

BEFORE THE INDIAN CLAIMS COMMISSION

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

ORDER ALLOWING ATTORNEYS' FEE

HAVING CONSIDERED the petition for award of attorneys' fee in this docket filed on June 15, 1976, on behalf of the plaintiff's attorney of record and others, the responses thereto by the Department of Justice and the Department of the Interior, the contract of employment under which the plaintiff was represented, and the entire record in this docket, the Commission makes the following findings of fact:

1. Petition for Attorneys' Fee.

The petition for attorneys' fee in the amount of \$103,043.73 was filed on June 15, 1976, by Frank E. Karelsen, III, on behalf of the firm of Karelsen, Karelsen, Lawrence, and Nathan (formerly Karelsen and Karelsen), and Darwin P. Kingsley, Jr., attorney of record for the plaintiff, Pueblo of Taos, Docket 357-A.

2. Final Award.

On March 17, 1976, the Commission entered a final award in favor of the plaintiff for 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% 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.

3. Notice to Parties and Responses.

Notices of the filing of the application for allowance of attorneys' fee in this docket were mailed on June 16, 1976, by the Clerk of the Commission to the tribal representatives, the Department of Justice, and the

Department of the Interior. 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 the subject petition, among other matters, at a meeting to be held on July 15 or 16. Governor Romero's letter stated that the plaintiff would reply to the notice of the filing of subject petition 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 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 in Santa Fe at which meeting the plaintiff's general counsel was also present. According to the letter of July 29, neither the Governor, the members of the General Council, nor their general counsel objected to subject petition for fees.

On September 15, 1976, the Department of Justice filed a response which included a letter dated July 2, 1976, from the Associate Solicitor, Division of Indian Affairs, and a memorandum dated July 1, 1976, from the Commissioner of Indian Affairs, Department of the Interior. The Department of Justice takes no position with respect to the allowance of the petition for attorneys' fees.

The memorandum from the 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 fee claimed in the subject petition. The letter from the Associate Solicitor, Division of Indian Affairs, concurred with the Commissioner's conclusion.

4. Attorney's 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 de Taos, and Darwin P. Kingsley, Jr., 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.

5. Compensation of Attorneys.

The contract provides that compensation for attorneys' services is to be wholly contingent upon a recovery for the plaintiff and that the attorneys shall receive 10 percent of any and all sums recovered or procured in the prosecution of the plaintiff's claims. The contract provides further that the obligations thereunder may not be assigned without the consent of the Commissioner of Indian Affairs nor may any assignment or encumbrance be made of an interest of the attorneys in compensation agreed to be paid without the approval of the Commissioner of Indian Affairs.

6. Assignments and Other Interests.

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 as of July 12, 1949, under which provision is 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, a one-half interest in 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 latter Agreement provides for the sharing of payments to and receipts from the Joint Efforts Group as between Kingsley and the Karelsen firm.

In an agreement of April 1, 1963, Mr. Kingsley and the Karelsen firm entered into an agreement with Stephen A. Mitchell of Taos, New Mexico, for the performance of legal services in connection with a number of contracts including subject contract 42605. The agreement of April 1, 1963, explains the assignment by Kingsley to the Karelsen firm of a one-half interest in subject contract and one-half of Kingsley's interest in the Joint Efforts Agreement. The April 1, 1963, agreement also sets forth provisions regarding compensation for Mitchell's services.

The record indicates also that the law firm of Fried, Frank, Harris, Shriver, and Kampelman and attorneys S. Bobo Dean, Arthur Lazarus, Jr., and Jay R. Kraemer have performed legal services in the prosecution of this claim. It does not appear whether these services were performed under the Joint Efforts Agreement or other arrangement.

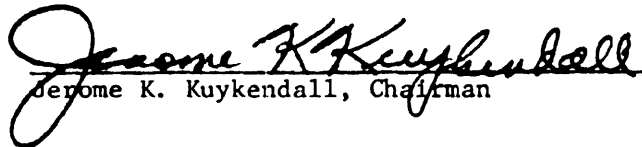
7. Attorneys' Services.

The attorneys performed valuable legal services in the successful prosecution before the Commission of this claim for compensation for the extinguishment of plaintiff's title to the 926 acres of land within the town of Taos, which extinguishment constituted a Fifth Amendment taking entitling the plaintiff to interest at the rate of 5 percent per annum from March 17, 1927, until paid. The attorneys also successfully represented the plaintiff in the appeal to the United States Court of Claims which affirmed the Commission decision in this case. The attorneys then participated in proceedings leading to the final award. The amount claimed as a fee for legal services is in accord with the terms of the contract which provides that the attorneys shall receive 10 percent of any and all sums recovered or procured for the plaintiff.

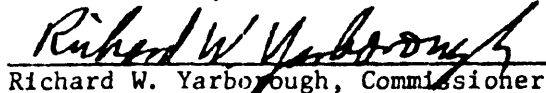
On the basis of the foregoing findings, considering the services rendered by the attorneys in these proceedings, the time involved in litigation, and the results obtained, the Commission concludes that an attorneys' fee in the amount of \$103,043.73, which is 10 percent of the final award of \$1,030,437.35 herein, is a reasonable fee for legal services in this case.


IT IS THEREFORE ORDERED that out of the funds appropriated to pay the final award herein entered on March 17, 1976, there shall be disbursed the sum of \$103,043.73 to Darwin P. Kingsley, Jr., contract attorney of record herein, in full satisfaction of any and all claims for legal services in this case, to be distributed by him to the participating attorneys in accordance with whatever interest they may have therein.

Dated at Washington, D. C., this 30th day of September 1976.


Jerome K. Kuykendall, Chairman

John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner