

## BEFORE THE INDIAN CLAIMS COMMISSION

PUEBLO DE ZIA, PUEBLO DE JEMEZ,	)	
AND PUEBLO DE SANTA ANA,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Docket No. 137
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

ORDER ALLOWING ATTORNEYS' EXPENSES

HAVING CONSIDERED the application for allowance of attorneys' expenses filed on February 1, 1974, by Claud S. Mann and M. J. Clayburgh, attorneys for the above-named plaintiffs, for themselves and the estate of Dudley Cornell, a deceased former attorney for the plaintiffs; the documentation of the claimed expenses received with the application and the additional evidence and information relating to those expenses subsequently supplied by the attorneys with a documented affidavit filed on April 15, 1974, a letter from the attorneys dated August 7, 1974, and a letter from Mr. Clayburgh dated August 27, 1974; the defendant's response to the application filed on July 29, 1974; the contract under which the attorneys prosecuted the cause of the plaintiffs in this case; and the remainder of the record herein, the Commission finds as follows:

1. Award to the plaintiffs. On January 10, 1974, in accordance with an approved compromise settlement agreement among the parties, the Commission entered a final award in this case in favor of the above-named plaintiffs in the sum of \$749,083.75 (33 Ind. Cl. Comm. 1, 16). Funds to pay the award were appropriated by the Act of June 8, 1974 (88 Stat. 195).

2. Expenses claimed. The attorneys' application requests payment from the award to the plaintiffs of expenses totaling \$6,466.08. The amounts included in this total are in three categories consisting of:

a. The sum of \$2,228.50 claimed as the cost incurred by the attorneys in the hiring of three experts who did appraisal work and supplied evidence and testimony on the value of the land, timber and mineral properties of the plaintiffs involved in the valuation phase of this case. It

appears that the amounts making up this sum are due from the attorneys to:

Mr. Dahl J. Kirkpatrick	\$ 617.50
Mr. Dewey Dismuke	675.00
Estate of Henry S. Birdseye	<u>936.00</u>
	\$2,228.50

b. The sum of \$1,673.92 claimed as the balance due from the attorneys to two expert witnesses hired by them who supplied evidence and testimony in the hearing on land title issues. Of this sum it appears that the amount of \$1,443.92 is owed to the anthropologist, Dr. Florence Ellis, and the amount of \$230.00 to the historian, Mr. Ward Minge.

c. The sum of \$2,563.66 claimed for out-of-pocket expenditures by the attorneys since commencement of their services in this case pursuant to their contract of employment with the plaintiffs.

3. Notice to the plaintiffs. On February 1, 1974, a notice of the filing of the attorneys' applications for allowance of their fees and expenses in this docket was sent to the Governor of each of the Pueblo plaintiffs inviting the submission by them of any comments or information they had that the Commission should consider before acting on the applications. No response to this notice was received.

4. Defendant's response. The response from the Department of Justice to the attorneys' application transmitted copies of a letter dated March 29, 1974, from the Associate Solicitor for Indian Affairs, Department of the Interior, and a memorandum, dated March 25, 1974, from the Acting Deputy Commissioner, Bureau of Indian Affairs, and expressed no view on the claimed expenses. In respect to those expenses, the letter from the Associate Solicitor observed that "we have no additional comments to add to those of the Acting Deputy Commissioner." The memorandum from the Acting Deputy Commissioner of Indian Affairs indicated, inter alia, that the costs claimed for expert assistance (the sums mentioned in findings 2a and b, above) appear to be reasonable and properly allowable. In regard to the claimed out of pocket expenses of \$2,563.66, the memorandum: (a) questioned whether certain itemized expense amounts for experts totaling \$1,021.12, on the first two pages of the application, had not been previously reimbursed to the attorneys out of \$6,000.00 advanced by the Pueblos for expenses under a 1957 amendment of the attorneys' contract of employment, (b) observed that the balance of the itemized out-of-pocket items appear to be reasonable and proper, except for the first three on the first page of the application totaling \$16.00 (reported as \$18.00 in the memorandum) and, (c) noted that the out-of-pocket expenses were not accompanied by supporting documentation. The evidence of incurrence of these expenses was received with a documented affidavit filed by the

attorneys on April 15, 1974, and was not available when the expense application was examined for the Bureau of Indian Affairs. Our determinations as to the questioned out-of-pocket items for experts totaling \$1,021.12, and the three totaling \$16.00 are indicated in finding 7, below.

5. Contract provisions. In respect to the attorneys' expenses, their contract with the plaintiffs (which is considered in findings 1 and 2 of our findings of fact on award of attorneys' fees at 35 Ind. Cl. Comm. 86, 87) provided, inter alia, that:

"The attorneys shall . . . be allowed and reimbursed from the amount of any judgment received, such actual expenses incurred by them as may be fixed by the Indian Claims Commission, court, or Commissioner of Indian Affairs, as the case may be."

An amendment of the contract made April 26, 1957, and approved September 26, 1957, provided: (a) for an immediate advance by the Pueblos of \$6,000.00 for expenses, part of \$7,673.92 in costs incurred by the attorneys in connection with the title proceedings in this case, which \$7,673.92 they then owed to seven experts and the reporting service that recorded the hearing on title issues held in Santa Fe, New Mexico, on the 5th, 6th, 7th, and 10th of December, 1956, and (b) that "all other expenses heretofore or hereafter incurred by the attorneys in the presentation of the Pueblos' claim against the United States shall be borne by the Attorneys and reimbursement therefor be made in accordance with the terms of the original Contract." The reimbursement provisions in the original contract are those quoted above. The difference between the \$7,673.92 accounted for in a detailed statement in the amendment as costs incurred by the attorneys and then owed by them and the \$6,000.00 advanced by the Pueblos is the sum of \$1,673.92 mentioned in finding 2b., above.

The amendment of April 26, 1957, constitutes clear evidence of the recognition by all parties thereto that the expenses totaling \$7,673.92 detailed therein were incurred by the attorneys and the agreement of those parties that the amount of \$1,673.92, not covered by the advance from the Pueblos, is payable to the attorneys out of the award herein to the plaintiffs.

6. Deceased attorney. An amendment of the attorneys' contract dated May 9, 1964, and approved June 16, 1964, substituted Mr. M. J. Clayburgh as attorney in the further prosecution of the Pueblos' claim in the place and stead of Mr. Dudley Cornell, who died on or about February 27, 1964. Mr. Clayburgh signed the attorneys' application in his individual capacity and as the duly appointed, qualified and acting executor of the estate of Dudley Cornell, deceased.

7. Conclusions. None of the claimed out-of-pocket expenditures making up the sum of \$1,021.12 mentioned in finding 4, above, were included in the \$7,673.92 owed by the attorneys at the time of the aforementioned 1957 amendment of their contract of employment and none of them were reimbursed to the attorneys out of the \$6,000.00 advanced by the Pueblos. All of the items covered by the sum of \$1,021.12 were paid by the attorneys prior to the advance of the \$6,000.00. The advance provided relief only as to expense amounts the attorneys then owed. There is no evidence of reimbursement to the attorneys of any of the expense items included in the total of \$6,466.08 claimed in their application.


The following items on the first page of the application are overhead costs that the attorneys should bear and are not allowable out of the award herein:

<u>Date</u>	<u>Description</u>	<u>Amount</u>
11-30-50	Filing fee	\$ 6.00
11-30-50	To Clerk of District Court Seal on Contracts	6.00
11-30-50	Mimeographing Attorneys' Contract	<u>4.00</u>
	Total	\$16.00

The attorneys' application is in compliance with the Commission's Rule 34b and Policy Statement 102 as to the remaining expenses totaling \$6,450.08. All of the expense items included in this total are reasonable and properly allowable to the attorneys out of the award to the plaintiffs.

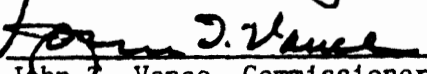
IT IS THEREFORE ORDERED that out of the funds appropriated to pay the aforementioned final award to the plaintiffs there shall be disbursed to Claude S. Mann, and M. J. Clayburgh individually and as executor of the estate of Dudley Cornell, deceased, the sum of \$6,450.08 as payment in full of their claim for allowance of expenses incurred herein in the prosecution of the plaintiffs' cause.

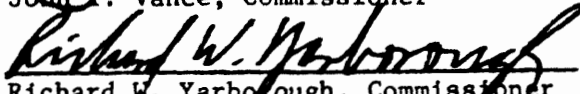
Dated at Washington, D. C., this 27th day of November 1974.

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarborough, Commissioner