

BEFORE THE INDIAN CLAIMS COMMISSION

THE HOPI TRIBE, an Indian Reorganization Act)	
Corporation, suing on its own behalf and)	
as a representative of the Hopi Indians)	
and the Villages of FIRST MESA (consolidated)	
Villages of Walpi, Shitchumovi, and Tewa),)	
MISHONGNOVI, SIPAULAVI, SHUNGOPAVI, ORAIBI,)	
KYAKOTSMOVI, BAKABI, HOTEVILLA, and MOENKOPI,)	
)	
Plaintiff,)	Docket No. 196
)	Count 9
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: January 23, 1974

Appearances:

John S. Boyden, Attorney for Plaintiff in
Docket 196; Wilkinson, Cragun & Barker,
Frances L. Horn, were on the Brief.

Dean K. Dunsmore, with whom was
Assistant Attorney General Wallace H. Johnson,
Attorneys for Defendant.

OPINION OF THE COMMISSION ON DEFENDANT'S MOTION
FOR A MORE DEFINITE STATEMENT

Kuykendall, Chairman, delivered the opinion of the Commission.

This case is before the Commission on the defendant's motion of September 6, 1973, to dismiss the plaintiff's claim for an accounting beyond August 13, 1946, or, in the alternative, that the plaintiff be ordered to provide a more definite statement of the alleged wrongdoings which accrued prior to August 13, 1946, and which continued thereafter.

In support of its motion the defendant asserts, inter alia, that it has accounted to the plaintiff for the period up to June 30, 1951, and that any claims which may have accrued to the plaintiff after August 13, 1946, would be new causes of action not within the jurisdiction of the Commission, that the plaintiff has neither set forth nor specified any claims consisting of such continuing wrongful conduct as would require a supplemental accounting.

In its alternative motion for a more definite statement the defendant points out, that, although it does not agree with the Commission, the Commission nevertheless has held that it has jurisdiction only over those wrongdoings which accrued prior to August 13, 1946, and continued beyond that date, that it is the duty of the plaintiff to specifically allege those facts which show the jurisdiction of the Commission, and that the plaintiff has not done so. Because of this the United States is unable to respond to Exception Number 1 until the plaintiff has with particularity specified those acts of wrongdoing which accrued prior to August 13, 1946, and which continued thereafter.

In its response of September 17, 1973, the plaintiff takes the position that mismanagement of its property, funds, and sources of revenue, if practiced over a period of time, is itself a continuing wrong, and inasmuch as a suit for an accounting based upon mismanagement was timely filed the jurisdiction of this Commission extends to continuing mismanagement, if any, and that such mismanagement

was a continuation of the defendant's previously established policy, in the course of which, it is asserted, the defendant refused to take seriously the obligations thereby imposed.

Alternatively, the plaintiff contends that if the alleged wrongdoing beyond August 13, 1946, consists of a specific type of wrongdoing, then the Commission has jurisdiction to order a complete and up-to-date accounting to establish the continuing nature of such acts.

The plaintiff further contends that the lapse of time between the accrual of its claims and the damages resulting therefrom does not divest the Commission of its jurisdiction. It points out that the Commission may consider, in its determination of offsets chargeable against an award, all gratuities received by the plaintiff from the defendant up to the time of determination of the offsets issue. The plaintiff contends that similarly the Commission may take into consideration all continuing wrongs up to the time it files its judgment.

The act of Congress which created this Commission and defined its jurisdiction is set out in pertinent part as follows:

The Commission shall receive claims for a period of five years after August 13, 1946, and no claim existing before such date but not presented within such period may thereafter be submitted to any court or administrative agency for consideration, nor will such claim thereafter be entertained by the Congress. (60 Stat. 1052, 25 U.S.C. § 70k.)

Jurisdiction of causes of action by Indian tribes against the United States after August 13, 1946, has been vested by the Congress in the United States Court of Claims. (28 U.S.C. 1505.)

The jurisdiction of the Indian Claims Commission under Section 2 of the Indian Claims Commission Act has been determined by the Court of Claims to be "exceedingly broad," Gila River Pima-Maricopa Indians v. United States, 135 Ct. Cl. 180, 185 (1956), 157 Ct. Cl. 941 (1962). Relevant language from the first above quoted Gila River opinion is as follows:

Section 2 of the Indian Claims Commission Act confers on that Commission exceedingly broad jurisdiction to hear and determine claims of Indian tribes, bands and identifiable groups, against the United States, notwithstanding any lapse of time or laches, where such claims arose prior to the date of the passage of that act on August 13, 1946. A claim arising prior to such date would not seem to be cut off where it is a continuing one. The jurisdiction conferred extends to all legal claims which would be otherwise cognizable in the Court of Claims if the claimants were not Indians, and includes in addition claims sounding in tort, claims arising if treaties, agreements, etc., between the United States and the Indians were revised for mutual or unilateral mistake, unconscionable consideration, fraud, duress, and claims arising out of a situation where the dealings of the Government with the Indians were less than fair and honorable. Section 24 of that act confers upon the Court of Claims jurisdiction over legal claims by Indian tribes, etc., against the United States accruing after the date of the act, but does not include therein tort claims, claims based on treaties revised for the grounds stated above, or purely moral claims. In defense of such claims, the Government has all the usual defenses including the statute of limitations and laches.

As a result of the above legislation the Court of Claims acts as an appellate court (section 20) with respect to the Commission's final determinations on claims accruing prior to the passage of the act, and as a trial court with respect to legal claims first accruing subsequent to August 13, 1946. Problems resulting from this arrangement may be illustrated as follows: Where a tribe is suing on a claim involving the recovery of periodic installments of compensation such as rent under a lease, and several of the installments fell due and were unpaid prior to the passage of the Indian Claims Commission Act while others fell due and were unpaid subsequent to that date, the question arises as to whether or not, on a claim therefor filed in the Commission, that body

has authority to render judgment for all such installments of unpaid rent up to the date of its final judgment, or whether its jurisdiction is or should be held to be cut off and limited to rendering judgment for only those installments due prior to August 13, 1946, so that suit for the remaining installments must be brought in the Court of Claims. There is no express provision in the Indian Claims Commission Act one way or the other on this point, nor in the legislative history of the act insofar as we have been able to determine. It is the usual rule that a court once having obtained jurisdiction of the persons and subject matter of a suit, retains such jurisdiction for all purposes including the awarding of all damages accruing up to the date of judgment. This is a good rule and we find nothing that would prevent its application here.

In 1972 this Commission determined its jurisdiction in Fort Peck Indians of the Fort Peck Reservation, Montana v. United States, Docket 184, 28 Ind. Cl. Comm. 171, 174, as follows:

In Exception No. 1 the plaintiff states that the accounting is incomplete, pointing out that the report filed on June 15, 1966, shows only the transactions respecting plaintiff's funds up to June 30, 1951. Defendant argues that the Indian Claims Commission Act, 25 U.S.C. 70a (1970) bars an up to date accounting. The Court of Claims recently answered this objection in Southern Ute Tribe v. United States, 191 Ct. Cl. 1, 423 F. 2d 346 (1970), rev'd on other grounds, 402 U.S. 159 (1971) (aff'g Docket 328, 17 Ind. Cl. Comm. 28 (1966)), affirming this Commission's determination that it had jurisdiction to order the Government to produce an up to date accounting. Specifically, the court stated:

. . . 25 U.S.C. 70a (1964) on its face bars the Commission from considering any claims accruing after August 13, 1946. In a previous interpretation of this section, however, we have said that where the Government's initial wrongdoing giving rise to a claim accruing before August 13, 1946, but continued past this time, the Indian Claims Commission was free to determine the extent of its jurisdiction in framing an award. Gila River Pima-Maricopa Indians, et al. v. United States, 135 Ct. Cl. 180, 186 (1956) 157 Ct. Cl. 941 (1962). We expressed agreement in that case with the established principle that "a court once having obtained jurisdiction of the persons and

subject matter of a suit, retains such jurisdiction for all purposes including the awarding of all damages accruing up to the date of judgment." We hereby reaffirm our adherence to this principle and hold the Commission correctly ordered an up to date accounting for continuing Government wrongdoings which predated and postdated the statutory time bar. (191 Ct. Cl. at 31.)

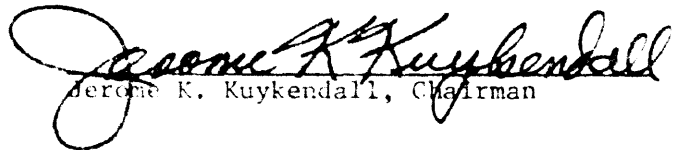
We have not overlooked the fact that, on appeal, the Supreme Court reversed the Court of Claims and dismissed Southern Ute, supra, on the ground that the doctrine of res judicata was applicable. Nevertheless, we have no reason to believe that the Court of Claims would not reach the same result if the same question were again presented to it. In any event, Gila River Pima-Maricopa Indians v. United States, 135 Ct. Cl. 180, 186 (1956), 157 Ct. Cl. 941 (1962), upon which the Court of Claims relied in Southern Ute, supra, still stands and supports the conclusion we reach. Accordingly, the Commission has jurisdiction to order the production of further data regarding wrongdoings accruing before August 13, 1946, and continuing thereafter. If it is determined that the defendant was guilty of pre-1946 wrongdoings which have continued, the United States will be ordered to supplement its accounting with respect to those matters and accounts.

In the case before us now the plaintiff has filed numerous exceptions to the accounts filed by the defendant. The defendant has responded to those exceptions with a motion to dismiss or for a more definite statement.

This Commission is mindful of the limitations imposed by the Congress upon its jurisdiction with respect to the statutory time bar. We are sensitive to the necessity that the authority exercised by us must be predicated upon the most careful scrutiny of those issues which may be shown to emanate from a pattern or practice of conduct over which our jurisdiction is clear.

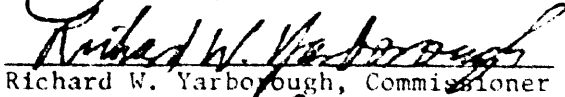
Our jurisdiction to order the defendant to account depends upon finding a course of wrongful action which was still going on at the cut off date. Blackfeet and Gros Ventre Tribes and Fort Belknap Indian Community v. United States, Dockets 279-C and 250-A, 32 Ind. Cl. Comm. 65 (1973).


The defendant has provided the plaintiff with an accounting for the period of time up to June 30, 1951. The statute provides that the United States shall make available to the attorney for all groups or tribes of Indians, full and free access to such records or documents as may be useful to said attorney in the preparation of claims for filing with this Commission. (60 Stat. 1049, Sec. 14.) The burden of proof remains with the plaintiff to assemble and present evidence to warrant an examination by us to determine whether wrongdoing occurred, when it occurred, and whether it may be found to be a continuing wrong which accrued within the statutory limits circumscribed by the Congress for the jurisdiction of this Commission.

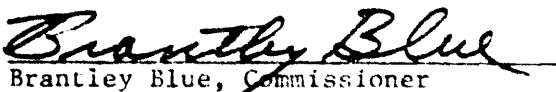

Jerome K. Kuykendall, Chairman

We concur:


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner