



under the contracts between the tribe and the attorneys the charges for legal services were limited to ten per cent of the first three million dollars of recovery and not to exceed 8 per cent on all over three million dollars. Claim is made for \$407,422.24, the maximum allowance that can be made under the contracts approved by the Commissioner of Indian Affairs.

In the preparation and presentation of the case much research was required and facts assembled of an historical character and for that purpose and to obtain the testimony of witnesses to testify to the same, the attorneys for petitioner engaged the services of a member of the faculty of Gonzaga University of Spokane, Washington, and for the use of its facilities and a member of the faculty, the attorneys for petitioner agreed with said University to pay it out of the attorneys' fee allowed a sum equal to 7% of such fee.

Taking into consideration the services performed by the attorneys, the contingent character of the fee and the fact that the payment for the services rendered by Gonzaga University must be deducted, we are of the opinion the attorneys should be allowed the sum of \$407,422.24, less the sum of \$28,519.55 payable to said University, or a net sum of \$378,902.69.

Kenneth R. L. Simmons was the original attorney for the tribal claimant under a contract with the tribe, dated December 16, 1949, and finally approved by the Commissioner of Indian Affairs on April 12, 1950. He performed legal services for the tribe in the presentation and prosecution of the claim until his death on April 13, 1953. During his handling of

the case he was associated with and assisted by other attorneys; he and his associates also spent several months negotiating for a settlement which never materialized. Up to the time of Mr. Simmons' death the proof had been made on the title phase of the case, but it was not until after his death that the briefing was done and an interlocutory determination of liability entered in 1955. Of course, after the determination of liability an extended hearing was had on the question of value, etc.

Counsel have asked us to determine the value of Mr. Simmons' services up to the time of his death and have offered proof to the effect that on <sup>April</sup> August 13, 1953, when he died, the services rendered by all the attorneys engaged in the work, including the deceased, entitled them to a payment equal to one-third of the fee finally fixed for legal services in the case. Taking into consideration such proof and our knowledge of the progress of the case, the proposed division of the fee appeals to us as very fair. However, as we have previously held, we have no jurisdiction to divide fees among the attorneys. See *Shoshone v. United States*, 6 Ind. Cls. Comm. 636; *Chickasaw Nation v. United States*, 121 C. Cls. 41. We can only determine the total fee leaving the interested parties to apportion the fee in accordance with their agreements therefor.

#### Reimbursable Expenses - Attorneys

The expenses usually connected with litigation such as this have in this case been advanced from time to time during the pendency of the case by the tribe. However, the tribal funds available for such purposes were exhausted and it became necessary for counsel for the petitioner to advance money for expenses of the litigation in order to complete it.

Kenneth R. L. Simmons during his lifetime advanced for such expenses the sum of \$64.99 which we allow in full. It was approved by the Tribal Council and must be paid to his heirs and distributees.

R. G. Wiggernhorn, between July 1, 1957, and July 29, 1957, expended for expenses of the case \$319.82. Included in the items were two charges of \$1.00 each for travel insurance. We consider such items personal to the attorney and are disallowed, reducing the claim to \$317.82. Mr. Wiggernhorn has submitted another claim for expenses during the period from December 6, 1957, to May 8, 1958, in the sum of \$342.89 which is allowed in full. His claim for the period from May 26, 1953, to September 7, 1958, is for \$162.26. There was erroneously included in this claim \$61.84 which had been previously paid by the Indian Service so the claim is reduced to \$100.42.

These three claims were approved by the Tribal Council on May 10, 1958, and are allowed in the aggregate sum of \$761.13.

Wilkinson, Cragun and Barker has submitted three claims for expenses advanced or incurred in the prosecution of the case, which will be considered separately.

A claim in the amount of \$1009.48 is submitted for expenses incurred in the case during the period June 1, 1957, to April 12, 1958. This sum included one-half of \$3.75 for a meal for Mr. Wiggernhorn, which he was compensated for separately, so the sum of \$1.87 is deducted, leaving a balance of \$1007.61, which is allowed.

Another claim in the amount of \$3,425.86 for expenses of the litigation advanced by counsel during the period June 25, 1953, to May 28, 1957,

is submitted. Of this sum the attorneys have voluntarily withdrawn the sum of \$9.17 for meals for Jones and Murray in June, 1956. Taxi fares for a member of the firm from his office to his home, aggregating \$3.50 and travel insurance of \$.62 are items included in the claim. We consider such items either personal to the attorney or office expenses which should not be charged to the tribe. Nor do we think the charge of \$3.39 for Sunday meals on March 24, 1957, a proper charge since they were for attorneys working at their office in Washington, D. C.. Another item included in the claim is \$32.05 for lithographing a "Digest of Indian Claims Commission Cases." This in our opinion is an office expense and should not be considered a reasonable expense in the prosecution of the claim. These items total \$48.73 and are excluded, thereby reducing the claim to \$3377.13, which is allowed.

The third claim is for \$641.95 for expenses of litigation paid between April 8 and August 7, 1958. This claim includes taxi fares aggregating \$7.50 for employees doing night work in May, 1958. We believe such items should be considered office expenses and borne by the employer. We, therefore, deduct the sum of \$7.50 and allow the claim in the sum of \$634.45.

All of the above claims, except the last, were approved by the Tribal Council.

#### Witness Fees

The attorneys for the tribe employed Henry T. Murray, as an expert appraiser, to value the lands involved and agreed to pay him total compensation for the work the sum of \$35,000.00 in case of recovery. There is

due him under his contract the sum of \$20,000.00. We consider the charge reasonable and it is accordingly allowed.

The attorneys also employed Fred O. Jones, as an expert appraiser, to value the mineral lands involved in the case and they agreed to pay him in the event of recovery the sum of \$25,000.00 over and above his actual expenses. According to the evidence there is now due him the sum of \$19,765.40 under his contract. We consider the charge reasonable and it is therefore allowed.

The claims of Murray and Jones were approved by resolution of the Coeur d'Alene Tribal Council on May 12, 1958.

Dr. Alfred W. Bowers, an anthropologist and archeologist of the University of Idaho, did much research in connection with the case and testified as a witness. We consider the charge reasonable and it is allowed in the sum of \$1,000.00.

William B. Osborne, Jr. and Harriet Cooley Osborne, as heirs at law of William B. Osborne, deceased, have presented a claim in the sum of \$7,150.00 for services rendered by their father. According to the proof, William B. Osborne was a Consulting Forester by profession and was engaged by attorneys for the tribe to make an investigation of and testify concerning the value of the timber land resources of the area involved in the case. There appears to have been no definite agreement as to compensation but Mr. Osborne apparently did some work on the case and was paid all his expenses while examining the lands, except \$50.00. There is no satisfactory proof as to the kind of services rendered or the time spent in making an investigation of the lands or the character of the

information assembled. At any rate, Mr. Osborne became incapacitated by illness on August 14, 1954, and died on October 28, 1954. No report of his work had ever been submitted to counsel and he never testified in the case. Counsel for the tribe suggest a payment of \$1250.00, which the Government considers too much. We are of the opinion that under the circumstances an allowance of \$1250.00 should be made. The heirs also claim \$50.00 for expenses which were not repaid deceased. These outlays are described only as "out-of-pocket expense." Obviously, such a description is too indefinite to consider. Such claims should be itemized to show character of the charges and time expended. We must therefore disallow the \$50.00 item.

On June 17, 1952, William B. Osborne submitted a voucher for payment of expenses in the case. This voucher included an item of \$11.95 for "1 Radiant Electric Heater (required to heat working quarters on Saturdays, Sundays and Hollidays)." The date of the charge is December 5, 1951, and was apparently paid. Such an item is not a proper charge against the tribe and is therefore deducted from the amount of \$1250.00 allowed, reducing that allowance to \$1238.05.

We have previously mentioned the Gonzaga University claim. It is in the amount of \$28,519.55, which has been deducted from the amount allowed for attorneys' fees. That amount is therefore allowed as a claim and should be deducted from the award and paid to that University.

We concur:

Louis J. O'Marr  
Associate Commissioner

Edgar E. Witt  
Chief Commissioner

Wm. M. Holt  
Associate Commissioner