEY'S FEE

HAVING CONSIDERED the application for allowance of attorney fee for services in behalf of the plaintiff herein that was filed on October 11, 1972, by Paul M. Niebell, Esquire, and the accompanying statement in support of the application; the defendant's response to the application, filed on November 27, 1972; the contracts under which Paul M. Niebell served the plaintiff; and the entire record and all proceedings in this case, the Commission finds as follows:

1. Award. On August 23, 1972, in consonance with an approved compromise settlement agreement between the parties, the Commission entered a final award in this docket in the sum of \$1,346,000.00 in favor of the Creek Nation (28 Ind. Cl. Comm. 353, 365). Funds to satisfy the award were appropriated by Public Law 92-607, approved October 31, 1972 (86 Stat. 1498).

2. Attorney Contracts. The representation of the Creek Nation in this case was under two contracts. The first contract, assigned No. I-1-ind. 18361, was entered into by the Creek Nation of Indians on August 28, 1946, with Paul M. Niebell. This contract was approved on November 12, 1947, and had a term of ten years beginning with its date of approval. The second contract, assigned No. 14-20-650-529, was entered into by the Creek Nation with Paul M. Niebell on October 30, 1957, and was approved on January 6, 1958, for a term of ten years, beginning on November 12, 1957. An extension of this contract for a period of five years that commenced on November 12, 1967, was approved on August 2, 1967. A further extension of this contract for a period of five years that commenced on November 12, 1972, was approved on July 10, 1972.

3. Compensation Under the Contracts and Requested Attorney's Fee. Each of the aforementioned contracts provide that compensation to the attorney for services rendered by him is contingent upon recovery, and shall be in an amount not to exceed ten percent of the amount recovered for the plaintiff. The attorney's application requests allowance of a fee for services rendered in this case in the amount of \$134,600.00, representing ten percent of the aforementioned award. Mr. Niebell has indicated that no application for reimbursement of attorney expenses will be filed with the Commission in this case, as such expenses have been substantially reimbursed to him from Creek tribal funds.

4. Response of the Defendant. The defendant's response to the application for allowance of attorney fee enclosed a letter dated November 22, 1972, from the Associate Solicitor, Division of Indian Affairs, Department of the Interior, and concluded with the advice that the Department of Justice "takes no position with respect to the payment of the attorneys' fee in this case". The letter from the Associate Solicitor mentions advice from the Bureau of Indian Affairs that the recitations in the application relative to the pertinent tribal claims attorney contracts are accurate and indicated that the Department of the Interior has no basis on which to make a recommendation as to the amount of attorney's fee which should be awarded.

5. Notice to the Plaintiff. A notice of the filing of the application for allowance of attorney fee, together with copies of the application and the statement in support thereof, was mailed by the Deputy Clerk of the Commission on October 11, 1972, to Claude Cox, Principal Chief, Creek Nation of Indians. The Commission received a reply to the notice from Principal Chief Claude Cox dated November 21, 1972, which reads in part as follows:

This letter will advise you, that I have no objection to the allowance of the 10% attorney fee to Paul M. Niebell in the Creek Case, Docket 275.

Hopefully, this letter will expedite the order of the Commission granting payment to Mr. Niebell for the excellent work he has done for the Creek Nation.

6. Attorney's Services. The above-mentioned contracts imposed upon the attorney the duty, among others, of advising and representing the Creek Nation in properly investigating and formulating claims of the said Nation against the United States and prosecuting them to final determination under the Indian Claims Commission Act before the Indian Claims

Commission, all courts, departments, tribunals, committees of Congress, and other officers having any duty to perform in connection with the investigation, consideration, and final settlement of said claims under said act.

The claim of the Creek Nation in this case was for compensation for some 1,500,000 acres of land in northern Alabama and northwest Georgia, south of the Tennessee River and north of the lands ceded by the Creek Nation in the Treaty of August 9, 1814 (7 Stat. 120) that the United States, in effect, gave to the Cherokee Nation by the Treaty of March 22, 1816 (7 Stat. 139). Mr. Niebell prepared the plaintiff's petition including therein allegations, among others, to the effect that this area of land was owned by the Creek Nation by recognized title or by aboriginal title at the time it was taken by the United States. The petition was filed with the Commission on August 9, 1951.

The issue of the liability of the United States to the Creek Nation for the taking of the lands in question was fully litigated before the Commission. In its decision on this matter entered in Docket 275 on April 15, 1970 (23 Ind. Cl. Comm. 1), the Commission determined, among other things, that the Creek Nation held aboriginal title to that portion of the lands in suit described in the Commission's finding No. 25 until, through a series of acts culminating with the ratification on April 8, 1816, of the aforementioned Treaty of March 22, 1816, with the Cherokees, the United States, without compensation, deprived the Creek Nation of its aboriginal title. The Commission's order of April 15, 1970, directed that this case proceed to a determination of the acreage contained within the area described in finding No. 25, the fair market value of said lands as of April 8, 1816, the amount of offsets, if any, and all other questions bearing upon the defendant's liability to the plaintiff.

Developing the proof that sustained the plaintiff's aboriginal title to the area described in finding No. 25 involved, among other things, research going back to the earliest historical accounts, including those of De Soto's travels in the claimed area in 1540, and required a thorough knowledge of the history of the Creek Nation and its treaties and agreements with the United States, and a thorough knowledge of the history, treaties, agreements, domains, and conflicting land claims of the neighboring Choctaw, Chickasaw, and Cherokee Tribes.

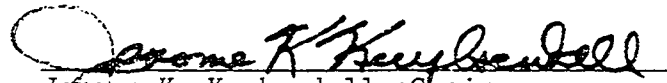
A motion filed by the defendant for rehearing and amendment of the Commission's aforementioned decision of April 15, 1970, was opposed by Mr. Niebell for the plaintiff and denied by the Commission's opinion and order entered in this docket on March 3, 1971 (24 Ind. Cl. Comm. 473). No appeal was taken from this decision, and the Commission set the case for trial on value.

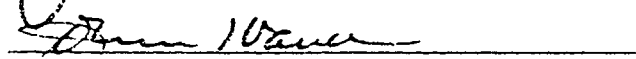
While preparing for trial on value, the attorneys were also negotiating, with the consent of their principals, for the settlement of this case. These negotiations resulted in the mutual agreement that the lands described in the Commission's finding No. 25 contained a total of 1,346,000 acres, as computed by the Bureau of Land Management in the Department of the Interior, and the approved agreement for the compromise settlement of the plaintiff's claim by entry of the aforementioned award of \$1,346,000.00

Considering the responsibilities undertaken, the difficult problems of fact and law involved in the case, the contingent nature of the compensation, the award recovered for the plaintiff, and the factors pertinent to the determination of attorney fees under the standards established by the Indian Claims Commission Act, the Commission finds that Paul M. Niebell, the attorney for the plaintiff, is entitled to a fee for services rendered in this case in the requested amount of \$134,600.00, representing ten percent of the award to the plaintiff.

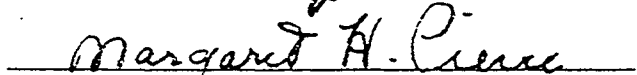
IT IS THEREFORE ORDERED that out of the funds appropriated to pay the final award entered herein on August 23, 1972, in favor of the Creek Nation, there shall be disbursed to Paul M. Niebell of Washington, D. C., the sum of \$134,600.00 as payment in full for legal services rendered in the prosecution of this case.

Dated at Washington, D. C., this 7<sup>th</sup> day of December 1972.

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarborough, Commissioner

  
Margaret H. Pierce, Commissioner

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Brantley Blue, Commissioner