

BEFORE THE INDIAN CLAIMS COMMISSION

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|-------------------------------|---|-----------------|
| JICARILLA APACHE TRIBE, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Docket No. 22-K |
| |) | |
| THE UNITED STATES OF AMERICA, |) | |
| |) | |
| Defendant. |) | |

ORDER ALLOWING ATTORNEYS' FEES

HAVING CONSIDERED the application for attorneys' fees filed on March 29, 1974, by Robert J. Nordhaus, Attorney of Record; the responses of the parties; the statements of contract attorneys Mobley, Davis, and Martin; the claims contracts under which the attorneys served the plaintiff; and the remainder of the record herein, the Commission finds as follows.

1. Award. On February 21, 1974, the Commission entered a final award on the plaintiff's claim in this case in the sum of \$7,000,000.00, subject to the terms and provisions of a Stipulation for Entry of Final Judgment.

2. Attorney Contracts. Prosecution of claims in this proceeding was governed by three contracts.

The Jicarilla Apache Tribe entered into contract No. I-1-ind. 42081, dated October 15, 1947, with attorneys James E. Curry and Roy T. Mobley. This contract, which provided for a fee not in excess of 10% of any award, was approved on August 8, 1948, for a period of ten years beginning August 8, 1948. The contract was terminated by the Secretary of the Interior on August 1, 1951.

A second contract, No. I-1-ind. 42530, dated March 5, 1951, was entered into by the Jicarilla Apache Tribe with attorneys Roy T. Mobley and Guy Martin. It was approved on August 1, 1951, for a period of ten years beginning with the date of approval, effective only as to attorney Martin. A later approval dated June 16, 1952, was made as to Mr. Mobley to be effective upon severance of his employment with the Federal Government, which occurred on July 4, 1952. This contract also provided for a fee not in excess of 10% of any award. The contract was extended five times, each for a period of two years. The last extension was approved on July 30, 1969, for a period of two years beginning August 1, 1969.

An agreement dated March 1, 1957, providing for the association of attorneys Robert J. Nordhaus and Richard M. Davis under contract No. I-1-ind. 42530 was approved on April 29, 1957. The effective date of the agreement was March 1, 1957. This agreement also provided that services might be performed by attorneys Nordhaus and Davis individually or through the law firms with which they were associated. The agreement provided for division of fees among the four attorneys. This provision on fees was later modified by a supplemental agreement dated March 1, 1964, made among attorneys Mobley, Martin, Nordhaus, and Davis. The supplemental agreement was approved on December 23, 1964. The agreement, as amended, provided for payment of twenty-five percent (25%) of the fees to Mr. Mobley. The remaining seventy-five percent (75%) was to be used first to pay the non-reimbursable expenses of the others, with any remainder to be divided equally between the others, viz., Messrs. Martin, Nordhaus, and Davis as well as to Messrs. Harry & Kunen, who as partners respectively of Messrs. Davis and Martin, were to be paid respectively by Messrs. Davis and Martin.

A third contract, No. MOOC14200879, dated October 1, 1971, between the Jicarilla Apache Tribe and attorneys Robert J. Nordhaus, Guy Martin, and Richard M. Davis was approved on October 19, 1971, for a term of two years beginning October 1, 1971. An extension of the contract until October 1, 1976, was approved on October 11, 1973. This contract provides that the attorneys shall receive as compensation for services rendered ten percent of any recovery on the claim for the tribe, the fee to be approved by the Indian Claims Commission as provided by law and paid to the attorney of record.

3. The Requested Fee. The application for attorneys' fees requests an allowance of fees of \$700,000, being ten percent (10%) of the award on the plaintiff's claim, as provided by the Attorneys' Contract as compensation for services rendered in connection with that award.

4. Notice to Parties. Notice of the filing of the application for attorneys' fees was mailed by the Deputy Clerk of the Commission on March 29, 1974, to:

- a. Mr. Hubert Velarde, Chairman of the Jicarilla Apache Tribal Council,
- b. Honorable Morris Thompson, Commissioner, Bureau of Indian Affairs, U. S. Department of the Interior, and
- c. Honorable Wallace M. Johnson, Assistant Attorney General, Land and Natural Resources Division, Indian Claims Section, U. S. Department of Justice.

5. Plaintiff's Response. The plaintiff, through its President, Mr. Hubert Velarde, responded to the notice on May 3, 1974. The response, which was filed on May 6, 1974, stated that the respondent had no comments or additional information for the Commission's consideration.

6. Defendant's Response. The Department of Justice responded to the notice on June 19, 1974, taking no position on the payment of attorneys' fees in this case. Transmitted with the Department of Justice's response was a copy of a letter dated June 12, 1974, from the Associate Solicitor for Indian Affairs of the Department of the Interior, and a copy of a memorandum dated May 29, 1974, from the Acting Deputy Commissioner of Indian Affairs. Both transmittals stated that the offices involved had no objection to allowance of the claimed fees of \$700,000.00, since the amount requested was in accord with the ten percent provision of the contracts.

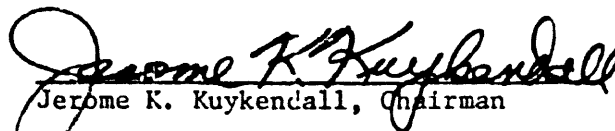
7. Statements of Other Contract Attorneys. By letter Dated April 4, 1974, Mr. Kenneth Simon, attorney for Contract Attorney Roy T. Mobley, informed the Commission that an agreement had been reached concerning payment by Mr. Nordhaus, to Mr. Mobley, of a portion of the attorneys' fee in this case. Mr. Simon urged the award of a 10% fee, and affirmatively expressed no objection to the fee being paid to Mr. Nordhaus.

By letter dated April 5, 1974, Mr. Nordhaus transmitted to the Commission separate statements by attorneys Martin, Davis and Mobley, concurring in the application for attorneys' fees, and requesting that the fee be allowed and that it be paid to Mr. Nordhaus.

8. Attorneys' Services. Pursuant to their contracts with the plaintiff tribe, the attorneys investigated filed and prosecuted the claim in this docket on which the plaintiff was awarded the sum of \$7,000,000.00. For services rendered in connection with that award the attorneys are entitled under the terms of their contracts with the plaintiff, to an attorneys' fee in the requested sum of \$700,000.00, being ten percent (10%) of the award.

IT IS THEREFORE ORDERED that out of the funds appropriated (or to be appropriated) to pay the final award entered herein on February 21, 1974, there shall be disbursed to Robert J. Nordhaus the sum of \$700,000.00 for distribution by him to the participating attorneys in accordance with their respective interests therein. This amount shall be payment in full for all services rendered in the prosecution of this case.

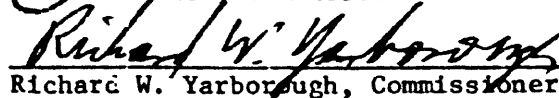
Dated at Washington, D. C., this 26th day of June 1974.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner

Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner


Richard W. Yarborough, Commissioner