

BEFORE THE INDIAN CLAIMS COMMISSION

THE EASTERN BAND OF CHEROKEE)	
INDIANS,)	
)	
Plaintiff,)	
)	Docket Nos. 282-A
v.)	through 282-L,
)	inclusive
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

ORDER ALLOWING ATTORNEYS' FEE

HAVING CONSIDERED the joint application for allowance of attorney fee for services in behalf of the plaintiff herein that was filed on October 16, 1972, by Frank M. Parker, W. M. Styles for himself and as the duly appointed Administrator of the estate of J. Scroop Styles, deceased, and Paul M. Niebell; the statements accompanying the application of services performed by J. Scroop Styles, William M. Styles, and Frank M. Parker as original attorneys for the Eastern Band of Cherokee Indians in prosecuting claims in Docket Nos. 282-A through 282-L, inclusive, before the Indian Claims Commission and by Paul M. Niebell in continuing the work on these cases before the Commission; the defendant's response to the application, filed on November 27, 1972; the contracts under which the attorneys served the plaintiff; and the entire record and all proceedings in Docket Nos. 282-A through 282-L, inclusive, the Commission finds as follows:

1. Award. On September 11, 1972, in conformance with an approved compromise settlement agreement between the parties, the Commission entered a final award in Docket Nos. 282-A through 282-L, inclusive, in the sum of \$1,855,254.50 in favor of the Eastern Band of Cherokee Indians (28 Ind. Cl. Comm. 386, 398). Funds to satisfy the award were appropriated by Public Law 92-607, approved October 31, 1972 (86 Stat. 1498).

2. Contractual Authority. The representation herein for the Eastern Band of Cherokee Indians was under two formal contracts:

(a) The first of these contracts, assigned No. I-1-Ind. 42485, was entered into by the Eastern Band of Cherokee Indians, State of North Carolina, on May 5, 1951, with the firm of Styles and Styles composed of J. Scroop Styles and William M. Styles, and with Frank M. Parker, of Asheville, North Carolina. This contract was approved on May 18, 1951, for a period of five years beginning with its date of approval. Extensions of the term of this contract were approved to May 18, 1964.

(b) The second contract, assigned No. K51C14200068, was entered into by the Eastern Band of Cherokee Indians with Paul M. Niebell, of Washington, D. C., on February 1, 1968. This contract was approved on May 14, 1968, and had a specified term of ten years beginning with its date of approval.

3. Compensation Under the Contracts and Requested Attorneys' Fee. Each of the aforementioned contracts provide that compensation to the attorneys for services rendered is wholly contingent upon recovery for the plaintiff and shall be in an amount not to exceed 10 percent of the plaintiff's recovery. The application of the attorneys requests allowance of an attorneys' fee for legal services in the amount of \$185,525.45, which is 10 percent of the amount of the aforementioned award. No claim for expenses is included in the application.

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 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 attorneys' fee which should be awarded".

5. Notice to the Plaintiff. A notice of the filing of the application for allowance of attorney fee, along with a copy of the application and copies of the accompanying statements of services rendered by the attorneys, was mailed by the Deputy Clerk of the Commission on October 17, 1972, to Noah Powell, Principal Chief of the Eastern Band of Cherokee Indians. The Commission received a letter, dated November 8, 1972, from Principal Chief Noah Powell in which he indicated that the Eastern Band of Cherokee Indians has no objection to the allowance of the requested attorneys' fee of \$185,525.45 for services rendered for the Band in Docket Nos. 282-A through 282-L.

6. Attorneys' Services. The above-identified contracts imposed upon the attorneys the duty, among others, of advising and representing the Eastern Band of Cherokee Indians in properly investigating and formulating the claims of said Band 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, or final settlement of said claims under said act.

The attorneys' initial investigations involved primarily a review of the history and affairs of the Cherokee Nation from the time of the formation of the United States until the middle of the twentieth century. Particular attention was given in these investigations to the history of 12 treaties executed by the United States with the Cherokee Nation, beginning with the Treaty of Hopewell of November 28, 1785, and ending with the Treaty of New Echota of December 29, 1835, under which the lands of the Cherokee Nation located east of the Mississippi River were ceded to the United States; the circumstances under which these treaties were negotiated; the reasonableness of the compensation paid for the ceded lands; and information in the historical records bearing on the question of what proportion of the Cherokee Nation on the dates of the treaties of cession was represented by the Eastern Band of Cherokee Indians. From the latter information the attorneys determined that the Eastern Band represented on those dates approximately one-fifteenth of the entire Cherokee Nation.

Using the results of their investigations, the attorneys prepared and timely filed with this Commission a petition in behalf of the Eastern Band of Cherokee Indians. Several claims against the United States were asserted in the allegations of this petition. Twelve of the claims, in paragraphs numbered 5 through 16 of the original petition, were founded upon allegations of unconscionable consideration paid by the United States for the lands ceded under the treaties executed during the 1795-1835 period. The petition was assigned Docket No. 282.

The defendant in due course answered the petition, raising multiple defenses both legal and factual, to the individual claims, and in general denying liability to the plaintiff in any manner. Thereafter, the defendant followed up its answer by filing a motion for summary judgment in which was requested a finding by the Commission that there existed no genuine issue of fact between the parties and that all of the claims asserted for the plaintiff should be resolved in the defendant's favor as a matter of law.

In respect to the 12 claims asserted in paragraphs 5 through 16 of the petition, the attorneys successfully met the challenge of the defendant's motion. The Commission's opinion on the motion, entered February 20, 1959 (7 Ind. Cl. Comm. 140), held, among other things, that each of those 12 claims stated a cause of action under Clause 3, Section 2 of the Indian Claims Commission Act. The Commission's order of February 20, 1959, denied the defendant's motion as directed to those claims and ordered, among other things, the filing of these claims in 12 separate petitions; the granting of the defendant's motion as directed to claims contained in paragraphs 17 through 20 of the petition and the dismissal of those claims; and the dismissal of the original petition in Docket No. 282 upon the filing of the separate petitions for the claims

in paragraphs 5 through 16. Pursuant to the Commission's order the 12 separate petitions were duly filed and assigned Docket Nos. 282-A through 282-L. The defendant filed separate answers to the 12 petitions in each case asserting several defenses and generally denying the allegations in the petition.

Thereafter, the attorneys for the plaintiff continued work on the 12 claims seeking information in respect to the extent and value of the land areas involved and exploring possibilities of settling the claims by agreement of the parties.

After one of the original attorneys for the plaintiff had died and the other two had accepted legal positions making it necessary for them to withdraw from the representation of the plaintiff, Paul M. Niebell, pursuant to the aforementioned contract approved on May 14, 1968, continued with the prosecution of the claims in Docket Nos. 282-A through 282-L and the exploration of settlement possibilities.

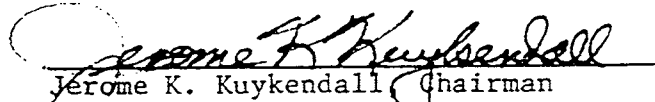
In February of 1970 settlement negotiations by counsel resulted in an agreement between the parties in respect to the extent of the land areas involved in the plaintiff's claims that made unnecessary a complex trial before the Commission on the issue of liability that had been set to commence on February 26, 1970.

After further research on value and other issues and long negotiations between counsel, the parties agreed upon the compromise settlement of all of the claims in Docket Nos. 282-A through 282-L, inclusive, by entry of the aforementioned final award in the sum of \$1,855,254.50 in favor of the Eastern Band of Cherokee Indians. By negotiating successful settlements of the issues involved in these claims and thereby avoiding the considerable expenditure of time and money that would have been involved in their complete litigation, counsel served the best interests of the plaintiff.

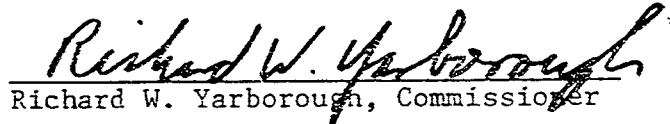
Considering the responsibilities undertaken, the difficult problems of fact and law involved in the cases, the contingent nature of the compensation, the award obtained for the plaintiff, and the factors pertinent to the determination of attorney fees under the standards established by the Indian Claims Commission Act, the Commission finds that the attorneys for the plaintiff are entitled to an attorneys' fee in the requested amount of \$185,525.45, representing 10 percent of the award to the plaintiff. The Commission is advised that the attorneys have agreed among themselves upon a division of the attorneys' fee and that Paul M. Niebell is authorized to receive payment of the fee for appropriate distribution among the attorneys.

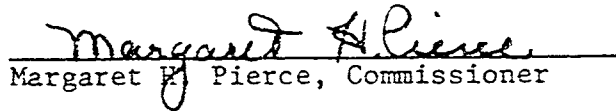
IT IS THEREFORE ORDERED that out of the funds appropriated to pay the final award entered in Docket Nos. 282-A through 282-L, inclusive, on September 11, 1972, in favor of the Eastern Band of Cherokee Indians, there shall be disbursed to Paul M. Niebell the sum of \$185,525.45 for distribution by him to the participating attorneys in accordance with their respective interests therein.

Dated at Washington, D. C., this 7th day of December 1972.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner

Brantley Blue, Commissioner