

BEFORE THE INDIAN CLAIMS COMMISSION

THE NORTHERN PAIUTE NATION AND THE)	
BANDS THEREOF, ET AL.,)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 87
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: April 23, 1969

FINDINGS OF FACT ON AWARD OF ATTORNEYS' FEES

On February 28, 1969, the attorney of record for the plaintiffs, various tribes, bands and groups of Northern Paiute Indians, in Docket No. 87, filed an application for allowance of attorney fees. On April 3, 1969, the response of the defendant, with attached letter from the Office of the Solicitor of the Department of the Interior and an accompanying memorandum, was filed with the Commission. After due notice, a hearing on the application was held before the Commission on April 14, 1969. The Commission having considered the entire record in the case, including the contracts of employment of the attorneys, makes the following findings of fact:

1. On November 4, 1965, the Commission entered its judgment, ordering that the petitioners recover from the defendant:

- a. the net sum of \$935,000.00, for and on behalf of the Monos or Paiutes of Owens Valley, and

- b. the net sum of \$15,790,000.00, for and on behalf of the Paviotso or Paiutes of Western Nevada.

(See 16 Ind. Cl. Comm. 215).

2. An appeal to the Court of Claims having been instituted by the defendant and a cross-appeal having been filed by the plaintiffs, the Commission's judgment of November 4, 1965, did not become final until July 18, 1968, following the appeal proceeding and the expiration of time for seeking review of the decision of the Court of Claims affirming the Commission's judgment. (393 F. 2d 786)

3. The funds in payment of the Commission's final awards in favor of the plaintiffs were appropriated by Congress by the Act of October 21, 1968 (P.L. 90-608) and were deposited in the United States Treasury.

4. The Indian Claims Commission Act (60 Stat. 1049), under which the claims in this case were prosecuted, contains the following provision pertaining to the allowance of attorney 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 in 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,; 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 (p. 1053).

5. The attorneys' contracts are with six Indian groups:

- a. The Reno-Sparks Indian Colony;
- b. The Pyramid Lake Paiute Tribe;
- c. The Walker River Paiute Tribe;
- d. The Paiute-Shoshone Tribe of the Fallon Reservation;
- e. The Yerington Paiute Tribe; and
- f. The Fort McDermitt Paiute-Shoshone Tribe.

6. Eight attorneys were parties to the contracts with the six tribes, requiring performance of services in the prosecution of the claims in this case. Of the eight attorneys, five, namely, I. S. Weissbrodt, Abe W. Weissbrodt and Morton Liftin, of Washington, D. C., and Jay H. Hoag and Rodney J. Edwards, of Duluth, Minnesota, are parties to contracts which are currently in force. The other three attorneys, namely, David Cobb and James E. Curry, of Washington, D. C. and Clarence G. Lindquist (deceased), formerly of Duluth, Minnesota, performed duties under superseded or replaced contracts.

7. The original contracts with the six tribes were entered into by James E. Curry during the years 1947-1949. These contracts were replaced by six contracts which were entered into, in 1954, with I. S. Weissbrodt, David Cobb, Jay H. Hoag, Rodney J. Edwards and Clarence G. Lindquist. In 1955, Jay H. Hoag, Rodney J. Edwards and Clarence G. Lindquist conveyed to John A. Spellacy, of Marble, Minnesota, two (2) percent of their interest in the net fees to be received under the contracts. The contracts made in

1954 were replaced, in 1964, by six new contracts entered into by I. S. Weissbrodt, Abe W. Weissbrodt, Jay H. Hoag, Rodney J. Edwards and Morton Liftin.

8. The applicant in this proceeding is I. S. Weissbrodt, one of the contract attorneys and the attorney of record in this case. He seeks an award of attorneys' fees on behalf of himself and all other present and former attorneys having a contract interest in the attorneys' fees in the proceeding, all of the contract attorneys having reached among themselves an amicable understanding as to the division of the fees. The obligations to the other attorneys who were engaged by the contract attorneys to perform services have already been paid by the contract attorneys or will be met from the award. Five of the contract attorneys, namely, Jay H. Hoag, Rodney J. Edwards, James E. Curry, David Cobb and Abe W. Weissbrodt have signed and filed with the Commission a formal consent and request that the attorneys' fees in this case be paid to I. S. Weissbrodt, the attorney of record. Pursuant to authority granted by a judgment of the District Court of the Sixth Judicial District, County of St. Louis, State of Minnesota, entered August 28, 1967, in proceedings involving the Estate of Clarence G. Lindquist, a formal consent and request has been signed and filed with the Commission on behalf of the Estate of Clarence G. Lindquist, also requesting that the attorneys' fees in the case be paid to I. S. Weissbrodt. John A. Spellacy, to whom Jay H. Hoag, Rodney J. Edwards and

Clarence J. Lindquist assigned two (2) percent of their interest in the net fees, has similarly signed and filed with the Commission a consent requesting that the attorneys' fees be paid to I. S. Weissbrodt.

The Commission has received from the Clerk of the United States District Court of the District of Columbia an order of that Court dated February 11, 1969, entered in the case of Ceil Bryson Cohen, Ancillary Executrix of the Estate of Henry Cohen, Deceased v. James E. Curry, Civil Action No. 86-69. The order provides that any share of the attorney fees payable by I. S. Weissbrodt to James E. Curry shall be deposited by I. S. Weissbrodt, pursuant to an escrow agreement between the parties to said case, in an account in a depository mutually satisfactory to said parties.

9. The amounts of the attorneys' fees for which application is made are:

- (a) \$93,500, being 10 percent of the net final award of \$935,000 made by the Commission to the plaintiffs for and on behalf of the Monos or Paiutes of Owens Valley (hereinafter called the "monos"); and
- (b) \$1,579,000, being 10 percent of the final award of \$15,790,000 made by the Commission to the plaintiffs for and on behalf of the Paviotso or Paiutes of Western Nevada (hereinafter called the "Paviotso").

10. The details of the attorney contracts are summarized, as follows:

a. The six original contracts entered into by James E. Curry were with (1) the Reno-Sparks Indian Colony, made December 9, 1947, and approved May 17, 1948 (I-1-Ind. 42021); (2) the Fort McDermitt Paiute-Shoshone Tribe, made December 15, 1947, and approved May 28, 1948 (I-1-Ind. 42033); (3) the Pyramid Lake Paiute Tribe, made October 1, 1948, and approved September 22, 1949 (I-1-Ind. 42197); (4) the Walker River Paiute Tribe, made March 8, 1949, and approved July 28, 1949 (I-1-Ind. 42182); (5) the Yerington Paiute Tribe, made March 8, 1949, and approved October 31, 1949 (I-1-Ind. 42228); and (6) the Paiute-Shoshone Tribe of the Fallon Reservation, made March 15, 1949, and approved March 29, 1950 (I-1-Ind. 42265).

b. These original contracts were replaced in 1954 by six new contracts, each of which was made with I. S. Weissbrodt, Jay H. Hoag, Rodney J. Edwards, Clarence G. Lindquist and David Cobb, the term of each of the contracts being ten years from date of approval. These contracts were made with (1) the Reno-Sparks Indian Colony, approved June 28, 1954 (Contract No. 162) ; (2) the Fort McDermitt Paiute-Shoshone Tribe, approved June 28, 1954 (Contract No. 161); (3) the Pyramid Lake Paiute Tribe, approved June 14, 1954 (Contract No. 157); (4) the Walker River Paiute Tribe approved June 14, 1954 (Contract No. 158); (5) the Yerington Paiute Tribe, approved June 25, 1954 (Contract No. 160); (6) the Paiute-Shoshone Tribe of the Fallon Reservation, approved August 16, 1954 (Contract No. 171).

c. The latter six contracts were succeeded by contracts made and approved in 1964 with I. S. Weissbrodt, Abe W. Weissbrodt, Jay H. Hoag,

Rodney J. Edwards and Morton Liftin. These contracts were made with:

- (1) the Reno-Sparks Indian Colony, approved effective June 28, 1964, to continue until June 27, 1969 (Contract No. 4884);
- (2) the Fort McDermitt Paiute-Shoshone Tribe, approved effective June 28, 1964, to continue until June 27, 1969 (Contract No. 4881);
- (3) the Pyramid Lake Paiute Tribe, approved effective June 14, 1964, to continue until June 13, 1969 (Contract No. 4883);
- (4) the Walker River Paiute Tribe, effective June 14, 1964, to continue until June 13, 1969 (Contract No. 4885);
- (5) the Yerington Paiute Tribe, approved effective June 25, 1964, to continue until June 24, 1969 (Contract No. 4886); and
- (6) the Paiute-Shoshone Tribe of the Fallon Reservation, approved effective August 16, 1964, to continue until August 16, 1969 (Contract No. 4882).

d. Each of the said 1964 contracts which are currently in force, as well as the aforementioned superseded and replaced contracts, provided, in substance, that any compensation received by the attorneys for services rendered thereunder was to be wholly contingent upon a

recovery on the claims, but that in no event was the total of attorney fees to exceed ten (10) percent of any recovery or settlement which was realized; and further that the attorneys were to be reimbursed, from the amount of the recovery, such actual expenses incurred by them as may be fixed by the Commission.

11. By a letter dated March 25, 1969, the Acting Deputy Solicitor of the Department of the Interior advised the Honorable Glen E. Taylor, Acting Assistant Attorney General, Land and Natural Resources Division, Department of Justice, that the Department did not have sufficient information upon which to base an opinion regarding the amount of fees earned by the attorneys. That letter enclosed a memorandum from the Commissioner of Indian Affairs to the Solicitor of the Department of the Interior, which reads as follows:

The Indian Claims Commission sent to us pursuant to 25 CFR 503.34B(b), copies of a petition filed on February 28, 1969, and supplemented by letter dated March 7, 1969, in the case of the Northern Paiute Indians, docket numbered 87, for allowance of attorneys' fees in the amounts of \$93,500.00 and \$1,579,000.00. A member of your staff informally requested our comments on the petition.

On November 4, 1965, the Indian Claims Commission granted in docket numbered 87 an award of \$935,000.00 and an award of \$15,790,000.00 to the Northern Paiute Nation of Indians. After subsequent appeal action, these awards became final on July 18, 1968, and Congress appropriated funds to cover them on October 21, 1968 (82 Stat. 1190).

A review has been made of the petition, statement, and supplement thereto. The information set out in the documents regarding the two awards, the contracts under which the

claims were prosecuted, the association of attorneys, the employment of attorneys, and the assignment of interest in fees, was found to be correct and complete.

The contracts under which the claims in docket numbered 87 were prosecuted provided generally that the compensation to the attorneys shall be wholly contingent upon recovery for the Indians and shall not exceed ten percent of the amounts recovered for the Indians.

This Bureau did not participate in the litigation of the claims resulting in the two awards and we do not have sufficient detailed information to make a recommendation as to the amount of compensation earned by the attorneys.

12. The final awards by the Commission in this docket in favor of the Monos and the Paviotso were entered after thorough investigation, research and analysis by the attorneys, and exhaustive trial proceedings pertaining to the issues of Indian title and liability of the defendant, followed by complicated valuation trial proceedings. In connection with the trial proceedings pertaining to Indian title and defendant's liability, vigorously contested and novel issues were presented as to the identifiability of the petitioners, their capacity to present the claims, the timeliness of the filing of the Mono claims, and the extent and boundaries of the Indian title lands of the Monos and Paviotso. In the valuation trial proceeding, numerous complex issues of fact and law were litigated, particularly with reference to the mineral resources of the lands. Indeed, the difficulties were such that the defendant sought, by appeal to the Court of Claims, a reexamination of critical issues determined by the Commission, both as to the liability of the defendant and as to amount of recovery.

Apart from the trial proceedings pertaining to Indian title and the valuation of the lands and resources, the record before the Commission reflects that there were certain special and difficult problems which were involved in the undertaking by the attorneys in this docket and a series of complications arose during the litigation which required time-consuming subsidiary proceedings, including large numbers of overlapping claims of other tribes, among them being the California case.

The record before the Commission in this docket and the appeal proceedings in the Court of Claims attest that the services performed by the attorneys were substantially greater and the responsibilities undertaken by them were more burdensome than are generally involved in this protracted and complex type of litigation pertaining to aboriginal title claims. Also, the risks and hazards in this litigation were especially heavy. On the whole, the record in this case, in comparison with other cases, shows that this has been one of the most difficult cases in the entire history of the prosecution of Indian claims cases.

13. At the time the attorneys contracted to prosecute the claims in this docket, separate groups of Indians, classified by anthropologists as Northern Paiutes, lived in over twenty scattered reservations, rancherias, colonies and communities located in eastern California, western Nevada, and southeastern Oregon, within an area extending, in its greatest dimensions, some 400 miles from south to north and about 200 miles from west to east. The Northern Paiutes were estimated at that time to number approximately 5,000.

14. The attorneys undertook and discharged the responsibility of keeping the various scattered Northern Paiute groups informed as to the grounds for the claims and the significant developments in the proceeding. Numerous communications were sent to tribal leaders informing them periodically of events in the litigation. Also, many detailed reports describing the progress of the claims were prepared by the attorneys, duplicated, and transmitted to the Northern Paiute groups for distribution among the members. Several hundred letters were sent to individual Northern Paiute Indians in direct response to their inquiries. The services of a local attorney, Robert Leland, of Reno, Nevada, were engaged by the contract attorneys for the purpose, among others, of keeping the Northern Paiute group informed as to the litigation. Further, the contract attorneys made six trips to the Northern Paiute region and, on several of those occasions, traveled, by automobile, more than one thousand miles to visit various locations in Nevada and California, convenient to the separate groups, and made oral reports at meetings at which members of the Northern Paiutes were assembled.

15. The contract attorneys performed services in the investigation and prosecution of the claims in this proceeding during a period of twenty years. The original petition in Docket No. 87 was filed with the Commission in December 1950. For approximately two years prior thereto, the attorneys were engaged in the preliminary investigation, discovery and analysis of the claims in order to prepare the petition; in meetings and

consultations with the tribal leaders; in the search for expert witnesses; in locating the sources of documentary evidence; and in the performance of various administrative duties, including those related to planning and organization of the future research and prosecution of the claims; in the clearance of the attorney contracts and amendments thereto with the Bureau of Indian Affairs; and in associating additional attorneys to assist in the case. The proceedings before the Commission, which finally resulted in the Commission's judgment of November 4, 1965, consumed fifteen years. The appeal proceedings before the Court of Claims consumed an additional two and one-half years.

16. There were a number of important factors and circumstances which establish that at the time the attorneys undertook their contract duties, as well as for many years thereafter, the claims were highly contingent and the litigation entailed especially serious hazards and risks.

(a) Lack of published information and knowledge concerning the Northern Paiute groups and their claims

When their services were first enlisted and they undertook their initial investigations, the attorneys discovered that little was known of the early history and land occupancy of the groups of Indians designated as Northern Paiutes. Only a few anthropologists had made any special studies of these Northern Paiute groups and there was considerable contradiction between the studies. Some of the studies left the impression that the Northern Paiutes comprised by and large merely an amorphous and indeterminate number of wandering individual families who spoke different

dialects of the same language, but were otherwise disparate and had no sense of attachment to land or land ownership.

The attorneys also found that none of the Northern Paiute groups whose claims were determined to be presented in Docket No. 87 had entered into any treaty relationship with the United States. Further, the attorneys discovered that there were unassembled masses of documents, including accounts of explorers, travelers, missionaries, settlers, government employees, army officers and others, pertaining to the Northern Paiute groups, which were dispersed in different parts of the country in the recesses of various governmental archives, in libraries of universities, historical societies, museums and other institutions, as well as in private collections, but there were no significant published historical studies which had utilized or analyzed such documents.

The paucity of important published studies and lack of readily available information concerning the history of the relationship and dealings between the United States and the Northern Paiute groups presented at the outset serious problems for any assessment of the merits or prospects for successful prosecution of any Northern Paiute claims.

(b) The special hazards of aboriginal Indian title claims

In the entire history of litigation of Indian claims cases before the Court of Claims, under the many jurisdictional acts which constituted the Court of Claims as the forum for the trial of the claims, prior to the enactment of the Indian Claims Commission Act, there is one, and only one,

case in which the Court of Claims issued a decision determining that a tribe was entitled to an award for a taking of Indian title lands. That case was Alcea Band of Tillamooks, et al., v. United States, 103 Ct.Cl. 494, decided April 2, 1945. Even in that case, the defendant moved for a new trial and after the motion was overruled on June 4, 1945, obtained the grant of a writ of certiorari. Also, though the judgment of the Court of Claims was affirmed by the Supreme Court, such affirmance was without a majority's concurrence on the grounds thereof. (329 U.S. 40 (1946)).

In contrast, there are the many cases in which after years of research and intensive work by the attorneys not only to assist the tribes in obtaining the enactment of special jurisdictional acts, but also in investigating and prosecuting claims, based on original Indian title, recovery was denied or the claims were dismissed. These cases include, among others, the following: Assiniboine Indian Tribe v. United States, 77 Ct. Cl. 347; Coos Bay Indian Tribes, et al., v. United States, 87 Ct. Cl. 143; Duwamish, et al. Tribes of Indians v. United States, 79 Ct. Cl. 530; Crow Nation or Tribe of Indians of Montana v. United States, 81 Ct. Cl. 238; Wichita Indians, et al., v. United States, 89 Ct. Cl. 378; Northwestern Bands of Shoshone Indians v. United States, 95 Ct. Cl. 642, affirmed 324 U.S. 335; Okanogan Indians v. United States, 279 U.S. 672.

During approximately the first twelve years of the existence of the Commission, while the attorneys were intensively engaged in the performance of services in the prosecution of the claims in this docket, the risks were

great. The attorneys for the defendant vigorously and ably contested the liability of the United States and there were grave doubts whether the plaintiffs' attorneys could obtain any recovery for the Northern Paiutes for one or more of the following reasons, among others:

- (1) The contention that Indian title was noncompensable. This was asserted and continuously maintained by the representatives of the United States as late as 1955 in the case of Tee-Hit-Ton Indians v. United States, 348 U.S. 272, 282, as well as other cases.
- (2) The quantum of proof exacted, with respect to extent of occupancy and use, was severe. Snake or Piute Indians, 1 Ind. Cl. Comm. 422, rev'd, 125 Ct. Cl. 241, 112 F. Supp. 543; Pawnee Tribe, 1 Ind. Cl. Comm. 230, rev'd, 124 Ct. Cl. 324.
- (3) The question whether any of the Northern Paiute groups had an entity sufficiently organized and cohesive to establish title to the lands claimed was under constant attack by defendant and was doubtful. Upper Chehalis, 4 Ind. Cl. Comm. 301, 330 (1956), rev'd, 140 Ct. Cl. 192, 155 F. Supp. 226 (1957).
- (4) It was not finally judicially established that aboriginal title was compensable under the Indian Claims Commission Act until the Supreme Court denied

certiorari in the case of Otoe and Missouri Tribe

v. United States, 350 U.S. 848, in October 1955.

Even after that, the risks did not abate since efforts were made to obtain an amendment to the Indian Claims Commission Act so as to preclude any claims based on a taking of Indian title lands.

(c) The special risks pertaining to recovery for mineral value

The defendant vigorously contended in the proceedings before the Commission, as well as in the appeal to the Court of Claims, that the Northern Paiutes were not entitled to any compensation for the subsurface minerals of their Indian title lands. The defendant rested its position, first, on the general argument that for compensation purposes Indian title lands do not include the value of the subsurface minerals, and, second, on the special argument that the Northern Paiutes had been dispossessed of any subsurface mineral rights by Spain and Mexico which had sovereignty of the lands prior to the United States. If the Government had prevailed with respect to either of these contentions, the final recovery for the Paviotso would have been a minor fraction of the Commission's award.

(d) The advance of substantial funds by the attorneys for the expenses of the litigation

None of the plaintiff tribes had any funds with which to meet the costs and expenses of the litigation. Accordingly, in the absence of any other available source, and in order for the Northern Paiutes to have the

opportunity to present and prosecute their claims, the attorneys undertook the obligation of advancing the monies to meet the necessary costs and expenses. The attorneys have estimated that during the course of the proceedings they paid, out-of-pocket, a total sum in excess of \$60,000 toward such costs and expenses, apart from the overhead expenses incurred by the attorneys.

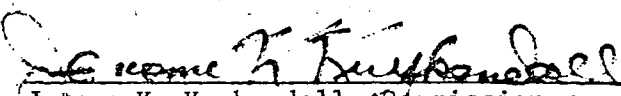
The attorneys have paid out such funds for necessary costs and expenses under stipulations in the attorney contracts that reimbursement would be made to the attorneys only out of the recovery, if any. Accordingly, under the circumstances involved here, the attorneys have invested and risked in the prosecution of the Mono and Paviotso claims not only their services, but also their own funds which have been tied up over a period of twenty years.


17. The attorneys who conducted these proceedings are experienced, skilled and resourceful lawyers. The results of the prosecution of the claims speak for themselves. The Northern Paiute tribal groups have been virtually entirely lacking in financial resources. The funds recovered on these claims may be expected to provide the means for the beneficial advancement of these groups.

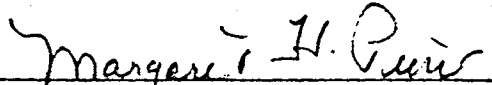
It is estimated that the principal of the two awards, in the aggregate amount of \$16,725,000.00, following the appropriation by Congress in October 1968, has been further augmented by interest earnings and accruals up to this time in a sum in excess of \$300,000.00.


18. Based on the entire record in this docket, and the appeal proceedings in the Court of Claims of which the Commission has taken notice, and considering the especially difficult problems peculiar to this litigation, as well as all appropriate factors pertinent to the determination of attorneys' fees in contingent cases under the standards established by the Indian Claims Commission Act, it is the conclusion of the Commission that the contract attorneys should be awarded and they are hereby awarded (1) a fee of \$93,500.00 to be paid out of the recovery for the Monos and (2) a fee of \$1,579,000.00 to be paid out of the recovery for the Paviotso. In accordance with the consents and requests by or on behalf of each and all of the contract attorneys, which have been filed with the Commission, the said fees are to be paid to I. S. Weissbrodt, the attorney of record, for appropriate distribution in accordance with the agreements between the attorneys.

John T. Vance, Chairman


Jerome K. Kuykendall, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Theodore R. McKeldin, Commissioner

