

BEFORE THE INDIAN CLAIMS COMMISSION

THE NAVAJO TRIBE,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 229
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: December 2, 1977

Appearances:

William C. Schaab, Attorney for Plaintiff.

Dean K. Dunsmore, with whom was Assistant Attorney General James W. Moorman, Attorneys for Defendant.

OPINION OF THE COMMISSION

PER CURIAM:

The Commission is this day granting defendant's motion of November 30, 1977, captioned "Government's Motion To Quash Subpoena Duces Tecum" and defendant's motion of the same date captioned, "Government's Motion For Protective Order"; both of which motions are aimed at saving defendant's expert witness, Mr. Vern A. Englehorn, from giving his deposition pursuant to the notice served upon the defendant on November 22, 1977.

The recent skirmishing between the parties (via motions and efforts at further discovery) since this Commission issued its opinion and order granting defendant's motion for summary judgment on November 2, 1977, has put the scheduled December 12, 1977, trial date on value in jeopardy. Our action in granting defendant's present motions is directed at preserving the December 12th trial date.

On November 29, 1977, the plaintiff filed a motion for rehearing aimed at reversing our November 2, 1977, decision granting the defendant's motion for summary determination.^{1/} Since the defendant has not yet responded to the plaintiff's motion for rehearing, any decision on plaintiff's motion will remain in abeyance. However, we think it only proper to note that, in its motion to rehear, the plaintiff brought to the Commission's attention for the first time certain matters that were not considered per se by the Commission in its November 2, 1977 decision. These matters involve plaintiff's allegations with respect to certain 1868 aboriginal title areas situated within the confines of plaintiff's present reservation that were not returned to the Navajo Tribe. We are referring to these particular items not with any intention of pre-judging plaintiff's motion to rehear, but simply because the Commission was not aware that it might have confused the parties as to the scope of plaintiff's aboriginal title claim as delineated in the

^{1/} 41 Ind. Cl. Comm. 85.

aforesaid opinion and order of November 2, 1977. If such be the case, then some clarification is in order.

In our order of November 2, 1977, the Commission stated the following:

IT IS THEREFORE ORDERED that plaintiff's claim in this matter is limited to those aboriginal title lands of the Navajo Tribe to which the United States extinguished title pursuant to the Treaty of June 1, 1868, 15 Stat. 667, but which the United States did not subsequently return to the Navajo Tribe. 2/

In our accompanying opinion we concluded as follows:

Plaintiff's claim in this matter is limited to those aboriginal title lands of the Navajo Tribe to which the United States extinguished title pursuant to the Treaty of June 1, 1868, but which the United States did not subsequently return to the Navajo Tribe. 3/

In both instances we meant precisely what was stated. If there be any confusion, it stems from the fact that the Commission was not made aware of any specific 1868 aboriginal title areas in the present reservation that had not been returned to the tribe, although we were certainly aware of such possibilities. Thus, such statements appearing in the November 2, 1977, opinion as

"In other words, the present Navajo Reservation is not a part of the plaintiff's aboriginal title claim in this docket." 4/

or

"While the Commission is not persuaded by plaintiff's contentions that a claim for the aboriginal title lands within the Navajo Reservation is still viable,.... 5/",

2/ 41 Ind. Cl. Comm. 85, 96

3/ 41 Ind. Cl. Comm. 85, 95

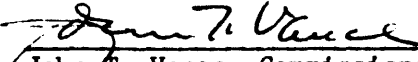
4/ 41 Ind. Cl. Comm. 85, 92


5/ Ibid.

were always subject to proof that within the present reservation there were certain 1868 aboriginal title areas that had never been returned to the plaintiff tribe. In no way did the Commission ever intend to excise such 1868 aboriginal title areas from the plaintiff's aboriginal title claim.


Undoubtedly, at some stage of these proceedings the question of the "non-returned" 1868 aboriginal title lands within the present Navajo Indian Reservation will be in issue. Therefore, in order to gain full advantage of the impending trial on value, the Commission will permit the parties to present evidence of the value of the entire Navajo aboriginal title area as defined under the Commission's decision of June 29, 1970, exclusive of the 1868 Navajo reservation and the Mexican land grants.

Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner

Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner