

# Federal court rules in favor of Osages in trust case

## Damages awarded could reach an estimated \$310 million

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Federal Judge Emily Hewitt

The U.S. Court of Federal Claims has ruled in favor of the Osages again.

Federal Judge Emily Hewitt issued a 95-page opinion Dec. 29 that states the Nation proved in trial that the Bureau of Indian Affairs' failed to collect all the royalties owed from oil leases on the reservation from 1974 to 2000 and that the tribe's estimates of damages were reasonable due to the disarray of the BIA's tribal trust accounting system, according to a prepared release. She also ruled that the tribe's estimates for the government's failure to properly credit interest income to the Osage tribal trust account from 1973 to 1992 were reasonable.

The opinion followed a series of court decisions and a trial held on June 30 and July 1 of last year in Washington, D.C., in which experts for the federal government in tribal trust accounting and oil royalty calculation testified in the 10-year-old case, according to the release. The Nation presented testimony from its oil royalty expert and from Koch Industries, Inc. about oil accounting and pricing. The prices Koch offered for oil in Kansas and Oklahoma in the 1981 to 1990 period were a key issue in the trial, according to the release.

The Nation's 10-year-old trust case seeks an accounting of 140 years of mismanagement of the tribe's oil royalty payments and other alleged malfeasance. There is a total of three Tranches for the Osage trust case. Tranche One is now over.

The Osage Trust Team is made up of Red Eagle, Speaker of the Congress Jerri Jean Branstetter, Osage Minerals Council Chairman Dudley Whitehorn, OMC Councilwoman Cynthia Boone and OMC Councilman Galen Crum.

### **'a source of concern'**

Judge Hewitt not only ruled against the United States but also disapproved of its litigation tactics, according to the release. Its counsel and its oil-royalty expert witness both "appear to have been ready to provide the court with testimony that could have obscured or hidden the corporate affiliate relationship" between two oil companies, a "litigation approach . . . [that] is a source of concern to the court." This is the second time in recent opinions that the Court has disapproved of the United States' litigation tactics, according to the release. In an earlier opinion in 2010, the Court expressed concerns about its delaying tactics.

### **Dollar amount**

Judge Hewitt has not yet announced a specific dollar amount for damages but the Nation and the United States were ordered to file specific damages amounts by Jan. 13. The Nation is expected to file a damages amount of approximately \$310 million, according to the release. This does not include possible damages awards for claims on the remaining claims in the cases – Tranche Two of the case.

Judge Hewitt has asked for scheduling proposals from both sides for Tranche Two of the case and is expected in the near future to set a date for a trial to address those remaining claims in the case, according to the release.

### **Location**

U.S. Court of Federal Claims  
717 Madison Place, NW  
Washington, DC  
United States