

EXPLANATION AND ANNOTATIONS TO THE SUBJECT INDEX

The decisions of the Indian Claims Commission are generally filed chronologically. With the "Opinion" on a given date will be the "Findings of Fact", if there are any, and any "Orders" which followed the opinion. Many orders, a few opinions, and a few findings of fact were never given page numbers particularly in the early volumes. The Native American Rights Fund edition of the reports has included chronologically some of these missing orders and all of the missing opinions and findings.

While Commission cases cover a wide variety of wrongs, most of them involve compensation for land. Much of the Commission's time is spent considering historical and anthropological evidence in order to determine the value of and title to tribal lands in the 18th and 19th centuries. Only occasionally do legal questions of the nature or implications of a claim arise. As a result, even though only the opinions are indexed, many of the citations in the index represent factual determinations of whether or not legal standards are met. Where the Commission discusses a strictly legal question or sets some precedent, the citation has been highlighted with an asterisk. To be sure of covering a topic, however, all the citations under the category should be referred to.

The subject index is organized roughly in order of: creation and jurisdiction of the Commission, standing of parties before the Commission, basis of claims in the Indian Claims Commission Act, property title, land valuation, offsets, and attorneys' fees and litigation

expenses. This parallels the order in which issues come before the Commission and reflects the fact that the Commission has been primarily occupied with land claims.

While some of the index categories are self-explanatory, others represent problems peculiar to the Indian Claims Commission. The annotations that follow explain how each category was used in the indexing and how it relates to other categories in the index. Like the citations, these annotations may be revised following new decisions by the Commission.

I. INDIAN CLAIMS COMMISSION, CONGRESSIONAL INTENT IN CREATING, RESPONSIBILITIES OF

...the primary objective of the Act was to provide a tribunal where and by which all of the claims against the United States, based on grounds defined in the Act, on behalf of any Indian tribe, band, or other identifiable group of American Indians residing within the territorial limits of the United States or Alaska, would be fairly heard and determined finally and for all time. (8 Ind. Cl. Comm. 410)

II. INDIAN CLAIMS COMMISSION, JURISDICTION GENERALLY

The Indian Claims Commission Act provides broad jurisdiction over a wide variety of claims. These run,

...all the way from securing of treaties and contracts with Indians by fraudulent or forceful means, failure to pay a fair price for lands taken from Indians either by treaty or force, failure to properly and fairly adjudicate Indian claims by some of the Committees, Boards, or Commissions which had been created over the years to help adjudicate Indian claims, trespass on Indian lands by United States agents or by its white citizens, failure to give an honest accounting for monies or other property held in trust by the United States for Indians, failure on the part of the United States in its negotiations with Indians to deal with proper representatives of the Indian tribes in question, to general claims based on the alleged failure of the United States to deal honorably, fairly, and equitably with Indians. (8 Ind. Cl. Comm. 410-411)

Although the Act does not specify what relief the Commission may grant, the Commission has interpreted the Act as limiting the relief to money. (1 Ind. Cl. Comm. 65) The following categories further divide

jurisdiction into III-V Cause of Action, VI-XI
Standing and XII-XX Claims Considered.

III. CAUSE OF ACTION: ACCRUAL OF CAUSE OF ACTION, STATUTE OF
LIMITATIONS, TIME FOR FILING

The Commission has jurisdiction over claims accruing through August 13, 1946. The filing deadline was August 13, 1951. Amended pleadings must relate back to the original petitions filed before the 1951 deadline. (See also LXVII. Amended or Consolidated Pleadings and Motions.) Under the Act,

All claims under this chapter may be heard and determined by the Commission notwithstanding any statute of limitations or laches.... (25 U.S.C. §70a)

IV. CAUSE OF ACTION: NEW CAUSE OF ACTION CREATED BY INDIAN
CLAIMS COMMISSION ACT

Many claims may be brought under the Indian Claims Commission Act, particularly under the "Fair and Honorable Dealings" and the "Unconscionable Consideration" clauses that could not normally be brought in a court of equity.

V. CAUSE OF ACTION: TRYING A SINGLE CAUSE OF ACTION "PIECE-
MEAL"

A single cause of action cannot be divided and tried as separate cases.

...determination of a cause of action precludes re-litigation of the same cause of action even though all the relief to which a party is entitled is neither requested or granted. (2 Ind. Cl. Comm. 172)

VI. STANDING: "IDENTIFIABLE GROUP" OF INDIANS

The act gives the Commission jurisdiction over,

...any Indian tribe, band or other identifiable group of American Indians, residing within the territorial limits of the United States or Alaska. (25 U.S.C. §70a)

...the word "Indian" and the phrase "American Indians" as used in the Indian Claims Commission Act are equivalents and that both are generic in nature, used to identify the aborigines of the Continental United States and Alaska....

... Congress did not intend to exclude the Aleuts and Eskimos and include only the other aboriginal inhabitants of our first forty-nine states. (19 Ind. Cl. Comm. 143)

VII. STANDING: CLAIMS OF INDIVIDUAL INDIANS

The jurisdiction of the Commission is

...limited to the consideration of common claims, that is, claims in the subject matter of which the members of the group have a common interest. (1 Ind. Cl. Comm. 131)

VIII. STANDING: INTERVENTION AND INTERVENORS

To intervene in a suit before the Commission,

...the applicant must show a common interest in the claim of the original plaintiff, that the defendant had sufficient notice of the applicant's possible claims and that intervention will not unduly delay the progress of the case. (27 Ind. Cl. Comm. 2-3)

IX. STANDING: CHANGE, ADDITION, DELETION, DIVISION OR CONSOLIDATION OF PARTIES

Addition of plaintiffs not having compensable interest in the original petition amounts to filing a new cause of action and violates the 1951 filing deadline. An unusual instance of a change of plaintiffs is the division of the California Indian claims. (See 6 Ind. Cl. Comm. 666)

X. STANDING: SUCCESSOR IN INTEREST, IDENTIFICATION

XI. STANDING: SUCCESSOR IN INTEREST, REPRESENTATION

After signing agreements ceding their native lands, tribes often moved onto reservations where they merged with other tribes and bands sharing the same reservation. Thus not only who the successor to a claim is but what group is entitled to represent him can become an issue. Section 70i of the Act reads,

Any claim within the provisions of this chapter may be presented to the Commission by any member of an Indian tribe, band, or other identifiable group of Indians as the representative of all its members; but wherever any tribal organization exists, recognized by the Secretary of the Interior as having authority to represent such tribe, band, or group, such organization shall be accorded the exclusive privilege of representing such Indians, unless fraud, collusion, or laches on the part of such organization be shown to the satisfaction of the Commission. (25 U.S.C. §70i)

- XII. CLAIMS CONSIDERED: "CLAIMS IN LAW OR EQUITY ARISING UNDER THE CONSTITUTION, LAWS, TREATIES OF THE UNITED STATES, AND EXECUTIVE ORDERS OF THE PRESIDENT;" 25 U.S.C. §70a(1).
- XIII. CLAIMS CONSIDERED: CLAIM ARISING "IN LAW OR EQUITY, INCLUDING THOSE SOUNDING IN TORT, WITH RESPECT TO WHICH THE CLAIMANT WOULD HAVE BEEN ENTITLED TO SUE IN A COURT OF THE UNITED STATES IF THE UNITED STATES WAS SUBJECT TO SUIT;" 25 U.S.C. §70a(2).
- XIV. CLAIMS CONSIDERED: "CLAIMS WHICH WOULD RESULT IF THE TREATIES, CONTRACTS, AND AGREEMENTS BETWEEN THE CLAIMANT AND THE UNITED STATES WERE REVISED ON THE GROUND OF FRAUD,..." 25 U.S.C. §70a(3).
- XV. CLAIMS CONSIDERED: "CLAIMS WHICH WOULD RESULT IF THE TREATIES, CONTRACTS, AND AGREEMENTS BETWEEN THE CLAIMANT AND THE UNITED STATES WERE REVISED ON THE GROUND OF..., DURESS,..." 25 U.S.C. §70a(3).
- XVI. CLAIMS CONSIDERED: "CLAIMS WHICH WOULD RESULT IF THE TREATIES, CONTRACTS, AND AGREEMENTS BETWEEN THE CLAIMANT AND THE UNITED STATES WERE REVISED ON THE GROUND OF,....., UNCONSCIONABLE CONSIDERATION,..." 25 U.S.C. §70a(3).
- XVII. CLAIMS CONSIDERED: "CLAIMS WHICH WOULD RESULT IF THE TREATIES, CONTRACTS, AND AGREEMENTS BETWEEN THE CLAIMANT AND THE UNITED STATES WERE REVISED ON THE GROUND OF , MUTUAL OR UNILATERAL MISTAKE WHETHER OF LAW OR FACT,..." 25 U.S.C. §70a(3).
- XVIII. CLAIMS CONSIDERED: "CLAIMS WHICH WOULD RESULT IF THE TREATIES, CONTRACTS, AND AGREEMENTS BETWEEN THE CLAIMANT AND THE UNITED STATES WERE REVISED ON THE GROUND OF,..... ,....., OR ANY OTHER GROUND COGNIZABLE BY A COURT OF EQUITY;" 25 U.S.C. §70a(3).
- XIX. CLAIMS CONSIDERED: "CLAIMS ARISING FROM THE TAKING BY THE UNITED STATES, WHETHER AS A RESULT OF A TREATY OF CESSION OR OTHERWISE, OF LANDS OWNED OR OCCUPIED BY THE CLAIMANT WITHOUT THE PAYMENT FOR SUCH LANDS OF COMPENSATION AGREED TO BY THE CLAIMANT;" 25 U.S.C. §70a(4).
- XX. CLAIMS CONSIDERED: "CLAIMS BASED UPON FAIR AND HONORABLE DEALINGS THAT ARE NOT RECOGNIZED BY ANY EXISTING RULE OF LAW OR EQUITY;" 25 U.S.C. §70a(5).

It is not always possible to tell from reading an opinion under which section or sections of the Act a

claim is being brought. Pages are cited in the Index where a section is discussed either generally or as the basis of a particular claim. These sections, particularly the "fair and honorable dealing" clause, provide very broad grounds for recovery. 25 U.S.C. §70a(5),

To make sure there would be no legitimate Indian claim left without its day in court, a new ground for recovery was added as a catch-all; that ground encompassed all "claims based upon fair and honorable dealings that are not recognized by any existing rule of law or equity". (8 Ind. Cl. Comm. 413)

The phrase,

...if the treaties, contracts, and agreements between the claimant and the United States were revised.... 25 U.S.C. §70a(3),

has been interpreted as permitting the Commission only to,

...go behind the provisions of a treaty and grant relief, and then only by applying equitable principles. We do not believe it was intended to permit us to revise a treaty, for that would be delegating to the Commission legislative powers. (1 Ind. Cl. Comm. 87)

- XXI. ADMINISTRATION OF INDIAN AFFAIRS (DEMANDS FOR GENERAL ACCOUNTING, IMPROPER HANDLING OF INDIAN MONIES, IMPROPER ENROLLMENT, MISHANDLING OF CONTRACTS MADE WITH TRIBE, ETC.)
- XXII. ADMINISTRATION OF INDIAN AFFAIRS: SUPERVISION OF LAND SALES AND LEASES
- XXIII. ADMINISTRATION OF INDIAN AFFAIRS: ACCOUNTING CLAIMS

Included under this category are all claims based on Federal administrative functions. This includes

claims for general accounting, claims charging mismanagement of Indian money and property, and claims arising from Federal supervision of contracts, leases, and treaties made between tribes and third parties. As many of these claims allege either violations of Federal trust responsibilities or violations of fiduciary obligations undertaken in treaties, this category often overlaps with XL. Treaties and Agreements: Fulfillment of Terms of Treaty or Agreement and XXIV. Federal Trust and Fiduciary Obligations. The Commission may hear accounting claims accruing before but running through the August 13, 1946 time bar.

...25 U.S.C. §70a (1964) on its face bars the Commission from considering any claims accruing after August 13, 1946. In a previous interpretation of this section, however, we have said that where the Government's initial wrongdoing giving rise to a claim accruing before August 13, 1946, but continued past this time, the Indian Claims Commission was free to determine the extent of its jurisdiction in framing an award. Gila River Pima-Maricopa Indians, et al. v. United States, 135 Ct. Cl. 180, 186 (1956), 157 Ct. Cl. 941 (1962). We expressed agreement in that case with the established principle that "a court once having obtained jurisdiction of the persons and subject matter of a suit, retains such jurisdiction for all purposes including the awarding of all damages accruing up to the date of judgment." We hereby reaffirm our adherence to this principle and hold the Commission correctly ordered an up-to-date accounting for continuing Government wrongdoings which predated and postdated the statutory time bar. (191 Ct. Cl. at 31)

- XXIV. FEDERAL TRUST AND FIDUCIARY OBLIGATIONS (SEE ALSO XL. TREATIES AND AGREEMENTS: FULFILLMENT OF TERMS OF TREATY OR AGREEMENT)
- XXV. FEDERAL TRUST AND FIDUCIARY OBLIGATIONS: LIABILITY FOR ACTS OF OTHERS

A trust relationship between the Government and a tribe may arise in a number of ways, including obligations undertaken in a treaty, in supervising a treaty or land sale, or arising under the Trade and Intercourse Act. The relationship between Indian tribes and the United States has been discussed in several decisions of the Court of Claims and the Supreme Court. In Creek Nation v. United States, 318 U.S. 629, 642; 63 S. Ct. 784, 87 L. Ed. 1046, the Court said:

Whether or not the legal relationship of guardian and ward exists between a particular Indian tribe and the United States depends, we think, upon the express provisions of the particular treaty, agreement, executive order or statute under which the claim presented arises. It is true that the word "fiduciary" and the expression "guardian-ward relationship" have been used by the courts to describe generally the nature of the relationship existing between the Indians and the Government. However, in the absence of some language in a treaty, agreement or statute spelling out such a relationship, the courts seem to have meant merely that the relationship between the Indians and the Government is "similar to" or "resembles" such a legal relationship and that doubtful language in the treaty or statute under consideration should be interpreted in favor of the weak and dependent Indians. (16 Ind. Cl. Comm. 466)

Before considering the cases which passed upon the question of the Government's fiduciary status in respect to its dealing with the Indians, it should be pointed out that when H. R. 4497 (which was the bill finally passed creating the Indian Claims Commission) passed the House it contained this provision: "The Commission, in determining whether a claimant is entitled to relief on legal grounds, shall apply with respect to the United States the same principles of law as would be applied to an ordinary fiduciary." This provision was eliminated by a Senate Committee on Indian Affairs amendment because, as the Committee explained, "that the United States shall be treated as an ordinary fiduciary has been stricken in the Committee amendments because it seemed that the Commission should be permitted to determine according to the usual principles of law whether the Government was a fiduciary in the particular case involved, and if so, what fiduciary duties were imposed upon it." (Senate Committee on Indian Affairs Report No. 1715, 79th Congress 2nd Session). The bill as so amended passed the Senate. (Cong. Record - Senate, pp. 9343-9345, July 17, 1946). (1 Ind. Cl. Comm. 66-67)

XXVI. TRADE AND INTERCOURSE ACT

...it is the conclusion of the Commission that under the Trade and Intercourse Act the defendant has the obligation to assure that Indian tribes receive conscionable consideration for their lands. Defendant's argument is without merit in attempting to avoid liability because the United States did not participate in twenty-three of the twenty-five treaties with the State of New York. Under the Trade and Intercourse Act it had a duty to participate in these transactions and to protect the plaintiffs' interest. There is sufficient legal authority for the proposition that a fiduciary can be held liable not only for taking improper action concerning property within its care, but also for its failure to act when

action is required on its part. Therefore the United States had a duty to come forth on its own initiative and protect the Oneidas. (26 Ind. Cl. Comm. 145)

XXVII. ORIGINAL INDIAN TITLE OR ABORIGINAL TITLE AND EXCLUSIVE USE AND OCCUPANCY

XXVIII. ORIGINAL INDIAN TITLE: POLITICAL DIVISION, JOINT OCCUPANCY

Original Indian title or Aboriginal Title is a right of occupancy conferred by aboriginal possession. While the Commission grants compensation for aboriginal lands, aboriginal title itself is not fee simple. To establish "aboriginal" or "original Indian title" to a tract of land a tribe must show "exclusive use and occupancy" from "time immemorial" to a "definable area".

...the period of exclusive use and occupancy necessary to develop an original title cannot as a general rule be fixed at any specific number of years....each case must rest more or less on its own facts. (14 Ind. Cl. Comm. 117-118)

Confederated bands or tribes holding lands in common may have trouble establishing "exclusive use". However, the Commission has recognized that the meaning of "exclusive use and occupancy" varies from tribe to tribe. In the aboriginal land claim of the Lummi Tribe in the Puget Sound area the Commission ruled,

...the cultural and economic life of these people cannot be ignored by attempting to fit

them into a pattern similar to that of some eastern Indians.... The criteria for determining group entity in this area must be something less than the political cohesion as known to the tribes of the east. If a group of village entities speak the same dialect, move about more or less together in search of subsistence and retain a hold on the same general area of land for their homes, then by the standards of the Puget Sound Area they should be considered an entity capable of prosecuting a claim and establishing their right thereto as a group. (5 Ind. Cl. Comm. 546)

Again in the Muckelshoot claim the Commission said,

...to deny the Muckleshoot Tribe the right to recover for lands occupied by the villages whose people were so closely associated economically and culturally on the grounds of lack of political cohesion would be to misconstrue the beneficent purpose of Congress in enacting the legislation under which this claim is maintained. (3 Ind. Cl. Comm. 675)

XXIX. "RECOGNIZED," "TREATY," "RESERVATION," OR "ACKNOWLEDGED" TITLE

A tribe may hold its aboriginal lands as well as reservation or other lands by recognized title. All that is necessary is Congressional action, a treaty or statute, recognizing tribal ownership or the right to permanent occupancy of the lands.

Recognized title is the granting to the Indians by Congress of a permanent right of occupancy in lands. ...When Congress has acted to grant or recognize title to land in a particular tribe, that tribe thereafter possesses a right to permanently hold such lands. The precise nature of the right or title thus granted or recognized depends on the wording and intent of Congress. (19 Ind. Cl. Comm. 334)

XXX. LAND INTEREST GRANTED OR RECOGNIZED BY SPAIN, MEXICO, OR RUSSIA

The Commission has held that it cannot provide compensation for Indian lands, title to which had been granted by the Spanish or Mexican governments to private parties.

...valid Spanish and Mexican land grants were private property when the Treaty of Guadalupe Hidalgo was signed in 1848. Hence these lands never became part of the public domain of the United States and are immune from aboriginal Indian title claims. (18 Ind. Cl. Comm. 206)

XXXI. SURVEY ERROR

A number of claims before the Commission request compensation for lands lost through the numerous errors in the early surveys of aboriginal and reservation lands.

XXXII. HUNTING AND FISHING RIGHTS OR INTERESTS

XXXIII. MINERAL RIGHTS OR INTERESTS

XXXIV. TIMBER RIGHTS OR INTERESTS

Claims for the value of minerals or timber taken from a reservation or for the value of lost hunting and fishing are much less frequent than claims indexed under XLI-L Land Valuation asserting that the presence of hunting, fishing, mineral and timber should be considered in valuing a tract. Original Indian title

generally conveys the right to hunt and fish and the use of minerals and timber. What, precisely, is conveyed by recognized title depends on, "the wording and intent of Congress." (19 Ind. Cl. Comm. 334)

XXXV. WATER RIGHTS OR INTERESTS

As to defendant's second contention, that the Commission lacks jurisdiction to relitigate plaintiff's water rights, the Commission is of the opinion that it does have jurisdiction to determine the extent of plaintiff's right to the use of the Gila River. It is clear that plaintiff's claim is cognizable under Section 2 of the Indian Claims Commission Act, 25 U.S.C. §70a (1970). It is a claim by an Indian tribe against the United States and it fits within one or more of the types of claim described in clauses (1) through (5) of section 2. (29 Ind. Cl. Comm. 148)

- XXXVI. TREATIES AND AGREEMENTS BETWEEN UNITED STATES AND INDIANS, GENERALLY
- XXXVII. TREATIES AND AGREEMENTS: RATIFICATION OR AMENDMENT OF TREATY OR AGREEMENT BY CONGRESS
- XXXVIII. TREATIES AND AGREEMENTS: PARTIES TO TREATY OR AGREEMENT
- XXXIX. TREATIES AND AGREEMENTS: BOUNDARIES INVOLVED IN TREATY OR AGREEMENT
- XL. TREATIES AND AGREEMENTS: FULFILLMENT OF TERMS OF TREATY OR AGREEMENT

Ratified treaties are the

"supreme law of the land" and ... no tribunal has the power to go behind them and declare them inoperative in any respect any more than it can go behind an Act of Congress or declare it inoperative.... (1 Ind. Cl. Comm. 80)

Not only must a treaty be ratified by Congress to be valid, but

The Supreme Court has repeatedly held that Congress is authorized to modify provisions of previously executed treaties. (3 Ind. Cl. Comm. 471)

...an Indian tribe obtains no legal right from a treaty to which it is not a contracting party. The Sac and Fox Tribe of Indians of Oklahoma, et al., v. the United States, Appeal No. 1-61, decided April 5, 1963.

...while the title to tribal property or funds is in the tribe, they are held for the common use and benefit of all its members; in fact, the members are usually treated by the Government as communal owners.... Therefore, when the individual members of a tribe are given an opportunity to consider a proposal and express their approval by a majority of them signing such an agreement affecting tribal property, we believe this majority should be considered, in effect, as acting on behalf of and representative of the tribe just as effectively as chiefs or an elected council.... (2 Ind. Cl. Comm. 226)

- XL I. LAND VALUATION, GENERALLY ("FAIR MARKET VALUE," "BEST AND HIGHEST USE," ETC.)
- XLII. LAND VALUATION: DATE OF VALUATION OR OF TAKING
- XLIII. LAND VALUATION: AGRICULTURAL VALUE
- XLIV. LAND VALUATION: GRAZING
- XLV. LAND VALUATION: HUNTING AND FISHING
- XLVI. LAND VALUATION: IMPROVEMENTS
- XLVII. LAND VALUATION: MINERAL RIGHTS
- XLVIII. LAND VALUATION: NATURAL WATER WAYS
- XLIX. LAND VALUATION: TIMBER

L. LAND VALUATION: TRANSPORTATION ROUTES, LAND AND WATER

For the most part the Commission makes awards only of money and only for property losses. (1 Ind. Cl. Comm. 65, 26 Ind. Cl. Comm. 281) The Commission bases its awards on the "fair market value" of a tract at the date it was taken. In valuing land claims the Commission takes into consideration the valuation date, agriculture, grazing, hunting and fishing, improvements, minerals, water, timber, transportation, pressures from settlers, other lands available in the area, and government land prices.

- LI. OFFSETS AND CREDITS, GENERALLY
- LII. OFFSETS AND CREDITS: "BENEFIT OF CLAIMANT"
- LIII. OFFSETS AND CREDITS: "ENTIRE COURSE OF DEALINGS" OR "GOOD CONSCIENCE" CLAUSE
- LIV. OFFSETS AND CREDITS: DEPRECIATION JUDGMENTS
- LV. OFFSETS AND CREDITS: PAYMENTS ON THE CLAIM
- LVI. OFFSETS AND CREDITS: RELIEF PAYMENTS TO INDIVIDUAL INDIANS
- LVII. OFFSETS AND CREDITS: REMOVAL EXPENSES
- LVIII. OFFSETS AND CREDITS: RESERVATIONS

Under the Act,

"...the Commission shall make appropriate deductions for all payments made by the United States on the claim, and for all other offsets, counterclaims, and demands that would be allowable in a suit brought in the Court of Claims under Section 250 of Title 28; the Commission may also inquire into and consider all money or property

given to or funds expended gratuitously for the benefit of the claimant and if it finds that the nature of the claim and the entire course of dealings and accounts between the United States and the claimant in good conscience warrants such action, may set off all or part of such expenditures against any award made to the claimant,.... (25 U.S.C. §70a).

The Act goes on to list exceptions, including expenditures for education, health, administrative purposes, or for

...removal of claimant from one place to another at the request of the United States.... (25 U.S.C. §70a).

To be "gratuitous" an offset must not be part of the terms of a treaty and it must have been made for the "benefit of the claimant" and not for individuals or for other parties. The category, LIII. Offsets and Credits: "Entire Course of Dealings" or "Good Conscience" Clause, refers to the requirement that in establishing offsets

...the burden is placed on the defendant of proving that the entire history of the United States - claimant's relationship, including the nature of the claim sued on, contains no overall fatal taint barring a finding that "in good conscience" gratuities should be allowed. (26 Ind. Cl. Comm. 25-26)

Of the other categories, LIV. Offsets and Credits: Depredation Judgments refers to the infrequent judgments outstanding against tribes for attacks on settlers or destruction of non-Indian property. LV. Offsets and Credits: Payments on the Claim refers to possible

legitimate payments the United States may have made on the claim. LVI. Offsets and Credits: Relief Payments to Individual Indians are not allowable as offsets as they are not payments made for the benefit of the tribe. LVII. Offsets and Credits: Removal Expenses are specifically excepted from allowable offsets by the Act and LVIII. Offsets and Credits: Reservations may or may not constitute legitimate offsets depending on the terms of the agreements or acts creating them.

LIX. INTEREST ON THE CLAIM

The Commission rarely, if ever, awards interest on aboriginal title claims, and, unless expressly provided for by statute, interest is not generally available on any claims against the United States. One exception is a taking entitling the claimant to "just compensation" under the Fifth Amendment. Another exception is interest sought as damages and not as interest on an award. For example, the United States might obligate itself in a treaty to invest certain funds on behalf of a tribe. Interest on these funds would not be interest on the claim, but rather part of the claim itself.

LX. APPORTIONMENT OF AWARD

...we should note that the Commission has no jurisdiction to determine how an award is to be paid or precisely who can participate in an award. This is for Congressional and administrative determination. (23 Ind. Cl. Comm. 319)

However, in determining a plaintiff's standing, the Commission often rules on who the successors to a particular claim may be. (See X. Standing: Successor in Interest, Identification, and XI. Standing: Successor in Interest, Representation.)

LXI. ATTORNEY'S FEES AND EXPENSES

The fees of such attorney or attorneys for all services rendered in prosecuting the claim in question, whether before the Commission or otherwise, shall, unless the amount of such fees is stipulated in the approved contract between the attorney or attorneys and the claimant, be fixed by the Commission at such amount as the Commission, in accordance with standards obtaining for prosecuting similar contingent claims in courts of law, finds to be adequate compensation for services rendered and results obtained, considering the contingent nature of the case, plus all reasonable expenses incurred in the prosecution of the claim; but the amount so fixed by the Commission, exclusive of reimbursements for actual expense, shall not exceed 10 per centum of the amount recovered in any case. (25 U.S.C. §70n)

LXII. ATTORNEY'S CONTRACTS, GENERALLY

LXIII. ATTORNEY'S CONTRACTS: APPROVAL OF

With the exception of tribes organized under 25 U.S.C. §476, tribes bringing claims before the

Commission must have attorney's contracts approved as outlined under 25 U.S.C. §§81, 82-84. (25 U.S.C. §70q). However, the Commission has ruled that an approved attorney's contract is not required for tribes intervening in Commission cases. (22 Ind. Cl. Comm. 7)

LXIV. EXPERT WITNESSES AND RESEARCH EXPENSES

Witnesses subpoenaed [sic] to testify or whose depositions are taken pursuant to this chapter, and the officers or persons taking the same, shall severally be entitled to the same fees and mileage as are paid for like services in the courts of the United States. (25 U.S.C. §70q)

LXV. RES JUDICATA AND ESTOPPEL

...the following legislative history of the enactment creating the Commission, which was introduced as H. R. 4497, plainly shows a purpose to exclude from consideration by the Commission any claim by the same parties which has been decided on its merits by any court of the United States. (1 Ind. Cl. Comm. 4-5)

However, the Indian Claims Commission Act has in many cases created new grounds for recovery not barred by doctrines of res judicata and estoppel. (See also IV. Cause of Action: New Cause of Action Created by the Indian Claims Commission Act.)

LXVI. EVIDENTIARY PROBLEMS

Much of the evidence presented to the Commission is historical and anthropological and the Commission often has to rule on the conflicting testimony of expert witnesses.

The purpose of submitting the reports and testimony of real estate appraisers is to aid the Commission in making this determination. The determination itself, however, is to be made by the Commission on the facts established by the evidence.... The appraisal can only be properly evaluated by giving consideration to the qualifications of the witness and in the light of the true facts upon which based.
(4 Ind. Cl. Comm. 401-402)

LXVII. AMENDED OR CONSOLIDATED PLEADINGS AND MOTIONS

The requirements for filing amended pleadings are outlined in 25 C.F.R. §503.13. Amendments filed after the 1951 filing deadline cannot set out a new cause of action not contained in the original petition.

LXVIII. COMPROMISE SETTLEMENTS

Compromise settlements must be approved by the petitioners and their attorneys, the Attorney General, the Secretary of the Interior, and the Commission.

(8 Ind. Cl. Comm. 417-419)

...no specific procedures governing the presentation of compromises of claims to the Commission, or how it shall proceed to a determination of compromises when they are presented are outlined in the Act or in the General Rules of Procedure adopted by Commission.

In view of the legislative history of the Act creating the Commission it appears that we must give more than a perfunctory consideration to proposed compromises; a mere rubber stamping of the agreements will not do. Also, it is conceivable that there may be some compromises which the Commission would feel duty bound to disapprove. (8 Ind. Cl. Comm. 409)

LXIX. REHEARING OR RECONSIDERATION

A motion for re-hearing shall be founded upon one or more of the following grounds: First, error of fact; second, error of law; and third, newly discovered evidence. (25 C.F.R. §503.33(b) (1973))