

BEFORE THE INDIAN CLAIMS COMMISSION

THE S'KLALLAM TRIBE OF INDIANS,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 134
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

ORDER ALLOWING ATTORNEYS' FEE

HAVING CONSIDERED the applications for fees filed by the attorneys in this case, 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 case, the Commission finds and orders as follows:

1. Fee Applications. Petitions for attorneys' fees have been filed by three attorneys, each of whom have represented the S'Klallam tribe in proceedings before the Commission at different times.

Attorney Frederick W. Post filed a petition for fees on July 25, 1977. Attorney F. L. Crawford filed a petition for fees and expenses on April 18, 1977, and Attorney Frederick L. Noland filed a petition for fees and expenses on October 28, 1977. This petition states that Attorneys Crawford and Post and Noland have agreed to an equal division of the fee allowed by the Commission and have authorized the petitioner to request that payment of the attorneys' fee be made to the petitioner, as attorney of record, for the agreed distribution. On November 10, 1977, Attorney Noland wrote to the Commission stating that he would make no additional claim for a fee to the Commission, the Bureau of Indian Affairs or to the S'Klallam tribe.

2. Attorney's Contracts. This claim has been prosecuted under the contracts described in the above applications for attorney's fee. These are as follows:

Contract Symbol I-1-ind. 42163 was entered into on December 17, 1948, by the Clallam Tribe of Indians and Attorney Kenneth J. Selander. Assistant Commissioner William Zimmerman, Jr., conditionally approved the contract on May 13, 1949, for a seven-year period beginning with the date of approval. On September 25, 1950, Attorney Selander resigned from the case and assigned his interest in the case to Attorney

Frederick W. Post. The assignment was approved by Commissioner D. S. Myer on January 22, 1951. A supplemental contract was entered into on January 5, 1957, by the Clallam Tribe and Attorney Post. The purpose of the supplemental contract was to modify the original contracts by adding a provision for the payment of \$750 for litigation expenses. The supplemental contract was conditionally approved by Deputy Commissioner W. Barton Greenwood on July 23, 1957. The conditions were accepted by Attorney Post on July 10, 1958, and by the tribe on July 16, 1958.

Contract Symbol 14-20-0650 No. 470 was entered into January 5, 1957, and conditionally approved by Deputy Commissioner W. Barton Greenwood on July 23, 1957, for a seven-year term beginning May 13, 1957. The conditions imposed by the Deputy Commissioner were accepted by Attorney Post on October 4, 1957, and by the Clallam Tribe on October 25, 1957.

Attorney Post states in his petition that the extended contract (Symbol 14-20-0650 No. 470) was extended for two years from May 13, 1963. The contract extension was conditionally approved by the Portland Area Director in July 1963. The conditions imposed by the Area Director were never accepted by Attorney Post or by the Tribe, even though several letters were sent to Attorney Post stating that the Bureau had not received notice of acceptance by the attorney or the tribe. A resolution passed by the Clallam Tribe on July 18, 1966, states Attorney Post never advised them of the conditions for approval. Since the conditions were never accepted by the attorney, and the Clallam Tribe was not informed of the conditions by Attorney Post, contract No. 470 expired May 12, 1963.

Contract Symbol 14-20-0500 No. 2715 was entered into March 2, 1967, by the Clallam Tribe and Attorney E. L. Crawford. Portland Area Director Dale M. Baldwin approved the contract on March 14, 1967, for a five-year period beginning with the date of approval. This contract expired on its own terms March 13, 1972.

On February 14, 1975, the Clallam Tribe entered into a contract (K51C14200922) with the law firm of McDonald, Hoague and Bayless. Commissioner Morris Thompson approved the contract on April 28, 1975, for a five-year period from February 14, 1975.

The contract between the tribe and McDonald, Hoague and Bayless in pertinent part relative to compensation is as follows:

2. The Klallam Tribe agrees to pay the Attorneys for their services as follows:

(a) As and for compensation to the Attorneys for their services in connection with the aforementioned claim of the United States for offsets of \$78,473.02 against the interlocutory award of \$400,820, the Klallam Tribe agrees to pay the Attorneys ten percent (10%) of the amount, if any, of the said claimed offsets which are disallowed. In the event that the full claimed offsets of \$78,473.02 are allowed against the Klallam Tribe, the Klallam Tribe shall owe the Attorneys nothing for their services rendered in connection with that portion of this case;

(b) As and for compensation to the Attorneys for their services rendered in advising the Klallam Tribe as to the right of appeal or cross-appeal in this case, (described above in paragraph B on page 2), for services rendered in representing the Klallam Tribe in the event of an appeal or cross-appeal (described above in paragraph C on page 2); and for services rendered in connection with the question of moving or petitioning to reopen the case (as described above in paragraph D on page 2-3), the Klallam Tribe agrees to pay the Attorneys such fees as the Indian Claims Commission may determine to be adequate and equitable compensation. It is recognized by the Attorneys that determination of the rights of Frederick W. Post and E. L. Crawford, under the terms of the contracts with the Klallam Tribe above-mentioned, has not been made, and that when done, may affect the compensation of the Attorneys for their services in those aspects of the case not involving the aforementioned offset claim (to wit, the review of the record and advice with regard to appeal or cross-appeal, services in connection with any appeal or cross-appeal, and the review of the question of reopening the case for further testimony on ceded area, and any such efforts to reopen the case).

This contract was approved by the Bureau of Indian Affairs on April 28, 1975, subject to the following four understandings:

1. Claims for compensation under Section 2(a) of the contract shall be submitted to the Commissioner of Indian Affairs or his authorized representative.
2. Claims for compensation under Section 2(b) of the contract shall be submitted to the Indian Claims Commission and the aggregate fee to be allowed for all sets of claims counsel shall not exceed ten percent of the amount recovered for the Indians.
3. Reimbursement of expenses under Section 3 of the contract is subject to the availability of tribal funds for that purpose.
4. The approval given this contract does not constitute concurrence in or approval of the allegations contained in paragraph D on pages 2 and 3 of the contract to the effect that the United States, acting through the Secretary of the Interior and the Commissioner of Indian Affairs, knew or should have known of alleged conflicts of interest on the part of former tribal claims attorneys for the Klallam Tribe.

The first two understandings make it clear that the processing of claims under Section 2(a) and 2(b) shall be separate. For example, claims submitted under Section 2(a) to the Commissioner of Indian Affairs or his authorized representative shall not involve the Indian Claims Commission.

The second understanding also clarifies the matter of compensation to all sets of attorneys not exceeding ten percent of the net final amount recovered for the Indians in completion of Docket No. 134.

The third understanding covers the possibility that the amount of reimbursable expenses may exceed the amount of available tribal funds at the time a payment is due.

3. Final Award. On November 5, 1976, the Commission entered a final award in favor of the plaintiff in the amount of \$385,820. Funds to satisfy the award were appropriated by the Act of May 4, 1977, 91 Stat. 61.

4. Amount of Fee Requested. The application for attorney's fee request the amount of \$38,582.00, which is an amount equal to ten percent of the final award entered in this docket.

5. Notice to Parties and Responses. Notices of the filing of this application for attorney fee were mailed by the Clerk of the Commission on October 31, 1977, to the Chairman of the S'Klallam Tribe, the Department of the Interior and the Department of Justice.

No response has been received from the tribe. On February 2, 1978, the Department of Justice filed a response which included a letter dated January 24, 1978, from the Department of the Interior with a copy of a memorandum dated January 18, 1978, from the Bureau of Indian Affairs, both of which stated that because those offices did not participate in the litigation they do not have sufficient detailed information on which to make a recommendation as to the compensation earned by the attorneys.

The Department of Justice takes no position with respect to the allowance of the fee.

6. Fee Determination. Attorney Fredrick W. Post prosecuted the claim of the S'Klallam Tribe from September 25, 1950, to May 12, 1965, during which time the Commission made a determination on December 2, 1957, (5 Ind. Cl. Comm. 697) that the tribe occupied an area on the north portion of the Olympic Peninsula along the straits of Juan de Fuca which contained 438,430 acres of land.

He then assembled evidence in preparation for the value phase of this case and made six trips to Washington, D. C., spending 52 days conferring with other attorneys and officials of the Bureau of Indian Affairs and attended hearings by the Commission in this case in Seattle, Washington on June 9th and 10th, 1952, August 12, 1953, and July 22, 1960.

Attorney E. L. Crawford represented the tribe from March 14, 1967, to March 14, 1972, and assembled additional evidence on the value of the tribal land and obtained an order reopening the case for the introduction of new evidence.

He then presented the new and additional evidence on value and prepared proposed findings of fact and a brief in support thereof as well as filing objections to defendants proposed findings of fact and brief.

Attorney Fredrick L. Noland has represented the tribe since April 28, 1975, under a contract presently in effect and having an expiration date of February 14, 1980.

Mr. Noland visited the offices of the Indian Claims Commission to familiarize himself with the record in this case and filed a motion to reopen the issue of payments and briefed and prosecuted the offsets phase of the case.

The amount claimed is in accordance with the contracts which provide that the aggregate fee to be allowed for all sets of claims counsel shall not exceed ten percent of the amount recovered for the Indians. On the basis of all of the foregoing, the Commission concludes that the attorneys herein have rendered valuable legal services to the plaintiff tribe in the prosecution of its claim in this case and that an attorneys' fee in the amount of \$38,582.00, representing ten percent of the final award is appropriate.

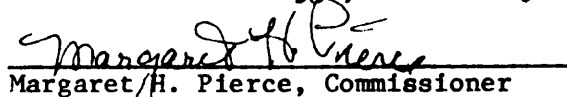
IT IS THEREFORE ORDERED that out of the funds appropriated to pay the final award entered herein on November 5, 1976, there shall be disbursed the sum of \$38,582.00 to Frederick L. Noland, attorney of record in this docket, for distribution to all parties having an interest in such fee, in full satisfaction of any and all claims for legal services in this docket.

Dated at Washington, D. C., this 15th day of February 1978.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner