

## BEFORE THE INDIAN CLAIMS COMMISSION

THE NISQUALLY TRIBE OF INDIANS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Docket No. 197
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

ORDER ALLOWING ATTORNEY'S FEE

HAVING CONSIDERED the application for attorney's fee filed on June 27, 1977, by the attorney of record for the plaintiff in this docket, the responses to the application filed by the Department of Justice and the Department of the Interior, the contracts of employment under which the plaintiff was represented, and the record of all proceedings in this case, the Commission finds and orders as follows:

1. Fee Application. The fee application was filed on June 27, 1977, by Frederick W. Post on his own behalf and on behalf of Malcolm S. McLeod. Mr. Post is the present attorney of record for the plaintiff.

2. Attorneys' Contracts. This claim has been prosecuted under the contracts described in the above application for attorney's fee. Contract Symbol I-1-ind. 42502 was entered into June 18, 1951, by the Nisqually Tribe of Indians and attorneys Frederick W. Post and Malcolm S. McLeod. The contract was approved July 27, 1951, by Acting Commissioner of Indian Affairs H. Rex Lee, and the contract ran for a five-year period from the date of approval. The contract provided that \$250.00 be paid to attorneys

Post and McLeod for an initial investigation of the case, and that in the event the attorneys should advise the tribe to pursue further litigation the \$250.00 would be deducted from the contingent attorney fees. On May 14, 1957, a supplement to the original claims attorney contract was conditionally approved by Deputy Commissioner Greenwood. The supplement amended the original contract by deleting the provision for payment of the \$250.00 retainer fee and instead made \$750.00 available for expenses. The conditions were accepted by the Nisqually Tribe on April 11, 1958, and by attorneys Post and McLeod on April 17, 1958. Contract Symbol I-1-ind. 42502 expired by its own terms July 26, 1956.

Contract Symbol 14-20-650 No. 469 was entered into on October 26, 1956, for the purposes of extending the original contract and providing additional money for expenses. This contract was conditionally approved by Deputy Commissioner Greenwood on May 14, 1957, for a ten-year period beginning July 27, 1956. The conditions were accepted by attorneys Post and McLeod on October 9, 1957, and by the Nisqually Tribe on October 19, 1957. This contract also expired by its own terms July 26, 1966.

Contract 14-20-0500 No. 2861 was entered into on November 25, 1967, for the purpose of attorney Post continuing with the prosecution of the Nisqually tribal claims. Attorney McLeod had dropped from the case. This contract was conditionally approved by Portland Area Director Baldwin March 6, 1968, for a six-year period beginning July 26, 1966. The conditions were accepted by attorney Post on February 7, 1968, and by the Nisqually Tribe on February 26, 1968.

Contract 14-20-0500 No. 3708 was entered into on July 10, 1972, and approved by Portland Acting Area Director Balsiger September 13, 1972. This contract was for a three-year period beginning July 26, 1972. With respect to attorneys' fees, this contract provided:

That the compensation of the party of the second part for the services to be rendered under the terms of this contract is to be wholly contingent upon recovery for the tribe. The total compensation for attorneys who have worked on the Tribe's said case under this or prior contracts shall be ten per centum of any and all sums recovered or procured through their efforts, in whole or in part, for the said Indians, whether by suit, action of any department of the Government or the Congress of the United States of America, or otherwise.

3. Final Award. On July 31, 1974, the Commission entered a final award in favor of the plaintiff in the amount of \$80,013.07. Funds to satisfy the award were appropriated by the Act of September 30, 1976, 90 Stat. 1416.

4. Amount of Fee Requested. The application for attorney's fee requests the sum of \$8,001.31, which is an amount equal to 10 percent of the final award entered in this docket. The petitioner states that he has reached an agreement with his former associate, Malcolm S. McLeod, who was a party to earlier contracts, that the compensation shall be divided equally between them.

5. Notice to Parties and Responses. Notice of the filing of the application for allowance of attorney's fee in this docket was mailed on June 30, 1977, by the Clerk of the Commission to the tribal representatives, the Department of Justice, and the Department of the Interior. No response has been received to date from the tribe.

On August 16, 1977, the Department of Justice filed a response, which included a letter dated August 2, 1977, from the Acting Associate Solicitor, Division of Indian Affairs, and a memorandum dated July 19, 1977, from the Acting Deputy Commissioner of Indian Affairs, both of which state there is no objection to the allowance of attorney's fee. The Department of Justice takes no position with respect to the allowance of the attorney's fee.

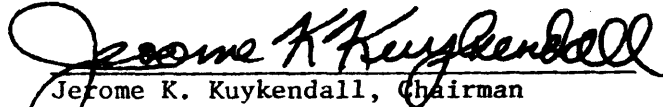
6. Fee Determination. The attorneys prosecuted the tribal claim before the Indian Claims Commission. The decision was in favor of the tribe, and held that the land aboriginally occupied by the tribe had a value of \$160,000 when it was acquired by the United States under the Treaty of Medicine Creek, March 3, 1855. The Commission found that the defendant paid \$78,893.92 for the land and that the plaintiff was entitled, after offsets of \$1,093.01, to an award of \$80,013.07. The attorney appealed this decision to the United States Court of Claims, which affirmed the award.

The amount claimed is in accordance with the contracts, as amended and extended, which provide for a fee in the amount of 10 percent of the amount recovered. On the basis of all of the foregoing the Commission concludes that an attorney fee in the amount of \$8,001.31, representing 10 percent of the final award, is appropriate.

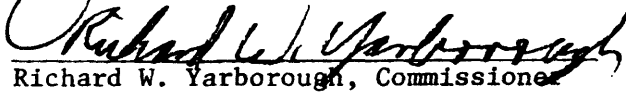
IT IS THEREFORE ORDERED that out of the funds appropriated to pay the final award herein entered on July 31, 1974, there shall be disbursed

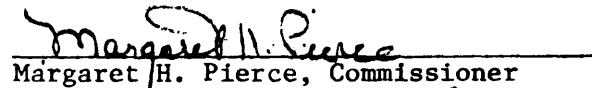
the sum of \$8,001.31 to Frederick W. Post, attorney of record in this case, for distribution to all parties having an interest in such fee, in full satisfaction of any and all claims for legal services in this docket.

Dated at Washington, D. C., this 19th day of October 1977.

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarborough, Commissioner

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner