

BEFORE THE INDIAN CLAIMS COMMISSION

THE LIPAN APACHE TRIBE, THE MESCALERO)
 APACHE TRIBE, et al.,)
)
 Plaintiffs,)
)
 THE PUEBLO DE SAN ANTONIO DE LA YSLETA)
 DEL SUR, AND THE PIROS, MANSOS AND THE)
 SUMAS TRIBES, AND THE PUEBLO OF THE)
 TIGUA INDIAN COMMUNITY,)
)
 Intervenors,)
)
 THE TONKAWA TRIBE OF INDIANS OF OKLAHOMA,)
 amalgamated with and successors in interest)
 to the TEXAS TONKAWA TRIBE and the TEXAS)
 LIPAN TRIBE, and the TEXAS KARANKAWA TRIBE,)
)
 Second Intervenors,)
)
 v.)
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Docket No. 22-C

Decided: February 19, 1976

Appearances:

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

OPINION OF THE COMMISSION

Blue, Commissioner, delivered the opinion of the Commission.

On February 14, 1975, the Pueblo de San Antonio de la Ysleta del Sur,
 on behalf of the Piros, Mansos, Sumas and Tigua Indian Community,
 hereafter referred to as the Tigua, intervenors in Docket 22-C, filed a
 motion to amend and supplement the order of the Commission granting in

part the defendant's motion to dismiss applications to intervene. The procedural history of this case indicates that the movants filed a petition to intervene in Docket 22-C on May 20, 1969, which was granted on November 5, 1969, Lipan Apache Tribe v. United States, 22 Ind. Cl. Comm. 1. On January 15, 1975, upon defendant's motion, the Commission's order of November 5, 1969, supra, was in part vacated, and the petition to intervene by the Pueblo de San Antonio de la Ysleta del Sur, et al., was denied, 35 Ind. Cl. Comm. 302. On February 14, 1975, the instant motion was filed pursuant to Sec. 33 of the Commission's General Rules of Procedures. 25 C.F.R. § 502.33.

Movants seek to have the Commission amend its holding of law and findings of fact to indicate that the Tiguas had an absolute right to notice of the Indian Claims Commission Act and that they, in fact, had not received notice of the Act's existence. The Commission is unable to state with certainty that the Tiguas received notice as required by the Act. Notwithstanding the Commission's uncertainty on this point, it is our opinion that the instant motion can be fully disposed of on other grounds. In order to adequately deal with the movants' contentions, we shall consider not only the legal issues expressly raised in this motion, but those legal issues raised by implication.

The Tiguas contend that the statute creating the Indian Claims Commission (25 U.S.C. §§ 70-70v-2) imposes an absolute duty on the Commission to give notice to Indians, in accordance with Sec. 13(a),

25 U.S.C. Sec. 70 1. ^{1/} The Tiguas further argue that because they did not have notice of the Act, the statute of limitations must toll. Movants ignore however, the obligation imposed on them to have knowledge of the law. The Supreme Court held in North Laramie Land Co. v. Hoffman, 268 U.S. 276, 45 S. Ct. 491, 69 L. Ed. 953 (1924),

All persons are charged with knowledge of the provisions of statutes, and must take note of the procedure adopted by them, and when that procedure is not unreasonable or arbitrary, there are no constitutional limitations relieving them from conforming to it.

The burden was on the Tiguas to know of the Indian Claims Commission Act. There was no showing that the procedures for filing a claim under the Act were either unreasonable or arbitrary.

Even if we assume that notice was lacking, this Commission is powerless to grant the relief sought. In Thomas v. United States, 125 Ct. Cl. 76 (1953), the Court stated, "Generally, lack of knowledge of the existence of a cause of action or of facts which constitute the cause will not postpone the operation of the Statute of Limitations." In support of this, see also Dion v. United States, 137 Ct. Cl. 166 (1956).

Movants' contention is adequately disposed of by Japanese War Notes Claimants Association v. United States, 178 Ct. Cl. 630 (1967), wherein the court stated:

^{1/} Sec. 13(a). As soon as practicable the Commission shall send a written explanation of the provisions of this Act to the recognized head of each Indian tribe and band, and to any other identifiable groups of American Indians existing as distinct entities, residing within the territorial limits of the United States and Alaska, and to the superintendents of all Indian agencies, who shall promulgate the same, and shall request that a detailed statement of all claims be sent to the Commission, together with the names of aged or invalid Indians from whom depositions should be taken immediately and a summary of their proposed testimonies.

In certain instances the running of the statute will be suspended when an accrual date has been ascertained, but plaintiff does not know of his claim. Ignorance of rights which should be known is not enough. (Cases deleted.) Plaintiff must either show that defendant concealed its acts with the result that plaintiff was unaware of their existence or it must show that its injury was "inherently unknowable" at the accrual date.

Movants cannot claim that their alleged ignorance of the Act alone is enough to toll the statute of limitations. Movants cannot show that the Commission intentionally concealed the Act or that its existence was inherently unknowable. On the contrary, the Commission went to great lengths from the date of its inception until August 13, 1951, to contact all tribes or bands whom it had reasons to know existed.

The question of jurisdiction with regard to a statute of limitations was discussed at great length by the Supreme Court in Soriano v. United States, 352 U.S. 270 (1957). The plaintiff had supplied Philippine guerilla forces from 1942 to 1945, claiming that they were in the employ of the U.S. Army. He filed a claim with the U.S. Army Claims Service in March 1948 which was denied in June 1948. He then filed a claim with the U.S. Court of Claims more than six years after the last requisitioning of supplies. The Court held that the plaintiff was under a legal disability by virtue of the Japanese occupation of the Philippines and allowed the claim to be filed. The Supreme Court reversed. The Court held:

It has been settled since Kendall v. United States, 107 U.S. 123 (1883), that the Congress in creating the Court of Claims restricted that court's jurisdiction. In Kendall this Court held that the Congress in the Act creating the Court of Claims gave the Government's consent to be sued therein only in certain classes of claims and that no others might be asserted against it, including

"claims which are declared barred if not asserted within the time limited by the statute." *Id.*, at 125. As to the latter cases, jurisdiction was given only over those filed "within six years after such claim first accrues," unless the claimant was "under legal disability or beyond the seas at the time the claim accrues," in which event suit must be filed within three years after the disability ceases." 62 Stat. 976, 28 U.S.C. Sec. 2501. As was said in Kendall, *supra*, "The court cannot superadd to those enumerated..." it having "no more authority to engraft (another) disability arising from sickness, surprise, or inevitable accident, which might prevent a claimant from suing within the time prescribed." *Id.*, at 125.

The Court continued:

. . . Congress was entitled to assume that the limitation period it prescribed meant just that period and no more. . . And this Court has long decided that limitations and conditions upon which the Government consents to be sued must be strictly observed and exceptions thereto are not to be implied. . . We are not unmindful that the enforcement of this rule might result in hardship in some cases. . . Such considerations are not for us, as this Court can enforce relief against the sovereign only within the limits established by Congress.

The Indian Claims Commission is in the same position as the Court of Claims in that it has a statute of limitations which bars forever all claims which are not filed in a timely manner.

The Commission has dealt with the jurisdictional question in Caddo Tribe v. United States, 35 Ind. Cl. Comm. 321 (1975) in which we said:

Assertions by certain of the intervenors that they failed to receive notice of the Indian Claims Commission Act are not proved. . . Even if lack of notice were proved, we do not feel the Commission could thereby find a cure for the jurisdictional defect determined by the Court of Claims. Finally, in light of that Court's ruling, we cannot accept the argument that this Commission may adopt a procedural rule and thereby circumvent the express limitation on the Commission's jurisdiction contained in Sec. 12 of our Act. 60 Stat. 1049, 1052.

We conclude that the Tiguas must be presumed to have known of the Indian Claims Commission Act, that the statute of limitations is not tolled by movants' alleged failure to receive notice, and this Commission is without authority to change the jurisdictional requirements mandated by the Act. However, it is our belief, based on a preliminary examination of all aspects of the evidence submitted in this docket, that movants' aboriginal title claim is not without merit. Unfortunately, we do not have the means to resolve movants' problem as they would like. Therefore, for the reasons stated above, movants' motion must be denied.


 Brantley Blue, Commissioner

We concur:


 Jerome K. Kuykendall, Chairman


 John T. Vance, Commissioner


 Richard W. Yarborough, Commissioner


 Margaret H. Pierce, Commissioner