

## BEFORE THE INDIAN CLAIMS COMMISSION

THE CONFEDERATED TRIBES OF THE	)	
WARM SPRINGS RESERVATION OF	)	
OREGON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Docket No. 198
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: March 20, 1974

FINDINGS OF FACT ON AWARD OF ATTORNEY FEE

On December 27, 1973, Frank E. Nash, attorney of record for plaintiff, filed a petition for award of attorney fee. This petition was accompanied by a statement concerning the legal services performed in successfully formulating and prosecuting the claim of the plaintiff. It was also accompanied by a joint consent of all contract attorneys hereinafter described consenting that the award be to Frank E. Nash who has undertaken to divide and distribute the amounts owed to the other contract attorneys. Having considered the petition and statement in support thereof, the defendant's response filed herein on March 7, 1974, the contracts of employment under which the attorneys served, the evidence supporting the petition and the entire record of all proceedings in this docket, the Commission finds the following facts:

1. Award. On October 17, 1973, the Commission entered a final award in the amount of \$1,225,000 in favor of the plaintiff tribe,

32 Ind. Cl. Comm. 7, 31. Funds to satisfy the judgment were appropriated by Public Law 93-245 approved January 3, 1974, 87 Stat. 1071, 1085.

2. Contractual Authority and Compensation. This claim was instituted and prosecuted pursuant to attorneys' contract dated July 10, 1951, approved by the Commissioner of Indian Affairs with modifications under date April 22, 1952, which modifications were approved by plaintiff by Resolution No. 777 of its Tribal Council adopted May 5, 1952. The agreement is designated attorneys' contract No. I-1-Ind. 42649 and is between the plaintiff tribe and T. Leland Brown, Sam Van Vactor and Frank E. Nash.

By Supplemental Agreement dated June 12, 1957, T. Leland Brown, Sam Van Vactor and Frank E. Nash agreed that Frank E. Nash would assume "primary responsibility" for the preparation and prosecution of the case and should be paid 87.5% of the ultimate fee with 12.5% being paid jointly to T. Leland Brown and Sam Van Vactor.

Thereafter by a Second Supplemental Agreement dated March 23, 1962, between plaintiff and T. Leland Brown, Sam Van Vactor and Frank E. Nash, Frank E. Nash assumed "sole responsibility" for the further investigation, preparation and prosecution of the case and it was agreed that the 12.5% interest of T. Leland Brown and Sam Van Vactor would be applied only to that portion of the fee which was attributable to the services rendered up to January 1, 1960.

By a Third Supplemental Agreement also of March 23, 1962, between

plaintiff, Frank E. Nash and the law firm of Wilkinson, Cragun & Barker of Washington, D. C., it was agreed that the 12.5% interest of that portion of the fee attributable to services performed after January 1, 1960, would be paid to Wilkinson, Cragun & Barker. Said Second and Third Supplemental Agreements contained the formula for computing the proportions before and after January 1, 1960, and assignments in accordance with said division of responsibility and fees. The term of the original contract of July 10, 1951, has been successively extended with the last extension being for a period of one year from and after November 20, 1973.

Said contract of July 10, 1951, as extended, provides that the attorneys shall receive as compensation for their services a fee not to exceed 10% of the amount recovered.

3. Statutory Provision on Fees. The authority to make the requested award in the amount of ten percent (10%) of the judgment is set forth in Section 15 of the Indian Claims Commission Act, 60 Stat. 1049, as follows:

The fees of \* \* \* attorneys for all services rendered in prosecuting the claim in question, whether before the Commission or otherwise, shall, unless the amount of such fees is stipulated in the approved contract between the attorney or attorneys and the claimant, be fixed by the Commission at such amount as the Commission, in accordance with standards obtaining for prosecuting similar contingent claims in courts of law, finds to be adequate compensation for services rendered and results obtained, considering the contingent nature of the case, plus all reasonable expenses incurred in

the prosecution of the claim; but the amount so fixed by the Commission, exclusive of reimbursements for actual expenses, shall not exceed 10 percentum of the amount recovered in any case. \* \* \*

4. Requested Fee. The petition is for an award of attorney fee in the amount of \$122,500 which is ten percent (10%) of the award of \$1,225,000.

5. Defendant's Response. The defendant responded to the notice of the petition for fees by letter dated March 6, 1974, from the Department of Justice. This letter states in pertinent part:

There are enclosed a copy of the letter dated February 25, 1974, from the Associate Solicitor for Indian Affairs, and a memorandum of February 7, 1974, signed by La Follette Butler, the Acting Deputy Commissioner of Indian Affairs.

You are also advised that this Department takes no position with reference to the amount, provided the combined fee does not exceed 10 percent and that the Commission determines that the fee allowed is reasonable for the services rendered.

The Associate Solicitor for Indian Affairs stated in his letter of February 25, 1974, to the Department of Justice that the Bureau of Indian Affairs did not have sufficient information to make a recommendation as to the amount of compensation earned by the tribal claims counsel.

The memorandum from the Acting Deputy Commissioner of Indian Affairs of February 7, 1974, concluded with substantially the same statement.

6. Notice to Plaintiff. On December 28, 1973, the plaintiff tribe was advised of said petition for award of attorney fee by letter inviting

it to comment on it within two weeks. A copy of the petition for award of attorney fee was enclosed with this notice but no response has been received from the tribe. This notice was sent to Mr. Olney Patt, President, Warm Springs Tribal Council, Warm Springs, Oregon 97761.

7. Services by Counsel. This docket consists of a claim for additional compensation for the aboriginal title lands alleged to have been owned by The Confederated Tribes and Bands of Middle Oregon and the respective tribal entities up to the time of the ratification of the treaty of June 25, 1855. The claim presented legal and factual issues which included:

- a. Plaintiff's right and capacity to prosecute the claim.
- b. The nature of title to the land, if any.
- c. The value of the lands owned.
- d. The consideration received for the lands involved.
- e. Gratuitous offsets claimed by the defendant.

The case was tried on title in March 1958 and decided by the Commission June 10, 1960, 8 Ind. Cl. Comm. 557. Plaintiff moved for rehearing and amendment of findings which was denied by the Commission October 10, 1963, but the Commission vacated the 1960 decision on its own motion and entered a new decision on that date, 12 Ind. Cl. Comm. 664. Plaintiff then appealed the title issue to the Court of Claims, which reversed the decision in part and remanded the case for further consideration, 177 Ct. Cl. 184 (1966). After the order on remand was entered, plaintiff again moved for rehearing which was denied in August 1968.

The value phase of the case was tried in November 1970, and decided by the Commission in December 1972, 29 Ind. Cl. Comm. 324.

The final award was based on the stipulation of the parties upon a compromise settlement, 32 Ind. Cl. Comm. 7.

At each stage of the case the attorneys for plaintiff filed with the Commission requested findings of fact and briefs on the law and facts, as warranted, to assist the Commission in determining the issues. In concluding the settlement, the attorneys made numerous reports to the plaintiff and its membership and furnished the tribe with a great deal of information in writing and orally at numerous meetings.

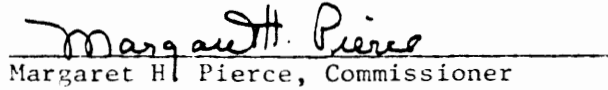
8. Conclusion. On the basis of the entire record in this docket and considering the responsibilities undertaken, the difficult problems of fact and law involved, the contingent nature of the compensation, the award obtained, and all appropriate factors pertinent to the determination of attorneys' fees under the standards established by the Indian Claims Commission Act, the Commission concludes that the attorneys for the plaintiff have rendered valuable legal services in successfully prosecuting their client's claim and ultimately obtaining a judgment. Under the terms of their contract and said standards, including those obtaining in the prosecution of similar claims in courts of law, the attorneys have earned an attorney fee of \$122,500, representing ten percent (10%) of the award to the plaintiff. Accordingly, payment of this amount to Frank E. Nash, attorney of record, on behalf of all

contract attorneys having an interest in the fee in this case, for distribution by him to all such contract attorneys, will represent payment in full of all claims for legal services in this docket. Such payment will be out of the funds appropriated to pay the award.

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarborough, Commissioner

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner