

BEFORE THE INDIAN CLAIMS COMMISSION

THE HOPI TRIBE, an Indian Reorganization)	
Act Organization, 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 ATTORNEYS' EXPENSES

HAVING CONSIDERED the petition for the reimbursement of \$20,000 in attorneys' expenses filed herein on July 18, 1977, by John S. Boyden, attorney of record, the exhibits in support of said petition, the applicable attorneys contract, and the record herein, the Commission finds and concludes:

1. On December 2, 1976, the Commission entered a final judgment in favor of plaintiff herein in the amount of five million dollars (\$5,000,000.00). See 39 Ind. Cl. Comm. 204, 223. Funds to satisfy the award were appropriated by Congress by Public Law 95-26, approved May 4, 1977.

2. The contractual authority for payment of the requested attorneys' expenses arises from the agreement between plaintiff and John S. Boyden, dated July 12, 1951 (contract I-1-ind. 42501). This contract was approved by the Acting Commissioner of Indian Affairs on July 27, 1951, for a term of ten years. Pursuant to paragraph 11 of said contract, provision was made for extension of the contract for additional two-year periods, by the Commissioner of Indian Affairs, and such extensions have been granted over the years to and including July 27, 1977.

Said contract provides as follows regarding the payment of attorneys' expenses:

8. The Attorney shall be allowed and reimbursed from Tribal funds, regardless of the outcome of said claims, and without awaiting the outcome thereof, or in his discretion may have paid directly from Tribal funds any or all proper and reasonable expense incurred by the Attorney in investigating, preparing and prosecuting such claims, including, without limitation, technical, professional (other than legal services) and stenographic assistance, traveling expenses, printing of briefs, court costs, and the like; provided, that such expenditures shall be itemized and verified by the Attorney and shall be accompanied by proper vouchers, and shall be paid only upon the approval of the Commissioner of Indian Affairs or his duly authorized representative; provided further, that neither the Hopi Tribes nor the United States shall be liable for such expenses except to the extent that tribal funds are available therefor. In the event the Attorney in the prosecution of any claim chooses to have any of the aforesaid expenses paid directly out of tribal funds, the party to whom such expenses are due shall submit a voucher of such expenses, through the Attorney, who shall certify that such expenses were incurred by him and are properly due, to the Commissioner of Indian Affairs, who shall pay the same out of Tribal Funds.

9. The obligation of the Hopi Tribe to reimburse the Attorney for expenses when their available funds are less than \$500.00, or when the annual expenditures are more than \$2,000.00, shall be subject to prior approval of the Hopi Tribes.

10. In the event no recovery is had upon said claims the liability of the Hopi Tribes to reimburse said sums for costs and expenses shall cease with the termination of this contract and all extensions and renewals thereof, otherwise all unpaid costs and expenses shall be paid from the proceeds of the recovery upon such claims.

The Indian Claims Commission Act provides for the reimbursement of "all reasonable expenses incurred in the prosecution of the claim." (25 U.S.C. §70n).

3. The \$20,000 in attorneys' expenses for which reimbursement is sought herein consists of a single item; namely, the payment of the expert witness fees of Dr. Fred Eggan who served as plaintiff's expert witness and technical advisor on anthropological matters from July 1951 until May 1963. Dr. Eggan's services included research, advice, and testimony in this docket before the Indian Claims Commission.

4. The attorney of record has certified that Dr. Eggan's services were performed in a diligent, competent and satisfactory manner; that said services were actually rendered; that the attorney of record has obligated himself for the payment to Dr. Eggan for such services in the amount of \$20,000, as evidenced by a promissory note, dated April 4, 1976, a copy of which is part of the record.

5. The plaintiff tribe has approved the reimbursement of the requested attorney's expense to the attorney of record, as evidenced by the Resolution of the Hopi Tribal Council, No. H-51-77, a copy of which is a part of the record.

6. Notices of the filing of the attorneys' petition for allowance of attorneys' expenses in this docket were mailed on July 19, 1977, by the Clerk of the Commission to the Chairman of the Hopi Tribe, the Department of Justice, and the Commissioner, Bureau of Indian Affairs.

The plaintiff tribe has not responded to the Commission's letter. The defendant's response, filed September 13, 1977, included a letter from the Acting Associate Solicitor, Division of Indian Affairs dated August 22, 1977, and a memorandum from the Acting Deputy, Commissioner of Indian Affairs dated August 17, 1977. The Acting Associate Solicitor, Division of Indian Affairs concurs in the position of the Acting Deputy, Commissioner of Indian Affairs that the \$20,000 claimed in expenditures for the services of Dr. Eggan is a reasonable and proper expenditure under Contract No. I-1-ind. 42501 and should be reimbursed. The Department of Justice takes no position as to the allowance of the expenses claimed.

7. The \$20,000 in attorneys' expenses for the payment of expert witness' fees is a reasonable and proper expense actually incurred in the prosecution of the claim herein by the attorney of record. As such said attorneys' expenses are properly reimbursable to the attorney of record.

IT IS THEREFORE ORDERED that, out of the funds appropriated to pay the final award in this docket there shall be paid to John S. Boyden, attorney of record, as a reimbursable attorney's expense, the sum of \$20,000.

Dated at Washington, D. C., this 5th day of October 1977.

Margaret H. Pierce
Margaret H. Pierce, Commissioner

Brantley Blue
Brantley Blue, Commissioner

Jerome K. Kuykendall
Jerome K. Kuykendall, Chairman

John T. Vance
John T. Vance, Commissioner

Richard W. Yarborough
Richard W. Yarborough, Commissioner