

BEFORE THE INDIAN CLAIMS COMMISSION

THE JICARILLA APACHE TRIBE, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 22-A
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

ORDER ALLOWING ATTORNEYS' FEE

Having considered the petition for allowance of attorneys' fee for services to the Jicarilla Apache Tribe, et al., plaintiffs herein, the response of the defendant, and the evidence in support of the petition, including the entire record and all proceedings in this case, the Commission makes the following findings of fact:

1. Award. On April 21, 1971, the Commission entered a final award in favor of the plaintiffs in the amount of \$9,150,000. Funds to cover the award were appropriated by the Act of May 25, 1971 (85 Stat. 40).

2. Attorney Contracts and Supplemental Agreements Among the Attorneys. Prosecution of the claims settled in Docket No. 22-A were governed by two contracts:

(a) The first contract entered into was contract No. I-1-ind. 42081, dated October 15, 1947, with attorneys James E. Curry and Roy T. Mobley. It was approved on August 8, 1948, for a period of ten years beginning with the date of approval. Later, by letter dated August 1, 1951, the Secretary of the Interior terminated the contract.

(b) The second contract, contract No. I-1-ind. 42530, dated March 5, 1951, was entered into by the plaintiffs with attorneys Roy T. Mobley and Guy Martin. It was approved on August 1, 1951, for a period of ten years beginning with the date of approval, effective only as to Attorney Martin. A later approval, dated June 16, 1952, was made as to Mr. Mobley to be effective upon severance of his employment with the Federal Government. This contract was extended five times, each being for a period of two years. The last extension was approved on July 30, 1969, for a period of two years beginning August 1, 1969.

An agreement dated March 1, 1957, provided for the association of attorneys Robert J. Nordhaus and Richard M. Davis under contract No. I-1-ind. 42530. This agreement was approved on April 29, 1957. The agreement also provided for services to be performed by attorneys Nordhaus and Davis individually or through the law firms with which they are associated and for the division of fees among four attorneys. The provision for fees among attorneys Mobley, Martin, Nordhaus, and Davis was later modified by a supplemental agreement dated March 1, 1964. The supplemental agreement was approved on December 23, 1964. The agreement, as amended, provides that 25 percent of the fees shall be paid to Mr. Mobley and 75 percent shall be paid to Messrs. Martin, Nordhaus, and Davis.

3. Attorneys' Agreed Compensation. Both contracts (No. I-1-ind. 42081 and No. I-1-ind. 42530) provide that compensation to the attorneys for services rendered in the prosecution of the claim shall not exceed 10 percent of the plaintiffs' recovery. The compensation to the attorneys is entirely contingent upon recovery by the plaintiffs. The attorneys, on May 26, 1971, filed a petition for allowance of a fee in the amount of 10 percent of the net award which in this case is \$915,000.

4. Response of the Defendant. The Department of Justice and the Department of the Interior after examining the attorneys' petition for allowance of attorneys' fees, make no recommendations with respect to the fee which should be awarded.

5. Notice to Tribe. A notice of the filing of the attorneys' petition for allowance of fee was mailed to the President of the Jicarilla Apache Tribe on May 28, 1971. The President responded to the notice in a letter dated July 23, 1971, addressed to the Commission in which he indicated that the Jicarilla Apache Tribe has no objection to the allowance of the attorneys' fee requested.

6. Attorneys' Services. The plaintiffs were engaged from 1952 to 1957 in active litigation before the Commission with respect to separating their claim from the claims of the other tribes of the Apache Nation which were originally all embraced in Docket No. 22. The attorneys for the plaintiffs filed a motion to amend the original petition and obtained an order allowing such amendment on July 20, 1953. They successfully opposed a variety of motions filed to consolidate their claim with other claims and were equally successful in opposing motions to dismiss their claims. On January 9, 1958, pursuant to a motion filed by the attorneys for the plaintiffs, the Commission granted an order for the severance of plaintiffs' claim as Docket No. 22-A. The amended and separated petitions were filed in Docket No. 22-A on January 9, 1958. Pursuant to the presentation of their claim, the attorneys for the plaintiffs undertook extensive research and preparations during 1957 and 1958 which included production of a complete history of Spanish, Mexican, and Colonial land grants in the area claimed.

Following extensive preparations, hearings were held before the Commission on December 1 through December 5, 1958, and June 22 through June 26, 1959, on the issue of the exterior boundaries of lands exclusively used and occupied by the plaintiffs from time immemorial and on the issue of the taking of the plaintiffs' lands by the United States. The transcripts of the two hearings contained 1,229 pages. The plaintiffs' proposed findings of fact, filed in December 1959, contained 145 proposed findings in addition to the argument. In addition to supplementary proceedings in connection with various exhibits and testimony at the aforesaid hearings, there was constant effort on the part of the defendant to consolidate Docket No. 22-A with the other claim proceedings, in particular the Pueblos, Kiowas, and Comanches. The plaintiffs' attorneys prepared and filed motions and memoranda in opposition to the defendant's motion to consolidate Docket No. 257 and others with Docket No. 22-A. The plaintiffs were successful in the elimination of all overlapping and conflicting claims by the Pueblos, Kiowas, and Comanches to any part of the areas claimed by the Jicarilla Apaches.

The Commission concluded in its findings of fact and interlocutory order dated August 26, 1963, that the plaintiffs held aboriginal title to an area in northeast New Mexico and a small area in southeast Colorado, and that the United States acquired, controlled, and treated the plaintiffs' lands as public lands without payment of compensation. The Commission then ordered that the case proceed to a determination of the further issues, the amount of acreage contained in the land grants, the award area, including all relevant matters concerning Spanish and Mexican land grants, both of law and of fact, the date of taking, and value. On December 7 through 11 and 14 through 16, 1964, the Commission heard the arguments of the respective counsel on the issues concerning the Spanish and Mexican land grants, the amount of acreage in the award area, in the land grants, and the date of taking of the awarded lands.

The attorneys for the plaintiffs undertook extensive analysis of the transcript (eight volumes) and exhibits that were necessary for the preparation of their brief and requested findings of fact, corrected the transcript and exhibits, studied the defendant's answer brief, and researched and prepared the plaintiffs' reply brief. The defendant was granted, over the plaintiffs' opposition, the right to file a response to the plaintiffs' reply brief. These matters, which included motions for extension of time and opposition thereto, consumed the greater part of 1965.

On November 9, 1966, the Commission filed its additional findings of fact, opinion, and interlocutory order which designated the areas

and boundaries of the award and ruled that the Spanish and Mexican land grants lying within the perimeter of the award area should be excluded from the award. Pursuant to the plaintiffs' requested finding, the Commission found that August 20, 1883, was the date when the land in question was taken and the date when it should be valued. Since the Spanish and Mexican land grants were an extensive and valuable part of the claimed area (approximately one-fourth), the plaintiffs futilely attempted to reverse the Commission's finding. These issues were briefed and argued before the Commission on January 24, 1968. Upon the Commission's denial of the plaintiffs' motion on June 20, 1968, for rehearing on the findings and opinion, the attorneys for the plaintiffs decided not to take an appeal on the land grant issue but rather to initiate preparations for the determination of value.

On May 14, 15, and 16, 1969, the Commission, pursuant to Rule 26 of the Commission's General Rules of Procedure, 25 C.F.R. § 503.26 (1968), heard the evidence of the parties and the arguments of the respective attorneys concerning the value of the award area. The plaintiffs' attorneys introduced extensive documentary evidence supporting the appraisals of their expert witnesses. There was quite a disparity in the appraisals of the expert witnesses for the plaintiffs and the defendant; therefore, the plaintiffs were required to analyze and evaluate the source materials used by the plaintiffs' principal appraisers in great detail. On May 29, 1969, the Commission made a preliminary finding that the value of the 9,218,532.77 acres in the award area as of the date of taking was \$9,950,000 including minerals and timber; approximately \$1.08 per acre.

The attorneys for the plaintiffs prepared and filed in July 1969 their proposed findings of fact and brief in support of the Commission's preliminary award of \$9,950,000 and filed a reply brief in November 1969. Oral argument was held before the Commission on November 14, 1969. On December 2, 1970, the Commission found the fair market value of the award area to be \$9,950,000 less gratuitous offsets, if any.

The attorneys for the plaintiffs did extensive research on the subject of offsets, including the preparation and study of materials from the General Accounting Office and from other government sources. They initiated, with the approval of the Tribal Council of the plaintiffs, conferences with the defendant for a settlement on the issues of offsets rather than further protracted adversary proceedings. These conferences led to a compromise agreement in January 1971 between the parties. On March 16, 1971, after detailed presentation by the plaintiffs of the terms of the proposed settlement to all interested parties, a general meeting of the plaintiffs and their Tribal Council resulted in the settlement of the plaintiffs' claim in the amount of \$9,150,000. After

a full hearing before the Commission on April 8, 1971, the stipulated settlement was approved by the Commission on April 12, 1971.

The attorneys for the plaintiffs successfully dealt with many contingencies in this case. They performed valuable legal services in the preparation and presentation of the legal and factual basis for the plaintiffs' claim over a period of more than 20 years.


On the entire record herein and considering the responsibilities undertaken, the difficult problems of fact and law involved in this case, the contingent nature of the compensation, the substantial award obtained for the benefit of the plaintiffs herein, all appropriate factors pertinent to the determination of attorneys' fees under the standards established by the Indian Claims Commission Act, and the foregoing findings, the Commission finds that the attorneys' fee of \$915,000.00, representing 10 percent of the final judgment, is a reasonable fee for said legal services.


IT IS THEREFORE ORDERED that out of the funds appropriated to pay the final judgment entered herein on April 21, 1971, in favor of the Jicarilla Apache Tribe, there shall be disbursed to Robert J. Nordhaus, attorney of record, as payment in full of all claims for legal services rendered in connection with the prosecution of this case, the sum of \$915,000.00 for distribution by him to the participating attorneys in accordance with their respective interests therein.

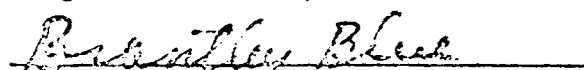
Dated at Washington, D. C., this 23rd day of August 1971.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner