

BEFORE THE INDIAN CLAIMS COMMISSION

THE LIPAN APACHE TRIBE and bands thereof, )  
ex rel., Pedro Mendez and Philemon )  
Venego; )

THE MESCALERO APACHE TRIBE and bands )  
thereof, ex rel., Solon Sombrero, )  
Fred Pellman, Eric Tortilla and )  
Victor Dolan; )

THE APACHE TRIBE OF THE MESCALERO )  
RESERVATION on behalf of, or as )  
successor to, the Lipan Apache Tribe )  
and bands thereof, and the Mescalewo )  
Apache Tribe and bands thereof, )

Plaintiffs, )

v. )

Docket No. 22-C

THE UNITED STATES OF AMERICA, )

Defendant. )

Decided: April 7, 1977

FINDINGS OF FACT ON ATTORNEYS' FEE

Having considered the application for an allowance of an attorney fee, filed herein on behalf of Roy T. Mobley on May 20, 1976, and the application for allowance of attorneys' fee filed herein on July 8, 1976, by I. S. Weissbrodt, as attorney of record for the plaintiffs in this docket, and having also considered the entire record in the case, the Commission makes the following findings of fact:

1. The Award. On February 19, 1976, the Commission entered its judgment in Docket 22-C, awarding to the plaintiff, the Apache Tribe of the Mescalero Reservation, the sum of \$5,000,000.00 for and on behalf of the aboriginal Lipan Apache Tribe, and the further sum of \$5,000,000.00 for and on behalf of the aboriginal Mescalero Apache Tribe. Funds to pay the award were appropriated by Act of September 30, 1976, Pub. L. No, 94-438.

2. Attorney Contracts. The attorney contracts involved in this case are:

(a) Contract No. I-1-ind. 42138 between the Apache Tribe of the Mescalero Reservation and Attorneys James E. Curry (deceased August 23, 1972) and Roy T. Mobley, approved January 16, 1948, by the Acting Commissioner of Indian Affairs, said contract being later amended. By an amendment of January 5, 1952, the employment of Roy T. Mobley under the contract was terminated and two new attorneys, Jay H. Hoag (deceased September 1, 1971) and I. S. Weissbrodt were employed under the contract, relative to the prosecution of the tribal claims against the United States. This contract expired by its own terms on January 16, 1958.

(b) On January 17, 1958, the Apache Tribe of the Mescalero Reservation entered into two new attorney contracts, namely Contract No. 681, Symbol 14-20-650 applicable to the Lipan Apache claim in Docket 22-C and Contract No. 680, Symbol 14-20-650 applicable to the Mescalero Apache claim in Docket 22-C. The attorney parties to each of said contracts were: I. S. Weissbrodt, Abe W. Weissbrodt, Jay H. Hoag, Rodney J. Edwards, David Cobb and Clarence J. Lindquist (deceased April 11, 1964).

The term of each of these contracts was a period of ten years commencing January 17, 1958.

(c) Said contracts, No. 680 and No. 681, were succeeded by two new contracts made January 17, 1968, namely Contract No. 8MC1420C0359, applicable to the claim of the Mescalero Apache Tribe in Docket 22-C, and Contract No. 8MC1420C0360, applicable to the claim of the Lipan Apache Tribe in Docket 22-C. The attorney parties to each of said contracts were: I. S. Weissbrodt, Abe W. Weissbrodt, Jay H. Hoag and Rodney J. Edwards. The term of each of said contracts was a period of ten years from January 17, 1968, until January 16, 1978.

3. Compensation provisions of the contracts. Each of the aforesaid contracts identified in Finding No. 2, supra, provided in substance, relative to the prosecution of the tribal claims, that the compensation for attorneys' services should not exceed ten per cent of the amount recovered.

4. The claim of Roy T. Mobley. On May 20, 1976, an application for an award of an attorney fee was filed on behalf of Roy T. Mobley for services rendered by him in this case. The application requested an allowance for the services of Roy T. Mobley in the amount of \$250,000.00, being twenty-five per cent of an assumed total of \$1,000,000.00 in attorneys' fee to be awarded in this case.

Roy T. Mobley has also requested that a hearing be held to receive evidence as to the legal services rendered by him in the case.

The Commission is today granting that request, entering an order setting a date for such hearing.

5. The claim of I. S. Weissbrodt. On July 8, 1976, I. S. Weissbrodt, attorney of record for the plaintiffs, filed an application on behalf of all contract attorneys who may have an interest in the fee in this case, except Roy T. Mobley. I. S. Weissbrodt requested an allowance of attorneys' fee in the amount of \$1,000,000.00, being ten per cent of the total recovery of \$10,000,000.00 for all legal services rendered by such contract attorneys.

6. Notice to Parties and Responses. Notices of the filing of these applications for allowance of attorneys' fee were mailed by the Clerk of the Commission to the tribal representatives, the Department of Justice, and the Department of the Interior. The notices requested that any comments or information on the applications be filed with the Commission within two weeks from the date of the notice.

Responses to the notices were noncommittal. A copy of the decision of September 1, 1953, by the Assistant Secretary of the Interior affirming the termination of Mobley's interest in a contract approved January 16, 1948, with the plaintiffs was transmitted with the reply from the Department of Justice.

7. The motion to dismiss the application of Roy T. Mobley. On July 8, 1976, I. S. Weissbrodt filed a motion to dismiss the application of Roy T. Mobley for an allowance of an attorney fee. Roy T. Mobley responded in opposition to this motion.

By order of February 9, 1977, the Commission set March 4, 1977, as the date for oral argument on the fee application of Roy T. Mobley and the motion of I. S. Weissbrodt to dismiss such application. Such argument was held on March 4, 1977. The Commission intends to reserve its ruling on the application of Roy T. Mobley for an allowance of an attorney fee and on the motion of I. S. Weissbrodt to dismiss the same until after the hearing to receive evidence as to the legal services rendered by Roy T. Mobley.

8. Services of I. S. Weissbrodt and the attorneys associated with him. The record which is now before the Commission establishes that I. S. Weissbrodt and the attorneys associated with him, have performed valuable legal services in the successful prosecution of the claims in this case. By opinion and order of August 6, 1965, the Commission granted the Government's motion to dismiss this case for failure to state a cause of action upon which relief could be granted. Upon appeal by I. S. Weissbrodt, the attorney of record for plaintiffs, the Court of Claims, on June 9, 1967, reversed the dismissal and remanded the case to the Commission.

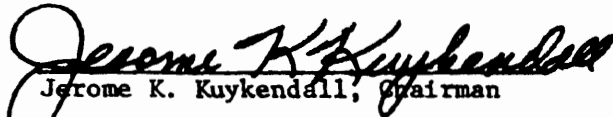
From May 1969 through March 1975, matters relating to the extent of aboriginal title lands and applications to intervene in the proceedings were decided. On March 14, 1975, the Commission issued its opinion, findings of fact, and interlocutory order determining the extent and boundaries of the plaintiffs' aboriginal lands in Texas. Thereafter, negotiations for a proposed settlement were successfully conducted and attorneys for the

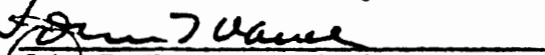
plaintiffs and the defendant executed a stipulation for entry of final judgment in the sum of \$5,000,000.00 on behalf of the Lipan Apache Tribe and the further sum of \$5,000,000.00 on behalf of the Mescalero Apache Tribe.


The Commission has tested the legal services of the attorney of record and his associated contract attorneys by the standards for prosecuting similar claims in courts of law, by the long protracted period of the litigation, by the contingent and very complex nature of the proceedings, and by the highly rewarding results obtained. Based on the entire record in this case, and the appeal proceedings in the Court of Claims of which the Commission has taken notice, and considering all appropriate factors, the Commission finds and concludes that the legal services rendered in this case by I. S. Weissbrodt and the contract attorneys associated with him have a value of not less than \$750,000.00 and that said sum of \$750,000.00 should be disbursed to I. S. Weissbrodt, in his capacity as attorney of record, on behalf of himself and all contract attorneys who may have an interest in such fee except Roy T. Mobley, to be appropriately distributed by I. S. Weissbrodt to such contract attorneys.

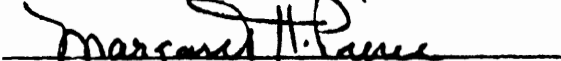
9. These findings are without prejudice to the claim of Roy T. Mobley that he has rendered services which contributed to the recovery in this case for which an allowance of attorney fee should be made. These findings are also without prejudice to any claim by I. S. Weissbrodt,

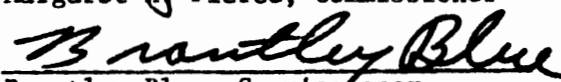
as attorney of record for the plaintiffs, for an allowance of an amount of attorneys' fee in this case in addition to the aforesaid \$750,000.00.

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarbrough, Commissioner

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner