

BEFORE THE INDIAN CLAIMS COMMISSION

THE PAPAGO TRIBE OF ARIZONA,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 102
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: January 23, 1975

Appearances:

Royal D. Marks, Attorney for the plaintiff;
Marks and Marks and Arthur Lazarus, Jr.,
were on the briefs.

MaryEllen A. Brown, with whom was Assistant
Attorney General Wallace H. Johnson, Attorneys
for defendant.

OPINION ON MOTION FOR SUMMARY JUDGMENT

Yarborough, Commissioner, delivered the opinion of the Commission.

This accounting action is now before the Commission on defendant's motion for summary judgment, and plaintiff's response thereto. Defendant's sole ground for its motion is the failure of the plaintiff to file any exceptions to the supplemental accounting report submitted by defendant. We find defendant's motion to be without merit and it will be denied for the reasons detailed below.

On July 24, 1970, defendant filed its original accounting in this docket. In December of the same year, plaintiff filed twelve detailed exceptions to this report. Defendant responded to these exceptions in

April of 1971. At that point the issues were drawn and the case ready to proceed according to the guidelines we have established for accounting cases. Sioux Tribe v. United States, Dockets 114, et al., 12 Ind. Cl. Comm. 541, 549-50 (1963). Subsequently, in response to a motion by plaintiff we ordered defendant to supplement its accounting report in certain areas (pertaining to exceptions 2, 3, 5 and 6) in which it was deficient. 26 Ind. Cl. Comm. 365 (1971). On June 21, 1974, defendant filed its supplemental accounting. Plaintiff has filed no additional exceptions to this report.

Defendant argues that when it filed its supplemental accounting plaintiff then had the burden, pursuant to Sioux, supra, of filing exceptions thereto. Defendant maintains that since plaintiff has failed to file exceptions to the supplemental accounting there are no issues of fact to be tried, and defendant is entitled to summary judgment.

Plaintiff states in its response to defendant's motion that the data in the supplemental accounting supports the validity of the pertinent exceptions and provides the information the parties need to proceed to trial.

The issues in this case were established when plaintiff filed its written exceptions in 1970. The supplemental accounting was ordered because defendant had failed to provide an accounting in such detail that it might be readily ascertained whether plaintiff's funds were properly managed as to certain exceptions. Defendant does not take the

position that the production of the report in itself answers plaintiff's exceptions, and we do not believe that that position could be maintained. There is no basis, in Sioux or elsewhere, for requiring plaintiff to file additional exceptions to defendant's supplemental accounting report. We concur with plaintiff that the supplemental accounting provides the information necessary to proceed to trial.

Accordingly, defendant's motion for summary judgment will be denied, and the case will proceed to pre-trial proceedings.

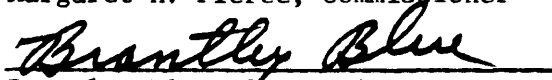

Richard W. Yarborough, Commissioner

We Concur:


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner