

BEFORE THE INDIAN CLAIMS COMMISSION

THE KIOWA, COMANCHE, AND APACHE)	
TRIBES OF INDIANS,)	
)	
Plaintiffs,)	
)	
v.)	Docket Nos. 257
)	and 259-A
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: January 8, 1975

FINDINGS OF FACT ON AWARD OF ATTORNEYS' FEE

On October 11, 1974, J. Roy Thompson, Jr., attorney of record for the plaintiffs, filed a petition for award of attorneys' fees herein, together with an affidavit and exhibits in support thereof. Having considered said petition and supporting documents, the defendant's response thereto filed on November 13, 1974, the contract and amendments thereto under which legal services have been performed on behalf of the plaintiffs with respect to the claims under the above-captioned dockets, the evidence supporting the petition, and the entire record of all proceedings under these dockets, the Commission makes the following findings of fact:

1. Award. On July 17, 1974, the Commission entered a final award in the amount of \$35,060,000.00, in favor of the plaintiffs, 34 Ind. Cl. Comm. 263, 286. This final award was entered upon the joint motion of the parties for entry of final judgment under Dockets 257 and 259-A,

pursuant to a stipulation between the parties for settlement and entry of final judgment. Funds to satisfy the judgment were appropriated by Public Law 93-554, approved December 27, 1974.

2. Contractual Authority and Compensation. The claims under Dockets 257 and 259-A were instituted and prosecuted under contract No. I-1-ind. 18353, dated May 16, 1947, between the Kiowa, Comanche, and Apache Tribes of Indians and attorneys Thomas P. Gore and W. C. Lewis. This contract was approved on August 1, 1947, for a period of ten years beginning with the date of approval. It was extended twice, each for a period of ten years. The last extension, which was approved on July 27, 1967, extended the contract for a period of ten years beginning August 1, 1967.

An assignment by Attorney Lewis of a one-half interest in the contract to Attorney J. Roy Thompson, Jr., with Attorney Thompson to pay from his one-half interest any fee due the estate of Attorney Gore, and an assignment by Attorney Lewis of a one-fourth interest in the contract to Attorney Frank Miskovsky were approved on June 16, 1949.

Attorney Thompson is the sole surviving attorney. Attorney Gore died March 16, 1949; Attorney Lewis, March 23, 1965; and Attorney Miskovsky, June 13, 1968.

The Executrix of Attorney Gore's estate, by document entered as an exhibit in connection with the petition for award of attorneys' fees filed before this Commission on May 8, 1959, under Docket 32, Kiowa, Comanche and Apache Tribes v. United States, agreed that said estate

had no interest in the litigation under Dockets 257 and 259-A. The estates of Attorneys Lewis and Miskovsky have an interest in any fee awarded hereunder pursuant to the terms of the contract.

The attorneys' contract originally provided for contingent compensation to the attorneys at the rate of seven and one-half percent (7 1/2%) of any and all sums recovered. An amendment to the contract dated April 17, 1950, and approved on August 9, 1950, provided, insofar as it related to compensation, as follows:

1. In consideration of the services to be rendered under the terms of this contract, the parties of the second part shall receive a sum equal to not less than seven and one-half (7 1/2) per centum of any and all sums recovered or procured through their efforts, in whole or in part, for the said Tribes, parties of the first part, whether by suit, action of the Congress of the United States, or otherwise; the amount of the fee, if any, in excess of seven and one-half (7 1/2) per centum shall be fixed by the Indian Claims Commission at such amount as the Commission, in accordance with the 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 but, in any event, shall not exceed ten (10) per centum of the amount recovered.

3. Requested Fee. The petition is for an award of attorneys' fee in the amount of \$3,506,000.00, which is ten percent (10%) of the award of \$35,060,000.00.

4. 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, 1053, 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. . . .

5. Defendant's Response. The defendant responded to the notice of the petition by letter dated November 12, 1974, from the Department of Justice. This letter states in pertinent part:

There are enclosed, a copy of the letter dated November 4, 1974, from the Associate Solicitor for Indian Affairs and a memorandum dated October 25, 1974, to the Solicitor from the Acting Deputy Commissioner of Indian Affairs.

You are advised that this Department takes no position with reference to the amount of attorney's fees to be awarded to the various counsel provided that the combined fee does not exceed 10 percent and the Commission determines that the fees allowed are reasonable for the services rendered.

The Associate Solicitor, Indian Affairs, Department of the Interior, in his letter of November 4, 1974, to the Department of Justice states as follows regarding the petitioned for fee:

. . . Although we too, like the Bureau of Indian Affairs, lack information regarding the services performed by the tribal attorneys, we have the following view to express.

The claims in this case were settled for \$35,060,000, and the tribal attorneys seek \$3,506,000 or the ten percent maximum fee permitted under their contract with the tribes. While their services may justify the payment of a fee of this size, we trust

that the Indian Claims Commission will not regard itself bound to award the maximum fee permitted by the contract simply because of allowing such maximum fees in other cases before it. In other words, while a ten per cent contingent fee may be reasonable compensation for the previous cases before the Commission which resulted in recoveries for Indians, the question is whether that standard of measurement here will also result in reasonable compensation for the services rendered.

6. Notice to Plaintiffs. In letters dated October 15, 1974, and October 21, 1974, from the Deputy Clerk of the Commission the plaintiff tribes were advised of the filing of the petition for award of attorneys' fee and were asked to comment thereon within two weeks from the date of the first letter. Separate letters, together with copies of the Petition for Award of Attorneys' Fees and Affidavit and Exhibits in Support Thereof, were sent to Mr. Bob Cannon, Chairman, Kiowa Indian Council, Lawton, Oklahoma; Mr. Lee Motah, Chairman, Comanche Tribal Council, Oklahoma City, Oklahoma; and Mr. Frank RedBone, Chairman, Apache Tribal Business Committee, Ft. Cobb, Oklahoma.

In addition, at the tribal meetings held on June 29, 1974, in connection with the settlement of the claims under these dockets, tribal members there in attendance were informed that an attorneys' fee of ten percent (10%) of the final award would be sought. Furthermore, on August 23, 1974, the attorney of record advised all tribal members on the mailing list of the intention to claim an attorneys' fee of ten percent (10%).

No responses to the Deputy Clerk's letters of October 15 and 21, 1974, to the tribal chairmen have been received, nor have any individual

tribal members seen fit to comment or object to the claim for an attorneys' fee of ten percent (10%) of the final award.

7. Attorneys' Services in Prosecution of the Claims. Docket 257 involved a primary claim that a large tract of land in Oklahoma and Texas was held by the tribes under recognized title and that the United States acquired said tract for an inadequate consideration under an 1867 treaty. An alternative claim asserted unconscionable consideration for defendant's acquisition under an 1865 treaty of an even larger tract of land in Colorado, Kansas, Oklahoma, New Mexico, and Texas allegedly held by the tribes under aboriginal title. A third claim was made for the difference in monetary payments under the two treaties.

Attorneys' services under this docket began with the identification and formulation of the claims which required investigation and study of all treaties, agreements, statutes, executive orders, and administrative regulations pertaining to the three plaintiff tribes and of the entire history of relations between the three tribes and the United States.

After formulation and filing of the claims in Docket 257, the attorneys prepared and argued before the Commission two separate motions for summary judgment on the plaintiffs' primary claim of recognized title. The first of said motions was denied in 1960; the second was granted in 1971. The attorneys also actively opposed the Commission's grant of intervention under Docket 257 in 1970 to the Wichita and Affiliated Tribes. In addition, Docket 257 was consolidated with Docket 22-A (Jicarilla Apache Tribe) and the attorneys were required to participate in a large part of

the liability phase of Docket 22-A in order to protect the recognized title claim under Docket 257. Counsel also successfully opposed efforts to consolidate Docket 257 with four other dockets.

Upon defendant's appeal of the Commission's decisions granting intervention to the Wichita and Affiliated Tribes and granting plaintiffs' motion for summary judgment on recognized title, counsel briefed and argued these matters before the Court of Claims and subsequently opposed the Wichita petition for certiorari before the Supreme Court.

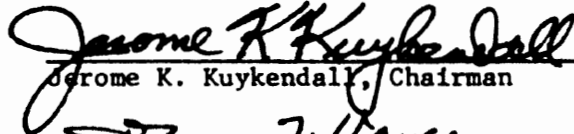
The attorneys were also for several years involved in efforts to settle Docket 257, culminating in plaintiffs' formal offer of settlement on April 15, 1974, and defendant's acceptance thereof on June 17, 1974. In connection with the settlement counsel also prepared extensive reports for the members of the tribes and appeared at tribal meetings to explain fully the terms of the settlement. Counsel also appeared before the Commission at the settlement hearing.

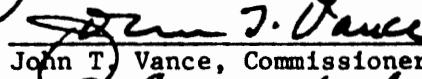
Docket 259-A sought an accounting from 1900 of 12,012.93 acres of agency, school, religious, and reserved land transferred to defendant under act of Congress in 1900. Counsel successfully argued before the Commission in 1970 that plaintiffs were entitled to the value of said lands as of 1900. Counsel had briefed the question of value of these lands and the same had been submitted to the Commission for decision on value at the time of the consolidated settlement of Dockets 257 and 259-A.

Finally, in both dockets, the attorneys frequently and fully informed the tribal authorities and individual tribal members of the status of these claims, and a significant amount of the attorneys' time has been necessary for said purposes.

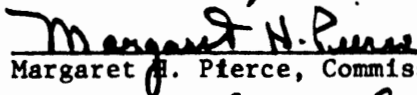
8. Conclusion. On the basis of the entire record in these dockets and considering the responsibilities undertaken, the difficult problems of fact and law involved, the contingent nature of the compensation, the award obtained, and all appropriate factors pertinent to the determination of attorneys' fees under the standards established by the Indian Claims Commission Act, the Commission concludes that the contract attorneys have rendered valuable legal services in successfully prosecuting their clients' claims and ultimately obtaining judgment. Under the terms of the attorneys' contract and the above-enumerated standards, including those standards obtaining in the prosecution of similar claims in courts of law, the contract attorneys have earned an attorney fee of \$3,506,000.00, representing ten percent (10%) of the award to plaintiffs. Accordingly, payment of this amount to J. Roy Thompson, attorney of record, on behalf of all contract attorneys and their legal representatives who may have any interest in the fee in this case, for distribution by him to all said contract attorneys and their legal representatives in accordance with whatever their respective interests might be, 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