

BEFORE THE INDIAN CLAIMS COMMISSION

TILLAMOOK BAND OF TILLAMOOKS,)
 NAALEM (Ne-ha-lum) BAND OF TILLAMOOKS,)
 CLATSOP TRIBE, KATHLAMET BAND OF)
 CHINOOKS, NUC-QUEE-CLAH-WE-MUCK TRIBE,)
 the CONFEDERATED TRIBES OF SILETZ)
 INDIANS, CONFEDERATED TRIBES OF THE)
 GRAND RONDE COMMUNITY, OREGON, and)
 portions and descendants of all such)
 tribes and bands,)

Plaintiffs,)

v.)

Docket No. 240

THE UNITED STATES,)

Defendant.)

Decided: November 2, 1965

ADDITIONAL FINDINGS OF FACT FOR ALLOWANCE OF
EXPERT WITNESS FEES AND EXPENSES

Upon consideration of the Petitions to Fix Compensation for Expert Services rendered by Herbert C. Taylor, Jr., Bruce E. Hoffman, and William Bushnell Osborne, Jr., the Supplemental Petition to Fix Compensation for Dorothy Crawford, and the Affidavit of E. L. Crawford and Joseph W. Creagh Respecting Attorneys' Services Rendered and Cash Advanced in the above-captioned case, all of which were filed with this Commission on February 11, 1963, together with Supplemental Certificate pertaining to James Hatfield, filed with this Commission on January 20, 1964, the defendant having had a copy of each of the named instruments served upon it, and certain objections thereto having been entered on December 2, 1963, and September 1, 1964, and the Commission

having received written evidence and having considered the record, including the contract of employment of said attorneys, on September 22, 1964, issued an Order Allowing Fees to the Attorneys, and for Certain Sums Advanced and Paid by Them To and For James Hatfield, an expert witness. Further supplemental material was furnished by the attorneys for the plaintiffs in order to meet the objections of the defendant as to the remaining petitions. The matter was set down for hearing and was heard by the Commission on April 14, 1965, with E. L. Crawford as witness.

The Commission, having considered the entire record, including the supplemental material provided by the attorneys for the plaintiffs and the testimony of E. L. Crawford, makes these additional findings of fact:

10. The attorneys for the plaintiffs in May, 1953, retained Dr. Herbert C. Taylor, Jr., an anthropologist, to make a detailed study as to the aboriginal tribal lands occupied by the Tillamook Band of Tillamooks, and the Nehalem Band of Tillamooks, and to appear as an expert witness before the Commission in support of their claim; that the agreement of employment provided that Dr. Taylor should be reimbursed for all out of pocket expenses; that he would be paid per diem of \$10.00 for each day actually spent on this claim; and that at the conclusion of the case the attorneys would present to the Commission a claim to allow a suitable fee to compensate him for his work. Attorney Crawford testified at the hearing held on April 14, 1965, that Dr. Taylor was not satisfied with this arrangement, and on or

about August 6, 1953, Mr. Crawford and Dr. Taylor agreed orally that Dr. Taylor would be paid by Mr. Crawford an additional \$40.00 for each day spent in preparation of the claim, or a total of \$50.00, and an additional \$90.00 for each day he appeared in court, or a total of \$100.00. Since Dr. Taylor claimed to have worked 34 half days and 31 full days in preparation of the case, and to have spent two full days in court, he would therefore be entitled to claim a total compensation of \$2600.00, of which Mr. Crawford has paid \$500.00. This amount Mr. Crawford testified he was bound to pay to Dr. Taylor no matter what the outcome of the case might be.

Dr. Taylor, in a letter dated October 27, 1962, addressed to E. L. Crawford, requested compensation at the rate of \$60.00 per day for work in preparation of the claim and \$100.00 per day in court, or a total of \$4800.00.

We consider the sums of \$50.00 for each day spent in preparation of the claim, and \$100.00 for each day spent in court, to be reasonable compensation which E. L. Crawford is bound to pay; that the amount claimed by Dr. Taylor over and above that sum is a contingent fee, and under the Commission's ruling in the Crow Tribe v. U. S., 10 Ind. Cl. Comm. 228, is not allowed, and therefore the claim of E. L. Crawford in the amount of \$2600.00 is approved, \$500.00 to be paid to him as reimbursement for payment which he has already made to Dr. Taylor, and which is included in his account of reimbursable expenses, and the balance of \$2100.00 to be allocated as payment to Dr. Herbert C. Taylor, Jr.

11. That the attorneys for the plaintiffs employed William Bushnell Osborne, Jr. and Bruce E. Hoffman as timber consultants, appraisers and expert witnesses to take cruises of the timber in the tribal area to determine and show their conclusions as to the stand of timber and the fair market value thereof in 1851, to prepare a written report showing the results of their research, and to testify before this Commission as expert witnesses. The agreement as to compensation was that Attorney Crawford would advance to them \$250.00 for out-of-pocket expenses; \$25.00 per day for each day actually spent on the project, but not to exceed \$1000.00 expenses in connection with getting out report, but not to exceed \$500.00; and at the conclusion of the case, the attorneys for the plaintiffs would apply to the Commission for such additional sum as would reasonably compensate Messrs. Hoffman and Osborne for their services.

Attorney Crawford testified that he advanced to them the sum of \$1500.00 for their work in preparation of the claim, including a written report, together with necessary expenses of \$185.75.

The record shows that Mr. Osborne spent $44\frac{1}{2}$ days on the project and Mr. Hoffman spent $25\frac{1}{2}$ days thereon; that in addition they claim \$20.00 for two trips to Salem, Oregon, for which they were not compensated by Mr. Crawford; that in the normal course of their professional activities they each charge and receive \$100.00 per day; that the attorneys for the plaintiffs stated that in their opinion this is a reasonable sum for such services rendered; that the Bureau

of Indian Affairs stated in its Memorandum of March 28, 1963, concerning this claim that the rate of compensation claimed was, in its opinion, reasonable; that it would not object to payment of \$3460.00 to William Bushnell Osborne, Jr. and \$2060.00 to Bruce E. Hoffman in addition to the sums already advanced and paid to them by E. L. Crawford.

The total claim submitted by Messrs. Osborne and Hoffman is in the amount of \$7020.00, less the \$1500.00 already advanced by E. L. Crawford herein, which is included in the claim for reimbursable expenses filed herein, or \$5520.00 to be divided \$3460.00 to William E. Osborne, Jr. and \$2060.00 to Bruce E. Hoffman.

This Commission finds that the fees claimed by Messrs. Osborne and Hoffman are reasonable compensation for the type of services rendered, that their compensation is a reasonable expense incurred in the prosecution of the claim; that it is not a contingent fee within the meaning of the claim of the Crow Tribe v. U. S., 10 Ind. Cl. Comm. 228; and that, therefore, the claim of Messrs. Osborne and Hoffman in the sum of \$5520.00 is approved and allowed.

12. The contract between the plaintiffs and their attorney 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 as expenses incidental to the employment of the second part thereunder."

13. Attorney E. L. Crawford employed Dorothy Crawford as a secretary, assistant and researcher in the prosecution of this and several other claims. Mrs. Crawford is the wife of attorney Crawford

and is regularly employed as his secretary. For this additional work he agreed to pay her at the rate of \$75.00 per week, or \$15.00 per day for time spent on these claims. A supplemental claim was filed with this Commission on May 2, 1963, for \$795.00, representing 53 days work away from the Salem office of Mr. Crawford, all of which were necessary to the prosecution of the claim according to Mr. Crawford's petition. In support of Mrs. Crawford's claim, Mr. Crawford further alleged that her experience in and knowledge of Indian claims made her services indispensable, and that to have hired another secretary so qualified would have been impossible.

It is the opinion of this Commission that the plaintiffs should not be charged for the 6 days between August 22 and August 30, 1953, spent at Dr. Taylor's archeological dig at the old Idaville site, or for 4 of the 16 days between November 13 and December 15, 1953, spent in Washington, D. C. and Arlington, Virginia, or for 2 days, January 18 and 19, 1958, spent around Tillamook, Oregon, in connection with Mr. Hatfield's report, or for 4 of 9 days spent between November 12 and November 20, 1959, spent in Washington, D.C., or for 2 of the 4 days between June 13 and June 16, 1961, spent in Washington, D.C., in preparation of the oral argument.

We find that compensation for 35 days of work by Mrs. Crawford at \$15.00 per day is a reasonable expense incurred by the attorneys in the prosecution of this claim and, accordingly, compensation in the amount of \$525.00 is approved and allowed.

14. The contract dated June 4, 1951, whereby E. L. Crawford was employed by the plaintiffs to represent them and file such claims as were authorized under and pursuant to the Indian Claims Commission Act, which was approved by the Commissioner of Indian Affairs on July 6, 1951, provided that compensation of the attorneys should be wholly contingent upon recovery, and not to exceed 10% of any and all sums recovered; that counsel could employ such technical or stenographic assistance as may be necessary, and should be reimbursed therefor; and that \$2000.00 should be advanced to counsel on account of reimbursable expenses. This sum was deposited by E. L. Crawford in a separate account in the United States National Bank of Portland, Oregon, and disbursements were made therefrom by check; that in connection with the prosecution of this claim, Tillamook v. The United States, Docket No. 240, a total of \$1,098.15 was paid out of that account, and a detailed statement of such expenditures marked Exhibit 1 was made a part of the record in this claim and is approved by this Commission; that the balance of \$901.85 was used in connection with Claim No. 239, and a detailed statement of such expenditures was approved by this Commission. Reimbursement for this sum of \$1,098.15 expended in connection with this claim was not requested by the attorneys in this case since no part of such moneys were advanced by the attorneys from their own funds.

In the Affidavit of E. L. Crawford and Joseph W. Creagh Respecting Attorneys' Services Rendered and Cash Advanced in this claim, filed with this Commission on February 11, 1963, Mr. Crawford alleged that in the prosecution of this claim he has advanced from his own personal

funds the sum of \$9847.14; that all of the disbursements were necessarily made and without making such disbursements it would have been impossible to have brought the claim to a successful conclusion.

The Bureau of Indian Affairs raised objection to several of the items and at the hearing held on April 14, 1965, the matters to which the Bureau had raised objection were discussed, and Mr. Crawford concurred in the disallowance of the following items:

<u>Date</u>	<u>Item</u>	<u>Amount</u>
11/1/53	Stenographic services. Receipt for only \$4.00 rather than \$6.00 claimed	\$ 2.00
11/9/53	Beverages .70 Insurance <u>.60</u>	1.30
11/1953) 1/1954) 2/1954)	(1/3 cost of substitute teacher (for Dr. Taylor 1/3 fare to Minneapolis 1/3 hotel chair	58.33 1.46 .16
6/28-30/1954	Storage of automobile	1.00
5/1/58	Parking	.05
8/13-15/1958	Rubber bands and clips .75 Parking <u>.05</u>	<u>.80</u>
	Total	\$65.10

Accordingly, E. L. Crawford is entitled to the sum of \$9782.04 as reimbursable expenses incurred in the prosecution of plaintiffs' claim, and it will be so ordered.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner