

BEFORE THE INDIAN CLAIMS COMMISSION

THE ONEIDA NATION OF NEW YORK,	)	
et al.,	)	
	)	
Plaintiffs,	)	
	)	
COUNTIES OF MADISON AND ONEIDA,	)	
NEW YORK	)	
	)	
Petitioners for	)	
Intervention,	)	
	)	
v.	)	Docket No. 301
	)	(Claims 3 through 7)
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: June 8, 1978

Appearances:

Marvin S. Chapman, Attorney for Plaintiffs.

Allan Van Gestel, Attorney for Petitioners for Intervention, William L. Burke, Donald E. Keinz were on the petition.

M. Edward Bander, with whom was Assistant Attorney General James W. Moorman, Attorneys for Defendant.

OPINION ON THE PETITION TO INTERVENE OF THE COUNTIES OF MADISON AND ONEIDA, NEW YORK

Pierce, Commissioner, delivered the opinion of the Commission.

The Commission has before it a petition to intervene as parties in this docket, filed by the counties of Madison and Oneida, New York. The

petitioners for intervention assert that they are defendants in civil litigation pending in the United States District Court for the Northern District of New York, and that the plaintiffs in that litigation are substantially identical to the plaintiffs in this docket. Petitioners further assert that the New York litigation and one of the claims in this docket arise out of the same 1795 land transaction between the Oneida Nation and the State of New York. Petitioners conclude that they must intervene in this docket to assure that their position in the New York litigation is not irreparably harmed by the action or inaction of the Commission in this docket. For the reasons stated below we must deny the petition to intervene.

In claims 3 through 7 of this docket plaintiffs are seeking additional compensation for lands acquired from the Oneida Nation by the State of New York in a series of transactions between 1795 and 1846. The Commission has previously ruled that under the Trade and Intercourse Act of 1790 the United States had undertaken a fiduciary relationship to the Oneidas with respect to their lands, and that the United States would be liable to the Oneidas if, in fact, the Oneidas did not receive adequate compensation for their lands from the State of New York. Oneida Nation v. United States, 26 Ind. Cl. Comm. 138 (1971).

On appeal, the Court of Claims affirmed that portion of our decision holding that the Trade and Intercourse Act created a fiduciary relationship between the United States and the Oneidas. United States v. Oneida Nation,

201 Ct. Cl. 546 (1973). However, the court ruled that the United States could be liable as a fiduciary only if it had actual or constructive knowledge of the transactions between the Oneidas and New York State and still failed to act to protect the Oneidas. The court remanded the case to the Commission to determine whether the United States had actual or constructive knowledge of the transactions involved in claims 3 through 7.

Trial on the issue of scienter in claims 3 through 7 was held before the Commission in May of 1974. The Commission's decision on this issue, however, has been deferred on the representation by the plaintiffs and defendant that they were actively engaged in settlement negotiations.

We shall not in this opinion describe in detail or deal with the allegations set out by the counties in their petition. This is not because we think them frivolous or without merit. Rather it is because we must deny the petition to intervene regardless of the validity of those contentions.

In creating the Commission, Congress limited our jurisdiction to hearing and determining claims against the United States by "any Indian tribe, and, or other identifiable group of American Indians." 25 U.S.C. §70a (1970). It is clear, therefore, that the only entities which can become parties to claims before the Commission are Indian tribes, bands, or identifiable groups, and the United States. The counties of Madison and Oneida obviously do not fall into any of these categories. Therefore, the Commission is without jurisdiction to permit the counties to intervene in this docket.

We wish to point out to the petitioners for intervention that the Commission has only about four months remaining in its life. In that time the Commission, at most, can decide the scienter issue before us. We shall be unable to determine actual liability of the defendant. In any event, within a short time jurisdiction over this docket will be transferred to the Court of Claims.

The Commission will enter an order denying the petition to intervene filed by the counties of Madison and Oneida, New York. <sup>\*/</sup>

Margaret H. Pierce  
Margaret H. Pierce, Commissioner

We concur:

Jerome K. Kuykendall  
Jerome K. Kuykendall, Chairman

John T. Vance  
John T. Vance, Commissioner

Richard W. Yarborough  
Richard W. Yarborough, Commissioner

\*/ Petitioners have sought to intervene in all seven claims under this docket. However, claims 1 and 2 of Docket 301 are currently before the Court of Claims on appeal from a decision of the Commission. We therefore do not have jurisdiction over these two claims and have ruled on the petition only as it applies to claims 3 through 7.

Commissioner Blue concurring in the result:

The majority opinion holds that no entity except an Indian tribe, band, or identifiable group may be permitted to intervene in any case before the Commission. I do not so interpret the Indian Claims Commission Act. Our rules do not speak to the question here presented and when they are silent the Federal Rules of Civil Procedure apply. I cannot agree, for instance, that only an Indian tribe or group could possibly file an amicus curiae brief.

I agree that no non-Indian entity could have filed a claim before the Commission, nor can such a claim be filed by way of intervention. However, a third party's interest might be such as to warrant intervention in a pending claim, seeking no special relief as such, but merely the right to address the issues before the Commission. In such a situation the intervenor would speak only to those substantive issues already pending before the Commission. I can conceive of instances wherein such an intervention should be granted.

In the case at hand I do not regard this to be an instance where the petition to intervene should be granted.

The Counties assert:

The Counties claim an interest relating to the property and transaction involved in the claims before the Commission; disposition of the pending action may as a practical matter seriously impair the Counties' ability to protect that interest; and the interest of the Counties is not adequately represented by the existing parties.

Two remaining issues are pending before the Commission in these claims:

1. Did the United States have actual or constructive knowledge of the transactions between the Oneidas and New York State, and still fail to protect the Oneidas? The Counties, in their petition do not take any specific position as to how this question should be resolved by the Commission. Nor do they show how they would be harmed if the issue were decided one way or the other.

2. If, the Government had such knowledge and failed to protect the Oneidas, was there an unconscionable consideration? Again, the Counties, in their petition take no position on this issue.

It is my opinion that if the Counties were permitted to intervene, they could, at most, address themselves to those two issues. They could raise no additional issues. The petition has failed to demonstrate to me how the Commission's resolution of those two remaining issues might adversely affect them. In addition, the trial on the issue of the Government's knowledge is long since completed and any attempt to intervene by any party at this date is untimely.

The Counties appear to be most interested in the possible effect of the litigation here on litigation elsewhere. Clearly, that might be of great concern to the two Counties, but that concern is not related to either of the two remaining issues before the Commission.

The Counties stressed one further point in their petition to intervene. The fear that a proposed compromise settlement between the parties presently before the Commission might contain language that would enable the plaintiff Oneidas to successfully pursue and obtain additional and further relief in a different forum. They seek intervention in the case before us so that they might gain access to all papers and documents in the office of the Attorney General and all correspondence dealing with the proposed settlement. Again, this is something that could be of interest to the Counties but does not relate to the resolution of either of the remaining two issues before the Commission. It would be a pure fishing expedition that would have nothing to do with the business of the Commission, in my view.

For the above reasons, I agree with the result of the majority opinion.

  
Brantley Blue, Commissioner