

BEFORE THE INDIAN CLAIMS COMMISSION

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|-------------------------------|---|--------------------------|
| THE FORT SILL APACHE TRIBE OF |) | |
| OKLAHOMA; THE CHIRICAHUA |) | |
| APACHE TRIBE, et al., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | Docket Nos. 30, 48, 30-A |
| |) | and 48-A |
| THE UNITED STATES OF AMERICA, |) | |
| |) | |
| Defendant. |) | |

Decided: November 7, 1973

FINDINGS OF FACT ON ATTORNEYS' FEE

Upon consideration of the petition for award of attorneys' fee in the above entitled dockets and the statement in support thereof, filed on September 24, 1973, by I. S. Weissbrodt, attorney of record for the plaintiffs in these cases, and upon consideration of the entire record herein, including the several contracts of employment of attorneys by the plaintiff, the Commission makes the following findings of fact:

1. The Award

On August 25, 1971, the Commission entered its final judgment in consolidated Dockets 30, 48, 30-A and 48-A, directing that the plaintiffs recover from the defendant (a) the sum of \$15,967,300.00 on their claims in Dockets 30-A and 48-A, and (b) the sum of \$521,796.00 on their claims in Dockets 30 and 48. (26 Ind. Cl. Comm. 193, 198)

An appeal to the Court of Claims from the Commission's judgment of August 25, 1971, was filed by the defendant. Following the appeal, the Court of Claims entered its decision on June 20, 1973,

affirming the Commission's judgment. (480 F.2d 819.) No review by the Supreme Court of the decision of the Court of Claims having been sought by the defendant within the 90 days allowed therefor, the judgment of the Commission became final on September 19, 1973.

2. The Petition for Attorneys' Fee

On September 24, 1973, I. S. Weissbrodt, attorney of record in the above entitled dockets, filed a petition, on behalf of all contract attorneys having an interest in the fee in these cases, for an award of attorneys' fee in the total sum of \$1,648,909.60, as follows: (a) the amount of \$1,596,730.00, being ten percent of the final award made by the Commission on the claims in Dockets 30-A and 48-A; plus (b) the amount of \$52,179.60, being ten percent of the final award made by the Commission on the claims in Dockets 30 and 48.

3. Notice of Filing to Plaintiffs and Executive Departments

By letter of September 25, 1973, the Deputy Clerk of the Commission, notified the Chairman of the Fort Sill Apache Tribe of the State of Oklahoma and the President of the Apache Tribe of the Mescalero Reservation ^{1/} of the filing of the subject petition for attorneys' fee, inviting

^{1/} The members of the Chiricahua Apache Tribe, who had been confined by the Government in 1886, as prisoners of war in Florida and Alabama, were moved in 1894 to the Fort Sill Military Reservation in Oklahoma. In 1913, the majority of the members of the tribe went to the Mescalero Reservation in New Mexico, where they became members of the Apache Tribe of the Mescalero Reservation; the rest stayed in Oklahoma, where they became identified as the Fort Sill Apache Tribe of the State of Oklahoma.

comments or information the Commission should consider. Notice of the filing of the petition was also given to the Department of the Interior and to the Department of Justice.

The Commission received from the Chairman of the Fort Sill Apache Tribe a letter dated October 5, 1973. As pertains to attorneys' fee, the letter commented that the tribe was pleased with the extended services rendered and results achieved by its attorneys, and further stated that the tribe would rely upon the Commission's determination as to the amount of compensation fairly and equitably due to the attorneys. The Commission has received no reply from the President of the Apache Tribe of the Mescalero Reservation.

The response, dated October 25, 1973, of the Department of Justice to the petition for award of attorneys' fee enclosed a letter from the Associate Solicitor for Indian Affairs, Department of the Interior, and a memorandum from the Deputy Assistant Secretary of the Interior, Office of the Secretary, Department of the Interior. The response of the Department of Justice concluded with the advice that the Department "takes no position with respect to the attorney fees being claimed." The memorandum of the Deputy Assistant Secretary of the Interior noted that the information contained in the statement accompanying the petition for award of attorneys' fee was examined and found to be "complete and accurate"; and the said memorandum of the Deputy Assistant Secretary and the letter of the Associate Solicitor for Indian Affairs concluded with

the statement that the Department of the Interior does not have sufficient detailed information to enable it to make a recommendation as to the amount of compensation earned by the tribal claims attorneys.

4. Contracts

Contracts with attorneys for the prosecution of the claims involved in Dockets 30, 48, 30-A, and 48-A, were made by two tribal groups, namely (a) the Fort Sill Apache Tribe of the State of Oklahoma, and (b) the Chiricahua and Warm Springs Tribes of Apache Indians.

The contract with the Fort Sill Apache Tribe of the State of Oklahoma, which, as amended, is currently in force and effect, is identified in the records of the Bureau of Indian Affairs, as Symbol 14-20-0200, Contract No. 1838. This contract succeeded several earlier contracts which are described hereinafter. The contract with the Chiricahua and Warm Springs Tribes of Apache Indians is identified in the records of the Bureau of Indian Affairs as Symbol I-1-ind. 42132.

The current contract with the Fort Sill Apache Tribe of the State of Oklahoma (as well as the predecessor contracts with that tribe) and the contract with the Chiricahua and Warm Springs Tribes of Apache Indians, provide that the compensation of the attorneys for their services is to be determined by the Commission in an amount equitably due, but in no event in excess of ten percent of the recovery.

The attorneys have entered into an agreement for the division of the fee which may be awarded by the Commission in Dockets 30,

48, 30-A and 48-A, whereby 60 percent will be payable jointly to those employed under the contract with the Fort Sill Apaches of the State of Oklahoma and 40 percent will be payable jointly to those employed under the contract with the Chiricahua and Warm Springs Tribes of Apaches. This agreement was approved by the Bureau of Indian Affairs on January 16, 1963.

(a) Contract made by the Fort Sill Apache Tribe of the State of Oklahoma

The existing contract of the Fort Sill Apache Tribe of the State of Oklahoma was made as of December 5, 1963, with attorneys I. S. Weissbrodt, Abe W. Weissbrodt and Morton Liftin, and was approved by the Bureau of Indian Affairs on January 10, 1964. The contract provided that it would continue in effect until January 12, 1969, except that, with the consent of the parties, subject to the approval of the Secretary of the Interior or his authorized representative, the term of the contract may be extended for additional periods of three years each. By amendment of the contract, executed as of January 12, 1969, and approved by the Bureau on March 14, 1969, the term of the contract was extended until January 12, 1974.

The aforesaid contract made December 5, 1963, succeeded an earlier contract which was entered into as of June 25, 1953, between the Fort Sill Apaches of the State of Oklahoma on the one hand, and attorneys I. S. Weissbrodt, Abe W. Weissbrodt and David Cobb on the other hand, and was approved by the Commissioner of Indian Affairs on

January 13, 1954 (Symbol 14-20-650, Contract No. 120). The term of this contract was ten years beginning with the date of its approval by the Commissioner. On January 16, 1963, the Bureau of Indian Affairs approved the association of the attorneys employed under the contract with the Chiricahua and Warm Springs Tribes of Apaches with the attorneys employed under the contract of June 25, 1953, with the Fort Sill Apaches, in connection with the prosecution of the aboriginal title claim then pending in Dockets 30 and 48.

Prior to the making of the said contract dated June 25, 1953, two earlier attorney contracts had been entered into with the Fort Sill Apaches of the State of Oklahoma. One of these was a contract with Grady Lewis, Esq., which was dated January 20, 1947, and was approved on July 15, 1947 (Symbol I-1-ind. 42006). Under date of February 27, 1950, Grady Lewis, Esq., executed an assignment conveying a portion of his interest in said 1947 contract to the law firm of Cobb and Weissbrodt, the assignment having been approved by the Bureau on April 12, 1950. The other earlier contract which had been made with Grady Lewis, Esq., on December 1, 1939, was approved by the Assistant Secretary of the Interior on February 15, 1940 (Symbol I-1-ind. 12642). This contract had a term of five years beginning with the date of its approval and it expired by its own provisions.

Grady Lewis, Esq., died on January 3, 1953. Esther N. Lewis, as Executrix of the Estate of Grady Lewis, and as sole beneficiary and

distributee under the Last Will of Grady Lewis, Esq., for value received executed an assignment to the law firm of Weissbrodt & Weissbrodt of all her right, title and interest in and to any award of compensation for legal services rendered in these cases, which assignment was approved by the Bureau of Indian Affairs on January 6, 1970.

(b) Contract made by Chiricahua and Warm Springs Tribes of Apache Indians

Under date of March 5, 1948, the Chiricahua and Warm Springs Tribes of Apache Indians entered into a contract with Roy T. Mobley, Esq. This contract, as amended September 30, 1948, was approved by the Bureau of Indian Affairs on January 7, 1949 (Symbol I-1-ind. 42132). The term of the contract was ten years from the date of its approval. By instrument dated April 3, 1950, Roy T. Mobley, Esq., assigned his interest in the contract to Guy Martin, Esq., which assignment was approved by the Bureau on April 26, 1950.

On April 29, 1957, the Bureau approved, as an assignment by Guy Martin to Roy T. Mobley, an agreement re-employing Roy T. Mobley as attorney under the contract in association with Guy Martin. On July 23, 1957, the Bureau approved an agreement whereby William A. Sloan, Esq., became associated as an attorney under the contract along with Roy T. Mobley and Guy Martin. On July 12, 1960, the Solicitor of the Department of the Interior approved a further agreement whereby the contract with attorneys Roy T. Mobley, Guy Martin, and William A. Sloan was extended, as of January 7, 1959, for a ten-year period thereafter.

5. Attorneys' Services

The record before the Commission in these dockets and the appeal proceedings in the Court of Claims attest that the services performed by the attorneys were substantial, the responsibilities undertaken by them were burdensome, and the risks and hazards in this litigation were especially heavy.

For the most part, the main services and undertakings of the attorneys are reflected in (1) the extensive record before the Commission, including the proposed findings of fact and the briefs filed by the attorneys, the voluminous exhibits received in evidence at the trials, and the transcripts of the trial proceedings and other hearings; and (2) the record in the appellate proceedings before the Court of Claims.

The initial petition in Docket 30 was filed with the Commission in May 1948. The petition in Docket 48 was filed in August 1949. For several years prior thereto, the attorneys were engaged in the preliminary investigation and analysis of the claims in order to prepare the petitions, including meetings and consultations with the tribal leaders, a search for expert witnesses, locating the sources of documentary evidence, and the performance of various administrative duties, including those related to planning and organization of the future research and prosecution of the claims.

The proceedings before the Commission, which finally resulted in the Commission's judgment of August 25, 1971, consumed 23 years. The appeal before the Court of Claims consumed an additional two years.

The attorneys also undertook and discharged the responsibility of keeping the plaintiff tribes informed as to the claims and the significant developments in the proceedings. Meetings were held with, and communications were sent to, tribal leaders periodically informing them of events in the litigation. Also, reports describing the progress of the litigation were prepared by the attorneys and transmitted to the tribes for distribution among their members.

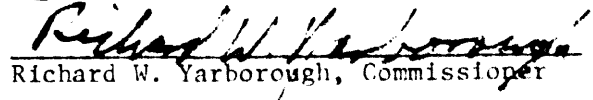
6. Conclusion

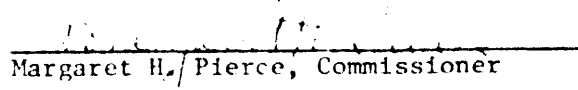
After full consideration of the entire record in these dockets, the appellate proceedings in the Court of Claims of which the Commission has taken notice, the results achieved, the risks involved, the services performed, and all appropriate factors pertinent to the determination of attorneys' fees in contingent cases under the standards established by the Indian Claims Commission Act, it is the conclusion of the Commission that the attorneys for the plaintiffs are entitled to a fee in the total sum of \$1,648,909.60, consisting of: (a) the amount of \$1,596,730.00, which is ten percent of the final award on the claims in Dockets 30-A and 48-A, and (b) the amount of \$52,179.60, which is ten percent of the final award on the claims in Dockets 30 and 48, which sums should be disbursed to I. S. Weissbrodt, as attorney of record in said dockets, for appropriate distribution by him to all attorneys

having an interest therein, including himself, as payment in full for all claims for legal services rendered by said attorneys in the dockets herein.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner