BEFORE THE INDIAN CLAIMS COMMISSION

THE CADDO TRIBE OF OKLAHOMA, et al., Plaintiffs,	)	
v.	)	Docket No. 226 (Accounting Claim)
THE UNITED STATES OF AMERICA, Defendant.	)	

Decided: August 4, 1977

Appearances:

Rodney J. Edwards, Attorney for the Plaintiffs.

Bernard M. Sisson, with whom was Assistant Attorney General Peter R. Taft, Attorneys for Defendant.

OPINION ON DEFENDANT'S MOTION TO DISMISS PLAINTIFFS' EXCEPTIONS NO. 2, 6, 8, 9, and 10 TO DEFENDANT'S ACCOUNTING REPORT

Yarborough, Commissioner, delivered the opinion of the Commission.

The original petition filed in this docket on August 8, 1951, demanded judgment on six counts, one of which, Count I, asks for a general accounting ". . . for all property and money belonging to plaintiffs which have come onto the hands of the defendant or under the treaty."

In response to the general accounting allegation, the defendant, on October 7, 1969, filed a report (dated April 28, 1958) entitled, General Accounting Office Report, Re: Petition of the Caddo Tribe of Oklahoma, Indian Claims Commission, No. 226, hereinafter referred to as the GAO report, or accounting report.

On April 25, 1975, the plaintiffs filed exceptions to several items in the accounting report. On May 16, 1975, the defendant filed a motion to dismiss the plaintiffs' exceptions 2, 8, and 10 to the GAO report. On March 25, 1976, the defendant filed an amended motion to dismiss the plaintiffs' exceptions 6 and 9 and, in addition, set forth an additional ground in support of its original motion to dismiss plaintiffs' exception 8 to the accounting report.

The plaintiffs' exceptions 2 and 10 are directed at certain gratuitous offset claims expended on behalf of the tribe under other than treaty appropriations. The defendant objects to both exceptions on the ground that neither claim can be asserted as a part of the accounting claim here for the reason that the offset claims are properly before the Commission in another proceeding involving the parties.

The plaintiffs, in their opposition to the motion to dismiss, filed June 2, 1975, conceded that the subject matter of exceptions 2 and 10 are, in fact, before the Commission in the offset phase of the case and probably are not proper subjects for its general accounting claim. Accordingly, the Commission will grant the defendant's motion to dismiss exceptions 2 and 10 from the accounting claim.

Plaintiffs' exception 8 to the defendant's accounting report, however, is another matter. Under this exception, the plaintiffs cited the alleged insufficiency of the defendant's identification of

the unallotted portions of the plaintiffs' land within the Wichita Reservation[1/] ceded under the Agreement of June 4, 1891, arguing that more information is necessary ". . . in order to proceed with a determination whether or not the arbitrary per acre price of $1.25 per acre was the fair market value of the plaintiffs' unallotted reservation lands that were set aside for schools and public buildings and opened for settlement and entry after conclusion of allotments in 1902."[2/]

In its motion to dismiss the defendant has charged initially that the plaintiffs' claim in exception 8, where recovery is sought for the difference between the fair market value of the surplus lands of Wichita Reservation and the $1.25 per acre price received by the plaintiff tribe for the cession, is simply a land claim that was not pleaded in the original petition in this docket and is therefore barred under the jurisdictional limitations imposed by section 70k of the Indian Claims Commission Act. (25 U.S.C. § 70k.) The defendant has further argued that this land claim was not the proper subject of an accounting claim and cannot escape the jurisdictional bar in the guise of an exception to the accounting report which defendant filed herein. Finally, the defendant interposed the defense of res judicata as a result of earlier litigation in the case of Choctaw and Chickasaw Nation v. United States and the Wichita and Affiliated Bands, 34 Ct. Cl. 17 (1899), rev'd, 179

1/ As followers of this litigation know, the plaintiff Caddo had been an important component of the "Wichita and Affiliated Bands" that inhabited the Wichita Reservation after 1859.

2/ P. 4 - Plaintiffs' exceptions to GAO report.

U. S. 494 (1900). In its amended motion of March 25, 1976, the defendant has offered the additional contention that the plaintiffs never had any compensable interest in the unallotted lands of the Wichita Reservation and therefore ". . . are not entitled to an accounting for said lands, nor are they entitled to the difference between the fair market value of the lands and the $1.25 per acre paid by Congress."[3/]

Defendant's amended motion to dismiss challenges plaintiffs' exceptions 6 and 9 to the accounting report as not stating a claim upon which relief can be granted. Plaintiffs' exception 6 alleges an improper expenditure by the defendant of $70,279.10 of the tribal monies realized from the proceeds of the sale of the plaintiffs' unallotted lands on the Wichita Reservation pursuant to the Act of March 2, 1895, 28 Stat. 876. Plaintiffs' exception 9 charges the defendant with failure to account for some $116,605.43, allegedly the difference between the proceeds received from the above sale of plaintiffs' reservation lands and the disbursements made as indicated in defendant's accounting report.

Further pleadings by the parties have elaborated on all the above issues.

Plaintiffs' Exception No. 8

For reasons stated below the Commission is of the opinion that the defendant's motion to dismiss plaintiffs' exception 8 should be denied

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3/ Pp. 4 and 5, Defendant's "Amended Memorandum of Points and Authorities in Support of Government's Motion to Dismiss."

insofar as it challenges the sufficiency of the pleadings as not giving the defendant adequate and timely notice of the "land claim" in issue, and that such claim was not "presented" pursuant to the jurisdictional requirements in section 70k of our act.

Defendant's assertion that the instant claim is barred by the limitations of section 70k is not unique. The Commission has on several occasions passed upon the sufficiency of pleadings in almost identical circumstances. Our most recent effort, one which received the approval of the Court of Claims, involved the claims of the Lower Sioux Indian Community in Docket 363, United States v. Lower Sioux Indian Community, 207 Ct. Cl. 492 (1975), aff'g Docket 363, 22 Ind. Cl. Comm. 226 (1969). In that case the defendant objected to an amendment of the plaintiffs' original timely filed complaint on grounds the plaintiffs were attempting to state a new claim subsequent to the tolling of the time limitations of our act. The court found the original claim, stated as an accounting claim, was sufficiently broad in its embryonic form to encompass a subsequent amendment for the taking of land. Controlling, in the opinion of the Court of Claims, was the sufficiency of the notice of the ". . . general . . . situation set forth in the original pleading," citing Snoqualmie Tribe of Indians v. United States, 178 Ct. Cl. 570, 587; 372 F. 2d 951, 960 (1967).

Our examination of the original petition in this docket clearly evidences an attempt by the pleader to render an all encompassing pleading; one that is drafted in the broadest terms possible to insure not only the

inclusion of the obvious claim or claims, but within reason, the foreseeable claims of which the supportive facts may not at that time be fully known to the pleader. The fact that a subsequent pleading is more precise in stating the claim at issue is not an admission of the insufficiency of the original pleading. If the original pleading lends itself to a construction that gives adequate and reasonable notice of the previous claim set forth in subsequent pleading, then the matter at issue has been "presented" within the proscriptions of the jurisdictional requirements of our act.

In reference to the subject land claims, the key language is found in paragraphs 21 through 25 of the original petition and the prayer for relief therein. These paragraphs, with emphasis supplied, read as follows:

> 21. The Plaintiffs' ancestors and predecessors occupied additional area outside of that ceded by the treaty of July 1, 1835, some of which may have been occupied and possessed solely by Plaintiffs' ancestors and predecessors, portions of which may have been jointly occupied with other tribes. The nature and extent of such possession and occupancy and the manner of taking and the frauds which may have been perpetrated upon Plaintiffs' ancestors and predecessors, and the value of said lands has not been determined and is left to proof to be furnished.
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> Count V
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> 22. Plaintiffs re-allege all of the foregoing allegations, and further allege:
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> 23. That during all of the time here involved Defendant has been the guardian of Plaintiffs and their property and undertook to care for and administer the property of Plaintiffs and their ancestors and predecessors and to protect the title to their lands.
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> 24. That Plaintiffs are entitled to an accounting for all property and money belonging to Plaintiffs which have come into the hands of the Defendant or under its control.

Count VI

25. Plaintiffs re-allege all the foregoing allegations and further allege that Defendant in its dealings with Plaintiffs, as aforesaid, did not deal fairly and honorably.

and the plaintiffs, in conclusion, prayed:

First - That Defendant be required to account to Plaintiffs, where such accounting is necessary, for all property and money belonging to the Plaintiffs which have come into the hands of the Defendant or under its control.

Second - That the treaties be revised to grant to Plaintiffs the reasonable and fair value of the right, title or interest in the lands ceded and to determine the amount justly due from the United States to Plaintiffs for lands taken, with credit for the amounts already paid.

Despite the somewhat vague and imprecise language in the above paragraphs of the original petition, the Commission believes that the plaintiffs have reasonably apprised the defendant of a generalized situation upon which there lies a cause of action apart from that asserted with respect to plaintiffs' aboriginal lands. Thus, we find that the plaintiffs have asserted: (1) they had ownership of other lands of which they were defrauded; (2) during the relevant period of time in question the defendant has assumed a fiduciary responsibility to administer and manage plaintiffs' property for the benefit of the Indians; (3) in carrying out its fiduciary obligations the defendant did not deal fairly and honorably with the plaintiffs; and, (4) relevant treaties should be revised to allow the plaintiffs the fair market value of ceded lands and a just amount for lands taken, less credit for any monies paid in by the defendant in lieu thereof.

Under exception 8 to the accounting report, the plaintiffs have now asked the defendant to identify specifically those unallotted lands on the Wichita Reservation that were sold for the plaintiffs' benefit pursuant to the 1891 agreement. That identification is a preliminary to plaintiffs' attempt to prove that the $1.25 per acre statutory price paid for the lands was far below the market value of the lands.

We agree with the defendant that the plaintiffs have indeed stated a land claim, but, since the Commission is more concerned with substance than with form, we view the language in exception 8 as a reasonable, clarifying amendment to the general factual situation that was developed in paragraphs 21 through 25 of the original petition. By this amendment the defendant has now been apprised of the particular manner in which the plaintiffs believe that they were wronged by the defendant when the latter disposed of their lands pursuant to the 1891 agreement. Under these circumstances, plaintiffs' exception 8 does not state a new cause of action but relates back to the original timely filed petition.

Even if plaintiffs land claim is not barred under the jurisdictional requirements of section 70k of our act, the defendant further contends that said claim is either res judicata by the decision rendered in the Choctaw case, supra, or by the fact that the plaintiffs never had a compensable interest in the unallotted lands of the Wichita Reservation when they concluded the 1891 agreement with the United States.

In the Choctaw case, the Court of Claims, pursuant to the jurisdictional authority granted under Article VIII of the 1891 agreement, as ratified by the Act of March 2, 1895, 28 Stat. 876, 894, decided that the Choctaw

and Chickasaw Nations were entitled to the proceeds from the sales of surplus unallotted lands on the Wichita Reservation. Upon appeal to the Supreme Court this determination was reversed in favor of the Wichita and Affiliated Bands, among them the present plaintiffs. Thereafter the Court of Claims entered an order fixing the sale price of the surplus unallotted lands at the 1895 act's maximum price of $1.25 per acre. It is this earlier decree of the Court of Claims that the defendant now interposes as a bar to the plaintiffs' present attempt to litigate the issue of the fair market value of the surplus unallotted reservation lands.

The Commission is of the opinion that in the Choctaw case the issue of the actual fair market value of the surplus lands was never before the Court of Claims under the jurisdictional grant set forth in Article VIII of the 1891 agreement. In ratifying the 1891 agreement and sending the conflicting claims of the Choctaw and Chickasaw Nations and the Wichita Bands to the Court of Claims, the Congress imposed the $1.25 per acre ceiling as the maximum price that the plaintiffs could expect to receive for their surplus lands if the Court of Claims decided the title issue in their favor. In addition, Article IV of the 1891 agreement prohibited the plaintiffs from litigating any claim against the United States with reference to the unallotted lands other than the issue of title as set forth in Article VIII of the 1891 agreement. It is clear that the issue of the fair market value of the surplus reservation lands was not raised in the Choctaw litigation nor could it have been raised. We therefore conclude that the defense of res judicata is not well taken in this case.

We find equally untenable defendant's further contention that the plaintiffs' lacked a compensable interest in the subject lands, and, therefore, have no standing to question the fairness of the amount paid to them for said lands.

First of all, contrary to the position taken by the defendant, the Commission has already concluded as a matter of law that:

> ". . . by the Act of March 2, 1895, which ratified the agreement of June 4, 1891, the United States perfected the grant of a compensable interest in the Wichita, Caddo, and other Affiliated Bands residing there." 4/

Secondly, our conclusion was consistent with certain views that were sanctioned by the Supreme Court in the Choctaw case, supra. The prime issue in Choctaw was the conflicting title claims of Choctaw and Chickasaw Nations and the Wichita and Affiliated Bands of Indians to the surplus unallotted lands on the Wichita Reservation. In reversing the Court of Claims' decision upholding a Choctaw and Chickasaw residual interest in the subject lands, the Supreme Court approved the following concession on the part of the government representative:

> ". . . the removal of the Wichita and Affiliated Bands from their former habitations and their permanent settlement upon the Wichita Reservation invested them with a full right of occupancy of the lands in dispute and with all the incidents of such right." 5/

The defendant would now challenge the potential binding effect of such a concession as nothing more than the naked admission of an attorney

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4/ 9 Ind. Cl. Comm. 56, modified by the Commission's order of August 30, 1968, 19 Ind. Cl. Comm. 385.

5/ 179 U. S. 494, 550.

on a question of law that is neither binding on the client or the court. The difficulty with this argument is that the United States is a unique client that can only act through its authorized representatives. Such being the case, we are not aware of any reason why the government attorney in Choctaw could not have bound the Government by this concession. What is more important, however, is that the Supreme Court in Choctaw accepted the Government's concession as the law of the case; witness the pertinent language in the final order issued by the Court of Claims following remand:

> ". . . ; and it further appearing to the court that the Wichita and Affiliated Bands of Indians were by the United States located within the boundaries of the lands hereinbefore described, . . . ; and it further appearing to the court that the said location of said Wichitas and Affiliated Bands within said boundaries was for the purpose of affording them permanent settlement thereon; . . ." 6/

We, therefore, reaffirm our conclusion that the plaintiffs, having been accorded rights of "permanent settlement," had a compensable interest in the surplus unallotted lands on the Wichita Reservation.

Exception No. 6

Under exception 6 the plaintiffs have objected to the defendant's disbursement of some $70,279.10 of the proceeds realized from the sales of the surplus unallotted lands on the Wichita Reservation. Specifically, the plaintiffs charge that these expenditures ". . . were not authorized by the 1891 agreement or proper expenditures of tribal trust funds, but were unauthorized expenditures for the benefit of the United States or

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6/ Senate Doc. No. 151, 56th Congress, 2d Session.

unidentified individuals."[7/] The expenditures involved are identified in Statement No. 9, Part II, Section D of the GAO accounting report, p. 71, as follows:

Attorney fees	$50,726.69
Cash relief payments	653.47
Clothing	239.43
Expenses of court cases	1,042.00
Expenses of Indian delegations	83.65
Provisions	428.23
Services as delegate	15,000.00
Tribal Council expenses	2,105.63
	$70,279.10

As the Commission sees it, defendant's motion to dismiss calls for a determination of the legal question of whether the record sustains the legitimacy of the above disbursements as being made in accordance with the purposes of the 1891 agreement. If such be the case, the issue of whether these disbursements actually conferred a tribal benefit on the plaintiffs is not really germane.

A. Attorney Fees - $43,332.93

The principal sum contested by the plaintiffs is $43,332.93 that was paid to the attorneys who represented the Wichita and Affiliated Bands in the important litigation instituted by the Choctaw and Chickasaw Nations against the United States, the Wichitas, and the plaintiffs pursuant to the 1895 act. Choctaw and Chickasaw Nations v. United States and the Wichita and Affiliated Bands, supra.

7/ P. 2 - Plaintiffs' memorandum of points and authorities in opposition to defendant's amended motion to dismiss.

Congressional authority for the payment of these attorneys' fees and the reimbursement of the same to the United States was authorized as follows under the Act of May 27, 1902, 32 Stat. 247, 267.

> For payment to the attorneys who, under a contract approved by the Commissioner of Indian Affairs and the Secretary of the Interior, represented the Wichita and affiliated bands of Indians in the Court of Claims and Supreme Court of the United States in the litigation provided for by Act of Congress to determine the title of said Indians to the lands of the former Wichita Reservation, in the Territory of Oklahoma, six percentum of the value of said lands as decreed by the Court of Claims, the sum of $43,332.93, or so much thereof as may be necessary, to be immediately available; Provided, That the said sum shall be reimbursed to the United States out of the proceeds of the sale of the said lands. (Emphases supplied)

Plaintiffs argue that the payment and reimbursement of the above attorneys' fees from the plaintiffs' funds was improper because (1) the 1891 agreement, as ratified by the 1895 act, made no provision for the payment of plaintiffs' attorneys with respect to the Choctaw and Chickasaw litigation before the Court of Claims, and (2) the subsequent authorization by Congress under the 1902 act to make such payment and to reimburse the Government of the same out of plaintiffs' funds was contrary to the 1891 agreement and constituted a "Fifth Amendment" taking of plaintiffs' property.

We think the plaintiffs' exception to the payment of $43,332.93 in attorneys' fees out of Indian trust funds as a result of the earlier Choctaw litigation is res judicata by virtue of the decision of the Court of Claims in the case of Wichita Indians, et al. v. United States, 89 Ct. Cl. 378 (1939). The present Caddo plaintiffs, citing affiliation with the Wichita Tribe, had intervened and were active litigants in the 1939 Wichita case.

In Wichita, the plaintiffs and the intervenor sought to recover over ten million dollars, plus interest, as "just compensation" for the alleged taking by the defendant of certain lands, monies, and other property belonging to the respective tribes and bands. Included therein was a claim by the Wichitas for the recovery of $75,000 in attorneys' fees said to have been paid out of Indian funds in defense of the claims asserted by the Choctaws and Chickasaws to the "Leased District" in the old Choctaw case. With respect to this particular claim the Court of Claims found that,

> ". . . The record shows that in 1902, after the termination of the litigation in question, Congress made a reimbursable appropriation of $43,332.93 for the benefit of the Wichita tribe, as attorneys' fees, for counsel for these Indians and that this amount was paid and subsequently reimbursed out of funds belonging to the Indians." 8/

Thereafter, the court concluded that the subsequent reimbursement of these attorneys' fees to the United States from Wichita funds was proper,

> ". . . for the reason that such an amount as was expended was for the payment of compensation to attorneys employed by the Indians . . . for which the United States cannot be held liable." 9/

The present plaintiffs, suing in the instant case for the identical amount and for substantially the same reasons as alleged in the 1939 Wichita case, are bound by the prior ruling of the Court of Claims on this matter.

8/ 89 Ct. Cl. 378, 398. The Caddos had filed a separate claim for $25,000 in attorneys' fees alleged to have been spent by the band in the same Choctaw case. However, the court found no evidence to support any such expenditure, nor has such evidence appeared here.

9/ Ibid, 422.

The essence of the claim there, as here, goes to the propriety of this expenditure from plaintiffs' funds. Whatever our ruling might be if this claim were presented here ab initio, the Court of Claims appears to have had jurisdiction to decide the claim on the merits, and did so. Accordingly, the Commission will grant the defendant's motion to dismiss plaintiffs' exception as directed at the payment of the $43,332.93 in attorneys' fees.

B. Additional Attorneys' Fees - $7,292.76

The plaintiffs' exception 6 also challenges as improper and unauthorized the payment of $7,393.76 in additional attorneys' fees between 1925 and 1940. These items are identified in the GAO report as disbursements made pursuant to the Act of March 2, 1895, from the "Proceeds of Wichita Ceded Lands." These additional attorneys' fees were paid in the following years and amounts:

Fiscal Year	Amount
1925	$3,000.00
1927	3,000.00
1930	480.83
1933	554.63
1934	227.71
1936	19.34
1940	106.65
	$7,393.76

Except for the provisions of the 1902 act, supra, that authorized the payment and reimbursement to the United States of $43,332.93 in attorneys' fees from the proceeds of the sale of the Wichita lands, there is nothing in the GAO report authorizing similar payments with respect to the $7,393.67. Payment of these additional attorneys' fees began 24 years following the conclusion of the Choctaw case in the Court of Claims. The state of the present record forecloses any presumptions on the part of the Commission

that said disputed expenditures were authorized as a matter of law. Since the question is left at issue, the Commission will deny the defendant's motion to dismiss so much of the plaintiffs' exception 6 as relates to "attorneys' fees" in the amount of $7,393.67.

C. Services of Delegate - $15,000

The Congress, by the Act of July 1, 1902, 32 Stat. 552, 583, appropriated the sum of $99,514.56 to compensate the Wichita and Affiliated Bands for those portions of their surplus unallotted lands that had been reserved for schools and public buildings under Article VIII of the 1891 agreement, supra. Of this sum, which has been set upon the books of the Treasury under the heading "Judgment, Wichita and Affiliated Bands," $15,000 was paid to the administrator of the estate of Luther H. Pike as compensation for his services as a delegate for the Wichita and Affiliated Bands.

Initial authority to make this payment is also found in the provisions of Article VIII of the 1891 agreement, supra:

> "That as fast as the lands opened for settlement under this act are sold, the money received from such sales shall be deposited in the Treasury subject to the judgment of the court in the suit herein provided for, less such amount, not to exceed fifteen thousand dollars, as the Secretary of Interior may find due Luther H. Pike, deceased, late delegate of said Indians, in accordance with his agreement with said Indians, to be retained in the Treasury to the credit and subject to the drafts of the legal representative of said Luther H. Pike . . ."

Pursuant to the mandate of the Supreme Court, dated January 12, 1901, in the Choctaw case, supra, the Court of Claims included in its order of January 31, 1901, fixing the value of the surplus Wichita lands the following provision,

> "and it is further adjudged and declared that . . . the said Indians are entitled to receive from the United States compensation at the rate of one dollar and twenty-five cents per acre for every section of land. . . , less such amount not to exceed $15,000, as the Secretary of the Interior may find due to Luther H. Pike, deceased, late delegate of said Indians, in accordance with his agreement with said Indians." 10/

In view of the above we fail to see how plaintiffs' exception to the $15,000 disbursement can be upheld on the general allegations that said payment was unauthorized. This is especially true when the record fails to raise any question that said payment to Luther H. Pike was not, in the words of the 1891 agreement, paid out "in accordance with his agreement with said Indians, . . ." The Commission will grant defendant's motion to dismiss so much of the plaintiffs' exception 6 as challenges the disbursement of the $15,000 for the payment of the services of a delegate.

D. Miscellaneous Items - $4,552.41

Miscellaneous expenditures contested by the plaintiffs in exception 6 total $4,552.41, and can be broken down as follows:

	Fiscal Year	Amount
Cash relief payments	1946	$ 260.00
	1945	300.00
	1946	93.47
		$ 653.47
Clothing	1946	$ 15.00
	1944	224.43
		$ 239.43
Expenses of court cases	1936	$ 712.49
	1937	48.01
	1938	252.50
	1939	29.00
		$1,042.00

10/ See footnote 6.

	Fiscal Year	Amount
Expenses of Indian delegations	1935	$ 10.15
	1946	73.50
		$ 83.65
Provisions	1946	$ 114.41
	1944	223.32
	1945	51.90
	1946	38.60
		$ 428.23
Tribal Council Expenses	1937	$ 130.50
	1938	99.00
	1939	303.00
	1940	213.00
	1941	138.00
	1942	108.00
	1943	159.00
	1944	111.03
	1945	61.00
	1945	627.10
	1946	36.00
	1949	120.00
		$2,105.63
	Total	$4,552.41

The above items are identified in the GAO report as having been disbursed from two funds: (1) "Proceeds of Wichita Ceded Lands" pursuant to the Act of March 2, 1895, supra, for a total of $2,830.32, and (2) "Interest on Proceeds of Wichita Ceded Lands" pursuant to the Act of February 12, 1929,[11/] for a total of $1,722.09. Apart from identifying the sources of these funds, the GAO report fails to disclose any authority upon which these miscellaneous expenditures were made. The relative lateness of the period involved, 1935 through 1946, suggests that these expenditures would have little or nothing to do in fulfilling the purpose

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11/ 45 Stat. 1164.

of the 1891 agreement. As the record stands, the question of the authority, and, in this instance, the further question whether these miscellaneous expenditures from plaintiffs' trust funds were for the plaintiffs' benefit are very much in issue. Defendant's motion to dismiss the plaintiffs' exception 6 insofar as it relates to these "miscellaneous expenditures" will be denied.

Exception No. 9

Under exception 9 the plaintiffs have alleged that the defendant's GAO report shows:

> "Unaccounted for sum of $116,605.43 which is the difference between the sum of $836,246.35 disclosed as the proceeds received from the sale of the unallotted portion of plaintiffs' reservation . . . and the sum of $717,918.83 which the GAO Report lists as total disbursements from the proceeds of the sale of said lands." 12/

In its amended motion to dismiss, the defendant argues that plaintiffs' exception 9 is the result of an erroneous reading of the GAO report. In replying to defendant's amended motion to dismiss, the plaintiffs have conceded an error by acknowledging their failure to take into account a double entry in the GAO report. Our review of the challenged figures confirms a double entry in the report, and that there is no shortage or unaccounted sum reflected in the balance sheets covering the proceeds from the sale of the surplus unallotted lands and the subsequent disbursements

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12/ P. 5 - Plaintiffs' exception to GAO report.

of said proceeds. The Commission will grant the defendant's motion to dismiss the plaintiffs' exception 9.[13/]

Conclusion

In sum, the Commission concludes that the defendant's motion to dismiss of May 16, 1975, as amended by its motion of March 25, 1976, plaintiffs' exceptions 2, 6, 8, 9, and 10 to the GAO report of April 18, 1958, is granted en toto to exceptions 2, 9, and 10, and granted in part insofar as said motion is directed at the following items in exception 6:

a) Attorneys' fee in the amount of $43,332.93, and

b) Services of a delegate in the amount of $15,000.

Defendant's motion to dismiss plaintiffs' exception 8 and the remaining items in plaintiffs' exception 6 is denied.

Richard W. Yarborough, Commissioner

We concur:

Jerome K. Kuykendall, Chairman

John T. Vance, Commissioner

Margaret H. Pierce, Commissioner

Brantley Blue, Commissioner

13/ We note in passing that, in answering the defendant's motion to dismiss exception 9, the plaintiffs again challenged the disbursement of $70,279.10 which was the subject matter of exception 6. In substance the issues raised anew with respect to the $70,272.10 are duplicitous and have been considered in our disposition of the same subject matter with respect to exception 6.