

BEFORE THE INDIAN CLAIMS COMMISSION

THE MOHAVE TRIBE OF INDIANS OF)	
ARIZONA, CALIFORNIA AND NEVADA,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 295-A
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

ORDER ALLOWING ATTORNEYS' FEE

HAVING CONSIDERED the petition for allowance of attorneys' fee filed on September 8, 1975, by Raymond C. Simpson, Esquire, attorney of record for the above-named plaintiff in Docket 295-A, and R. J. Kilpatrick, Esquire, on behalf of themselves and all other contract attorneys having an interest in the attorneys' fee in this docket; the contracts under which the attorneys of record served the said plaintiff; the plaintiff's response, filed on September 26, 1975, to said application; the defendant's response, filed on November 3, 1975, to said application; and the remainder of the record on file herein, the Commission finds:

1. Award. The Commission granted the parties' joint motion for entry of final judgment filed herein on May 1, 1975, pursuant to a stipulation for entry of final judgment filed with said motion, and entered a final award of \$550,000, subject to the terms and provisions set forth in the stipulation for entry of final judgment, to the plaintiff on September 18, 1975, 36 Ind. Cl. Comm. 452, 471. Funds to satisfy this award were appropriated by the Act of December 18, 1975, 89 Stat. 826.

2. Attorneys' Contracts. Attorneys' services in Docket 295-A were first performed under claims contract No. I-1-ind. 42625, dated March 10, 1951, between the Mohave Tribe of Indians of California and Arizona and Harold Payne, Esquire, for legal services on all of the tribe's claims or demands against the United States Government. This contract was approved by the Commissioner of the Bureau of Indian Affairs on June 4, 1951, becoming effective on said date for a period of ten years. The contract was extended several times. The extension agreement for two years, beginning on June 4, 1961, was approved on January 5, 1962. The last extension of the contract for a two year period, beginning June 4, 1963, was approved on September 20, 1963.

The contract with Attorney Payne 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 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 thereto.

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. Pursuant to said resolution, claims contract 14-20-0450, No. 5276, dated December 12, 1964, was entered into between the Fort Mohave Tribe of Indians and Attorney Simpson and was approved on March 23, 1965, for a period of five years commencing with the date of approval. This contract was extended twice; the first extension was for a two-year period commencing March 22, 1970, and the second was for a ten-year period beginning March 22, 1972.

The foregoing claims contract was initially approved, 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."

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 the basis of quantum meruit, "...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.

3. Petition for Attorneys' Fee. On September 8, 1975, Raymond C. Simpson and R. J. Kilpatrick filed a petition herein for themselves and on behalf of all contract attorneys having an interest in the fee in Docket 295-A. The fee of \$55,000 sought by the petitioners represents ten per cent (10%) of the final award of \$550,000 in this docket made to the plaintiff. (36 Ind. Cl. Comm. 452, 471)

4. Notice to Parties. By letter of September 12, 1975, the Clerk of the Commission notified the Chairman of the Mohave Tribal Council, the Commissioner of Indian Affairs, Department of the Interior, and the Chief, Indian Claims Section, Lands and Natural Resources Division, Department of Justice, of the filing of the subject petition for attorneys' fee.

5. Response of Plaintiff. In a letter filed with the Commission on September 26, 1975, the Chairman of the Fort Mohave Tribal Council stated the Council had no comments concerning the petition for attorneys' fee.

6. Response of Defendant. On November 3, 1975, the Department of Justice responded to the letter of notice, stating that it took no position with respect to the petition for award of attorneys' fee.

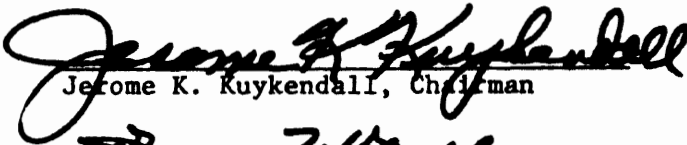
Enclosed with the response from the Department of Justice was a copy of a letter dated October 15, 1975, from the Associate Solicitor, Indian Affairs Division, Department of the Interior, transmitting a copy of a memorandum dated October 10, 1975, from the Commissioner of Indian Affairs concerning the said petition. The Commissioner stated that the Bureau of Indian Affairs did not participate in the litigation, and thus did not have sufficient information upon which to make a recommendation as to the amount of compensation earned by the claims attorneys. For the same reason, the Associate Solicitor was unable to make a recommendation.

7. Agreement Allocating Attorneys' Fee. In a letter dated November 21, 1975, Raymond C. Simpson, attorney of record for the plaintiff herein, offered to pay, "out of whatever fee is to be awarded, the sum of \$4,000.00, to the Estate of Harold Payne", in full satisfaction for his legal services rendered to the plaintiff herein under claims contract No. I-1-ind. 42625. The said offer was accepted by a letter dated December 20, 1975, from Philip B. Wagner, attorney for Harold Payne's Estate, to Raymond C. Simpson.

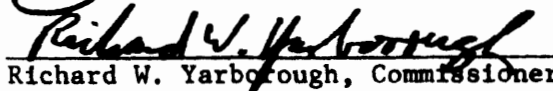
8. Conclusion and Order. Pursuant to the contract with the plaintiff, the attorneys investigated, filed and prosecuted the claim in this docket, on which plaintiff has been awarded the amount of \$550,000.00. For services rendered in connection with that award, the attorneys are entitled to a fee in the requested amount of \$55,000.00, representing ten percent of the award to the plaintiff herein. Pursuant to an agreement entered into between Raymond C. Simpson and the Estate of Harold Payne, \$4,000.00 of the said attorneys' fee is to be paid to the Estate of Harold Payne.

IT IS THEREFORE ORDERED that out of the funds appropriated to pay the final award of September 18, 1975, there shall be distributed to Raymond C. Simpson, attorney of record, and R. J. Kilpatrick the sum of \$55,000.00, out of which the sum of \$4,000.00 shall be paid to the Estate of Harold Payne in full satisfaction for his legal services rendered to the plaintiff herein; the remaining \$51,000.00 shall be distributed by the said Raymond C. Simpson and R. J. Kilpatrick to such other attorneys entitled to share in the fee in accord with their respective interests. The sum of \$55,000.00 shall be payment in full for all services rendered in the prosecution of this claim.

Dated at Washington, D. C., this 8th day of January 1976.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner

Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner