

## BEFORE THE INDIAN CLAIMS COMMISSION

THE SAN CARLOS APACHE TRIBE OF INDIANS	)	
OF ARIZONA AND THE WHITE MOUNTAIN	)	
APACHE TRIBE OF THE FORT APACHE	)	
INDIAN RESERVATION, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Docket No. 22-D
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

ORDER ALLOWING ATTORNEYS' FEE

HAVING CONSIDERED the petition for award of attorneys' fee for services to the plaintiffs herein that was filed on October 13, 1972, by I. S. Weissbrodt, Esquire, attorney of record for the plaintiffs, in behalf of himself and all other contract attorneys having an interest in the fee; the defendant's response to the petition, filed on November 22, 1972; the contracts under which the attorneys served the plaintiffs; and the entire record and all proceedings in this case, the Commission finds as follows:

1. Award. On September 12, 1972, in consonance with an approved settlement agreement between the parties, the Commission entered a final award in this docket in the amount of \$4,900,000.00 to the plaintiffs, the San Carlos Apache Tribe of Arizona and the White Mountain Apache Tribe of the Fort Apache Indian Reservation, for and on behalf of the Western Apache (28 Ind. Cl. Comm. 399, 421). Funds to cover the award were appropriated by the Act of October 31, 1972, Public Law 92-607.

2. Attorney Contracts. Prosecution of the claims settled in Docket No. 22-D were governed by contracts made with two present-day organized tribes, plaintiffs herein, namely, the San Carlos Apache Tribe of Arizona and the White Mountain Apache Tribe of the Fort Apache Indian Reservation:

(a) The current contract with the San Carlos Apache Tribe was approved by the Bureau of Indian Affairs on August 3, 1966, effective from June 25, 1966, to extend through June 24, 1974. This contract was made with attorneys, I. S. Weissbrodt, Abe W. Weissbrodt, C. M. Wright, Jay H. Hoag and Rodney J. Edwards (Symbol 14-20-0450, Contract No. 5831). This contract replaced an earlier contract which was entered into on December 9, 1952, and approved June 25, 1953, with attorneys, I. S. Weissbrodt, David Cobb, C. M. Wright, Jay H. Hoag, Rodney J. Edwards and C. G. Lindquist (Symbol 14-20-650, Contract No. 114). The latter contract

superseded an earlier approved contract entered into on January 6, 1948, with James E. Curry, Esquire (Symbol No. I-1-ind. 42082), which was terminated on June 25, 1953.

(b) The current contract with the White Mountain Apache Tribe was approved by the Bureau of Indian Affairs on August 8, 1966, effective June 25, 1966, to extend through June 24, 1974. This contract also was made with attorneys, I. S. Weissbrodt, Abe W. Weissbrodt, C. M. Wright, Jay H. Hoag and Rodney J. Edwards (Symbol 14-20-0450, Contract No. 5828). It replaced an earlier contract which was entered into December 11, 1952, and approved June 25, 1953, with attorneys, I. S. Weissbrodt, David Cobb, C. M. Wright, Jay H. Hoag, Rodney J. Edwards and C. G. Lindquist (Symbol 14-20-650, Contract No. 111). The latter contract superseded an earlier approved contract entered into on June 23, 1948, with James E. Curry, Esquire (Symbol No. I-1-ind. 42076), which was terminated on June 25, 1953.

3. Attorneys' Agreed Compensation. Each of the aforementioned contracts provide that compensation to the attorneys for services rendered in the prosecution of the claims shall not exceed 10 percent of the plaintiffs' recovery. The compensation to the attorneys is entirely contingent upon recovery by the plaintiffs.

4. Requested Attorneys' Fee. The petition by the attorney of record requests an award of attorneys' fee in the amount of \$490,000.00, being 10 percent of the aforementioned final award.

5. Response of the Defendant. The defendant's response to the petition for award of attorneys' fee enclosed a letter dated November 17, 1972, from the Associate Solicitor, Division of Indian Affairs, Department of the Interior, and concluded with the advice that the Department of Justice "takes no position with respect to the amount of attorneys' fee which should be allowed." The letter from the Associate Solicitor mentions advice from the Bureau of Indian Affairs that the recitations in the petition relative to the pertinent tribal claims attorney contracts are accurate and indicated that the Department of the Interior has "no basis on which to make a recommendation as to the amount of attorneys' fee which should be awarded."

6. Notice to Tribes. A notice of the filing of the petition for award of attorneys fee, along with a copy of the petition and of the statement in support thereof, was mailed by the Deputy Clerk of the Commission on October 16, 1972, to the Chairman of the San Carlos Apache Tribe and the Chairman of the White Mountain Apache Tribe. The notice requested the Tribes to file a response with the Commission if they had any comments or information that the Commission should consider. No response to the notice was received.

7. Attorneys' Services. The final award on the claims in Docket No. 22-D was entered by the Commission based on a stipulation of settlement which was negotiated by the attorneys for the parties. This settlement was worked out after a full investigation, exhaustive trial proceedings pertaining to the liability of the defendant, and the decision of the Commission on the issues of the extent and boundaries of the Indian title lands of the aboriginal Western Apache groups located in Arizona and the date of the taking of parts of such lands by the United States.

The claims set forth in Docket No. 22-D were originally presented, along with various other claims, in a petition, filed on February 3, 1948, in Docket No. 22, on behalf of the so-called "Apache Nation." The lands claimed in this petition were located by reference to Royce Cessions 688 and 689, which encompassed the aboriginal lands of the Yavapai as well as aboriginal lands of various Apache tribes. On October 18, 1950, a first amended petition was filed in Docket No. 22 which specifically added as parties: (a) various present-day organized tribes, including the San Carlos Apache Tribe and the White Mountain Apache Tribe; (b) various aboriginal groups, including the Western Apache; and (c) various individual representative plaintiffs, including certain individuals of Western Apache descent.

As precedents developed under the Indian Claims Commission Act, and when events made it desirable and advantageous for the disposition of the claims, the attorneys obtained leave of the Commission to separate various claims in Docket No. 22. By order entered May 25, 1959, the Commission permitted the separation from Docket No. 22 of the claims of the Western Apache for compensation for the taking of parts of their lands in the present State of Arizona, and the assertion of such claims in a second amended petition designated as Docket No. 22-D. Subsequently, pursuant to a Commission order dated October 10, 1961, entered upon a joint motion by the plaintiffs in Docket Nos. 22-D (Western Apache) and 22-E (Yavapai), portions of the areas involved in the claims asserted in those dockets that were claimed to have been used and occupied by the Northern Tonto Apache Indians were severed from Docket Nos. 22-D and 22-E and included in a separate petition assigned Docket No. 22-J.

The attorney contracts imposed upon the attorneys the duty, among others, of investigating the claims. In carrying out this duty, the contract attorneys met and consulted with their clients and investigated and assembled, from a wide variety of sources, published and unpublished, available historical documents and ethnological writings for the purpose of the trial of the Indian title and taking issues. Complete sets of these documents and writings, composing the great bulk of plaintiffs' exhibits, which were later offered and received in evidence at the main trial proceedings, were furnished by the attorneys to the expert witnesses who were engaged by the attorneys, on behalf of the plaintiffs, to testify at the trials.

Following trial, the Commission issued its findings of fact, opinion, and interlocutory order in Docket No. 22-D on June 27, 1969, determining (1) the extent and boundaries of the area of land which the Western Apache and the groups thereof aboriginally used and (2) the dates when the United States took several parts thereof without making any payment. By its interlocutory order, the Commission directed that the case proceed for the determination of the acreage of the tracts of land which were taken, and for the determination of the value of the several tracts as of the respective dates of taking.

In addition to the main issues and hearing pertaining to proof of Indian title and the dates of taking, there were a variety of other time-consuming proceedings involving subsidiary issues, including, inter alia, those related to the capacity and identity of the plaintiffs, complex problems arising out of overlapping claims of other tribes and other proceedings and issues pertaining to the separation of the claims of the Western Apache from other tribal groups.

Following the Commission's decision of June 27, 1969, the attorneys commenced the investigation of the economic, geographic and historic materials pertinent to the determination of the value of the awarded lands, including the various resources thereof. Experts were employed by the attorneys to appraise the Western Apache lands, including the resources thereof. The attorneys studied and analyzed the valuation data and the reports of the experts. Also, the attorneys analyzed the valuation decisions of the Court of Claims and this Commission in comparable Indian claims cases.

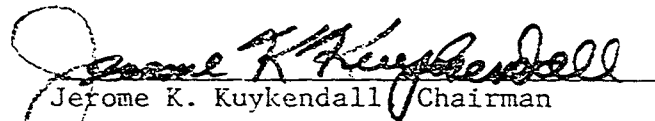
Thereafter, the tribal claims attorneys engaged in negotiations with the attorneys for the defendant for a compromise settlement of the claims in Docket No. 22-D. These negotiations culminated in a settlement offer made by the claims attorneys on behalf of the tribes, which was conditionally accepted by the Assistant Attorney General, Kent Frizzell, acting for the United States. Thereafter, the claims attorneys took steps to obtain the necessary approvals of the proposed compromise settlement by the tribal governing bodies, the tribal members and the Commissioner of Indian Affairs, in accordance with the settlement procedures and requirements established by the Commission. On September 12, 1972, a hearing was held before the Commission on a joint motion of the parties to approve the compromise settlement and, on the same day, the Commission entered its order and findings approving the compromise settlement of the claims.


As a result of the efforts of the contract attorneys, with the assistance of attorneys associated with them, which efforts extended over a period of more than twenty years, a fund of \$4,900,000.00 comprising tribal assets has been produced.

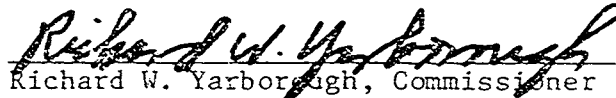
On the entire record herein and considering the responsibilities undertaken, the difficult problems of fact and law involved in this case, the contingent nature of the compensation, the substantial award obtained for the benefit of the plaintiffs herein, all appropriate factors pertinent to the determination of attorneys' fees under the standards established by the Indian Claims Commission Act, and the foregoing findings, the Commission finds that the requested fee of \$490,000.00, representing 10 percent of the aforementioned final award, is a reasonable fee for said legal services.

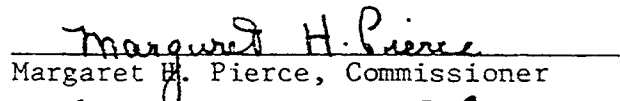
IT IS THEREFORE ORDERED that out of the funds appropriated to pay the final award entered herein on September 12, 1972, in favor of the San Carlos Apache Tribe of Arizona and the White Mountain Apache Tribe of the Fort Apache Indian Reservation, for and on behalf of the Western Apache, there shall be disbursed to I. S. Weissbrodt, 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 \$490,000.00 for distribution by him to the participating attorneys in accordance with their respective interests therein.

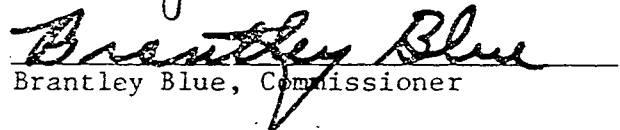
Dated at Washington, D. C., this 29<sup>th</sup> day of November 1972.

  
 Jerome K. Kuykendall, Chairman

  
 John T. Vance, Commissioner

  
 Richard W. Yarbrough, Commissioner

  
 Margaret H. Pierce, Commissioner

  
 Brantley Blue, Commissioner