

BEFORE THE INDIAN CLAIMS COMMISSION

PUEBLO DE ZIA, PUEBLO DE JEMEZ,)	
AND PUEBLO DE SANTA ANA,)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 137
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: October 31, 1974

FINDINGS OF FACT ON AWARD OF ATTORNEYS' FEES

On February 1, 1974, M. J. Clayburgh and Claud S. Mann, attorneys for the plaintiffs herein, filed for themselves and on behalf of the estate of Dudley Cornell, an application for allowance of attorneys' fees, together with an application for reimbursement of expenses incurred in the prosecution of the claim, which will be the subject of a separate order. Subsequently, two affidavits and memoranda were submitted, outlining in substantial detail the legal services performed by counsel in successfully formulating, prosecuting and settling the claim of the plaintiffs herein. Having considered the said application, affidavits and memoranda; the defendant's response to the application, filed July 29, 1974; the attorney contract under which the attorneys' services were performed; and the entire record of this docket, the Commission makes the following findings of fact:

1. Contract. The Pueblo de Zia, Pueblo de Jemez and Pueblo de Santa Ana, acting through their duly authorized representatives, executed an agreement on November 30, 1950, with Dudley Cornell and Claud S. Mann, attorneys, to represent them in matters relative to their claims against the United States. The contract, Claims Contract No. 1-I-ind. 42427, was approved by the Commissioner of Indian Affairs on December 14, 1950, for a period of six years from the date of approval. The contract was extended eight times for periods of two years each. The last extension, approved May 10, 1972, extended the contract until May 9, 1974.

2. Contractual and statutory provisions. The contract between the parties, relative to attorney compensation, provided:

" . . . the compensation of the attorneys for the services to be rendered under the terms of this contract shall be wholly contingent upon a recovery for the Pueblos. The attorneys shall receive such compensation as the Commissioner of Indian Affairs may find equitably to be due, if the matter be settled without submission to a court or tribunal, or in the event it is submitted to a court or tribunal, then such sum as may be determined by the court or tribunal equitably to be due for the services theretofore rendered under this contract, but in no event shall the aggregate fee exceed ten per centum of any and all sums recovered or procured, through efforts, in whole or in part, for the Pueblos, whether by suit, action of any department of the Government or of the Congress of United States, or otherwise.

The Indian Claims Commission Act (60 Stat. 1049) contains the following provisions pertaining to the allowance of attorneys' fees:

"Sec. 15 . . . The fees of such attorney or 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 per centum of the amount recovered in any case. . ."

3. Award. A compromise settlement was entered into by the parties hereto, and was approved by the Commission on January 10, 1974 (33 Ind. Cl. Comm. 1). The compromise provided for the settlement of all matters in dispute, the entry of an award for the plaintiffs in the sum of \$749,083.75, and a waiver of the right of review or appeal by any of the parties. Funds to pay the award were appropriated by the Act of June 8, 1974 (88 Stat. 195).

4. Deceased attorney. The record reports the demise of Attorney Dudley Cornell. The attorney contract provides that in the event of the death of a contracting attorney, his estate should be compensated for the services rendered. According to the memorandum submitted September 3, 1974, Mr. Clayburgh has been appointed executor of the estate of Mr. Cornell, deceased.

5. Notices. On February 1, 1974, copies of the petition for attorneys' fees and reimbursement of expenses were forwarded to the Department of Justice, representing the defendant; the Commissioner of Indian Affairs, Department of the Interior; Miguel Armijo, Governor, Pueblo de Santa Ana; Abel Sando, Governor, Pueblo de Jemez; and Gilbert Lucera, Governor, Pueblo de Zia, inviting comments or information for the Commission's consideration in determining the amount of attorneys' fees and expenses to be allowed. No response to the communication has been received from the governors of the Pueblo plaintiffs.

6. Determination of Attorneys' Fees.

a. Services Performed. The attorney contract between the plaintiffs and the petitioners imposed upon the attorneys the duty of advising and representing the Pueblos in connection with investigating and formulating the claims of the Pueblos against the United States involving the original Ojo Espiritu Santo Grant of 1776, comprising 382,849 acres, and of representing the Pueblos before all courts, departments, tribunals, Committees of Congress, and other officers having any duty to perform in connection with the investigation, consideration, or final settlement of the claim.

In the pursuit and discharge of their contractual obligations under the agreement, the attorneys prepared and filed plaintiffs' petition, subsequently denominated as Docket 137, on July 9, 1951, alleging, among other things, the plaintiffs' aboriginal possession of the land in dispute. After extensive research, an amended complaint

was filed on March 17, 1952, asserting, in addition to aboriginal possession, title through a Spanish Grant. Developing the proof to sustain the plaintiffs' contentions involved, among other things, extensive studies and assembly of historical data of the Pueblo boundaries, necessitating the employment of expert and technical assistance for research and mapping, personal visits to the area to ascertain the location of shrines and markers relied upon by the plaintiffs to define their aboriginal land holdings, and interviews and consultations with the elders of the Pueblos having knowledge of the historical uses of the land. The attorneys appeared, presented and argued the merits of the case before the Commission on December 5 and 6, 1956, and, in connection therewith, prepared and filed memoranda of law, briefs, findings of fact, objections and reply briefs. After a decision by the Commission adverse to the plaintiffs, 11 Ind. Cl. Comm. 131 (1962), the case was appealed. The attorneys engaged in the preparation of briefs, reply brief and arguments before the Court of Claims which materially contributed to the reversal by that court of the conclusions of the Commission. 165 Ct. Cl. 501 (1964).

Thereafter the attorneys argued before the Commission on subsequent occasions the issues of the date of taking, value, and offsets, necessitating the preparing of briefs, proposed findings of fact and reply briefs. Following Commission decisions concerning the fair


market value of plaintiff's lands, 24 Ind. Cl. Comm. 270 (1970), and allowable offsets, 26 Ind. Cl. Comm. 218 (1971), there was another appeal, requiring further briefing and argument. This appeal was taken by defendant, who asserted that it was entitled to \$889,000 in additional offsets. The Court of Claims ruled on appeal that defendant was entitled to two additional offsets; \$252.33 in grazing fees, and an allowance for 3,520 acres of land placed in trust for the Pueblo de Santa Ana plaintiff. 200 Ct. Cl. 601 (1973).

At various times during the conduct of the hearings, the attorneys were also negotiating for a settlement of the case. Following the 1973 decision of the Court of Claims, supra, negotiations concerning the offset value of the 3,520 acre tract culminated in a compromise settlement of the case. As a result of such agreement, the parties agreed to an award to the plaintiffs of the sum of \$749,083.75. 33 Ind. Cl. Comm. 1 (1974).

b. Defendant's response. In its reply of July 29, 1974, to the Commission's notification, the Department of Justice stated that it took no position concerning the award of a fee of up to 10 per cent of the final award, provided the Commission determines it reasonable in light of the services performed.

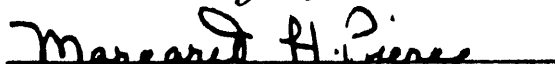
c. Conclusion. Considering the responsibilities undertaken, the difficult problems of fact and law involved in the case, the contingent nature of the fee, the amount of the award achieved through the efforts

of the attorneys, and the factors pertinent to the determination of attorneys' fee established by prior decisions of the Indian Claims Commission, the Commission finds that Claud S. Mann, M. J. Clayburgh, and the estate of Dudley Cornell, deceased, are entitled to an award of attorneys' fees in the requested sum of \$74,908.37. Payment to M. J. Clayburgh and Claud S. Mann of the sum herein awarded as attorneys' fees will represent payment in full for all claims for legal services rendered in this docket.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner