

BEFORE THE INDIAN CLAIMS COMMISSION

UPPER CHEHALIS TRIBE, ET AL.,)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 237
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: Nov 2 1965

FINDINGS OF FACT ON PETITION FOR ALLOWANCE OF ATTORNEYS' FEE AND EXPENSES

The Commission makes the following findings of fact:

1. We have for consideration the application filed herein for the allowance of attorneys' fees, reimbursable costs and expenses of the litigation paid or incurred by the attorneys.

Attorneys' Fees

2. The attorneys' contract between the Confederated Tribes of the Chehalis Reservation and attorney E. L. Crawford was approved by the Commissioner of Indian Affairs on March 21, 1951, to run for a period of ten years from November 20, 1950. On March 9, 1955, the assignment of a forty percent (40%) interest in the contract to Garland S. Ferguson III and Joseph W. Creagh was approved by the Commissioner of Indian Affairs. Later, Mr. Ferguson assigned all his interest in the contract to Joseph W. Creagh and the assignment was approved by the Acting Deputy Commissioner of Indian Affairs on June 28, 1957. On March 14, 1961, the Deputy Solicitor of the Department of the Interior approved an extension of the contract for a five year period beginning March 21, 1961.

The said attorneys' contract provided that the attorneys should receive for legal services ten percent (10%) of any and all sums or of the value of any and all property recovered, through his efforts, whether by judgment, compromise, settlement, or action of any department of the Government, or of the Congress of the United States, or otherwise.

3. A final judgment was entered in this case on October 7, 1963, awarding the claimant tribe the sum of \$754,380.00. The claim for attorneys' fee for \$75,438.00 is 10 percent of the net judgment recovered, and is in accordance with the terms of the aforesaid approved contract and is therefore approved and allowed in said amount. It is shown by the aforesaid approved assignments that the attorneys entitled to the award of attorneys' fees are E. L. Crawford and Joseph W. Creagh.

Reimbursable Expenses Incurred by Attorneys

4. The attorneys' contract provides that the attorney shall also be allowed and reimbursed from the amount of the judgment received such actual expenses incurred by him as may be fixed by the Indian Claims Commission pursuant to Section 15 of the Act of August 13, 1946. Section 15 of the Act provides for the payment of "all reasonable expenses incurred in the prosecution of the claim."

5. The attorney, E. L. Crawford, asks an allowance of items of expense totaling \$6,081.80 paid by him from personal funds in the prosecution of the claim. The Bureau of Indian Affairs has examined the said itemized expenses and supporting documents and in a memorandum by the Associate Commissioner of Indian Affairs under date of

January 22, 1964, and filed with the Commission on April 6, 1965, certain items of expense were questioned unless explained and substantiated to the satisfaction of the Indian Claims Commission.

6. At the hearing before the Commission on April 14, 1965, Mr. Crawford agreed that the following items of expense questioned by the Commissioner of Indian Affairs should be disallowed, to-wit:

<u>Date Incurred</u>	<u>Item</u>	<u>Amount</u>
5/2/1950	Cost attestation of signatures to attorneys' contract	\$ 2.50
5/9/1950	Certification of E. L. Crawford as an attorney	1.00
12/2/1950	Cost of certification of contract	4.00
7/18/1951	Cost of copies of claims contract	5.93
3/25/1952	Cost of pamphlet	.65
5/14/1952	Cost of pamphlet	.65
11/13/53 to 12/15/53	Hotel chair (one-third)	.15
	Ticket to Minneapolis	1.46
	Advance to Dr. Taylor	6.66
10/28/1954	Mapmaking overcharge	1.00
5/1-4/1960	Book	3.90
6/16/1960	Book	<u>4.50</u>
	Total	\$32.40

Deducting the \$32.40 leaves \$6,049.40 claimed by Mr. Crawford for expenditures from his own funds.

7. We disallow the following items of such expenses, which we think are not proper charges, to-wit:

<u>Date Incurred</u>	<u>Item</u>	<u>Amount</u>
7/13/1953	Dinner guest	\$3.65
8/1/1953	Dinner guest	3.55
8/1/53 to 8/8/53	Garage rent	7.00
9/1/53 to 9/24/53	Garage rent	4.00
11/13/53 to 12/15/53	Substitute teacher For Dr. Taylor (one-third)	58.33
12/13/55 to 12/29/55	Guest meals	3.95
1/20/1956	Guest transportation	8.42
12/27-29/1955	Guest meals	6.76
	Garage rent	2.50
11/27-30/1956	Garage rent	5.00
6/16/1960	Extension of attorney contract. Talk with experts in Dkt. No. 240	8.85
7/7-8/1960	Garage rent	2.50
11/14-15/1961	Garage rent	<u>1.50</u>
	Total	\$116.01

After deducting the above expense items totaling \$116.01, we approve and allow the remaining \$5,933.39 as reasonable expenses incurred by attorney Crawford in the prosecution of petitioner's claim.

Claims Incurred For Technical and Stenographic Assistance

8. The attorney, E. L. Crawford, has claims for expenses incurred in the prosecution of the claim for which he has not paid but is

committed to pay, as follows: To Dorothy Crawford for secretarial, mapmaking, research and other services rendered in support of the case, \$810.00; and to Dr. Herbert C. Taylor, Jr., for services as an expert witness in said case, a balance of \$1,950.00.

9. The attorneys' contract of November 20, 1950, provides that the attorney "may employ such technical or stenographic assistance in respect of his obligations under this contract as he may deem necessary, same to be paid by the party of the first part (the petitioner tribe) as expenses incidental to the employment of second party thereunder."

10. The attorney, E. L. Crawford, employed Dorothy Crawford as secretary, assistant, and researcher to assist him in the prosecution of petitioners' claim at an agreed compensation of \$15.00 a day for the time spent in this regard. The services performed by Mrs. Crawford were all performed at locations other than at Salem, Oregon, where Mr. Crawford has his office, and he would have had to employ public stenographers and other expert help to do the work performed by Mrs. Crawford. The claim is for 54 days work between July 2, 1953 and April 27, 1963, at \$15.00 a day for 54 days, or \$810.00. We think the petitioner Indians should not be charged for the three days at Portland, Oregon from November 27th to 30th, 1956, the three days from May 1st to May 4th, 1960 on a field trip over the tribal lands, and six days of the eleven days spent in Washington, D. C., between February 6th and 24th, 1963, or a total of 12 days. We find that the remaining 42 days of work by Mrs. Crawford at \$15.00 a day, or \$630.00, is a reasonable expense incurred by Attorney Crawford in the prosecution of petitioners' claim, and the same is approved and allowed.

11. The attorney for petitioners employed Dr. Herbert C. Taylor, Jr., an anthropologist, in May, 1953 to research and testify as an expert witness before the Commission on petitioners' claim. It was agreed that the attorney would pay Dr. Taylor \$10.00 a day and expenses, and Mr. Crawford would present a claim to the Commission for allowance of additional compensation for Dr. Taylor's services. Attorney Crawford testified at the hearing on April 14, 1965 that Dr. Taylor was not satisfied with this arrangement and so on or about August 6, 1953, Mr. Crawford orally agreed with Dr. Taylor to pay him an additional \$40.00 a day, making a total for him of \$50.00 a day for each day he worked in preparation for the case, plus an additional \$90.00, making a total of \$100.00 a day for each day he appeared in court as a witness. Mr. Crawford paid Dr. Taylor at the originally agreed rate of \$10.00 a day for 28 half days (\$140.00) and 28 full days (\$280.00) and three days giving testimony (\$30.00), a total of \$450.00, which is included in the reimbursable expenses of \$5,933.39, allowed in Finding No. 7. Mr. Crawford testified at the hearing on expenses that irrespective of the outcome of the case he was personally committed to pay Dr. Taylor the additional amount guaranteed in the August, 1953 modification of the agreement for 28 half days at \$20.00 per half day (\$560.00), 28 full days at \$40.00 per day (\$1,120.00), and three days in court at \$90.00 a day (\$270.00), a total of \$1,950.00.

We consider the total agreed compensation to Dr. Taylor of \$50.00 a day for field work in preparation for trial and \$100.00 a day for days

testifying before the Commission is a reasonable expense incurred in the prosecution of the claim and therefore Attorney Crawford's claim for the \$1,950.00 is approved and allowed.

12. Accordingly, Attorneys E. L. Crawford and Joseph W. Creagh are entitled to an attorney fee of \$75,438.00; and in addition thereto E. L. Crawford is entitled to the sum of \$8,513.39 as reimbursable expenses incurred in the prosecution of the petitioners' claim, and it will be so ordered.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner