

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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April 28, 2000

<b>CONTRACTORS SAND AND GRAVEL, INC.,</b>	:	<b>EQUAL ACCESS TO JUSTICE</b>
	:	<b>PROCEEDING</b>
Applicant,	:	
	:	
v.	:	Docket No. EAJ 96-3
	:	
SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	
Respondent	:	

**DECISION ON REMAND**

Before: Judge Cetti

On January 7, 2000, the United States Court of Appeals for the District of Columbia Circuit issued a decision in the above Equal Access to Justice Award case ("EAJA"). The Court held that Secretary's position in the underlying proceeding was not substantially justified. The Court ordered the award of fees and expenses that were granted by the administrative law judge be restored, and remanded the case to the Commission for a determination of the amount of the award to Contractors for pursuing review before the Court.

On March 28, 2000, the Commission issued an order reinstating the judge's EAJA award. The Commission also remanded the case to the judge for a determination of fees and expenses incurred in defending the judge's decision before the Commission and those incurred in the court's review of the Commission's decision.

Pursuant to the remand, the judge ordered the parties to confer and to attempt to reach an agreement upon the amount of the fees and expenses to which the Applicant was entitled. Counsels have conferred as ordered, and counsel for the Secretary reports the parties have agreed that a total amount of \$99,935.51 in fees and expenses will be paid by the Respondent to the Applicant.

**WHEREFORE**, the Secretary of Labor is **ORDERED TO PAY** Contractors Sand and Gravel a total award of \$99,935.51 within 30 days of the date of this decision. Upon receipt of full payment, this proceeding is dismissed.

August F. Cetti  
Administrative Law Judge

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