

BEFORE THE INDIAN CLAIMS COMMISSION

PUEBLO OF TAOS,)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 357-A
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

FINDINGS OF FACT AND ORDER ALLOWING ATTORNEYS' EXPENSES

HAVING CONSIDERED the petition for allowance of attorneys' expenses filed on June 28, 1976, by Frank E. Karelsen, III, Esq., a member of the firm of Karelsen Karelsen Lawrence & Nathan, for that firm's expenses on behalf of the plaintiffs in Docket 357-A; the response from the Department of Justice filed on May 2, 1977; the response from the Acting Associate Solicitor, Division of Indian Affairs, dated April 12, 1977, with a memorandum dated April 8, 1977, from the Acting Deputy Commissioner of Indian Affairs, Department of the Interior, the attorney contract under which the plaintiffs were represented; and the supporting documents submitted by Mr. Karelsen; the Commission finds:

1. Award. On March 17, 1976, the Commission entered a final award in favor of the plaintiffs in the amount of \$297,684.67 plus simple interest thereon at the rate of 5 percent per year from March 17, 1927, until payment of the principal sum. 37 Ind. Cl. Comm. 520. The total award of \$1,030,437.35 consists of the principal sum plus interest in the amount of \$732,752.68 computed thereon at the rate of 5 percent per year

from March 17, 1927, to June 9, 1976, the date of the Treasury's payment of the award. Funds to pay the award were appropriated by Act of June 1, 1976, Pub. L. No. 94-303 (90 Stat. 587).

2. Attorneys' Contract. Attorneys' services in this case were performed under a contract identified as symbol I-1-Ind. 42605, dated July 27, 1951, between the plaintiff, Pueblo of Taos, and Darwin P. Kingsley, Jr., attorney of record for the plaintiff, for the prosecution of the plaintiff's claims against the defendant. The initial term of the contract was 10 years from the date of its approval by the Commissioner of Indian Affairs subject to an extension for an additional 5 years. On August 9, 1951, the Commissioner approved the contract, and on August 8, 1961, it was extended for 5 years. By agreement of August 7, 1966, the contract was amended to provide for a 10-year extension of its term from August 9, 1966. Pursuant to that agreement, the contract was extended until August 8, 1976.

The contract recites that the attorney thereunder (Darwin P. Kingsley, Jr.) entered into an agreement, known as a Joint Efforts Agreement, dated November 10, 1948, with other firms of attorneys and a supplemental agreement dated July 12, 1949, under which provision was made for joint facilities for the investigation, formulation, and filing of claims.

Under contract 42605, attorneys are permitted to select associate attorneys subject to the approval of the Commissioner of Indian Affairs provided that no further expense results thereby to the Pueblo of Taos. The Joint Efforts Agreement, according to the contract attorney, contained a similar provision regarding the selection of associate attorneys.

By agreement of December 31, 1951, Mr. Kingsley assigned to the firm of Karelsen, Karelsen, Rubin, and Rosenberg, predecessor of Karelsen and Karelsen, and now known as Karelsen Karelsen Lawrence and Nathan, a one-half interest in the subject contract. The assignment was approved by the Joint Efforts Committee on May 7, 1952, and by the Acting Commissioner of Indian Affairs on May 10, 1956. Under the assignment, the parties thereto became parties to the Joint Efforts Agreement. A supplement to the later agreement provides for the sharing of payments to and receipts from the Joint Efforts Group as between Kingákey and the Karelsen firm.

3. Application for Attorneys' Expenses. The application filed by Mr. Karelsen requested this Commission to fix a total of \$4,338.95 as reimbursable expenses. This total represents both expenditures made solely for the Pueblo of Taos and that Pueblo's share of expenditures made jointly for it and other Indian pueblos represented by the same attorneys. The attorneys herein represent the Pueblo of Taos in Docket 357 as well as in this Docket 357-A, and the Pueblo of San Ildefonso in Docket 354, the Pueblo of Santo Domingo in Docket 355, the Pueblo of Santa Clara in Docket 356, and the Pueblo of Nambe in Docket 358. All these cases have been prosecuted together, and in many instances joint expenditures have been made. The exhibit accompanying the petition shows such expenditures as having been made (1) for Taos and one other pueblo, (2) for Taos and three other pueblos, and (3) for Taos and four other pueblos. The said expenditures are apportioned, respectively, one-half, one-fourth, and one-fifth to Taos. The petition asks reimbursement for only one-half of the expenditures so apportioned to Taos, plus one-half of the expenditures made

solely for Taos. The reason for this is that the other half of the total Taos expenditures is reserved for the other Taos docket, No. 357, which has not yet gone to final judgment.

4. Notice to Parties and Responses. Notices of the filing of the petition for reimbursement of expenses, with copies thereof, were mailed by the Clerk of the Commission on June 28, 1976, to:

- a. Honorable Jose La Cruz Romero
Governor, Pueblo of Taos
P. O. Box 1848
Taos, New Mexico 87571
- b. William C. Schaab, Esq.
General Counsel, Pueblo of Taos
First National Bank Building - West
West Central Avenue at 3rd Street
P. O. Box 1888
Albuquerque, New Mexico 87103
- c. Honorable Morris Thompson
Commissioner, Bureau of Indian Affairs
Attn: Louise Perkins, Tribal Operations
U. S. Department of the Interior
1951 Constitution Avenue, NW.
Washington, D. C. 20240
- d. Honorable Peter R. Taft
Assistant Attorney General
Land and Natural Resources Division
Attn: A. Donald Mileur, Chief
Indian Claims Section
U. S. Department of Justice
Washington, D. C. 20530

The notices requested that any comments or information on the petition be filed with the Commission within two weeks from the date of notice. An undated letter which the Commission received on July 15, 1976, from Jose de la Cruz Romero, Governor of the Pueblo of Taos, explained that the plaintiff needed more than two weeks to respond to the notice because the General Council of the Pueblo of Taos wished to question

their attorneys about both the petition for attorneys' fee and the petition for reimbursable expenses at a meeting to be held on July 15 or 16, 1976. Governor Romero's letter stated that the plaintiff would reply to the notice of the filing of the subject petitions as promptly as possible after meeting with the claims attorneys the following week. No further response from tribal representatives has been received to date.

A letter of July 29, 1976, to the Clerk of the Commission from the Karelsen firm states that the claims attorneys met with the plaintiff's Governor and General Council on July 17, 1976, in Santa Fe at which meeting the plaintiff's general counsel was also present. According to the letter of July 29, 1976, neither the Governor, the members of the General Council, nor their general counsel objected to the petition for attorneys' fees. The subject of reimbursable expenses was not mentioned in the letter.

On May 2, 1977, the Department of Justice filed a response which included a letter dated April 12, 1977, from the Acting Associate Solicitor, Division of Indian Affairs, and a memorandum dated April 8, 1977, from the Acting Deputy Commissioner of Indian Affairs, Department of the Interior. The Department of Justice takes no position with respect to the petition for reimbursement of expenses. The memorandum from the Acting Deputy Commissioner of Indian Affairs summarized the contract provisions under which attorneys' services were performed in this case, concluding that the Bureau of Indian Affairs had no objection to the allowance of the expenses claimed in the subject petition. The letter from the Acting Associate Solicitor, Division of Indian Affairs, concurred with the Commissioner's conclusion.

5. Determination of Reimbursable Expenses. Pursuant to section 15 of the 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 original petition herein, the supporting record, the attorneys' contract with the plaintiff, and the entire record of expenditures incurred in the prosecution of this claim, the Commission concludes that expenses claimed in the application are reasonable and proper expenses of litigation and should be allowed, with the exception of the following items (references are to Exhibit A accompanying the petition):

Taos
Portion

Part II, Item 8, page 3

Travel expenses of Richard Shifter in the amount of \$21.00 are not supported by voucher and no explanation or date is given	\$ 4.20
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Part VII, Item 18, page 14

The attorney expense record shows only \$7.75 paid in meals, plus an additional \$7.00 for a motel room, with other meal expenses paid for by a third party.

Amount claimed for meals:	\$89.96	
Amount actually spent:	<u>14.75</u>	
Amount disallowed for meals:	\$75.21	15.04

Item 23, page 15

Air fare of \$80.00 is submitted for a trip to Washington, D. C. in June 1964. However, \$16.00 of that amount is shown by voucher to have been incurred on July 20th, rather than for June travel.

Amount claimed for air travel:	\$80.00	
Amount allowed:	<u>64.00</u>	
Amount disallowed for air travel:	\$16.00	3.20

Item 29, page 15

On a trip by two lawyers to Sante Fe in May 1971, one was accompanied by his wife. The airline ticket shows the correct fare for two persons was \$518.75.

Amount claimed:	\$712.50	
Amount allowed:	<u>518.75</u>	
Amount disallowed:	\$193.75	\$ 38.75

Item 29, page 16

A New York restaurant bill in the amount of \$37.90 charged on Diner's Club is disallowed as not being connected with travel or other contract purpose	7.58
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Item 30, page 16

The cash advance of \$100.00 for an overnight trip to Albuquerque in 1976 is disallowed. Vouchers or adequate explanation must be submitted for recent expenditures	<u>20.00</u>
	\$ 88.77

SUMMARY:

Attorney expenses claimed in Docket 357-A	\$4,338.95
Attorney expenses disallowed in Docket 357-A (one-half of \$88.77)	<u>44.39</u>
Expenses allowed in Docket 357-A	<u>\$4,294.56</u>

IT IS THEREFORE ORDERED that out of the funds appropriated to pay the final award entered herein on March 17, 1976, there shall be disbursed to Darwin P. Kingsley, Jr., contract attorney of record in Docket 357-A, the sum of \$4,294.56 as reimbursement in full for expenditures incurred in the prosecution of this claim, said sum to be distributed by him

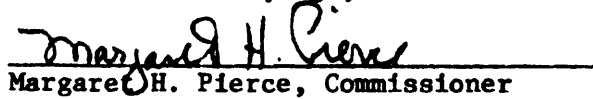
to the participating attorneys in accordance with whatever interest they may have therein.

Dated at Washington, D. C., this 14th day of July 1977


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner