

BEFORE THE INDIAN CLAIMS COMMISSION

GILA RIVER PIMA-MARICOPA)	
INDIAN COMMUNITY, et al.,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 236-N
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: November 22, 1974

Appearances:

Z. Simpson Cox, Attorney for Plaintiff.

David M. Marshall, and Alexander J. Pires, Jr.,
with whom was Assistant Attorney General
Kent Frizzel, Attorneys for Defendant.

OPINION OF THE COMMISSION

Yarborough, Commissioner, delivered the opinion of the Commission.

This docket contains plaintiff's claim for a general accounting of the defendant's management of money and other property held in trust for the plaintiff by the defendant. In response to the plaintiff's petition, the defendant filed an accounting report prepared by the General Services Administration. The plaintiff filed exceptions to the report on November 9, 1972. On January 5, 1973, the defendant responded to the plaintiff's exceptions, denying generally each of the plaintiff's allegations. In this opinion the Commission will examine the plaintiff's exceptions in light of our decisions in Blackfeet and Gros Ventre Tribes v. United

States, Dockets 279-C and 250-A, 32 Ind. Cl. Comm. 65 (1973), Te-Moak Bands of Western Shoshone Indians v. United States, Dockets 326-A and 22-G, 31 Ind. Cl. Comm. 427 (1973), and Confederated Tribes of the Goshute Reservation v. United States, Docket 326-B, 33 Ind. Cl. Comm. 130 (1974).

Exception No. 1. The plaintiff's first exception alleges in general terms that the defendant has failed to furnish an adequate up-to-date accounting. This exception contains several parts, which are more specific, and are discussed separately below. (The designations are the plaintiff's.)

Exception 1-1A. This exception alleges that the defendant has failed to account for the plaintiff's rights to use the waters of the Gila and Salt Rivers. The plaintiff demands that the defendant restate its account to show the full nature and extent of the plaintiff's water rights.

The plaintiff's water rights, and the defendant's alleged failure to protect those rights, are the subjects of the suits in Dockets 236-C (concerning Gila River water rights) and 236-D (concerning Salt River water rights). The plaintiff's water claims can be most effectively dealt with in Dockets 236-C and 236-D, rather than as an exception to the defendant's general accounting report. This part of Exception 1 will therefore be dismissed.

Exception 1-1B. This exception alleges that the defendant has failed to account for all real property held in trust by the defendant for the plaintiff. The plaintiff demands that the defendant restate its account to include this property.

The plaintiff does not indicate the nature of the property to which it is referring. Rather, it states, "The full nature and extent of such other real property and Government's administration thereof is known to Government." This part of Exception 1 is too vague to permit the defendant to respond to it. Unless it is made more specific, it will be subject to a motion by the defendant to dismiss.

Exception 1-1C. This exception alleges that the defendant has failed to account for all monies due or payable to the plaintiff. The plaintiff demands that the defendant restate its account to show all such monies.

With the exception of several specific allegations made in the statement in support of the exception, the plaintiff does not indicate the extent or source of the monies to which it is referring. The plaintiff states, "Government has knowledge of the full nature and extent of the monies constituting the trust res" With the exception of the specific allegations, this part of Exception 1 is too vague to permit the defendant to respond to it, and, unless made more specific, will be subject to the defendant's motion to dismiss.

The first specific allegation in support of this exception is that the defendant has failed to account for \$275,000 which it received in 1945 from Phelps-Dodge Corporation in settlement of the company's wrongful use of the plaintiff's Gila River water. The defendant denies that it has failed to account for all monies which it has received on behalf of the plaintiff. This allegation therefore presents an issue which is ripe for trial.

The first specific allegation also charges, as do the second, third, and fourth specific allegations, that the defendant has permitted mining companies to wrongfully use Gila River water, and that the plaintiff has been injured in an aggregate amount in excess of 21 million dollars. These allegations relate to the plaintiff's Gila River water rights claim, and thus should be handled in Docket 236-C.

The fifth specific allegation is that the defendant has failed to credit the plaintiff with income from the operation of an experimental farm. There is no indication in the record that the experimental farm in fact produced any income. The plaintiff should use discovery methods to ascertain whether there was any income from the farming operation. See Indian Claims Commission General Rules of Procedure, 25 C. F. R. § 503.14.

The sixth specific allegation is that the defendant has failed to account for the plaintiff's ownership interest in the assets of the Salt River Irrigation Project. The plaintiff states that its funds were used to construct the project, and that it is entitled to at least 4 percent ownership in all of the property and property rights of the project, and an accounting of monies due therefrom. The plaintiff should rely on discovery methods to determine whether in fact it has any trust property in the Salt River Project. See Rules of Procedure, supra.

Exception 1-1D. This exception alleges that the defendant has failed to account for other trust property or property rights held by the defendant. The plaintiff requests that the defendant restate its account to include this property.

With the exception of a single specific allegation, this part of Exception 1 is too vague and, if not made more specific, will be subject to a defense motion to dismiss. The specific allegation is that the defendant has used for its own purposes "1,000' horsepower of electricity which was part of the trust res of which Indians were the beneficial owners." The plaintiff should use discovery methods to ascertain whether the defendant held in trust its right to use electricity. See Rules of Procedure, supra.

Exception 1-2. This exception alleges that the defendant has failed to show the exact nature of the expenditures for which it claims credit in the accounting report. The plaintiff requests that the defendant restate its account to show in detail the exact nature and amount of each disbursement, and furnish the plaintiff with a voucher or other document to support each claimed expenditure.

This exception is in effect a request that the defendant supplement the disbursement portions of its accounting. As the Commission indicated in Blackfeet, supra, 32 Ind. Cl. Comm. at 85, it will not ordinarily order a supplemental accounting for disbursements. This portion of Exception 1 will be dismissed.

Exception 1-3. This exception alleges that the defendant has failed to account for "[a]ctions taken by Government in its administration of the trust res." The plaintiff demands that the defendant restate its account to show such actions.

This exception is too vague to permit the defendant to respond to it. Unless made more specific, it will be subject to a motion by the defendant to dismiss.

Exception 1-4. This exception alleges that the defendant has failed to account for the full trust period from 1859 to date. The plaintiff demands that the defendant restate its account to cover the full trust period.

The General Services Administration report covers the period from 1883 to June 30, 1951. The 1883 date is evidently the earliest that funds appeared in the plaintiff's Indian Moneys, Proceeds of Labor (IMPL) account. To recover for the period prior to 1883, the plaintiff must show either that the defendant held its funds in trust prior to that time, or undertook the use of its property prior to that time. This issue is ripe for trial.

In Blackfeet, supra, 32 Ind. Cl. Comm. at 74-75, the Commission indicated that it has no jurisdiction to order an accounting for the period after August 13, 1946, without a showing of a wrongdoing by the defendant beginning prior to that date and continuing thereafter. The plaintiff has not yet established that it is entitled to a post-1946 accounting.

Exception No. 2. Exception 2 alleges that the defendant's accounting report is confusing and unintelligible to the plaintiff. With the exception of certain more specific allegations contained in the supporting statement, all of which are incorporated by reference into Exception 10,

this exception is too vague to permit the defendant to respond to it. Unless it is made more specific, it will be subject to a motion by the defendant to dismiss.

Exception No. 3. This exception alleges that the defendant has failed to communicate to the plaintiff all material facts "in connection with its administration of the trust," including transactions on its own account, and has failed to establish that it fulfilled its duty to deal fairly with the plaintiff.

It is unclear exactly what the plaintiff is requesting in this exception. The exception is too vague to permit the defendant to respond to it, and unless it is made more specific, it will be subject to a motion by the defendant to dismiss.

Exception No. 4. This exception alleges that the defendant has failed to establish that it exercised the requisite care and skill in the handling of the plaintiff's property and property rights. The plaintiff demands that the defendant restate its account to show the care and skill it actually exercised, and to show what the extent of the trust property would have been had the defendant exercised the proper care and skill.

This exception is too vague to permit the defendant to respond to it. It is impossible to determine exactly what the plaintiff is asking for. Unless it is made more specific, this exception will be subject to a motion to dismiss by the defendant.

Exception No. 5. This exception alleges that the defendant has failed to account for the plaintiff's property and money, other than those funds which were deposited in the Treasury. The plaintiff requests that the accounting be restated to show all of the property held in trust by the defendant, the cash receipts that the property generated, and the Government's actions in its administration of the property.

The supporting statement indicates that the plaintiff is seeking two things in Exception 5: (1) an accounting for property other than money; (2) a more detailed accounting for receipts other than appropriations.

In Blackfeet, the Commission ruled that the defendant is required to account for trust property other than money when it has undertaken to permit a third party to use trust land or exploit trust natural resources, or has done so itself. 32 Ind. Cl. Comm. at 78. The GSA report in this docket indicates that the defendant has in fact made such undertakings. In Statements No. 7 and No. 8, pages 15 through 18, and statements No. 13 through 17, pages 62 through 67, such items as "Agricultural lease rentals," "Grazing and trespass fees," "Hunting and trapping permits," "Mineral leases," "Pasturage," and various rights of way, indicate that the Government has allowed third parties to use the plaintiff's land and resources. In Statements No. 12 and No. 13, pages 61 through 63, and statement No. 17, page 67, such items as "War Relocation Authority: Rent of Camp Sites," and "War Relocation Authority: Rent of fields," indicate that the Government itself has made use of the plaintiff's property. The plaintiff is

thus entitled to a property accounting. We shall order the defendant to supply a property accounting which conforms with the standards set down in Blackfeet, supra, at 82-83.

In Blackfeet, in which the defendant, in accounting for receipts, presented only a list of deposit warrants and bulk figures collected from various sources over the entire life of the fund, the Commission ordered that the defendant make a more detailed accounting. 32 Ind. Cl. Comm. at 92. In this docket the defendant's accounting for receipts again consists of only lists of warrants for the various funds (Part III of the report), and bulk figures of income from various sources over the entire period of the accounting (Statements No. 7, 8, 10, 12-17). The plaintiff is therefore entitled to receive a more detailed accounting of receipts from the defendant. We shall order the defendant to supplement its accounting with respect to receipts to conform to the standards set down in Blackfeet, supra, at 92-93.

Exception No. 6. This exception alleges that the defendant has failed to establish that it fulfilled its duty to use reasonable care and skill to make the plaintiff's property productive. The plaintiff requests that the defendant restate its account to show all income which was, or could have been, received from the plaintiff's trust property.

In Blackfeet, 32 Ind. Cl. Comm. at 77, the Commission indicated that the Government has no general obligation to make trust property productive. This obligation arises only when the defendant undertakes to permit third parties to use the plaintiff's property or does so itself. As indicated in the discussion of Exception 5, above, the

defendant has in fact made such undertakings. However, all the information the plaintiff is entitled to under this exception will appear in the supplemental accountings ordered for Exception 5. Exception 6, therefore, will be dismissed.

Exception No. 7. This exception alleges that the defendant's accounting report fails to show credit for interest which should have accrued on the plaintiff's IMPL funds and other funds. The plaintiff requests that the defendant restate its account to reflect the proper credits for interest. The defendant denies any obligation to pay interest on any of the plaintiff's money, other than that already reflected in the accounting report.

In Te-Moak, supra, 31 Ind. Cl. Comm. 427, the Commission ruled that under the Act of September 11, 1841, 25 Stat. 465, the Government was obligated to make its Indian trust funds productive. It ruled specifically that this duty extended to IMPL funds.

The funds covered in Part II, Section A, of the GSA report are IMPL funds. The funds covered in Part II, Section B, and Part II, Section C, of the report were not treated by the defendant as IMPL funds, and it is not clear whether they were in fact trust funds. The question whether the defendant was obligated to invest these funds is ripe for briefing.

Exception No. 8. This exception alleges that the defendant has failed to provide sufficient information to enable the plaintiff to determine whether disbursements were always made from non-interest-bearing, or lowest interest-bearing, funds. The plaintiff requests that the defendant restate its accounts to show this information.

Any losses that the plaintiff may have sustained from reverse spending can be determined from information already in the accounting report. See Blackfeet, 32 Ind. Cl. Comm. at 90. The request that the accounts be restated will therefore be denied.

Exception No. 9. This exception alleges that the defendant has failed to render an up-to-date accounting, and requests that the defendant restate its account to cover the trust period to date.

This exception raises the issue previously raised by the plaintiff in Exception 1-4. It will be treated the same way. Unless the plaintiff can show that there was a wrongdoing transcending the 1946 jurisdictional cutoff date, it is not entitled to additional accounting under this exception.

Exception No. 10. This exception alleges that in the accounting report the defendant credits itself with expenditures of funds which were not made for the benefit of the plaintiff. The plaintiff requests that all disbursements claimed in the accounting report be disallowed.

This is the plaintiff's major substantive exception. In its supporting statement, and the supporting statement to Exception 2, which is incorporated by reference, the plaintiff excepts to the entire accounting report on an item-by-item basis. The issues raised in this exception are ready for trial.

Exception No. 11. In this exception the plaintiff alleges that the defendant has failed to account for the disloyalty and defalcations of

its agents. The plaintiff requests that the defendant restate its account to reflect reimbursement to the plaintiff for any defalcation of its agents.

In its supporting statement, the plaintiff specifically alleges that one J. B. Alexander, who was Superintendent of the Pima School from 1902 to 1911, embezzled some of the plaintiff's funds. Support for this allegation is contained in plaintiff's Exhibits 11, 12, 13, 14, and 15 in Docket 235, of which the Commission takes judicial notice.

In Goshute, supra, 33 Ind. Cl. Comm. at 139, the Commission ruled that where there is evidence of misappropriation of a plaintiff's property by an agent of the defendant, the plaintiff is entitled to proof of delivery of the disbursements claimed by the defendant.

In this docket plaintiff is entitled to proof of delivery of the items listed in the accounting report for the years that Alexander served as Superintendent, to establish that the defendant is not claiming credit for any item or service that Alexander did not in fact deliver to the plaintiff. We shall order the defendant to produce vouchers, reports, or other proof of delivery of goods and performance of services for this period.

Exception No. 12. This exception alleges that the defendant has failed to account for the plaintiff's funds which it handled. The plaintiff requests that the bulk of the credits claimed by the defendant in the accounting report be disallowed.

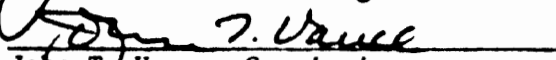
This exception is too vague to permit the defendant to respond to it. Unless it is made more specific, it will be subject to a motion by the defendant to dismiss.

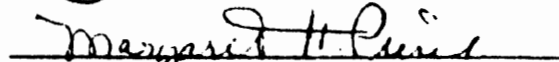
The Commission's experience with other accounting cases has indicated that conferences of the attorneys and accountants for the parties, a Commissioner, and members of the Commission's staff, will often expedite the adjudication of the claim. We shall therefore order the parties to arrange for such a conference, to be held before January 31, 1975.


Richard W. Yarborough, Commissioner

We concur:


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner