

BEFORE THE INDIAN CLAIMS COMMISSION

THE MOHAVE INDIANS WHO ARE MEMBERS)	
OF THE COLORADO RIVER INDIAN)	
TRIBES AND OTHERS,)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 283
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	
)	
MOHAVE TRIBE OF INDIANS OF ARIZONA,)	
CALIFORNIA, AND NEVADA; AND)	
OTHERS,)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 295
)	
THE UNITED STATES OF AMERICA,)	(Consolidated)
)	
Defendant.)	

Decided: December 2, 1976

FINDINGS OF FACT AND ORDER ALLOWING ATTORNEYS' EXPENSES

Having considered the applications for the reimbursement of attorneys' expenses filed on March 29, 1976, and on April 5, 1976, by Samuel P. Goddard, Jr., attorney for plaintiffs in Docket 283, and the record in its entirety, the Commission finds as follows:

1. Award. On September 26, 1973, the Commission entered a final award in the above dockets directing that the Mohave Indians who are members of the Colorado River Indian Tribes, and others, plaintiffs in Docket 283, and the Mohave Tribe of Indians of Arizona, California, and Nevada, and others, plaintiffs in Docket 295, recover from the defendant the sum of \$468,358.07. (31 Ind. Cl. Comm. 410, 425.)

2. Expense Applications. Samuel P. Goddard, Jr., attorney for plaintiffs in Docket 283, has filed two petitions for the reimbursement of attorneys' expenses incurred in the prosecution of these claims. The first petition was filed on March 29, 1976, and covers expenses incurred and paid directly by Mr. Goddard and the late C. M. Wright, who was attorney of record in Docket 283 until his death on May 5, 1975. The total amount claimed in the first petition is \$19,238.55. This petition, it is noted, also includes certain costs and expenses incurred by the late Harold Payne (attorney of record in Docket 295 until his death on December 3, 1964) which were paid by C. M. Wright and Samuel P. Goddard.

The second petition was filed by Mr. Goddard on April 5, 1976, and covers costs and expenses incurred by the late Harold Payne, attorney of record in Docket 295. These expenses were paid by Mr. Payne out of sums advanced to him by C. M. Wright and Mr. Goddard or reimbursed to him by Wright and Goddard pursuant to a joint efforts agreement described in finding No. 3, infra. The expenses in this second petition cover the period January 1951 to May 1959 and total \$11,941.08. In submitting this petition, Mr. Goddard has eliminated a number of items totaling \$865.29, covering expenses which on their face would not have been reimbursable. The Commission finds that the deletions are proper. Accordingly, the net claim in this second petition totals \$11,075.79.

According to the statement contained in the second petition, the late Harold Payne did not transmit to Mr. Wright or Mr. Goddard any statement

of expenses incurred in connection with the prosecution of these claims for the period May 10, 1959, to December 3, 1964 (date of Mr. Payne's death), and no records have been located as to such expenses. Therefore, no claim is made in this petition relative to any expenses incurred during said period.

Additional expenses incurred in Docket 295 and not covered in these applications have been reimbursed to Raymond C. Simpson, Esq., who succeeded the late Harold Payne as attorney of record in Docket 295. See 35 Ind. Cl. Comm. 118 (1974).

3. Attorneys' Contracts. Our finding of fact No. 5 which accompanied our order allowing attorneys' fees, 34 Ind. Cl. Comm. 377, 383, entered on July 31, 1974, sets forth the details of the attorneys' contracts in these consolidated dockets and is hereby incorporated by reference, except as otherwise detailed or explained herein.

With regard to litigation costs, contract No. 14-20-0450-6997, currently in effect in Docket 283, provides reimbursement out of recovery for such out-of-pocket expenses and costs as have been or become necessary or proper for the prosecution of the land claims. Provisions regarding travel permitted counsel the use of an automobile at the rate of \$0.07 per mile, as well as a per diem rate of \$10.00.

The joint efforts agreement between Harold Payne and C. M. Wright, approved by the Secretary of the Interior on March 3, 1959, provided for division of responsibilities, fees, and expenses in these consolidated cases. Under that agreement C. M. Wright agreed to advance and pay all

costs and disbursements in connection with the joint prosecution of the claims. Any such costs allowed and recoverable were to be refunded to Mr. Wright. The agreement also provided for the absorption by either or both parties for any litigation costs disallowed by the court or tribunal making the determination.

As noted above the record indicates that Harold Payne, attorney of record in Docket 295, died on December 3, 1964. Since it appears from the evidence submitted herein that the late Harold Payne had been fully reimbursed by the late C. M. Wright for the expenses claimed herein, his estate would appear to have no interest in these applications. The record further indicates that C. M. Wright, attorney of record in Docket 283, died on May 5, 1975, and that Helen Wright, his wife, is the executrix and sole beneficiary of the estate of C. M. Wright.

4. Notice to Parties. Pursuant to rule 34 b (c) of the Commission's General Rules of Procedure, the Clerk of the Commission timely notified the appropriate parties of the filing of the expense applications in these dockets. The following responses have been received:

A. On June 11, 1976, Anthony Drennan, Sr., Chairman of the Colorado River Tribal Council (Docket 283), addressed a letter to the Commission suggesting that certain expenses incurred by Harold Payne under the joint agreement discussed above were for the joint and mutual benefit of the plaintiffs in the two consolidated proceedings. He further indicated that respective counsel are aware of the matter, especially as it regards

the prorating of such expenses. Based on the record before us, it does appear that Mr. Payne's expenses were intended and incurred for the benefit of both tribal groups, and the Commission so finds. As to the ultimate distribution of the joint award herein, the Commission is without jurisdiction in this matter.

B. On April 19, 1976, Llewellyn Barrackman, Chairman of the Fort Mohave Indian Tribe (Docket 295), addressed a letter to the Commission strongly suggesting that the total amount of the claims filed herein for reimbursement are inordinately high and that the Commission should request full justification of all expenses claimed before approval. Mr. Barrackman also notes that the tribe's attorney, Mr. Payne, did not submit to the tribe interim accountings. With respect to this last item the Commission finds that the attorney contracts herein did not provide for periodic accountings and that it has no factual basis upon which to make findings regarding Mr. Payne's relationship with his client.

C. On May 25, 1976, the Department of Justice filed a response to the first application filed herein. The response included a copy of the comments of the Acting Deputy Commissioner of Indian Affairs, Department of the Interior, respecting the application made

on May 13, 1976. The conclusion of the Bureau of Indian Affairs was that the claimed expenses, supported by invoices and receipts, appear to be reasonable and proper for reimbursement. The Department of Justice has taken no position in the matter. . .

D. On May 26, 1976, the Department of Justice filed a response to the second application filed herein. That response included a copy of comments respecting the application made on May 14, 1976, by the Acting Deputy Commissioner of Indian Affairs, Department of the Interior. The Bureau examination recommended that nine items claimed for reimbursement, in the amount of \$298.27, be disallowed. The Commission has examined the record regarding these items and finds that they are disallowable as indicated in finding No. 5, infra. The Department of Justice, on the other hand, has taken no position regarding these expenses.

5. Commission Examination of the Petitions. The following claimed items of expenses listed below are not allowable for the reasons indicated.

A. First Petition (Wright-Goddard):

(1) Overcharge, Copying Costs	\$ 98.65
(2) Excess Printing Costs	1,270.00
(3) Unsupported Travel Costs	<u>237.55</u>
Total	\$1,606.20

B. Second Petition (Payne-Wright):

(1) Excess Mileage Rate	\$ 788.55
(2) Unsupported Printing Costs	516.69
(3) Unsupported Book Purchases	51.65
(4) B.I.A. Items (which include travel prior to contract; books and supplies; unexplained travel insurance; and duplicated expenses	<u>298.27</u>

Total: \$1,655.16

The Commission, by letter dated September 30, 1976, advised Mr. Goddard that the above-listed items required further documentation or explanation, and that if such information was not forthcoming, said items would be disallowed by the Commission or, in the alternative, may be withdrawn by counsel. In reply to the Commission's letter Mr. Goddard, on October 12, 1976, submitted further supporting evidence respecting the printing costs in the amount of \$516.69. The Commission finds that this item is allowable. As to the remaining questioned items, Mr. Goddard has withdrawn the claim thereto, indicating that the untimely deaths of Mr. Wright and Mr. Payne, coupled with the fact that certain pertinent documents have been lost or destroyed, makes a further search impractical.

6. Determination of Expenses. Pursuant to section 15 of our act, rule 34 (b) of the Commission's Rules of Procedure (25 C.F.R. § 503.34 (b)), as amended, 39 Fed. Reg. 41173 (1974), the Commission's Policy Statement § 102, issued July 15, 1968, the foregoing findings, and upon examination of the applications herein, the supporting record, the attorneys' contracts with the plaintiffs, and the entire record of expenditures incurred in the

prosecution of these consolidated claims, the Commission concludes that claimed expenses in these applications totalling \$27,608.65 in the aggregate, as summarized below, are reasonable and proper expenses of litigation and should be allowed:

Summary:

First Petition:

Amount Claimed	\$19,238.55	
Amount Disallowed or Withdrawn	<u>1,606.20</u>	
	\$17,632.35	
Plus Tabulation Errors in Petition	<u>38.98</u>	
Net Allowable		\$17,671.33

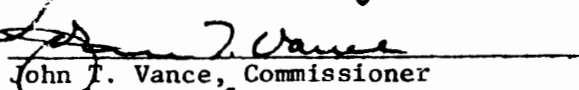
Second Petition:

Amount Claimed	\$11,075.79	
Amount Disallowed or Withdrawn	<u>1,138.47</u>	
Net Allowable		\$ <u>9,937.32</u>
Total Allowable		<u><u>\$27,608.65</u></u>

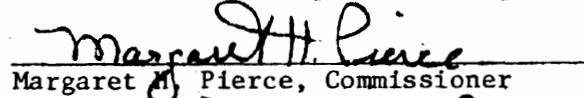
IT IS THEREFORE ORDERED that out of the funds appropriated to pay the joint final award entered herein on September 26, 1973, there shall be disbursed to Samuel P. Goddard, Jr., attorney for plaintiffs in Docket 283, the sum of \$27,608.65 as reimbursement in full for expenditures incurred

in the joint prosecution of these claims, said sum to be distributed by Samuel P. Goddard, Jr., to all parties having an interest in these applications.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner