

BEFORE THE INDIAN CLAIMS COMMISSION

THE NAVAJO TRIBE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Docket Nos. 69, 299 and 353
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: January 23, 1975

Appearances:

William C. Schaab, Attorney for the Plaintiff.

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

OPINION OF THE COMMISSION

Kuykendall, Chairman, delivered the opinion of the Commission.

The Commission has before it plaintiff's motion of July 1, 1974, to amend the petitions in Dockets 69, 299 and 353, defendant's response thereto, and plaintiff's reply to the response. In addition, we have before us defendant's motion for final judgment, and plaintiff's response. Since these motions deal with related issues, they will be decided together.

Plaintiff originally asserted eight claims for relief in its petition in Docket 69, which was filed on July 11, 1950. Each claim contained allegations of certain facts and wrongdoings, and each was

followed by a paragraph stating plaintiff's legal conclusions arising from the preceding allegations. Claims 1 through 6 and claim 8 pertain to various treaties and agreements between the parties which were concluded in the nineteenth century. Claim 7 is a request for a general <sup>1/</sup> accounting.

In an amended petition, filed October 1, 1969, plaintiff deleted certain of the conclusory paragraphs of its original petition, and stated that it was thereby withdrawing from consideration claims 1 through 6 and claim 8. However, it did not delete any of the allegations of fact supporting the claims.

Plaintiff's motion to amend which is now before us was filed following a change of counsel for plaintiff in September 1973. This motion proposes to reformulate the conclusory paragraphs of claims 1 through 6 of the original petition and it seeks permission to amend the seventh claim by adding thereto a prayer for supplementation of defendant's 1961 accounting report. Plaintiff also requests permission to amend the petitions in all three dockets by including a request that defendant's accounting report be extended beyond August 13, 1946, as to wrongs occurring before that date and continuing after it.

PLAINTIFF'S MOTION TO REFORMULATE CLAIMS 1 THROUGH 6

Defendant contends that as a result of plaintiff's amended petition of 1969, the proposed reformulated claims have nothing to which they

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<sup>1/</sup> Since Dockets 299 and 353 also present accounting claims, and defendant filed one accounting report for all three dockets, we consolidated the dockets. 31 Ind. Cl. Comm. 40 (1973). For a history of the dockets see our discussion therein.

can relate back, and argues that as a consequence plaintiff's motion to amend must be denied. However, as we have observed above, plaintiff's first amended petition, which purported to withdraw seven of plaintiff's claims, <sup>2/</sup> did not delete the allegations of fact which were the substance of those claims. Moreover, plaintiff's seventh claim, which clearly remained after the amended petition of 1969 was filed, stated that plaintiff "restates and reaffirms each and every allegation of fact" of the original petition.

Therefore, since plaintiff's proposed reformulated claims are based on allegations of fact which have never been withdrawn, we will grant plaintiff's motion of July 1, 1974, to amend the petitions.

#### DEFENDANT'S MOTION FOR FINAL JUDGMENT

Defendant's motion for dismissal of claims 1 through 6 and claim 8 in Docket 69 is grounded on plaintiff's purported withdrawal of these claims by the filing of its amended petition in 1969.

The newly amended petition which we are permitting to be filed will supersede the 1969 amended petition which is the petition to which defendant's motion is directed. For this reason, as well as the reasons set forth above for granting plaintiff's instant motion to reformulate its claims, we will deny defendant's motion for final judgment as to the claims 1 through 6 and claim 8.

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<sup>2/</sup> The attorney contract in effect with the Navajo Tribe at the time of the amended petition of 1969 required that any adjustment of plaintiff's claims by plaintiff's attorneys would be subject to the approval of the tribe. The record does not indicate that this requirement, which would presumably be applicable to an amendment withdrawing several claims, was met.

PLAINTIFF'S MOTION TO AMEND SEVENTH CLAIM

This motion requests permission to amend the seventh claim in Docket 69 by adding a prayer that further information be supplied in the accounting report. Defendant's response to plaintiff's motion does not address itself to this issue.

Plaintiff's motion is not in accord with the proper procedure in accounting cases. See, e.g., Blackfeet and Gros Ventre Tribes v. United States, Dockets 279-C and 250-A, 32 Ind. Cl. Comm. 65 (1973), and cases cited therein; Sioux Tribe v. United States, Docket 114 et al., 12 Ind. Cl. Comm. 541 (1963). After defendant has filed its accounting report, amendments to plaintiff's petition are usually no longer necessary. Ft. Peck Indians v. United States, Docket 184, 34 Ind. Cl. Comm. 24, 55 (1974).

The appropriate procedure is for plaintiff to file amended or supplemental exceptions to defendant's accounting report, or to move for a supplemental accounting. See, e.g., Sioux Tribe v. United States, Docket 119, 34 Ind. Cl. Comm. 230 (1974) (discussions of exceptions No. 3 and No. 13); Blackfeet and Gros Ventre Tribes, supra, at 67. Plaintiff has already indicated its intention of filing supplemental exceptions to the accounting. We therefore will deny plaintiff's motion. We further discuss below, the matter of supplemental accountings.

PLAINTIFF'S MOTION FOR POST-1946 ACCOUNTING

Finally, plaintiff requests an amendment which would contain a request for a supplemental accounting in all three dockets from August 13, 1946, to date. As we have noted above, such a motion is not now appropriate.

Furthermore this question was raised by plaintiff previously herein, and has been discussed and disposed of by the Commission. See 31 Ind. Cl. Comm. at 53. As we stated there, the United States will be ordered to supplement its accounting beyond August 13, 1946, only after it has been disclosed that defendant was guilty of pre-1946 wrongdoings which continued after that date.

For the above reasons plaintiff's motion to amend the petitions in all three dockets so that they include requests for an accounting from August 13, 1946, to date will be denied without prejudice.

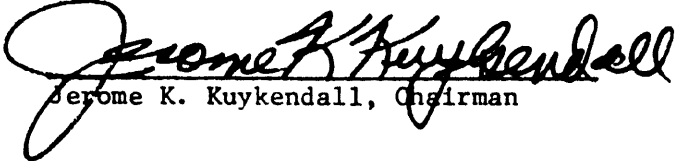
FUTURE PROCEEDINGS

Defendant has included in its response to plaintiff's motion a request that plaintiff be precluded from filing further exceptions to the accounting report. Defendant apparently has in mind a motion filed by plaintiff on December 17, 1973, which requested six months to file supplemental exceptions. None have yet been filed.

Since present counsel for plaintiff now has had adequate time to become familiar with these dockets and the applicable law, he should be able to act promptly. We will therefore grant plaintiff until February 19,

1975, within which to file any amended or supplemental exceptions to defendant's accounting report.

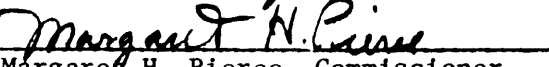
Plaintiff's claims 1 through 6, and claim 8, in Docket 69 are not accounting matters and they therefore will be separated from the consolidated accounting claims in Dockets 69, 299 and 353.

  
Jerome K. Kuykendall, Chairman

We concur:

  
John T. Vance, Commissioner

  
Richard W. Yarborough, Commissioner

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner