

BEFORE THE INDIAN CLAIMS COMMISSION

THE HOPI TRIBE,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 196
)	Count 9
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: March 13, 1975

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 PLAINTIFF'S MOTION TO FILE A MORE DEFINITE STATEMENT

Kuykendall, Chairman, delivered the opinion of the Commission.

This case is before the Commission on plaintiff's motion to file, out of time, a more definite statement of continuing wrongs, pursuant to our previous order. The defendant having heretofore filed pleadings urging that the plaintiff be ordered to file a more definite statement, now objects to filing of the same on the grounds that there is pending in the Court of Claims, an appeal filed by plaintiff from our determination on the title phase of this case and that the Commission has, by reason of the appeal, been divested of jurisdiction in this matter.

The sequence of events which framed the issue before us is as follows:

On June 29, 1970, the Commission entered an interlocutory order herein relating to and determining the issue of aboriginal title and dates of extinguishment thereof, 23 Ind. Cl. Comm. 277. On August 28, 1970, the Hopi plaintiff filed a motion requesting a further hearing on the dates of taking, a rehearing and an amendment of findings. Thereafter on April 28, 1971, the Commission granted the Hopi plaintiff a rehearing limited solely to the question of the "date(s)" of taking of the Hopi aboriginal land. Following the rehearing on May 22, 1972, the Commission entered an opinion and order on July 9, 1973, denying the Hopi plaintiff's request to amend the Commission's previous findings of fact with respect to the extent of the Hopi aboriginal holdings and the "taking" dates thereof, 31 Ind. Cl. Comm. 16.

On January 23, 1974, the Commission entered an order with respect to Count 9 of Docket 196, requiring that the plaintiff file a statement containing specific allegations of those wrongful acts which occurred prior to August 13, 1946, and which continued thereafter.

On February 19, 1974, the plaintiff filed a motion for clarification of the Commission's order of January 23, 1974, and for an order limiting its effect. The defendant filed its response in opposition on February 28, 1974, in which it requested that plaintiff's motion be denied and that the plaintiff be ordered to comply with the previous order of the Commission.

On March 8, 1974, plaintiff filed a motion for enlargement of time in which to reply to defendant's response of February 28, 1974. On March 27, 1974, the Commission entered an order permitting the filing of the reply as of March 19, 1974.

On April 23, 1974, plaintiff filed a Notice of Appeal from the Commission's order of June 29, 1970, dealing with aboriginal title.

On May 1, 1974, the Commission entered an order denying the motion of plaintiff for clarification of the Commission order of January 23, 1974, and ordered that "plaintiff shall on or before the 1st day of July 1974 file a statement alleging with particularity those wrongful acts which occurred prior to August 13, 1946, and which continued thereafter."

On May 23, 1974, plaintiff's appeal from our order of June 29, 1970 was docketed in the Court of Claims as Appeal No. 13-74. Thereafter the defendant moved to dismiss the appeal as untimely and on September 13, 1974, the Court of Claims denied that motion.

On October 10, 1974, plaintiff moved the Commission for leave to file out of time the statement, which pursuant to our order of May 1, 1974, was to have been filed no later than July 1, 1974. On October 23, 1974, the defendant objected to plaintiff's motion on grounds that the Commission has been divested of its jurisdiction in this matter by reason of the pendency of the appeal.

The notice of appeal filed in this case avers specifically that the appeal is taken from those parts of the interlocutory order and determination of this Commission, of June 29, 1970, which denied the claim

of the Hopi Tribe to certain land and determined that Hopi Indian title to other described land was extinguished on the dates and by the means set out in that opinion.

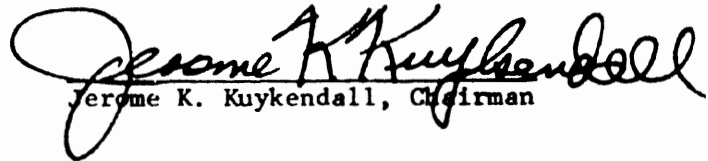
The interlocutory order entered by the Commission on June 29, 1970, further provides "that this case shall proceed to a determination of the acreage and December 16, 1882 fair market value of the lands described in the Commission's Finding of fact 20, lying outside of the boundaries of the 1882 Executive Order Reservation, the June 1937 fair market value of the 1,868,364 acres within the 1882 Executive Order Reservation lying outside the boundaries of "land management district 6", and all other issues bearing upon the question of the defendant's liability to the Hopi Tribe.

The plaintiff has appealed our determination concerning land title, However, Count 9 of the petition in this case seeks an accounting of plaintiff's funds in the Treasury, the management thereof, and revenues received through leasing, mining or rights of way on plaintiff's land, and the dates and nature of all transactions producing funds which were deposited in plaintiff's principal account and deductions from such accounts by defendant.

It is clear that the issues raised by Count 9 of the petition are not as of this date ripe for determination by the Commission, nor are they incorporated in the appeal which has been filed in the Court of Claims. It follows, therefore, that the Commission has retained jurisdiction over the issues raised by Count 9.

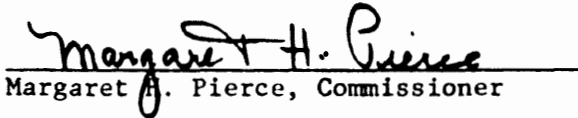
Accordingly, we will grant the motion of the plaintiff for leave to file a more definite statement of continuing wrongs and grant the defendant sixty days from the date of this order to respond to plaintiff's more definite statement of continuing wrongs, to plaintiff's exceptions and to the motion of plaintiff requiring defendant to supplement its accounting report.

Concurring:


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret J. Pierce, Commissioner


Brantley Blue, Commissioner