

BEFORE THE INDIAN CLAIMS COMMISSION

THE HOPI TRIBE, an Indian Reorganization)	
Act Corporation, suing on its own behalf)	
and as a representative of the Hopi)	
Indians and the Villages of FIRST MESA)	
(Consolidated Villages of Walpi,)	
Shitchumovi and Tewa), MISHONGNOVI,)	
SIPAULAVI, SHUNGOPAVI, ORAIBI, KYAKOTSMOVI,)	
BAKABI, HOTEVILLA, and UPPER AND LOWER)	
MOENKOPI,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 196
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

ORDER ALLOWING ATTORNEY'S FEE

HAVING CONSIDERED the application for attorney fee filed on April 22, 1977, by the attorney of record for the plaintiff in this docket; the responses to the application filed by the Department of Justice and the Department of the Interior, the contract of employment under which the plaintiff was represented, and the record of all proceedings in this docket, the Commission finds and orders as follows:

1. Fee Application. The fee application was filed April 22, 1977, by John S. Boyden, the attorney of record for the plaintiff in this case who is a partner in the law firm of Boyden, Kennedy, Romney & Howard. The law firm of Wilkinson, Cragun & Barker is co-counsel in this case.

2. Attorneys' Contracts. This claim has been prosecuted under the contracts described in the application for attorney fee. The original contract between the plaintiff and the attorneys was negotiated and concluded with John S. Boyden. This contract, I-1-ind. 42501, dated July 12, 1951, was approved by the Acting Commissioner of Indian Affairs on July 27, 1951, for a term of ten years.

Under the provisions of paragraph 5 of the contract the plaintiff agreed to the selection of additional attorneys by John S. Boyden. Pursuant thereto the law firms now known as Wilkinson, Cragun & Barker

and the law firm now known as Boyden, Kennedy, Romney & Howard became associated with this case.

Paragraph 6 of the contract provides that compensation for legal services shall be wholly contingent upon a recovery for the Hopi Tribe. The contract further provides that the attorney fee shall be determined by the court or tribunal in which litigation is presented and that the aggregate fee shall not exceed ten per centum of the amount recovered for the Hopi Tribe.

Paragraph 11 of the contract provided for two year extensions if the claim was not concluded in the first ten years. The Commissioner of Indian Affairs thereafter approved the following two year extensions.

<u>Date</u>	<u>Approved</u>
July 27, 1963	November 29, 1961
July 27, 1965	September 9, 1963
July 27, 1967	July 19, 1967
July 27, 1969	July 19, 1967
July 27, 1971	October 6, 1969
July 27, 1973	October 20, 1971
July 27, 1975	July 23, 1973
July 27, 1977	November 5, 1976

3. Final Award. On December 2, 1976, the Commission approved a compromise settlement of the claims in this docket and entered a final award in favor of the plaintiff in the amount of \$5,000,000.

Funds to satisfy the award were appropriated by the Act of May 4, 1977, P. L. 95-26.

4. Amount of Fee Requested. The application for attorney fee requests the sum of \$500,000, which is an amount equal to ten per cent of the final award entered in this docket. The fee application represents that the contract attorneys are agreed upon the division of the fee to be awarded and that the attorney of record will make the appropriate division thereof.

5. Notice to Parties and Responses. Notices of the filing of the application for allowance of attorney fee in this docket were mailed on April 27, 1977, by the Clerk of the Commission to the tribal representatives, the Department of Justice and the Department of the Interior. No response to the petition for attorney fee has been received from the plaintiff.

On June 13, 1977, the Department of Justice filed a response which included a letter dated June 9, 1977, from the Acting Associate Solicitor, Division of Indian Affairs and a memorandum dated May 20, 1977, from the

Acting Deputy Commissioner of Indian Affairs, both of which stated that because those offices did not participate in the litigation they do not have sufficient detailed information on which to make a recommendation as to compensation earned by the attorneys. The Department of Justice takes no position with respect to the allowance of the attorney fee.

6. Fee Determination. The issues in the case were complex and involved aboriginal title to land, an intricate web of overlapping claims, the rental value of land and a claim for a general accounting. The services were rendered over a period of twenty-six years. There were conflicting claims by the Navajo Tribe of Indians and related litigation in the Federal Courts in Arizona.

Trial of the consolidated dockets in this case generated almost 10,000 pages of testimony and a large number of exhibits. Pre-trial and post-trial motions were extensive. An appeal was filed and argued in the Court of Claims. After a decision there, a petition for a writ of certiorari was filed in the Supreme Court. Settlement negotiations were also being conducted and when those efforts were complete the terms and conditions thereof were approved by the Commission.

The legal work in this docket involved the investigation, preparation and presentation of the case and was complicated by the refusal of a number of tribal members to cooperate with the attorneys in the preparation of this matter.

Exhaustive research was done in records of the National Archives and the Department of the Interior as well as various Indian agencies. Because of overlapping land claims by the Navajo Indian Tribe this case was consolidated with Docket No. 229 on May 31, 1957, and on April 25, 1960, was further consolidated with Dockets 91, 30, 48 and 22-D for purposes of trial.

The historical, scientific, administrative and legal work performed in this case was executed with a high degree of professional skill and we find the attorneys rendered valuable legal services to the plaintiff.

On the basis of all of the foregoing the Commission concludes, based on the criteria applied by the courts to measure compensation awarded to attorneys, that an attorney fee in the amount of \$500,000, representing ten per cent of the final award is reasonable compensation for the legal services to the plaintiff in this case.

IT IS THEREFORE ORDERED that out of the funds appropriated to pay the final award herein entered on December 2, 1976, there shall be disbursed the sum of \$500,000 to John S. Boyden, attorney of record in this case, for distribution to all parties having an interest in such fee, in full satisfaction of any and all claims for legal services in this case.

Dated at Washington, D. C., this 27th day of July 1977


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner