

BEFORE THE INDIAN CLAIMS COMMISSION

THE CHEMEHUEVI TRIBE OF INDIANS, et al.,)	
)	
Petitioners,)	
)	
v.)	Docket Nos. 351 and 351-A
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: August 1t, 1965

FINDINGS OF FACT IN THE MATTER OF THE ALLOWANCE OF ATTORNEYS FEES AND EXPENSES

1. Arthur Lazarus, Jr., attorney of record for the petitioners in Docket Nos. 351 and 351-A, on behalf of himself and all other attorneys having an interest in this litigation, hereby petitions the Commission, pursuant to Section 15 of the Act of August 13, 1946, c. 959, 60 Stat. 1049, 1053, 25 U.S.C. 70n, and in accordance with the claims contract between counsel and the petitioners, for the allowance of attorneys' fees in the amount of \$99,683.48 and expenses in the amount of \$2506.96, or a total award of \$102,190.44.

2. Final judgment in the above-entitled cases was entered on January 18, 1965, in the net sum of \$996,834.81. This petition is based upon the entire record and proceedings in Docket Nos. 351 and 351-A, and consolidated Docket Nos. 88 and 330.

3. These cases were instituted on August 11, 1951, by the filing of a petition seeking, in the first cause of action, damages for the

taking by the United States of land in the present States of California, Arizona and Nevada to which the Chemehuevi Tribe claimed original Indian title, and in the second cause of action, an accounting and other relief. After over 13 years of litigation, a final judgment was entered in favor of petitioners on January 18, 1965, in the net amount of \$996,834.81.

4. On July 13, 1951, the Chemehuevi Indian Business Organization entered into a contract with the law firm of Marks & Marks, Phoenix, Arizona, for the prosecution of the claims of the Chemehuevi Tribe. This contract, which was approved by the Commissioner of Indian Affairs on August 2, 1951 (Symbol No. 42531, recorded in Vol. 19 of Miscellaneous Records of the Bureau of Indian Affairs at p. 4), recited in part:

"It is agreed that the compensation of the parties of the Second Part the attorneys for the services to be rendered under the terms of this contract, is to be wholly contingent upon a recovery for the Tribe. The parties of the Second Part shall receive as such compensation ten per centum (10%) of any and all sums recovered or procured, through efforts, in whole or in part, for the said Indians, whether by award of the Indian Claims Commission, suit, action of any department of the Government or of the Congress of the United States, or otherwise, plus reasonable expenses incurred in the prosecution of the claims: * * *."

5. The above-mentioned 1951 attorneys' contract further provided that Marks & Marks "may associate with them as their assistants under this contract, the following named attorneys of Washington, D.C., namely: Arthur Lazarus, Jr., Marvin J. Sonosky and Louis L. Rochmes: * * *." Marks & Marks in fact did agree with the three named attorneys jointly to work on the Chemehuevi claims, and actual services were performed by them

beginning in July of 1951, but the Bureau of Indian Affairs later construed the language of the contract as not vesting in Washington counsel any interest in the prospective fees. Accordingly, on October 17, 1953, the Chemehuevi Tribe of Indians, acting through the Chemehuevi Indian Business Organization, executed an amended attorneys' contract with Marks & Marks, Arthur Lazarus, Jr., Marvin J. Sonosky and Louis L. Rochmes, as parties.

6. The 1953 contract again provided that the attorneys be paid as compensation for their services "ten per centum (10%) of any and all sums recovered" for the Chemehuevi Tribe. This contract was conditionally approved by the Commissioner of Indian Affairs on May 24, 1954 -- the condition relating to a change in the agreement governing the reimbursement of expenses. On August 12, 1954, the Acting Commissioner of Indian Affairs withdrew this condition and approved the attorneys' contract: (a) "as a representative contract rather than a tribal contract"; and (b) "if the contract is modified so as to fix the compensation of the attorneys on a contingent basis not to exceed 10% of the recovery." Neither the Chemehuevi Indians nor the attorneys acted upon the Commissioner's proposal, and the 1953 agreement never became operative.

7. On January 12, 1959, the Chemehuevi Tribe of Indians entered into a new amended attorneys' contract with Marks & Marks, Louis L. Rochmes, Marvin J. Sonosky, and Strasser, Spiegelberg, Fried & Frank (of which Arthur Lazarus, Jr., was and is a member). In view of the Acting

Commissioner's letter of August 12, 1954, and the continuing Bureau policy of refusing to approve attorney contracts providing for a flat 10% contingent fee, Paragraph 3 of the 1959 agreement stipulates:

"As compensation for the services rendered by the ATTORNEYS and each of them under the contract approved August 2, 1951 of which this contract is amendatory and for the services to be rendered under this contract, the ATTORNEYS shall receive not to exceed ten per centum (10%) of any and all sums recovered or procured for the TRIBE, whether by award of the Indian Claims Commission, or other tribunal, or by the Executive Branch of the Federal Government, or by Congress, or otherwise."

The 1959 contract further provides for the reimbursement of "all necessary and proper expenses incurred since July 13, 1951," and recognizes the services and expenses of Messrs. Lazarus, Rochmes and Sonosky since that date as authorized *nuc pro tunc*. This attorneys' contract was approved by the Acting Commissioner of Indian Affairs on June 18, 1959 (Contract No. 691, Symbol 14-20-650), and is now in full force and effect.

8. The only attorneys having an interest in the contract, or in the compensation provided thereunder, are: Strasser, Spiegelberg, Fried & Frank, represented herein by Arthur Lazarus, Jr., a partner and attorney of record; Marks & Marks, represented herein by Royal D. Marks; Marvin J. Sonosky; and Louis L. Rochmes.

9. In his oral presentation of the case for the attorneys Mr. Arthur Lazarus, Jr., stated that:

(a) In the years immediately after the filing of the petition, and notwithstanding the defendant's failure to file an answer and thus join

issue until May of 1954, the attorneys directed their major effort to the intensive research and painstaking collation of evidence required to make out an affirmative case of exclusive use and occupancy. To this end, the attorneys investigated archives from Washington to California, checked all published historical sources and examined the scientific literature bearing upon the history, culture and territory of the Chemehuevi Indians and their neighbors. Perhaps the attorneys' most difficult, yet rewarding achievement during this period, however, was to persuade Dr. A. L. Kroeber, the dean of American anthropologists and an acknowledged expert on California Indians, to prepare a map of the Chemehuevi country and to testify on the Tribe's behalf.

(b) The road to trial on the merits was not without its procedural obstacles. In February of 1954, for example, the United States moved to consolidate Docket No. 351 for trial with Docket No. 90 (Hualapai) and three other cases. Petitioners herein responded in substance that the Chemehuevi claim, as pleaded, actually did not overlap the Hualapai claim and that consolidation thus would serve no useful purpose. This Commission agreed, and a potentially time-consuming complication was avoided.

(c) Similarly, on August 10, 1951, a separate petition had been filed and assigned Docket No. 283, which, inter alia, also asserted a claim by and on behalf of the Chemehuevi Tribe of Indians. The attorneys recognized that the existence of a duplicate claim in another docket

could lead only to confusion and delay, with different counsel perhaps working at cross purposes to the ultimate detriment of the client. Finally, after months of negotiations at the instant of the attorneys, the petitioners herein and the petitioners in Docket No. 283 on September 23, 1954, entered into a stipulation by which the claims set forth in Docket No. 283 on behalf of the Chemehuevi Indians were withdrawn. On August 8, 1958, the Commission directed the dismissal of the claim for the Chemehuevi Indians in Docket No. 283, leaving the petitioners herein with the sole and exclusive right to present the land claims of the Chemehuevi Tribe.

(d) The Road to trial on the merits also was not without legal hurdles. On May 5, 1954, the Commission entered an order setting down for preliminary hearing certain legal questions common to all land claims in California. In a brief filed August 5, 1954, the attorneys argued: (a) that original Indian title is a compensable interest under the Indian Claims Commission Act; (b) that the Commission has jurisdiction to consider and adjudicate claims based upon original Indian title; (c) that petitioners herein were not barred from asserting or prosecuting a claim for lands based upon original Indian title by the Act of March 3, 1851, 9 Stat. 631; and (d) that petitioners' claims were not barred on grounds of res judicata. This Commission, of course, adopted the position so advanced by counsel for the Chemehuevi Tribe and other claimants to California lands.

(e) Jurisdictional obstacles overcome, the attorneys began trial of the merits of the Chemehuevi claim on July 12, 1955, with the examination of Dr. Kroeber during the course of the hearings in the Indians of California cases which had started in San Francisco late in June. (As is more fully described hereinafter, the consolidation of Docket No. 351 for trial with Dockets 31 and 37, though necessary for the Commission properly to dispose of the latter litigation, greatly increased the attorneys' workload in handling the Chemehuevi land claim.)

(f) During the years 1954-56, the attorneys and counsel for defendant periodically sparred over the scope of the hearings in Docket No. 351, with Government counsel seeking to limit trial on title to California lands, while the attorneys sought to include Chemehuevi lands in Nevada and Arizona and to present petitioners' claim as a unit, thus escaping even further delays and the added costs of submitting the same testimony and exhibits twice. The Commission approved the attorneys' position, and a further trial on the merits of the entire Chemehuevi case (which had been consolidated with the Southern Paiute claims in Docket Nos. 88 and 330) began on December 17, 1956. For reasons explained in detail at pp. 23-27 of the Statement in Support of Petition for Allowance of Attorney Fees, recently filed by counsel for the Indians in Docket Nos. 88 and 330, which need not be repeated herein, proof in the consolidated Chemehuevi - Southern Paiute cases was not closed until September 13, 1961, with the cross-examination by the attorneys of the Government's chief witness.

The attorneys thereafter prepared proposed findings and a brief on all factual and remaining legal issues relating to liability, which was filed on behalf of the Chemehuevi Tribe with the Commission on March 30, 1962.

(g) In addition to the Chemehuevi land claim, the attorneys had petitioned for a general accounting. Pursuant to an order of the Commission separating causes of action, entered January 11, 1955, an amended petition covering the accounting claim was filed and assigned Docket No. 351-A. In due course, defendant submitted to the Commission a General Accounting Office report, dated March 31, 1961, which the attorneys thoroughly reviewed. No further proceedings were held in Docket No. 351-A, however, in view of the settlement subsequently described.

(h) In June of 1953, the United States moved to consolidate all cases involving claims to land within the present State of California, and to abate such cases (presumably including Docket No. 351) as were included within one or more of the other cases (presumably meaning Docket Nos. 31 and 37). Petitioners opposed the Government's motion, in a response dated September 14, 1953, on the grounds: (a) that the Chemehuevi Tribe is an identifiable group of American Indians within the meaning of section 2 of the Act, and thus was entitled independently to file suit before the Commission; and (b) that, insofar as the Chemehuevis were concerned, consolidation would cause complications, confusion and delay.

(i) This Commission refused to abate the Chemehuevi claim, but on November 19, 1953, entered an order consolidating all California land

claims for trial. Though necessary for the Commission properly to dispose of the major Indians of California cases, this order of consolidation greatly increased the attorneys' workload in handling the Chemehuevi claim. Specifically, as counsel for one of the so-called "splinter tribes," the attorneys frequently were required to attend hearings and arguments at times and places not of their own choosing, and with respect to issues which might not have arisen in the absence of consolidation. In addition, as a result of having Docket No. 351 joined to Docket Nos. 31 and 37, the attorneys were required to master a record, participate in hearings and study proposed findings and briefs far more complex and voluminous than would have been necessary under ordinary circumstances.

(j) Throughout these proceedings, counsel for the "Indians of California" also asserted that their client possessed an exclusive right to prosecute any claim arising out of the loss by Indians of lands in that State. In response to an order entered by the Commission on June 20, 1957, the attorneys submitted a memorandum of law to the effect that no such exclusive right of representation existed. This Commission agreed, and on January 20, 1958, ruled that separate and identifiable California tribes, including the Chemehuevi Indians, could prosecute their claims independently.

Thereafter, the attorneys supported the Commission's decision against attack by the petitioners in Docket Nos. 31 and 37, both in response to a motion for reconsideration and through a brief upon appeal to the Court of Claims.

(k) Settlement negotiations began in this case during January of 1964, shortly after the filing of proposed findings and a brief on behalf of the petitioners in Docket Nos. 88 and 330. In preparation for the initial exploratory discussions with defendant's counsel, Mr. Lazarus, the attorney of record in Docket No. 351, conferred with John W. Cragun, Frances L. Horn and Abe Weissbrodt, representing the Southern Paiute Indians. In addition to collecting information about values and acreage, the attorneys found it necessary in connection with the negotiations to determine the probable amount of offsets chargeable against a Chemehuevi award and the probable value of the accounting claim in Docket No. 351-A. All activities required by the Omaha decision with respect to compromise settlements were faithfully carried out by counsel for the Indians in the above docket numbers.

10. Based on the above findings and the entire record * with respect to the above docket numbers, and considering all the facts and circumstances peculiar to Indian claims cases, and considering the further fact that the recovery in the above dockets is comparatively small as compared with many cases in which larger awards are made where the service required is not much in excess of that rendered herein, it is the conclusion of the Commission that the petitioners' contract attorneys in the above dockets should be awarded a fee of \$99,683.48, which is 10 percent of the award to their Indian clients.

* See Finding 11 for position of Department of Interior in re: Attorney Fee to be awarded.

ALLOWABLE ATTORNEYS EXPENSES

11. The attorneys' contract provides for the reimbursement of "all necessary and proper expenses" incurred by counsel since July 13, 1951, in the prosecution of the Chemehuevi claims. Accordingly, the attorneys have submitted detailed itemizations of those out-of-pocket expenses occurred in the prosecution of the claims in Docket Nos. 351 and 351-A, for which they seek reimbursement. Where available, receipts or other supporting vouchers have been submitted with the itemizations.

With respect to the allowance of the itemized expenses, the defendant offered no objection and concurred in the following views of the Department of Interior as expressed in its letter of July 13, 1965:

"With respect to the requested fees, the Bureau states that it does not have sufficient information to make a recommendation on the amount of fees earned by the attorneys but that it finds no reason to object to the allowance of the ten percent fee which is requested by the attorneys. On the matter of expenses, the Bureau reports that they appear to be of a reasonable nature and that they are within the categories of expenses for which reimbursement is permitted by the terms of the applicable claims attorney contracts. The Bureau adds, however, that its examination was not a detailed or comprehensive audit and that therefore it is unable to comment on whether the various claimed expenses are all proper for allowance in the amounts claimed.

We concur in the views stated in the Bureau's memorandum."

12. The Commission, having received all items of expenses submitted by the attorneys, finds, with the exception of one item, they are necessary, proper, and reasonable expenses incurred in the prosecution of

the claims in these dockets, and have been either properly supported by vouchers or other adequate proof. The exception noted above is a \$25.00 item listed as "Miscellaneous" in the expense account of Daniel E. Eddy, Sr., for which there is no explanation or supporting evidence (X-29). With this exception the Commission will approve and allow to the attorneys total reimburseable expenses in the sum of \$2,481.96.

Orders in accordance with these findings will be entered.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner