BEFORE THE INDIAN CLAIMS COMMISSION

THE LOWER SIOUX INDIAN COMMUNITY IN MINNESOTA, ET. AL.,	)	
Plaintiff,	)	
v.	)	Docket No. 363 Second Claim
THE UNITED STATES OF AMERICA,	)	
Defendant.	)	

Decided: December 10, 1969

Appearances:

Marvin J. Sonosky, Attorney for Plaintiff. Emerson Hopp was on the brief.

John D. Sullivan with whom was Mr. Assistant Attorney General Shiro Kashiwa, Attorneys for Defendant.

OPINION OF THE COMMISSION

Vance, Commissioner, delivered the Opinion of the Commission.

On October 6, 1969, plaintiffs filed a motion captioned "Motion for Leave to Sever from Docket No. 363 Claims Identified As Docket No. 363A and Docket No. 363B". While so denominated, the motion in substance requires a ruling as to whether the specific claims now set out were encompassed by the general language of the original petition. Only if these claims were within the original petition may they now be heard since the time for presentation of new claims under Section 12 had expired over eighteen years prior to the filing of the motion.

The claim which plaintiffs identify as 363A asks for compensation

for land taken by the Act of April 27, 1904, 33 Stat. 319. The claim which plaintiffs identify as 363B asks for compensation (1) for rights and interests ceded under the Treaty of February 19, 1867, 15 Stat. 505, amended and ratified by the Senate on April 15, 1867, 15 Stat. 509, amendments accepted by the Sisseton and Wahpeton Bands on April 22, 1867, 15 Stat. 510; and (2) for land ceded under the agreement dated September 20, 1872, 2 Kappler 1057, amended and confirmed by Congress by the Act of February 14, 1873, 17 Stat. 437, 456, ratified by the Sisseton and Wahpeton Bands on May 2, 1873, 2 Kappler 1059-1063, and again confirmed by Congress by the Act of June 22, 1874, 18 Stat. 146, 167.

The Second Claim of the original petition contained very broad language, apparently intending thereby to encompass any claims that plaintiffs might have against defendant. The petition claimed:

> 14. Under and by virtue of various statutes, treaties and administrative acts, the defendant has been obligated to pay various sums in money and goods to the petitioners, has invested and held for investment various funds belonging to the petitioners, and has managed and disposed of property, both real and personal, belonging to the petitioners.
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> 15. In the course of its management and control, the defendant at various times:
>
> (1) Has paid out sums belonging to the petitioners to persons not entitled to receive the same;
>
> (2) Has sold, rented or otherwise alienated property, including lands, belonging to the petitioners in an improvident manner;
>
> (3) Has unlawfully induced the petitioners to consent to the use of their funds for the payment of alleged debts never incurred by the petitioners;

(4) Has taken unto itself lands and other property belonging to the petitioners;

(5) Has profited at the expense of the petitioners by its management and control of petitioners' funds and property;

(6) Has enabled its non-Indian citizens to profit at the expense of the petitioners by the defendant's management and control of petitioners' funds and property.

It is clear, however, that our rules of procedure have always contemplated that such general allegations might be filed and have provided that if the pleading is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, it may move for a more definite statement before interposing its responsive pleading. Rule 11(e). Had defendant made such a motion, the allegations now set forth by plaintiffs would have been a proper response.

In a similar situation, the Court of Claims in Yankton Sioux Tribe v. United States 175 Ct. Cl. 564, (1966), held that a broadly worded claim supported a claim to a specific land area and held that the Commission should have permitted the pleading to be amended to conform to the evidence. It stated:

> We agree with the Commission that its jurisdiction cannot be extended by agreement of the parties in a case before it, and absent the necessary pleading, the right to recover is precluded. However, we do not agree that appellant's pleading is insufficient to meet the requirements of Section 12 of the Indian Claims Commission Act. Commissioner Scott has written a dissent thoroughly discussing the point and, agreeing with his view as we do, there is no need to belabor the query with a rehash of his exposition of the logical and historical reasons for allowing the claim to Royce Cession 151 to be determined on its merits. It is sufficient for our purposes of review to note several factors which sum up our conclusion and require reversal of that portion of the Commission's order relating to the jurisdictional point.

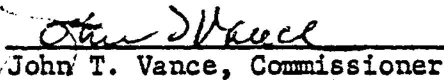
> First, the wording of paragraph 8-b of appellant's petition in docket No. 332-A, while exceedingly broad and comprehensive, did in fact include Royce Cession 151. That paragraph stated in part that "the petitioner * * * owned or occupied certain portions of the lands enclosed by the following boundaries * * *" and, as the Commission said, "then there follows a lengthy description of a vast area encompassing some nine states and some 85 million acres, including all of Royce Area 151." Under the circumstances of the time interval between Indian occupancy of the land (into which settlement was rapid after the mid-1800's) and the date for filing the petitions, the uncertainties of Indian title to any of this land and the time pressures for filing the claims before the Commission, we cannot say that appellant's claim is so broad or indefinite that it fails to allege any cause of action, since the area in controversy was in fact included in the land claimed. There are indications that at the time the claim was filed it was as specific as possible. Second, we note that defendant had no difficulty at all answering or defending the claim on account of its broadness, for it knew what the controversy was concerned with and defended well. Third, we take cognizance of the liberality in pleading before judicial tribunals in these modern times, as fully discussed by Commissioner Scott, and need but mention that the Commission is bound both by the rules it has adopted and the spirit of the Indian Claims Commission Act to this liberality in procedure. Id. at 568-569.

In addition, it should be noted that a long line of cases in both the Commission and the courts clearly indicates that the special relationship between Indians and the Federal government and the broad remedial purposes of the Indian Claims Commission Act require that substantial justice be done in tribal claims, even at the expense of procedural niceties. It will suffice to quote the latest of many such cases:

> Finally, we cannot forget that this is a litigation brought by Indian Tribes to redress an alleged wrong by the Government which has long supervised their affairs. Though we do not lean over backwards in such a case, we are somewhat more lenient in procedural matters than we

> might be in other classes of cases in which the relationship of the parties are not so special. Confederated Salish and Kootenai Tribes v. United States, 189 Ct. Cl. _____ (November 14, 1969), slip opinion at p. 4.

We therefore hold that the allegations set forth by plaintiffs in their amended petitions were included in the original timely petition. We see no need to sever these claims from Docket No. 363. The Commission will proceed to take evidence as to these claims.



John T. Vance, Commissioner

We concur:

Jerome K. Kuykendall, Chairman

Richard W. Yarborough, Commissioner

Margaret H. Pierce, Commissioner

Brantley Blue, Commissioner