

BEFORE THE INDIAN CLAIMS COMMISSION

THE LIPAN APACHE TRIBE and bands thereof,)	
ex rel., Pedro Mendez and Philemon Venego;)	
)	
THE MESCALERO APACHE TRIBE and bands thereof,)	
ex rel., Solon Sombrero, Fred Pellman,)	
Eric Tortilla and Victor Dolan;)	
)	
THE APACHE TRIBE OF THE MESCALERO RESERVATION)	
on behalf of, or as successor to, the)	
Lipan Apache Tribe and bands thereof, and)	
the Mescalero Apache Tribe and bands thereof,)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 22-C
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: March 9, 1977

FINDINGS OF FACT AND ORDER ALLOWING ATTORNEYS' EXPENSES

Having considered the application for the reimbursement of attorneys' expenses filed on October 26, 1976, by I. S. Weissbrodt, plaintiffs' attorney of record, and the entire record herein the Commission finds as follows:

1. Award. On February 19, 1976, the Commission entered a final judgment and award in favor of the plaintiffs in the total amount of \$10,000,000.00 pursuant to a joint motion by the parties for entry of a final judgment in this docket. The judgment awarded to the plaintiff, the Apache Tribe of the Mescalero Reservation, the sum of \$5,000,000 for and on behalf of the aboriginal Lipan Apache Tribe, and the further sum

of \$5,000,000 for and on behalf of the aboriginal Mescalero Apache Tribe (37 Ind. Cl. Comm. 239-40). Funds to pay the award were appropriated by the Act of September 30, 1976, P.L. 94-438.

2. Expense Application. (a) The expense application under consideration was filed on October 26, 1976, by I. S. Weissbrodt, the attorney of record in this docket, on behalf of the law firm of Weissbrodt & Weissbrodt. The application requests reimbursement of costs and expenses incurred and paid by said firm in the amount of \$64,009.75 on behalf of plaintiffs in connection with the prosecution of the claim in this docket. This application, made pursuant to Section 15 of our Act, the Commission's General Rules of Procedure, and the attorneys' contracts with the plaintiffs seeks reimbursement of the following items of expense:

A. Purchase of Materials and Services:	\$ 4,914.45
B. Travel Expenses--Attorneys:	1,720.47
C. Extra Postage:	107.39
D. Expert Witness Fees and Expenses:	53,335.40
E. Photo Duplication:	3,325.10
F. Long Distance Phone and Telegrams:	337.35
G. Additional Fares:	123.10
H. Allocated Joint Expenses:	146.49
Total	<u>\$64,009.75</u>

(b) In support of the above expenditures, counsel has submitted detailed records which include cancelled checks, vouchers, receipts, invoices, and other documentation indicating the persons or firms providing certain services, and the dates and amounts paid for such services.

3. Attorneys' Contracts. The two current attorney contracts with the Apache Tribe of the Mescalero Reservation under which the claims in

Docket 22-C were brought to final judgment are contract No. 8MC1420C0360 applicable to the claims of the aboriginal Lipan Apache Tribe for loss of lands in Texas, and contract No. 8MC1420C0359, applicable to the claims of the aboriginal Mescalero Apache Tribe for the loss of its Texas lands. Both of these contracts were approved by the Albuquerque Area Director for the Commissioner of Indian Affairs on January 11, 1968 for a term of 10 years from January 17, 1968, subject to extensions for additional periods of 5 years. The attorneys named as parties under each of the said contract are I. S. Weissbrodt, Abe Weissbrodt, Jay H. Hoag, and Rodney J. Edwards.

The above contracts replace and succeed two earlier contracts made on January 17, 1958, for a term of 10 years and identified in the record as contract Nos. 680 and 681, Symbol No. 14-20-650. The terms of 1958 contracts respecting litigation expenses provided for the reimbursement to the attorneys of such actual expenses paid and advanced by the attorneys which were strictly necessary and proper in connection with the performance of their duties under the contracts (as well as prior expired contracts). Said provision listed the various types of permissible expenses and included, among others, all forms of printing and publication costs, travel, communications, stenographic and clerical costs, and the expenses of research and expert assistance such as historians and anthropologists. These provisions regarding expenses have been incorporated into the two contracts currently in effect. For a description of the contracts in effect prior to 1958, See 18 Ind. Cl. Comm. 398 (1967).

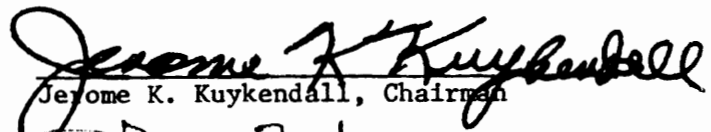
4. Notice to Parties. Pursuant to Commission rules, notices of the filing of this application were mailed on October 28, 1976, by the Clerk of the Commission to the tribal representatives, the Department of Justice, the Department of the Interior and other interested parties. The notices requested that any comments or information on the expense application should be filed with the Commission within two weeks from the date of the notice. No objections or other comments have been received to date from the tribal representatives.

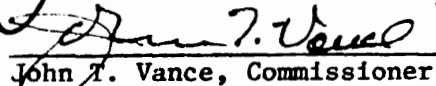
On November 2, 1976, the Department of Justice responded to the Commission's notice of the subject application by taking no position in regard to the reimbursement of expenses in this docket. The response of the Department of Justice also included a copy of a letter dated November 23, 1976, from the Assistant Solicitor, Division of Indian Affairs, Department of the Interior, and a memorandum of November 19, 1976, from the Acting Deputy Commissioner of Indian Affairs to the Solicitor, Department of the Interior. The Commission's memorandum, with which the solicitor concurred, stated that the expenses claimed were supported by invoices, receipts, and cancelled checks, and concluded that the Bureau of Indian Affairs had no objection to the allowance of the expenses claimed.

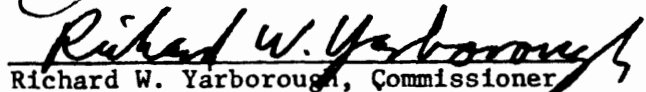
5. Determination of Expenses. Pursuant to section 15 of our Act, rule 34(b) of the Commission's Rules of Procedure (25 C.F.R. §503.34(b)), as amended, 39 Fed. Reg. 41173 (1974), the Commission's Policy Statement §102, issued July 15, 1968, the findings entered herein, and upon examination

of the application, the attorneys' contracts with the plaintiffs, and the entire record of expenditures incurred in the prosecution of the claims in this docket, the Commission concludes that the claimed attorney expenses in the total amount of \$64,009.75, as summarized in finding 2, supra, are reasonable and proper and should be allowed.

IT IS THEREFORE ORDERED that out of the funds appropriated to pay the awards entered in this docket there shall be disbursed to I. S. Weissbrodt, on behalf of the law firm of Weissbrodt & Weissbrodt, the sum of \$64,009.75 as reimbursement in full for expenditures incurred by said firm or its predecessors in the prosecution of the claims in Docket 22-C.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner