

BEFORE THE INDIAN CLAIMS COMMISSION

THE CROW TRIBE OF INDIANS,)	
)	
Petitioner,)	
)	
v.)	Docket No. 54
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: December 26, 1962

FINDINGS OF FACT

This case with respect to the matter of fees of expert witnesses is again before the Commission on remand from the Court of Claims, in which it was ordered that "The order, findings and opinion of the Commission, entered on February 12, 1962, in Indian Claims Docket No. 54, dealing with the question of compensation of expert witnesses, be and the same are vacated and the case is remanded * * * for further consideration in light of its findings of fact, conclusions and order, entered on June 14, 1962, in the Northern Paiute Nation et al., v. United States, Indian Claims Commission Docket 87, as to which this Court means to intimate no opinion."

In consideration of the foregoing order, the Commission enters the following Findings of Fact:

1. That the contract attorneys in this case representing the Crow Tribe of Indians at the time of the employment of the above witnesses were Kenneth R. Simmons (now deceased), Ralph G. Wiggenghorn, and Ernest L. Wilkinson. Later a law partnership consisting of Ernest L. Wilkinson, John W. Cragun, Glen A. Wilkinson, Robert W. Barker and Donald C. Gormley,

of Washington, D. C., and a law partnership of Montana consisting of Ralph G. Wiggernhorn, George J. Hutton, John H. Schiltz and John C. Sheehy became and now are contract attorneys representing said Crow Indian Tribe.

2. That the contract of employment of said attorneys, among other things provided:

6. The said attorneys, parties of the second part, shall be allowed and reimbursed from tribal funds, upon approval by the Commissioner of Indian Affairs, all proper and reasonable expenses incurred by the attorneys in investigating, preparing and prosecuting said claims, including, without limitation, technical and professional assistance other than legal assistance, traveling expenses, printing or other reproduction of pleadings, briefs, and other court papers and proceedings, the costs of procuring copies and certification of documents, papers and records, the costs, expenses and fees of witnesses including especially valuation and historical expert witnesses and including their necessary travel and other expenses in conducting research and marshalling facts in preparation for trial; the total of all such costs and expenses so incurred not to exceed the sum of \$25,000.00. . . With regard to the costs, expenses and fees of the valuation and historical experts engaged by the parties of the second part as above provided, the parties of the second part may require that the persons so engaged present and file their charges for their costs, expenses and fees to and with the said Crow Tribe, without requiring that the parties of the second part advance the money for the same, whereby said persons may thus be paid and reimbursed directly after approval by the Commissioner of Indian Affairs as hereinafter provided: . . . All such expenses chargeable under the terms of this contract shall be itemized and verified and shall be accompanied by the proper vouchers and shall be paid only upon approval of the Commissioner of Indian Affairs; and provided, further, that the amount for expenses shall be contingent upon the availability of funds in the Treasury of the Crow Tribe or upon an appropriation by Congress from tribal funds held in the United States Treasury.

Later the contract was amended to permit contract attorneys to incur costs and expenses up to \$40,000.00. The amendment was effective as of February 1, 1958.

3. The petition, filed by said attorneys for the allowance of expert witness fees and expenses, contracted for by said attorneys, together with the statements of said witnesses attached to said petition and a part thereof, is in words and figures as follows to-wit:

Petition for Allowance of Reasonable
Expenses Incurred by Attorney

Comes now the Attorney of Record in the above-captioned matter and petitions the Commission for an order allowing, as reasonable expenses incurred in the prosecution of the above entitled matter, the amounts of the respective claims of Mont H. Saunderson and Merrill G. Burlingame hereto attached and made a part hereof, to be paid to the attorney of record herein for the credit respectively of said Mont H. Saunderson and Merrill G. Burlingame.

The facts as stated in the two said respective claims attached are substantially true and are hereby confirmed. Because of the limited finances of the Crow Tribe at the time, the attorneys for the tribe were not able to engage qualified experts for the prosecution of said case except upon the terms as set forth in the attached claims. In each instance the additional compensation sought is reasonable and just under the circumstances in the opinion of the petitioner.

This petition is made under authority of Sec. 15 of the Act of August 13, 1946 (c. 959, 60 Stat. 1053), Sec. 503.34b of the Commission's Rules, and the claims contract between the said Crow Tribe of Indians and Ralph G. Wiggenhorn and Kenneth R. L. Simmons (deceased), now held by Wilkinson, Cragun & Barker and Wiggenhorn, Hutton, Schiltz & Sheehy, as successors.

Dated this 8th day of September, 1961.

/S/ Ralph G. Wiggenhorn
Attorney of Record

The petition was verified under oath.

July 22, 1961

To: Mr. R. G. Wiggenhorn, Esq., Wiggenhorn, Hutton, Schiltz & Sheehy, Electric Building, Billings, Montana

Mr. John W. Cragun, Esq., Wilkinson, Cragun & Barker
1616 H Street, N.W., Washington 6, D. C.

From: Mont H. Saunderson, Accredited Rural Appraiser
2328 Cloverdale Drive, Missoula, Montana

Subject: Claim for compensation for appraisal work done for the Crow
Indian Tribe in Docket No. 54 before the Indian Claims Commission

I, Mont H. Saunderson, residing at 2328 Cloverdale Drive, Missoula, Montana, contracted with the Crow Indian Tribe of Montana through their claims attorney, Mr. R. G. Wiggenhorn, to do the valuation work on their lands cession of 1868 to the U. S. Government, and to appear before the U. S. Indian Claims Commission as a valuation witness in connection therewith. The agreement in this was made orally with Mr. R. G. Wiggenhorn and Mr. Ernest L. Wilkinson.

It was provided in this agreement that I should currently receive a partial payment for the work, and that I should receive later from the award, when and if there was an award, such additional compensation as might be determined by the attorneys and the Indian Claims Commission to constitute full and final reasonable compensation for the work.

I worked on this assignment for approximately twelve months up to the time of the hearings before the Indian Claims Commission, held at Billings, Montana in May of 1956. Up to the time of these hearings the Crow Tribe paid me a total amount of \$13,750.00 for my services. Since that payment represents about half of my usual full work rate for the twelve months of work time, I hereby request an additional payment of \$12,500.00 in full settlement of the account.

The information concerning payments made to me for services and expenses are contained in three vouchers bearing the Billings, Montana Area Office of the Bureau of Indian Affairs voucher designations 250-C-507; 250-C-975; and 250-C-1010.

STATE OF MONTANA)
COUNTY OF MISSOULA) ss

I hereby certify that the foregoing statements by me are correct and true to the best of my knowledge and belief.

/S/ Mont H. Saunderson

Subscribed and sworn to before me this twenty second day of July, 1961.

/S/ Lyman J. Hall

My Commission expires:
September 10, 1963

Notary Public, Montana
Residing at Missoula

Attorney's Approval of Expert Witness' Claim

I do hereby approve and recommend payment of the claim of Mont H. Saunderson for additional compensation in the sum of \$12,500.00 for his services as an expert appraiser rendered in the prosecution of the claim of the Crow Tribe vs. the U. S. as shown in his attached claim, and I certify that the facts therein stated are substantially correct, and that under the circumstances of his employment and the understanding and agreement between him and the attorneys for the Crow Tribe when Mr. Saunderson was employed, he accepted employment and performed the services for a minimum fee with additional compensation to be awarded him in the event the Crow Tribe recovered. I consider the additional charge of \$12,500.00 to be a reasonable amount to be awarded him under the circumstances.

Dated July 27th, 1961

/S/ Ralph G. Wiggernhorn
Attorney for the Crow Tribe
under Claims Agreement, and
attorney of record on said claim.

Resolution No. 62-01-A

A Resolution of the Crow Tribal Council Approving the Claim
For Additional Compensation of Mont H. Saunderson

BE IT RESOLVED by the Tribal Council of the Crow Tribe of Indians that the claim of Mont H. Saunderson for additional compensation in the sum of \$12,500.00 for his expert services for said tribe in the prosecution of the claim of said tribe against the United States, as Mr. Saunderson's claim is set forth in his petition under date of July 22, 1961, be and the same hereby is APPROVED AND PAYMENT THEREOF AUTHORIZED as a part of the reasonable expenses incurred in the prosecution of said claim.

PASSED, ADOPTED AND APPROVED by the Crow Tribal Council this 11th day of August, 1961, by vote as follows:

Votes for adoption - unanimous
Votes against adoption - no

/S/ John B. Simmons
Chairman, Crow Tribal Council

28 June 1961

Mr. R. G. Wiggenhorn
Wiggenhorn, Hutton, Schiltz & Sheehy
Electric Building
Billings, Montana

Dear Mr. Wiggenhorn:

I should like to formally petition for additional compensation in connection with my research, report and testimony as historical expert in the case before the Indian Claims Commission, the Crow Tribe of Indians, Petitioner Vs. the United States of America, defendant, Docket No. 54. The hearing date was May 5-7, 1956.

It was my understanding at the time I was asked to carry on the research and prepare the report that the Crow Tribe had limited funds. Payment for services rendered must be held to the minimum, but contingent upon a favorable decision, a petition for additional compensation would be reviewed by the Indian Claims Commission. A reference to this possibility is contained in the introductory statements in my testimony which begins on page 13 of the Transcript of testimony and extends to page 109.

I was engaged in research and preparation of the report for a total of 28 days. The research entailed several overnight trips to Helena to consult materials in the Historical Society of Montana library. Because the Crow lands extended into southern Wyoming, borrowing books, and securing of some photostat and microfilm copies of documentary materials from Wyoming was necessary. The research, therefore, involved the outlay of personal funds as well as the time involved.

I received for my services \$30.00 per day for research time, and \$100 per day for two days of testimony during the hearing. I consider the amount received for the two days of testimony as satisfactory.

I should like to petition for additional compensation for the 28 days of research time in the amount of \$30.00 per day, a total additional amount of \$840.00.

Very truly yours,

Merrill G. Burlingame
Chairman of Department

STATE OF MONTANA)
County of Gallatin) ss

MERRILL G. BURLINGAME, being first duly sworn, deposes and says that he is the person who makes the foregoing petition; that he has read the same and knows the contents thereof and that the matters and facts therein stated are true and correct.

/s/ Merrill G. Burlingame

Subscribed and sworn to before me this 28 day of June, 1961.

F. H. DeFrate
Notary Public for the State of Montana. Residing at Bozeman, Montana.

My Commission Expires
8-9-62

ATTORNEY'S APPROVAL OF EXPERT WITNESS' CLAIM

I do hereby approve and recommend payment of the claim of Merrill G. Burlingame for additional compensation in the sum of \$840.00 for his expert services as a historian rendered in the prosecution of the claim of the Crow Tribe vs. the U. S. as shown in the attached claim, and I certify that the facts stated therein are substantially correct, and I consider that, under the circumstances of the very modest charge made by Dr. Burlingame in the first instance and the understanding existing between us, that the additional present charge of \$30.00 per day for his investigatory work and studies is most reasonable.

Dated July 27th, 1961

Ralph G. Wiggernhorn
Ralph G. Wiggernhorn
Attorney for the Crow Tribe under Claims Agreement, and attorney of record on said claim.

RESOLUTION NO. 62-01-B

A RESOLUTION OF THE CROW TRIBAL COUNCIL APPROVING THE CLAIM FOR ADDITIONAL COMPENSATION OF MERRILL G. BURLINGAME.

BE IT RESOLVED by the Tribal Council of the Crow Tribe of Indians that the claim of Merrill G. Burlingame for additional

compensation in the sum of \$840.00 for his expert services for said tribe in the prosecution of the claim of said tribe against the United States, as Mr. Burlingame's claim is set forth in his petition under date of June 20, 1961, be and the same hereby IS APPROVED AND PAYMENT THEREOF AUTHORIZED as a part of the reasonable expenses incurred in the prosecution of said claim.

PASSED, ADOPTED AND APPROVED by the Crow Tribal Council this 11th day of August, 1961 by vote as follows:

Votes for adoption - unanimous

Votes against adoption - 0

John B. Simmons
Chairman, Crow Tribal Council

4. The petition, as captioned above, and as filed before this Commission, sets forth as a reasonable expense incurred by said attorney of record in the prosecution of this case, a claim in an amount sufficient to cover the respective compensation claims of Mont H. Saunderson and Merrill G. Burlingame, which claim, if allowed by this Commission, is to be paid directly to the "Attorney of Record herein for the credit respectively of said Mont H. Saunderson and Merrill G. Burlingame." Therefore, said petition, as written, alleges a proper claim for reimbursable expenses incurred by the contract attorney in the prosecution of this law suit, the recovery for which is provided for in Section 15 of the Indian Claims Commission Act (60 Stat. 1049, 1053). The Commission concludes as a matter of law that it has the requisite jurisdiction to hear and adjudicate said claim by the attorney of record for himself and his colleagues as filed herein.

5. The witness, Mont H. Saunderson, entered into an oral agreement on or before April 1, 1955, to serve as an expert witness and appraiser,

for the benefit of the Crow Indian Tribe, with the contract attorneys Kenneth R. Simmons, Ralph G. Wiggernhorn, and Ernest L. Wilkinson.

The terms and conditions of said agreement, as stated in the language of the witness were as follows:

I was engaged by said attorneys before April 1, 1955, with instructions to make a complete study and survey of the territory and a research of all records and data bearing upon or that might aid in determining the value of said lands as of May 7, 1868, the date of the treaty of cession, and to prepare myself to testify as a valuation expert upon the trial of said case and to present and submit a written valuation report and to appear as such expert witness upon the trial. Under the terms of said employment it was agreed that I was to receive all of my out-of-pocket expenses incurred in pursuit of such work and as compensation I was to receive \$5,000 for the research and survey work in preparation for testimony, and I was to be paid \$2,500 additionally for preparation of a written report upon completion of such report, and to be paid as an expert witness upon the trial of said case a per diem of \$100 per day while in attendance as a witness and for the time consumed in going to and returning from the place of trial, together with my subsistence and travel expenses while so employed. It was further agreed that if recovery was had for the tribe that I was to receive such additional fee as might be allowed by the Commission or Court before whom the case was tried or by the Commissioner of Indian Affairs.

(Report of Reinholt Brust, Assistant Area Director of the Bureau of Indian Affairs under date of December 4, 1961, voucher No. 250-C-507).

6. That pursuant to said agreement the witness proceeded according to its terms to render service to said attorneys for the benefit of said Indian Tribe as an expert appraiser and witness; that on the 12th day of November 1955, the said witness presented a claim and voucher for services rendered, and for expenses incurred up to said date, to the Department of Interior through the Bureau of Indian Affairs, at its area office in Billings, Montana; that said claim called for the payment of \$7,500 for services rendered under

said agreement and an additional \$1028.89 covering expenses incurred by the witness during said period of time.

That the statement presented by the witness requesting payment for services was as follows:

"I hereby request full payment, as of the date of this voucher, of the total fee for the work, my work now having been completed and the written report submitted, there remaining only the presentation of my testimony upon the trial, as now anticipated. It is now therefore in accord with my agreement with your claim attorneys that at this time I be paid the sum of \$7,500."

Attached to the voucher was a certificate of Ralph G. Wiggenhorn, one of the contract attorneys for the petitioner, which among other things, certified that the services were rendered by Mr. Saunderson "in accordance with the terms of his employment and as agreed to by Ernest L. Wilkinson and myself upon his employment and is a reasonable and just charge for such service to the date of said voucher." The certificate also certified to the necessity of, and the correctness of, the expenditures. The attorney also requested that the payment of said charges, expenses and fees be made directly to the said Mont H. Saunderson. The vouchers were approved, with the exception of a correction for mileage on the use of an automobile and the claim in the sum of \$8,528.89, covering services and modified expenses, was paid to the claimant by the Department of the Interior through its Indian Bureau, out of Crow Tribal funds.

7. That on June 8, 1956, the said witness Mont H. Saunderson filed a second claim for services rendered and expenses incurred in Docket No. 54 against the Crow Indian Tribe for the sum of \$3,949.04, with the Department of the Interior through its area office of the Bureau of Indian Affairs at Billings, Montana. Of the said sum \$199+ was for expenses incurred by the witness.

