

BEFORE THE INDIAN CLAIMS COMMISSION

THE MOHAVE INDIANS WHO ARE MEMBERS	)	
OF THE COLORADO RIVER INDIAN TRIBES	)	
AND OTHERS,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Docket No. 283
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	
	)	
MOHAVE TRIBE OF INDIANS OF ARIZONA,	)	
CALIFORNIA, AND NEVADA; AND OTHERS,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Docket No. 295
	)	
THE UNITED STATES OF AMERICA,	)	(Consolidated)
	)	
Defendant.	)	

Decided: July 31, 1974

FINDINGS OF FACT ON ATTORNEYS' FEE

Upon consideration of the petition for award of attorneys' fees in the above consolidated dockets, the statement in support thereof filed on January 2, 1974, by Raymond C. Simpson, for himself as attorney of record in Docket 295, and for C. M. Wright, attorney of record in Docket 283, the defendant's opposition to the petition, filed on May 3, 1974, and the entire record herein, the Commission makes the following findings of fact:

1. The Award

On September 26, 1973, the Commission entered a final award in the above dockets directing that the Mohave Indians who are members of the Colorado River Indian Tribes, and others, plaintiffs in Docket 283, and the

Mohave Tribe of Indians of Arizona, California, and Nevada, and others, plaintiffs in Docket 295, recover from the defendant the sum of \$468,358.07. (31 Ind. Cl. Comm. 410, 425.)

2. Petition for Attorneys' Fees

On January 2, 1974, Raymond C. Simpson filed a petition herein for himself and C. M. Wright on behalf of all contract attorneys having an interest in the fee in consolidated Dockets 283 and 295 for an award of attorneys' fees in the amount of \$60,000, being ten per cent of the adjudicated fair market value of plaintiffs' aboriginal lands at the time of taking. (23 Ind. Cl. Comm. 87, 106.)

3. Notice of Filing to Executive Agencies and Plaintiff

By letters of January 3, 1974, the Deputy Clerk of the Commission notified the Chairman of the Colorado River Tribal Council and the Chairman of the Mohave Tribal Council, the Commissioner of Indian Affairs, Department of the Interior, and the Chief, Indian Claims Section, Lands & Natural Resources Division, Department of Justice, of the filing of the subject petition for attorneys' fees.

In reply thereto, the defendant filed a statement opposing in part the petition for award of attorneys' fees, and transmitted comments on the petition from the Associate Solicitor for Indian Affairs, Department of the Interior and from the Acting Deputy Commissioner of Indian Affairs.

Each of the replies pointed out that the maximum amount for attorneys' fees which may be allowed under the Indian Claims Commission Act is 10 percent of the amount actually recovered in this consolidated case, namely, \$468,358.07, or a maximum fee of 46,835.80. On March 30, 1974, the Commission heard oral argument on the matter of attorney fees in these consolidated dockets.

4. Attorneys Contracts Docket 283

Attorneys' services in Docket 283 were first performed under claims contract No. I-1-ind. 42195 of May 7, 1949, as amended, between the Colorado River Indian Tribes of the Colorado River Reservation, and James E. Curry, Chief Attorney, and C. M. Wright, Associate Attorney, for legal services on each and all of the tribe's claims. Curry's services under the contract were terminated by a letter of January 2, 1953, to him by the Commissioner of Indian Affairs.<sup>\*/</sup> This general contract for all claims work for the Colorado River Indian Tribes of the Colorado River Indian Reservation was superseded by a number of specialized attorneys' contracts.

Claims contract No. K 51C 14200 123, executed June 22, 1955, between the Mohave Indians who were enrolled members of the Colorado River Indian Tribes of the Colorado River Reservation and C. M. Wright for legal services

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<sup>\*/</sup> Paragraph 4(a) of the contract provided for its termination by the Commissioner of Indian Affairs with the consent of the Tribe on 60 days' written notice to all parties in interest, for cause which the Commissioner deemed reasonable; subject to the payment of compensation to the Chief Attorney and Associate Attorney for services theretofore performed, as determined under paragraph 8(a) of the contract.

The memorandum of April 1, 1974, for the Commissioner of Indian Affairs on subject petition states that the contract was terminated as to Attorney Curry by a letter of January 2, 1953, by the Commissioner.

on the Mohave land claims, was conditionally approved, as amended June 20, 1958, on December 1, 1958, and unconditionally approved as amended on March 3, 1959. This contract had a term of 10 years from the date of approval by the United States. Compensation for legal services thereunder was contingent on a recovery and would be fixed by the court or tribunal at a figure not exceeding 10% of the amount of the recovery.

One of the approved amendments of June 20, 1958, to the above original contract incorporated an agreement between Attorney Harold Payne, representing the Mohave plaintiffs in Docket 295, and C. M. Wright representing them in Docket 283. This agreement, as originally evidenced in a letter from Payne to Wright, dated February 9, 1953, and formalized in document executed on September 20, 1956, called for a joint effort on part of counsel in prosecuting the Mohave aboriginal title claims in Dockets 283 and 295, as well as a division of responsibilities, fees, and expenses.

The other approved amendment permitted C. M. Wright to employ his law partner, Samuel P. Goddard, Jr., as associate counsel in the prosecution of the Mohave aboriginal land claims in Docket 283.

This contract was superseded by claims contract No. 14-20-0450-6997, executed January 19, 1970, between the Mohave Indians who are enrolled members of the Colorado River Indian Tribes and Attorneys C. M. Wright and Samuel P. Goddard. This contract was approved on January 22, 1970, for a period of ten years beginning December 2, 1968. The contract provides that C. M. Wright and Samuel P. Goddard, Jr., may divide and distribute their work, expenses, and compensation between themselves as they alone

may determine; provided that C. M. Wright shall be the chief attorney and the attorney of record in all litigation, and the one who shall receive whatever compensation is allowed under the contract, to be distributed by him among all other attorneys, including Goddard, to whom any parts thereof may be payable.

Paragraph 7 of this contract entitled Compensation, provides as follows:

The fees and compensation of the Attorneys shall be payable only out of, and be wholly contingent on, a recovery for the Client. Such compensation shall cover all services performed in connection with the aboriginal land claim:

- a. by James E. Curry under an earlier contract between the Colorado River Indian Tribes and attorneys Curry and Wright that included the aboriginal land claim;
- b. by Wright under any and all former contracts with the Client or with the Colorado River Indian Tribes that covered the aboriginal land claim;
- c. by the Attorneys, and each of them, under this expired contract with the Client;

all of which former contracts are herein called the former aboriginal land claim contracts; and

- d. by the Attorneys and each of them, and their associate attorneys under this contract;

and shall be in such amounts:

- e. as are determined to be equitable by a court or tribunal if the recovery is pursuant to any order or judgment of such court or tribunal; and/or
- f. as constitute the original value of the relative services performed, that is, on a quantum meruit basis, and as are approved by Government, if the recovery is effected without submission to any court or tribunal;

provided that in no event should the total amount of such compensation, including that for services in connection with the aboriginal land claim under all former aboriginal land claim contracts and under this contract, exceed 10% of all amounts recovered or procured, through the efforts of the Attorneys in whole or in part, for the Client.

Paragraph 11 of the claim contract indemnifies the Mohave plaintiffs in Docket 283 against any claim by Attorney James E. Curry for fees and expenses resulting from services performed by him under any of the former aboriginal land claim contract. Any such compensation due Curry shall be paid by the attorneys out of compensation received by them under this contract.

Incorporated into the above claims contract, and made a part thereof as approved by the Bureau of Indian Affairs, is a 1966 agreement between Attorney Simpson in Docket 295 and Attorneys Wright and Goddard in Docket 283 wherein the parties would work jointly on the Mohave aboriginal land claims in these dockets, and, if successful, that compensation not in excess of ten percent (10%) of the total recovery in favor of the plaintiffs would be divided equally between Simpson and Wright. Under paragraph 3 of this agreement Simpson obligated himself to pay to the estate of Harold Payne out of his one half share of such fees and compensation the amount to which such estate was entitled after first deducting therefrom and paying to Attorney Wright whatever may be due the latter as a reimbursement under his earlier agreements with Attorney Payne. Wright became obligated to pay out of his one half share of such fees and compensation whatever amount would be due to Attorney Goddard.

Each of the three attorneys' contracts under which attorneys' services have been performed in Docket 283 (i.e. in I-1-ind. 42195, K 51C 14200 123, and 14-20-0450-6997) provided, in substance, that the chief attorney (or the chief attorney and the associate attorney) might, with the approval of the Commissioner of Indian Affairs and of designated representatives of the Indians, employ such additional attorneys as seemed advisable, provided that the Indians were under no obligation to pay such additional attorneys so employed.

5. Attorneys' Contracts, Docket 295

Attorneys' services in Docket 295 were initially performed under claims contract No. I-1-ind. 42625, dated March 10, 1951, approved by the Commissioner of Indian Affairs on June 4, 1951. Under this contract, Harold Payne agreed to perform all legal services for the Mohave Tribe of Indians of California and Arizona in connection with its claims against the United States, including claims under the Indian Claims Commission Act (60 Stat. 1049). The contract was for a term of 5 years with a provision for one 5-year extension to be followed by additional extensions for 2-year periods until the work was completed. The contract also provided that in the event of the death of the attorney, or of any associate attorney interested in the contract, the estate of the deceased attorney should be allowed compensation for services rendered in such sum as might be properly determined either by the Commissioner of Indian Affairs, if the matter were settled without submission to court or tribunal, or by such court or tribunal, if the matter were submitted to court or tribunal. With respect

to the employment of other attorneys, the initial contract provided that, subject to the approval of the Commissioner of Indian Affairs, Attorney Payne might choose the attorneys he wished to work with him under this contract, providing that compensation for such work be paid by Mr. Payne. This contract was extended for a period of two years beginning June 4, 1961. An additional extension of two years beginning on June 4, 1963, was approved on September 20, 1963.

Harold Payne died on December 3, 1964. By a tribal resolution of December 12, 1964, the Fort Mohave Tribal Council employed Attorney Raymond C. Simpson to represent the Fort Mohave Tribe in Dockets 295 and 295-A before the Indian Claims Commission. Attorney Simpson was engaged by the Fort Mohave Tribe pursuant to claims contract 14-20-0450-5276, dated December 12, 1964, and approved March 23, 1965. The term of this contract was five years from the date of approval. It was extended twice--once for a two-year period commencing March 22, 1970, and again for a ten-year period beginning March 22, 1972.

Compensation for all legal services rendered pursuant to the above contract, presently in force, is to be fixed by the proper court or commission on a quantum meruit basis ". . . not to exceed ten per cent (10%) of any sum or sums of money and of the value of lands and interests in lands recovered by the attorney . . .". The contract also provides for the association of other attorneys at no additional expense to the Fort Mohave Tribe with all compensation for legal services under this contract to be paid directly to Raymond C. Simpson and associates.



Approval of this claims contract on March 23, 1965, was subject to the following condition imposed by the Bureau of Indian Affairs:

The estate of Harold Payne shall be allowed compensation in such sums as the court or tribunal awarding a judgment to the Tribe may find equitably to be due for services theretofore rendered, under previous claims contract Symbol I-1-Ind-42625; if there be recovery without submission to a court or tribunal, then in such sums as the Secretary or his authorized representative may find equitably to be due.

6. Deceased Contracts Attorneys

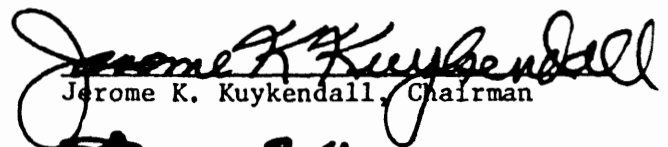
The records of this Commission indicate that the following contract attorneys having an interest in any fee award herein are now deceased: James E. Curry and Harold Payne. The Commission records further show that Landon G. Dowdey of Washington, D. C., is the attorney for the estate of James E. Curry, and that Philip B. Wagner of San Bernardino, California, is the attorney for the estate of Harold Payne.

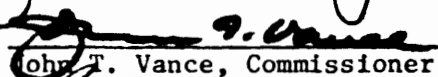
7. Attorneys' Services

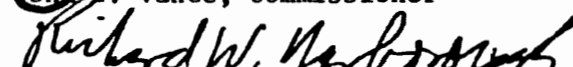
The record herein demonstrates clearly that, throughout the course and history of the successful prosecution of the plaintiffs' aboriginal land claims, the several contract attorneys rendered valuable legal services, including, but not limited to, the preliminary investigation, preparation, and filing of the original petitions; the legal and factual research, assemblage, and preparation of numerous documentary exhibits and other evidence, as well as the procurement of expert witnesses for the actual trial of all issues in this case; the necessary briefing and preparation of proposed findings of fact when such matters were required; and, the making of numerous appearances before this Commission as required.

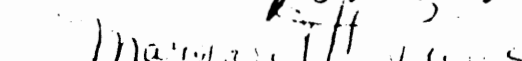
8. Conclusion

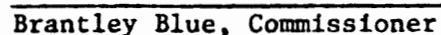
Considering the services rendered by the attorneys herein, the results obtained, and standards governing the prosecution of similar contingent claims before this Commission and in courts of law, the Commission finds and concludes upon the record and the foregoing findings of fact that the several contract attorneys are entitled to a fee of \$46,835.80, said fee being ten percent (10%) of the amount recovered in this case as represented by the final award herein of \$468,358.07. Payment to the attorneys of record of the foregoing fee of \$46,835.80 out of funds appropriated to pay the final award, for distribution by said attorneys of record to all participating attorneys, or their representatives, in accordance with their respective interests, shall represent payment in full for all legal services rendered to the plaintiffs in Dockets 283 and 295.

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarborough, Commissioner

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner