

BEFORE THE INDIAN CLAIMS COMMISSION

THE SQUAXIN TRIBE OF INDIANS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Docket No. 206
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

ORDER ALLOWING ATTORNEY'S FEE

HAVING CONSIDERED the application for attorney's fee filed on June 20, 1977, by the attorney of record for the plaintiff in this docket, the responses to the application filed by the Department of Justice, the Department of the Interior, and the plaintiff, the contracts of employment under which the plaintiff was represented, and the record of all proceedings in this docket, the Commission finds and orders as follows:

1. Fee Application. The fee application was filed on June 20, 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 No. I-1-ind. 42646 was entered into September 6, 1951, with the Squaxin Tribe of Indians of Washington and attorneys Frederick W. Post and Malcolm S. McLeod. The contract was conditionally approved April 28, 1952, by Commissioner D. S. Myer for a five-year period from the date of

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approval. The contract provided that \$750.00 be paid to attorneys Post and McLeod for certain litigation expenses and, in the event of a recovery for the tribe, the \$750.00 should be deducted from the allowed contingent fee. The record does not indicate that the attorneys in fact received the \$750.00.

The conditions imposed by the Commissioner were accepted by the Squaxin Tribe and by attorneys Post and McLeod on October 2, 1955. This contract was extended four times, each time for a two-year period, ending April 27, 1965.

Contract Symbol 14-20-0500 No. 2351 was entered into June 6, 1965, by the Squaxin Tribe and attorney Post. Attorney McLeod had dropped from the case. The contract was approved by Portland Acting Area Director James E. Sayers July 27, 1965, for a two-year period beginning April 28, 1965. This contract provided, in essence, that the payment of attorney's fees was to be contingent upon a recovery for the tribe. The attorney would receive such compensation as decided by the Indian Claims Commission. The compensation, however, would not exceed 10 percent of any and all sums recovered for the tribe. The attorney would also be allowed and reimbursed actual expenses incurred by him under this contract and prior contract I-1-ind. 42646, excluding such items as had been previously paid, or were afterwards paid out of tribal funds.

Contract No. 2351 was amended and extended for a five-year period beginning April 27, 1967. In respect to attorney's fees, the amended contract provided that the total compensation for attorneys under this

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contract and prior contracts would be 10 percent of any and all sums recovered. Contract No. 2351 expired by its own terms April 26, 1972.

Claims Attorney Contract 14-20-0500 No. 3727 was entered into September 19, 1972, and approved October 17, 1972, by Portland Acting Area Director Richard M. Balsiger, for a three-year period beginning April 27, 1972. This contract contained substantially the same terms and conditions as the prior contract.

3. Final Award. On July 31, 1974, the Commission entered a final award in favor of the plaintiff in the amount of \$7,661.82. 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 \$766.18, 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 were mailed on June 22, 1977, by the Clerk of the Commission to the tribal representatives, the Department of Justice, and the Department of the Interior.

On September 26, 1977, the Commission received a telegram from Calvin J. Peters, Chairman, Squaxin Island Tribe, expressing disapproval of payment to the attorneys until the tribe is informed of the status of

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the appeal of this docket. The Commission has informed the tribe of the status of the appeal.

On August 16, 1977, the Department of Justice filed a response which included a letter dated August 3, 1977, from the Acting Associate Solicitor, Division of Indian Affairs, and a memorandum dated July 25, 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 prepared the complaint on behalf of the plaintiff and presented evidence on liability, damages, and offsets. They prepared and filed motions, briefs, and findings of fact which resulted in a determination that the tribe was entitled to recover the sum of \$7,661.82. This determination was appealed to the United States Court of Claims, which affirmed the order entered by the Commission.

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's fee in the amount of \$766.18, representing 10 percent of the final award, is appropriate.


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

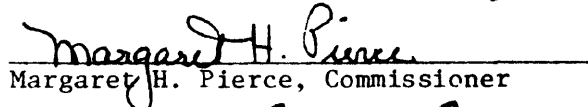
disbursed the sum of \$766.18 to Frederick W. Post, attorney of record in this case, for distribution to all parties having an interest in such fee, in full satisfaction of any and all claims for legal services in this docket.

Dated at Washington, D. C., this 9th day of November, 1977.

  
Jerome K. Klykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarborough, Commissioner

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner