

## BEFORE THE INDIAN CLAIMS COMMISSION

GILA RIVER PIMA-MARICOPA INDIAN	)	
COMMUNITY, ET AL.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Docket No. 236-I
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: May 19, 1971

## Appearances:

Z. Simpson Cox, Esq.,  
Attorney for Plaintiff.

David M. Marshall, Esq., with whom was  
Mr. Assistant Attorney General Shiro Kashiwa,  
Attorneys for the Defendant.

OPINION ON DEFENDANT'S MOTION FOR  
PRELIMINARY ADJUDICATION

Yarborough, Commissioner, delivered the opinion of the Commission.

As material here, the plaintiff's claim is based on the alleged failure of the United States to obtain adequate compensation for the tribe under some 16 leases of tribal and allotted lands executed before and after August 13, 1946. This matter is now before the Commission on defendant's Motion for a Preliminary Adjudication by which defendant moves for a determination that the claims of the plaintiff, within the scope of Paragraph 12 of the petition filed in this case, insofar as such claims are based on leases of allotted

lands or on leases and permits dated after August 13, 1946, are outside the jurisdiction of the Commission on the following grounds:

- (a) The Commission lacks jurisdiction of the claims based on leases of allotted lands because such claims are individual in nature; and
- (b) The Commission lacks jurisdiction of the claims based on leases and permits dated after August 13, 1946, because claims which accrued after that date are excluded under Section 2 of our Act.

Defendant seeks a dismissal of all claims falling within these categories. Plaintiff does not argue the challenge to the allotted lands, but does assert that the Commission has jurisdiction of the claim based on leases before and after 1946.

It cannot be questioned at this late date that this Commission, under the provisions of the Indian Claims Commission Act, 60 Stat. 1049, has original jurisdiction of all claims of the general character asserted in this petition. The provisions respecting the jurisdiction and authority of the Commission should be liberally construed.

Thompson v. United States, 122 Ct. Cl. 348 (1952). The Court of Claims has held that our Act contains no limitations respecting damages or compensation accruing subsequent to August 13, 1946, following the general rule that, once a court obtains jurisdiction of person and subject matter, it retains such jurisdiction for all

purposes including the awarding of all damages accruing up to the date of judgment. Gila River Pima-Maricopa Indians v. United States, 135 Ct. Cl. 180, 140 F. Supp. 776 (1956).

Plaintiff contends that the question of jurisdiction raised here by defendant is res judicata, relying on a 1962 order of the Court of Claims in Gila River Pima-Maricopa Indians v. United States, 157 Ct. Cl. 941 (1962). That order, it is noted, was issued after the case, pending since 1953, came before the court on its rule to show cause why plaintiff's petition should not be dismissed for lack of prosecution. It appears that plaintiff originally sought an abatement of the proceedings in the court pending the outcome of its suit before this Commission on the same claims. Since it appeared to the court that the alleged wrongful acts of the defendant accrued, if at all, prior to 1946, it held that the Indian Claims Commission had jurisdiction of the claim, and dismissed the petition accordingly.

We have thoroughly examined the very limited record then before the Court of Claims, and upon which its determination was made. It is our interpretation that the Court of Claims rested its judgment solely on the assumption that plaintiff was alleging continuing causes of action that initially accrued prior to August 13, 1946. By so regarding the continuing nature of the claims and the question of damages, the Court recognized that the claims before it could be presented before the Commission, and that the Court, in the exercise of its appellate jurisdiction, could review any decision of the

Commission. (An order to the same effect was issued in Colorado River Indian Tribes v. United States, 156 Ct. Cl. 712 (1962).)

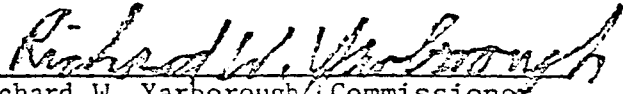
Without reaching the necessity of ruling on the res judicata contention, the Commission's own assessment here of its jurisdiction is compatible with the action of the Court of Claims.

There would appear to be no jurisdictional dispute respecting the claims arising out of pre-1946 leases of tribal lands. If plaintiff is alleging in the instant suit a cause or causes of action which arose prior to August 13, 1946, and, if damages or plaintiff's right to compensation resulting therefrom continued to accrue subsequent to the passage of our Act, then the Commission clearly has jurisdiction. Presumably, the plaintiff's basis for recovery is that the entire leasing policy as administered by the Government, of which the leases are evidence, gave rise to the initial wrongdoing accruing prior to 1946. The cause of action being a continuing one, as evidenced by the leases, gives this Commission jurisdiction to award damages, as measured by the leases. Apparently this was the basis upon which the Court of Claims in 1962 resolved its jurisdictional question with respect to the identical claim. If, on the other hand, plaintiff's theory of recovery is founded on wrongful acts arising independently and separately out of each single lease of plaintiff's lands, defendant's objection to our jurisdiction would have merit.

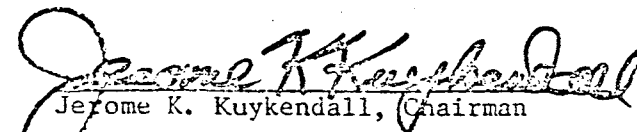
The allegations in the record from which these matters can be determined are not clear. Neither the petition nor plaintiff's more

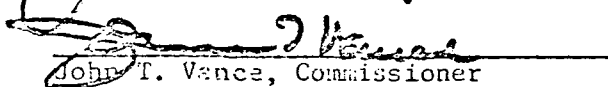
definitive statement discloses, with any degree of precision, the exact theory of the cause or causes of action, or the accrual dates thereof. Moreover, the question of the title to the subject lands, insofar as it relates to the status of leased lands under what appears to be individual allotments, requires further development and clarification in this record. Other issues, e.g., the uncertain status of a certain eight sections of land, will be the subject of further pre-trial proceedings.

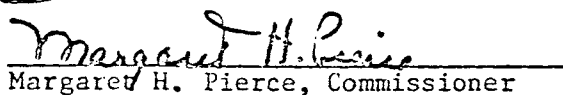
Since the complete facts are not before us from which we can determine these matters, the Commission is of the opinion that the case should proceed and defendant's motion for a preliminary adjudication, which is akin to a motion for summary judgment, should be denied without prejudice to the merits of the contentions.

  
Richard W. Yarborough, Commissioner

We Concur:

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Margaret H. Pierce, Commissioner

\_\_\_\_\_  
Brantley Blue, Commissioner