

BEFORE THE INDIAN CLAIMS COMMISSION

THE SUQUAMISH TRIBE OF INDIANS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Docket No. 132
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: July 31, 1974

FINDINGS OF FACT ON ATTORNEY'S FEE AND EXPENSES

On July 3, 1972, Frederick W. Post, attorney of record for the Suquamish Tribe of Indians, plaintiff in this docket, filed a petition for payment of compensation and expenses. This petition contains a statement of the legal services performed, and moneys expended, in the formulation and prosecution of the plaintiff's claim in this docket. Having considered this petition, the responses of the plaintiff tribe and the defendant, the contract of employment under which Frederick W. Post served the plaintiff, and the entire record in this docket, the Commission makes the following findings of fact.

1. The Award.

On October 22, 1970, the Commission entered final judgment in this docket, entitling plaintiff to recover from defendant the sum of \$42,170.49. 24 Ind. Cl. Comm. 34, 49. This award was affirmed by the Court of Claims on March 17, 1972. 197 Ct. Cl. 775.

2. Attorneys' Contract.

Attorneys' services in this case were performed under a contract dated October 14, 1949, identified as I-1-ind 42420, between the

Suquamish Tribe of Indians and attorneys Frederick W. Post, Kenneth J. Selander, Kenneth L. R. Simmons, and Ralph G. Wiggenhorn. The contract was effective for a period of five years beginning February 21, 1950, the date of its approval by the Bureau of Indian Affairs.

On October 19, 1949, Ralph G. Wiggenhorn assigned his entire interest in the contract to Kenneth Simmons. This assignment was approved by the Bureau of Indian Affairs on February 21, 1950. On September 25, 1950, Kenneth J. Selander assigned his entire interest in the contract to Frederick W. Post. This assignment was approved by the Bureau on February 27, 1951. Mr. Simmons died in May 1953. Mr. Simmons did not formally assign his interest in the contract to Mr. Post prior to his death.

The contract between Mr. Post and the Suquamish Tribe was extended several times for periods of two years. The most recent extension, for a period of two years beginning February 21, 1971, was approved on February 23, 1971.

3. Contractual Provisions for Compensation and Reimbursement of Expenses.

The contract provides that compensation of the attorneys is wholly contingent upon plaintiff's recovery, and is to be set by the Commission at a sum not to exceed 10% of the amount of that recovery. The contract further provided that within six months of its approval plaintiff would pay the attorneys \$750 as an advance on their fee. This amount was to be deducted from any contingent fee owed to the attorneys. This advance was paid by the tribe -- \$375.00 to Mr. Simmons, \$375.00 to Mr. Post -- on or before April 10, 1951. On February 3, 1953, Mr. Simmons transferred \$153.06 of his advance to Mr. Post.

The contract also provided that the attorneys should be reimbursed

from any judgment recovered by plaintiff the expenses of litigation incurred in prosecuting the claim.

4. Requested Fee and Expenses.

Mr. Post's petition requests the award of an attorney's fee in the amount of \$4,217.05, which is equivalent to a full 10% of the judgment entered by the Commission in this docket.

Mr. Post also requests reimbursement of a total of \$1,329.49 in litigation expenses incurred in prosecuting plaintiff's claim. The petition breaks down these expenses as follows:

1. General expenses of litigation including expenses of appeals.	\$1,090.42
2. One-ninth share of expenses incurred in common prosecution of claims of nine tribes.	267.13
3. Expert witness fee of Dr. James R. Crutchfield.	500.00
Total incurred	<u>1,857.55</u>
Less Suquamish Tribe payment	- 528.06
Total due	<u>\$1,329.49</u>

5. Response of the Defendant.

The response, dated April 2, 1973, of the Department of Justice to Mr. Post's petition, was accompanied by a letter from the Associate Solicitor for Indian Affairs, Department of the Interior, and a memorandum from the Assistant to the Secretary of the Interior. These documents indicated that in accordance with the attorney contract the Suquamish Tribe had already paid its attorneys \$750 as an advance on their fee. The Government therefore had no objection to the allowance

of the full 10% fee, less the \$750 already paid. With regard to expenses, the memorandum indicated that although the items fell generally within categories of expenses which are proper for reimbursement, Mr. Post had failed to properly document many of his claims.

6. Notice to and Response of the Plaintiff.

On July 5, 1972, the Clerk of the Commission notified Mr. Richard Belmont, Jr., Chairman of the Suquamish Tribe, that Mr. Post had filed his petition. By letter dated July 10, 1972, plaintiff responded to Mr. Post's petition as follows:

In reference to our claim; Docket No. 132. The Suquamish Indian Tribe considers it a grave insult to our ancestors to accept \$.90 an acre for land they fought and died for. We realize that Mr. Post has been working on the case for twenty years and has a just claim of 10%.

Since we will never except [sic] the finding of the Claims Commission a just one, the attorneys fees can not be paid out of this judgment.

We need all the copy's [sic] of the attorney contracts before the tribe could consider paying Mr. Post. We would appreciate more information on the Commissions final judgment since we reject it. As a tribe, we know our children will also realize the insult of these findings and will not accept the Commissions small token for Suquamish ancestral land. If we receive no money for our claim, we will still have pride and love in this land, which to us, will always be ours.

Yours truly,  
Richard W. Belmont Jr. /s/  
Suquamish Tribal Chairman

7. Trip of Tribal Representatives to Washington, D. C.

On January 19, 1973, the Commission, in fulfillment of the requirements of Section 27(a) of the Indian Claims Commission Act, 25 U.S.C



Post, not by the Commission.

On March 6, 1973, Mr. Bread wrote to the Chairman of the Indian Claims Commission again expressing the tribe's dissatisfaction with the judgment entered by the Commission. Mr. Bread also indicated that the tribe was completely dissatisfied with the way their case was handled by Mr. Post. Enclosed with Mr. Bread's letter was a copy of a letter sent by Mr. Bread to the Washington State Bar Association, complaining of Mr. Post's behavior in issuing an unauthorized notice of hearing. Mr. Bread alleged that the tribe had expended in excess of \$1200 in sending two representatives to attend the "hearing" scheduled by Mr. Post.

8. Hearing.

On August 7, 1973, a hearing on Mr. Post's petition was held in Seattle, Washington. Mr. Post appeared in support of his petition. Mr. Bread appeared on behalf of the Suquamish Tribe.

At the hearing Mr. Post described the legal services he had performed on behalf of the tribe. He also introduced in evidence vouchers to support some of his claimed expenditures.

At the hearing Mr. Bread read into the record letters the tribe had written to the Chairman of the Commission, the Washington State Bar Association, and Senator James Abourezk, complaining about the judgment they had received in this case and the services rendered by Mr. Post.

In replying with regard to his "Notice of Hearing" and the trip of the tribal representatives to Washington, D. C., Mr. Post stated

that the matter had been investigated by the Washington State Bar Association, which concluded that he had not been guilty of any unethical conduct.

9. Attorney Services.

The claim in this docket was for additional compensation for plaintiff's aboriginal title lands acquired by the defendant under the Point Elliott Treaty of January 22, 1855, 12 Stat. 927. Plaintiff's petition and defendant's answer presented legal and factual issues which included the following:

a. Whether plaintiff's claim was barred by the decision of the Court of Claims in Duwamish v. United States, 79 Ct. Cl. 530 (1934), cert. denied, 295 U. S. 735 (1935);

b. Whether plaintiff had standing to prosecute the claim;

c. The value and extent of plaintiff's land title, if any;

d. The value of the land owned;

e. The amount of consideration, if any, received by plaintiff;

f. The allowability of gratuitous offsets claimed by defendant.

The issues of plaintiff's standing to sue and title were tried in June 1952, August 1953, and August 1955. Both parties filed proposed findings of fact and briefs. On March 25, 1957, the Commission issued its decision, holding that plaintiff had the right to prosecute its claim, and that plaintiff held aboriginal title to a portion of the lands it claimed. 5 Ind. Cl. Comm. 140. The Commission also decided that the

1934 Court of Claims decision was not res judicata with respect to plaintiff's claim. 5 Ind. Cl. Comm. at 160.

Trial on the value of plaintiff's aboriginal lands was held in January 1959. The Commission issued its value decision on July 10, 1959. 7 Ind. Cl. Comm. 747.

This docket was consolidated with other dockets involving claims arising under the Point Elliott Treaty for the purpose of allocating the treaty consideration among the tribes which participated in the treaty. On August 13, 1964, the Commission issued its decision allocating consideration among the participants to the Point Elliott Treaty. Upper Skagit Tribe of Indians v. United States, Docket 92, et al., 13 Ind. Cl. Comm. 583.

Defendant then filed a motion for determination of its liability. On January 21, 1966, the Commission decided that the consideration received by plaintiff for its lands was unconscionable, and that defendant was liable to plaintiff in the amount of \$42,170.49. 16 Ind. Cl. Comm. 479.

Trial on the offsets phase of the case was held in November 1968. On October 22, 1970, the Commission disallowed all gratuitous offsets claimed by defendant and entered final judgment in favor of plaintiff. 24 Ind. Cl. Comm. 34. Plaintiff filed its notice of appeal from the Commission's judgment on January 18, 1971. On March 17, 1972, the Court of Claims affirmed the Commission's award. 197 Ct. Cl. 775.



Plaintiff's attorney prepared and filed the petition in this docket. At each stage of the litigation of this claim he presented documentary evidence and expert testimony, filed motions, responses to motions, proposed findings of fact, and briefs, and appeared before the Commission on behalf of the tribe. In prosecuting an appeal to the Court of Claims, he filed briefs and argued plaintiff's cause before the court.

10. Conclusion on Attorney's Fee.

On the basis of the entire record in this docket, including the attorney's contract, and considering the responsibilities undertaken, the difficult problems of fact and law involved, the time and work involved in the litigation, the contingent nature of the compensation, the award obtained, and all appropriate factors pertinent to the determination of attorneys' fees under the standards established by the Indian Claims Commission Act, the Commission concludes that Frederick W. Post, attorney for plaintiff, has rendered valuable legal services in prosecuting plaintiff's claim. However, the events described in finding of fact 7, supra, have led the Commission to conclude that Mr. Post should not receive the maximum fee allowable under his contract. Therefore, under the terms of the contract in this docket, and the standards established by the Commission for determination of attorneys' fees, which include those obtaining in the prosecution of similar claims in courts of law, Frederick W. Post has earned an attorney fee of \$3,700.00--representing 8.77 percent of the award to plaintiff--less \$750 previously paid by the tribe as an advance on the attorney fee. Payment of \$2,950.00 to Mr. Post will represent payment in full of his claim for compensation for legal services rendered in this docket.

11. Denial of Certain Claimed Expenses.

Based on its review of the entire record, including the evidence introduced at the hearing August 7, 1973, the Commission finds that the following claimed expenses are not allowed, for the reasons indicated.

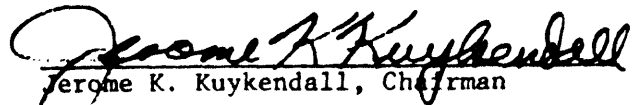
<u>Paragraph</u>	<u>Amount Claimed</u>	<u>Date</u>	<u>Amount Disallowed</u>	<u>Reasons</u>
11	\$ 1,090.42	5/8/51 through 1/20/71	\$ 2.31	Travel expenses on Suquamish ledger indicated as \$6.79 per trip rather than \$7.00. Disallow \$.21 per trip for 11 trips.
		8/5/51	\$ 2.71	Claim for miscellaneous item not adequately supported by documentary evidence.
		11/5-9/68	\$ 25.00	Per diem expenses not adequately supported by documentary evidence, nor in conformity with requirements of Commission's Policy Statement §102.
		1/14/71	\$ 10.00	Court of Claims filing fee already reimbursed by plaintiff.
		2/1-7/72	\$ 25.00	Per diem expenses not adequately supported by documentary evidence, nor in conformity with requirements of Commission's Policy Statement §102.

12. Unreimbursed Expenses Allowed.

In paragraph 13 of his petition, Mr. Post indicates that he was paid \$528.06 by the plaintiff for expenses of litigation. Mr. Post's ledger for the Suquamish Tribe indicates that he received \$375.00 from the tribe on April 10, 1951, and an additional \$153.06 from Mr. Simmons on February 3, 1953. This last amount represents part of the \$375.00 paid by the tribe to Mr. Simmons on or before April 10, 1951. As indicated in finding of fact 3, supra, the moneys advanced to Mr. Post and Mr. Simmons in 1951 represented advances against fees rather than for the payment of expenses. We have already set off these moneys against Mr. Post's fee in finding of fact 10, supra. Therefore, we shall not deduct this \$528.06 from the total attorney expenses otherwise allowed to Mr. Post.

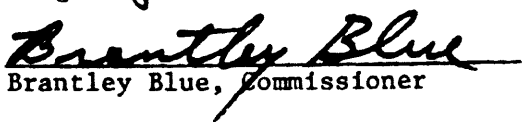
13. Conclusion.

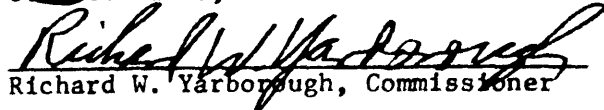
The Commission concludes that Frederick W. Post is entitled to receive \$2,950.00 as an attorney fee, plus \$1,842.53 in reimbursement of litigation expenses, or a total of \$4,792.53.

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner

  
Richard W. Yarbrough, Commissioner