

2. Attorneys' Contracts. Representation of the plaintiff in this docket has been under four approved contracts. The first contract, No. I-1-ind. 42644, dated October 11, 1951, between the Chinook Tribe and Attorneys Frederick W. Post, Malcolm S. McLeod and James E. Sareault, was approved on December 27, 1951, for a period of five years beginning with the date of approval. An agreement dated September 15, 1953, by which Attorneys Post, McLeod and Sareault assigned a ten percent interest in the fees under this contract to Attorney E. L. Crawford was approved on March 9, 1955.

The second contract, Symbol 14-20-0650, No. 761, dated February 21, 1958, between the Chinook Tribe and Attorneys Post, McLeod and Sareault, was approved on February 5, 1959, for a period of ten years beginning December 27, 1956. This contract was terminated at the request of the Chinook Tribe as of sixty days after receipt by Attorney McLeod of an official notice of termination addressed to him on April 8, 1964, by the Area Director, Western Washington Agency, Bureau of Indian Affairs.

Contract Symbol 14-20-0500 No. 2080, dated August 1, 1964, between the Chinook Tribe and Attorneys Jeremiah M. Long and Richard F. Broz, was approved on December 9, 1964, for a period of two years beginning with the date of approval. By letter dated April 19, 1966, these attorneys advised the Chinook Tribe that they desired to terminate the contract and that they waived any claim for compensation for services rendered. Termination of the contract was approved on June 20, 1966, effective as of June 15, 1966.

Contract Symbol 14-20-0500 No. 2723, dated February 28, 1967, between the Chinook Tribe and Attorney E. L. Crawford, was approved on

May 15, 1967, for a period of five years beginning with the date of approval.

3. Contractual Provisions for Compensation and Reimbursement of Expenses. Each of the above-described contracts ^{2/}provides that the attorneys shall receive as compensation for their services a fee not to exceed ten percent of any and all sums recovered. Furthermore, the above-described agreement of September 15, 1953, between Attorney Crawford and Attorneys McLeod, Post and Sareault gave Attorney Crawford a ten percent interest in any fees awarded to the three original attorneys and provided that he should be reimbursed for the expenses of litigation incurred by him in prosecuting the claim.

Each of the contracts provided that the respective contract attorneys should be reimbursed from any judgment recovered by plaintiff for the expenses of litigation incurred in prosecuting the claim. In addition, the contract dated October 11, 1951, between the Chinook Tribe and Attorneys Post, McLeod and Sareault provided that the plaintiff would advance the attorneys \$750.00 toward the expenses of litigation which sum, to the extent advanced, would be deductible from the attorneys' fee. The contract dated February 21, 1958, between the same parties provided that the plaintiff would make a similar advance of \$3,000.00 which sum, to the extent advanced, would be set off against expenses of litigation claimed.

^{2/} The term "contracts" here and hereinafter does not include that contract between the Chinook Tribe and Attorneys Long and Broz which was terminated on the initiative of said attorneys who waived any claims for compensation.

4. Requested Fee and Expenses. The petitions by the claims attorneys request an attorneys' fee in this case in the amount of \$4,869.20, representing ten percent of the amount of the award, to be apportioned among said attorneys in a manner the Commission deems to be just and equitable. At the hearing on these petitions held on July 23, 1974, at Seattle, Washington, Attorneys McLeod, Post and Crawford, and Mr. Donald H. McGavick representing the widow of Attorney Sareault, stipulated to the following apportionment of the requested fee:

- 1) To Attorney Crawford, the sum of \$1,686.92, composed of \$486.92 under the agreement of September 15, 1953, and \$1,200.00 for services performed under his contract, dated February 28, 1967, with the Chinook Tribe.
- 2) To Attorney Post, the sum of \$500.00.
- 3) To Attorney McLeod and the estate of Attorney Sareault, the sum of \$2,682.28, jointly, in equal shares.

Reimbursement of expenses incurred by the contract attorneys in the prosecution of this claim is sought in the following amounts:

| | |
|-----------------------------------|-------------------|
| 1) Attorney Crawford -- | \$2,368.50 |
| 2) Attorney Post -- | 0.00 |
| 3) Attorney McLeod -- | 5,107.39 |
| 4) Estate of Attorney Sareault -- | <u>\$4,527.94</u> |
| Total | \$11,995.50 |

5. Response of the Defendant. The response, dated August 17, 1973, of the Department of Justice to the petitions of the claims attorneys advised the Commission that "[T]his Department takes no position with respect to the allowance of attorneys fees except that the total amount

of the fees should not exceed ten percent of any and all sums recovered for the Chinook Indians in the above proceeding." Enclosed with the response was a letter from the Acting Associate Solicitor, Division of Indian Affairs, Department of the Interior, and a memorandum dated June 27, 1973, from Mr. Newton Edwards who signed the memorandum for the Assistant to the Secretary of the Interior.

The Department's letter of August 17, 1973, refers to the contents of the memorandum prepared by Mr. Edwards as follows:

The memorandum *** contains a history of the applicable tribal claims, attorney contracts and their compensation provisions, and reports the results of a general examination of the petitions requesting reimbursement of expenses. You will note that the memorandum states that Attorney E. L. Crawford did not furnish sufficient information to support his claimed expenses and that these expenses cannot be reconciled with the enclosed records of the Bureau of Indian Affairs. Furthermore, Mr. Edwards states that he does not have sufficient detailed information upon which he can make a recommendation as to the amount of compensation earned by the various attorneys.

In Mr. Edwards' memorandum reference is also made to possible payment of some expenses from tribal money, including expenses for expert testimony and for court reporter's services.

6. Notice to Plaintiff. On August 7 and 11, 1972, notices of the filings of the attorneys' petitions for award of fees and reimbursement of expenses were sent to Mr. Stephen A. Meriwether, Secretary, Chinook Indian Tribe, Inc., Ilwaco, Washington.

By letter dated August 15, 1972, the Chinook Indian Tribe, by Adolph J. Sund, Tribal Chairman, and Stephen A. Meriwether, Tribal Secretary,

responded as follows:

As concerns your letters of August 7 and 11 last, we have made the claims of the messieurs Post, McLeod, and Crawford known to our attorney. We have no doubt that the claims of these attorneys are legitimate and with some merit. We are, however, deeply concerned that the claims of these gentlemen will place a grave burdon [sic] on the final award to the Chinook Tribe. In view of services rendered faithfully and impartially; in view of his efforts in this case from its earliest stages up to its conclusion, we urge the Commission to give first consideration to the claim of E. L. Crawford above all other attorney claims.

* * * * *

Mr. Crawford has worked long and hard for the Chinook claims case at considerable personal expense. Our gratitude and warm personal regards go out to Mr. Crawford. It would be a grave injustice if Mr. Crawford's claims were not given preference over those of other attorneys since the bulk of work occurred under the guidance of Mr. Crawford.

On January 23, 1973, notice of the filing of the attorneys' petitions was sent to Mr. John Kent Elliott, Chairman, The Chinook Tribe and Bands of Indians, Skamokowa, Washington. No reply to this letter was received.

On July 3, 1974, notice of the hearing to be held at Seattle, Washington, on July 23, 1974, on the applications for attorneys' fees and expenses was sent to Mr. John Kent Elliott, Chairman, The Chinook Tribe and Bands of Indians, Skamokowa, Washington, and, on July 5, 1974, notice of said hearing was sent to Mr. Stephen A. Meriwether, Tribal Secretary, Chinook Indian Tribe, Inc., Ilwaco, Washington. No representative of either organization of Chinook Indians attended the hearing held on July 23, 1974.

7. Advances by Plaintiff. The record herein establishes that Attorney Sareault received an advance from the plaintiff in the amount of \$750.00 for expenses of litigation. The record herein does not substantiate that any other advances were made to the contract attorneys. Pursuant to the

terms of the contract of October 11, 1951, between the plaintiff and Attorneys Post, McLeod and Sareault said advance of \$750.00 must be deducted from any fee awarded to the attorneys herein.

8. Conclusion on Attorneys' Fee. On the basis of the entire record in this docket, including the attorneys' contracts, and considering the responsibilities undertaken, the difficult problems of fact and law involved, the time and work involved in the litigation, the contingent nature of the compensation, the award obtained, and all appropriate factors pertinent to the determination of attorneys' fees under the standards established by the Indian Claims Commission Act, the Commission concludes that the claims attorneys have rendered valuable legal services in prosecuting their client's claim and ultimately obtaining a judgment. Under the terms of the contracts and said standards, including those obtaining in the prosecution of similar claims in courts of law, the contract attorneys have earned an attorneys' fee of \$4,869.20, representing ten percent of the award to the plaintiff. Under the terms of the stipulation entered into by the surviving contract attorneys and the representative of the widow of the deceased contract attorney at the hearing of July 23, 1974, on these applications for fees and expenses, which stipulation the Commission hereby approves, the attorneys' gross fee of \$4,869.20, was agreed to be apportioned in the following amounts and percentages among the contract attorneys:

- | | |
|---|--------------------|
| 1) Attorney Crawford -- | \$1,686.92 (34.6%) |
| 2) Attorney Post -- | 500.00 (10.3%) |
| 3) Attorney McLeod and the estate of Attorney Sareault, jointly, in equal shares -- | 2,682.28 (55.1%) |

From the gross award of \$4,869.20, there must be deducted the amount of \$750.00, representing advances for expenses received by the contract attorneys and deductible from the attorneys' fee pursuant to the terms of the October 11, 1951, contract. In the absence of agreement among the contract attorneys regarding the allocation of the \$750.00 reduction among them, the Commission finds that said reduction should be allocated among the attorneys pro-rata. Accordingly, the Commission finds that the contract attorneys and their representatives are entitled to a net attorneys' fee of \$4,119.21 in this docket, to be apportioned among them as follows:

- | | |
|--|--------------------|
| 1) To Attorney Crawford -- | \$1,425.25 (34.6%) |
| 2) To Attorney Post -- | 424.28 (10.3%) |
| 3) To Attorney McLeod and the estate of Attorney Sareault, jointly, in equal shares -- | 2,269.68 (55.1%) |

Payment of the entire fee of \$4,119.21, to the attorney of record, E. L. Crawford, for distribution by him to the claims attorneys and their representatives in accordance with their respective interests will represent payment in full of their claims for compensation for legal services rendered in this docket.

9. Determination of Expenses. The Commission has examined the claims made by Attorneys Crawford and McLeod, and that on behalf of the representative of Attorney Sareault for reimbursement of expenses incurred under this docket during the course of litigation.

The criteria controlling reimbursement of attorneys' expenses are set forth under Section 15 of the Indian Claims Commission Act, 60 Stat. 1049, 1053 (1946); Rule 34b of the Commission's General Rules of Procedure (25 CFR §503.34b, as amended, 39 Fed. Reg. 41173 (1974)); and Commission Policy Statement §102, issued July 15, 1968.

Rule 34b, as amended, specifies that each claimed expense item must be supported by receipts or other evidence of payment except that with respect to expenses incurred in connection with appearances on behalf of the applicant's Indian client in proceedings of record before the Commission where the applicant is unable to supply receipts or other evidence of incurrence or payment of such expenses, they may be allowed in a reasonable amount upon the applicant's affidavit as to their incurrence. Commission Policy Statement §102 provides that the requirement of support by receipts or other evidence of payment may be satisfied by a receipt or any other contemporaneous documentation of incurrence of the claimed expense that would be admissible under the "shop book rule." For small items for which it is not practicable to obtain receipts, the Commission will be disposed to accept the sworn statements of the attorneys but such costs must be itemized and adequately explained. In addition to the required documentation, all travel expense items must be

supported by a clear statement concerning the trip which statement must include the purpose for the travel, the dates and hours of departure and arrival, and the transportation used.

Having examined the applications for reimbursement of expenses, the supporting documentation, and the entire record of expenditures claimed to have been incurred in the prosecution of this claim, the Commission has concluded, as hereinafter explained, that the application of Attorney McLeod for reimbursement of expenses must be denied in its entirety; that the application of the representative of the widow of Attorney Sareault must be denied except with respect to expenditures in the sum of \$24.00; and that the application of Attorney Crawford will be granted since, with certain exceptions described hereinafter, the expenses claimed therein are reasonable and proper expenses of litigation and said application conforms to the Commission's requirements.

With respect to the application of Attorney McLeod, expenses are claimed in an amount totalling \$5,107.39. This total consists of the sum of two non-contemporaneous compilations of expenditures, one totalling \$2,502.49, the other totalling \$1,354.90 (to which is appended copies of receipts totalling \$159.77). By affidavit, Attorney McLeod has also claimed \$1,250.00 in travel expenditures for three trips to Washington, D. C.

Under the Commission's criteria for determining the allowability of reimbursement for expenses of litigation non-contemporaneous compilations of expenditures are not acceptable. Furthermore, travel expense

items, except in connection with appearances of record before the Commission, must be supported by details concerning the trip and its purpose. Mr. McLeod's application fails to satisfy these criteria in any respect.

Attorney Sareault appeared before the Commission at a hearing held on January 7, 8 and 9, 1963, at Seattle, Washington. In connection with his attendance at said hearing Attorney Sareault incurred mileage expenses totalling \$24.00. Reimbursement of this expenditure may be allowed. However, the remaining expenses in the amount of \$4,503.94, for which reimbursement is sought on behalf of the widow of Attorney Sareault must be disallowed for the reason that the application therefor is supported only by non-contemporaneous compilations of the claimed expenditures.

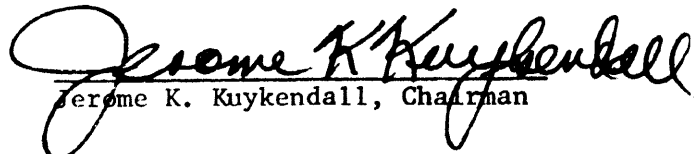
Attorney Crawford has requested reimbursement of expenses incurred in an amount totalling \$2,368.50. These expenditures are supported by Attorney Crawford's diary entries and by some receipts. The diary entries itemize and adequately explain the claimed expenditures. Furthermore, the claimed travel expenditures comply with the requirements of the Commission's Policy Statement §102. In addition, the Commission is satisfied that the claimed expenditures were actually incurred during the course of this litigation. The comments regarding Mr. Crawford's claim for expenditures contained in the memorandum of June 27, 1973, from Newton W. Edwards, supra, do not alter our conclusions.

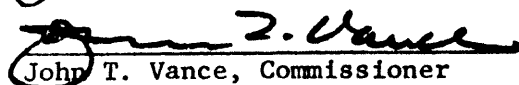
Certain of Attorney Crawford's claimed expenditures enumerated below must, for the reasons stated, be disallowed:

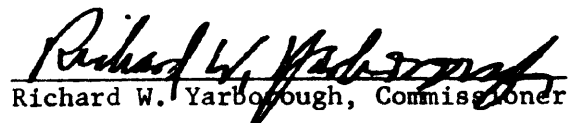
| <u>Dates</u> | <u>Amounts Claimed</u> | <u>Amounts Disallowed</u> | <u>Nature of Expenditure</u> | <u>Reason</u> |
|-----------------------------|------------------------|---------------------------|---|---|
| Nov. 13 to Dec. 15, 1953 | \$302.04 | \$58.33 | Advance to expert witness to pay substitute teacher | Not an expense of litigation |
| Nov. 13 to Dec. 15, 1953 | 302.04 | 0.15 | Rental of hotel chair | " |
| Nov. 13 to Dec. 15, 1953 | 302.04 | 1.46 | Transportation expense -- stopover in Minneapolis | Personal expense |
| Nov. 13 to Dec. 15, 1953 | 302.04 | 6.66 | Advance to expert witness | Not an expense of litigation |
| Aug. 24, 1954 | 4.12 | 4.12 | Photostat of agreement | Not identified as incurred in prosecution of this claim |

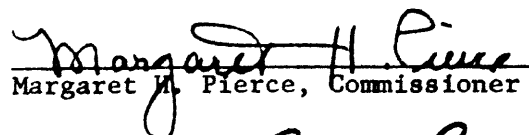
\$70.72 Total Disallowed

The remaining claimed expenditures of Attorney Crawford, in the amount of \$2,297.78, are reasonable and proper expenses of litigation and will therefore be allowed.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner