

BEFORE THE INDIAN CLAIMS COMMISSION

THE FORT SILL APACHE TRIBE OF)	
THE STATE OF OKLAHOMA, et al.,))	
)	
Plaintiffs,)	
)	
v.)	Docket No. 182
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: September 13, 1972

Appearances:

Weissbrodt & Weissbrodt;
Abe W. Weissbrodt, Attorneys for
the Plaintiffs.

Dean K. Dunsmore, with whom was
Mr. Assistant Attorney General
Kent Frizzell, Attorneys for the
Defendant.

OPINION OF THE COMMISSION

Blue, Commissioner, delivered the opinion of the Commission.

On July 3, 1972, the plaintiffs, for the purpose of expediting the adjudication of this docket, filed a motion before the Commission seeking an order separating into two groups those claims they contend were pleaded in the petition filed in this docket on July 31, 1951. The plaintiffs urge the Commission to treat as "Group A" claims and "Group B" claims those claims purportedly pleaded. The Group A claims would represent those for damages and compensation for the removal of various resources from the aboriginal lands of the Chiricahua Apache

Tribe in Arizona and New Mexico prior to the date the Government extinguished the Indian title to said lands and for damages and compensation for various uses of the tribe's lands before said date of extinguishment. The Group B claims would comprise those claims denominated as follows at page 8 of the Plaintiffs' Reply To Defendant's Response To Motion To Separate Or Sever Claims, filed on August 1, 1972:

- (1) a claim for damages or compensation arising out of defendant's actions, in violation of the Constitution, or in breach of law or equity, or in breach of its fiduciary obligations to plaintiffs, or in breach of fairness and honor in dealing with plaintiffs' lands and other property within the Fort Sill Reservation for defendant's own advantage, benefit and purpose, and to the injury of plaintiffs; and
- (2) A claim for an accounting by defendant with respect to its supervision, dealings with, and disposition of, the lands of the Fort Sill Reservation and the property constructed or acquired by plaintiffs while occupying the Reservation, including villages, buildings, wells, water tanks, fences, other improvements, and appurtenances, cattle and agricultural products, and funds derived from the sale of the foregoing.

Pursuant to Commission order this case was brought to trial on May 8 through May 10, 1972, for the admission of evidence on "all issues present in this case, including the accounting claim". See Order dated April 19, 1972. At trial, counsel for the plaintiffs informed the Commission of their intention to move for an order separating the claims they contend were pleaded, and they requested that the trial then in

progress be limited to the issues described above as the Group A claims. Defendant's counsel did not object to this procedure, but reserved the right to oppose any such motion, stating that defendant did not agree with plaintiffs that a claim for a general accounting had been pleaded. The trial was conducted solely on the Group A claims and the plaintiffs' counsel have now filed their promised motion. The defendant has objected to the plaintiffs' motion on the grounds that only one cause of action is contained within the pleadings in this case, and that cause of action is for the use of plaintiffs' aboriginal lands prior to the extinguishment of plaintiffs' title to these lands. Defendant thus asserts there are no Group B claims pleaded.

The plaintiffs' arguments in support of their motion to separate or sever claims are set forth in their Reply To Defendant's Response To Motion To Separate Or Sever Claims, filed on August 1, 1972. Plaintiffs contend that the allegations in the petition that defendant has exercised in respect to the lands and other property of the plaintiffs the power of a guardian and trustee in possession (paragraph 10), that defendant concealed from plaintiffs the true value of their lands and other property (paragraph 27(e)), and that defendant dealt with such lands and property to its own advantage for its own benefit and to the detriment of the plaintiffs (paragraph 27(f)), are sufficient to embrace a claim with respect to defendant's dealings with, and disposition of, plaintiffs' lands and other property within the Fort Sill Reservation. Further, plaintiffs contend that their allegations in the petition that defendant

has sold or otherwise disposed of the lands and other property belonging to plaintiffs and has not accounted for receipts from such sales and other dispositions (paragraph 11), and plaintiffs' prayer for an accounting (paragraph 28A), are sufficient to state a claim for a general accounting with respect to defendant's handling of plaintiffs' property within the Fort Sill Reservation and the funds derived from the sale or other disposition of any such property.

Plaintiffs also contend that defendant may not now take the position that it had no notice that it might be required to defend against the two Group B claims, for the reason that defendant denied, in its answer, plaintiffs' allegations that the defendant had wrongfully or unfairly dealt with plaintiffs' lands and property, sold or otherwise disposed of plaintiffs' property, and failed to safeguard plaintiffs' rights to their lands and property, and, further, with respect to the claim for accounting, for the reason that the defendant has previously expressly acknowledged and represented to the Commission that the petition presents a claim for an accounting (defendant's motion of June 28, 1962, to extend the time to answer or otherwise plead) and defendant has filed an accounting report with the Commission.

The defendant's arguments in opposition to the motion are based upon the assertion, as stated supra, that only one cause of action is contained within the petition and that is for the use of plaintiffs' aboriginal lands prior to the extinguishment of their title thereto. Defendant has looked, procedurally, to the plaintiffs' claims for relief

(paragraph 27), has found no claim there for accounting but has found, rather, that all the claims therein stated are claims for use of the plaintiffs' aboriginal lands before extinguishment of their title, all of which were tried as part of the so-called Group A claims; and, further, has looked to the prayer for accounting (paragraph 28) and found, citing authority, that the prayer for relief is not part of the cause of action, which must be gleaned only from the allegations of the petition. Based upon this analysis, defendant finds that the plaintiffs' present motion constitutes an attempt to bring in new claims which are beyond the Commission's jurisdiction, and that its own prior acknowledgments and representations to the Commission that the petition pleaded a general accounting cannot be used to confer jurisdiction where it is not otherwise present.

Substantively, the defendant's argument is based upon two recent decisions of the Commission involving claims by Alaskan aborigines which were dismissed by the Commission subsequent to the enactment of Public Law 92-203, The Alaskan Native Claims Settlement Act of 1971, 85 Stat. 688. See Native Village of Gambell v. United States, Docket 284, 27 Ind. Cl. Comm. 140 (1972) and Aleut Community of St. Paul Island v. United States, Dockets 352 and 369, 27 Ind. Cl. Comm. 177 (1972). In each of these cases, as in the present case, the prayer for relief included a request for an accounting for the management of the respective plaintiffs' lands and property. In the two cases cited the Commission concluded that the "accounting" sought in the petitions was not a general accounting. The following language from the Commission's

opinion in Aleut Community, supra, at 180, explains the Commission's decision:

... The Plaintiffs' alleged accounting action is not a demand for comparison of monies promised and appropriated, or of monies appropriated and expended, but is merely a demand that the defendant open its books to facilitate a computation of damages, assuming that any compensable cause of action survives the pending motions.

For the reasons hereinafter set forth, we hold that the claims relating to the Fort Sill Reservation were pleaded in the petition originally filed herein.

Based upon the broad remedial intent of the Indian Claims Commission Act of 1946, 60 Stat. 1049, and upon the exigencies of pleading in litigation such as countenanced by that Act, it has been consistently held that pleadings should be liberally construed in actions brought before the Indian Claims Commission. Thus, in the case of Yankton Sioux Tribe v. United States, 175 Ct. Cl. 564, 568-69 (1966) (rev'g Docket 332-A, 10 Ind. Cl. Comm. 137 (1962)), the Court of Claims, describing the peculiar need for liberal construction of pleadings in suits brought under the Indian Claims Commission Act, held that a plea for additional compensation for the taking of a specified area of land was included in an "exceedingly broad and comprehensive" allegation that the petitioner owned a "vast area encompassing some nine states and some 85 million acres" when the specific area of land was included within the boundaries originally pleaded. This Commission in the case of Lower Sioux Indian Community v. United States, Docket 363, 22 Ind. Cl. Comm. 226 (1969),

held that "very broad language, apparently [intended] to encompass any claims that plaintiffs might have against defendant" and alleging obligations "[u]nder and by virtue of various statutes, treaties and administrative acts" included allegations of obligations imposed by virtue of treaties first specifically enumerated 18 years after the petition was filed. In the latter case, the Commission stated:

*** 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.

See also the Commission's opinion in the same docket at 26 Ind. Cl. Comm. 267 (1971).

In the case before us, we are basically in agreement with plaintiffs' rationale in support of their motion. Plaintiffs' petition at paragraph 10 clearly sets forth an allegation that the defendant has exercised in respect to the plaintiffs' lands and other property the function of a guardian and trustee in possession. The language of this paragraph does not limit itself to plaintiffs' aboriginal lands and property thereon but, rather, that paragraph includes broad language alleging the creation of a fiduciary relationship "[b]eginning with the Treaty of Guadalupe Hidalgo of February 2, 1848 (9 Stat. 922) and in accordance with other legislative and executive acts promulgated from time to time thereafter".

Furthermore, the same paragraph alleges the continuation of such a relationship up to the present day. Again the language of paragraph 27 of the petition contains within it demands for relief which are sufficiently broadly worded to include a claim for damages or compensation, under the categories of suits authorized under section 2 of our Act, arising out of defendant's dealings with plaintiffs' property within the Fort Sill Reservation.

With respect to the claim for accounting, paragraph 10 of the petition alleges, as stated above, the continuing existence of a fiduciary relationship. Paragraph 11 specifically alleges that defendant has not accounted to the plaintiffs for the receipts derived from the "sales, leases, franchises and other dispositions" of the plaintiffs' lands and other property (which allegation was apparently overlooked by defendant in its response to this motion) and paragraph 28A of the petition includes a prayer for general accounting for the period February 2, 1848 until August 13, 1946. We construe these portions of the petition to contain a claim for a general accounting by defendant with respect to its supervision, dealings with, and disposition of, the lands of the Fort Sill Reservation and the property constructed or acquired by plaintiffs while occupying the Reservation.

Defendant's arguments against the motion proceed on too narrow grounds. Admittedly, most of the allegations of the petition relate to the plaintiffs' aboriginal lands and property there but, as we have pointed out above, such emphasis does not exclude other claims where

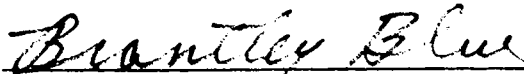
the language of the petition is broad enough to include such other claims. Furthermore, defendant's argument that there is no cause of action for accounting because only the prayer for relief contains a reference to accounting is, as we have remarked above, factually fallacious. Finally, defendant's reliance on the two recent Commission dismissals of Alaskan claims is misplaced since the latter cases may, at best, be analogized to a claim for accounting only with respect to the disposition of plaintiffs' land and other property within its aboriginal territory and such is not the subject of the claim for accounting pleaded here.

Without finding it controlling, we, nevertheless, have given weight to the fact that until very recently in this litigation the defendant has not disputed that a claim for accounting was pleaded. Defendant acknowledged this in its motion of June 28, 1962, for leave to extend the time to answer or otherwise plead where it was stated, as grounds for such extension, that ". . . the plaintiffs ask for a general accounting of all funds and moneys alleged" and that reports from the General Accounting Office on this matter were not yet available. In addition, the defendant filed such an accounting report with the Commission after receiving it from the General Services Administration.

For these reasons we conclude that the petition filed herein does include claims for damages or compensation arising out of defendant's actions in dealing with plaintiffs' lands and other property within the Fort Sill Reservation and for a general accounting by defendant with respect

to its supervision, dealings with, and disposition of, the lands of the Fort Sill Reservation and the property constructed or acquired by plaintiffs while occupying the Reservation. We will therefore issue an order granting the plaintiffs' motion to the extent of separating the claims pleaded within the petition in this docket into Group A claims and Group B claims as delineated above and permitting the plaintiffs' exceptions to defendant's accounting report to be filed as of August 1, 1972.

This case will now proceed to an adjudication of those issues under the Group A claims which have been previously tried and, in the case of the Group B claims, to consideration by the Commission of the defendant's Motion To Dismiss Or To Strike Exceptions, Or For More Definite Statement, filed on August 16, 1972.



Brantley Blue, Commissioner


We concur:



John T. Vance, Commissioner



Richard W. Yarborough, Commissioner



Margaret A. Pierce, Commissioner

Chairman Kuykendall dissenting:

While it is desirable policy liberally to construe petitions filed in claims before the Indian Claims Commission, it is nevertheless necessary to adhere to a standard which does not abrogate the jurisdictional limitation of section 12 of the Indian Claims Commission Act, 60 Stat. 1052, requiring that all claims be filed within a period of five years from August 13, 1946. Certainly there is a legally definable line that divides claims present within a petition from those which are not. Definition of that line must be based upon construction of the petition.

It is therefore necessary to consider in some detail the contents of the petition filed herein on July 31, 1951. The first six paragraphs of the petition relate to the jurisdiction of the Commission and the standing of the parties. Paragraphs 7, 8 and 9 allege, respectively, the aboriginal occupancy by plaintiffs' ancestors of a large, described tract in the present States of Arizona and New Mexico; the use of said tract by plaintiffs' ancestors' and the acknowledgment by the defendant, in various treaties and statutes, of the rights of plaintiffs' ancestors to the use, occupancy and ownership of said tract. The next two paragraphs of the petition are as follows:

.....

10. Beginning with the Treaty of Guadalupe Hidalgo of February 2, 1848 (9 Stat. 922) and in accordance with other legislative and executive acts promulgated from time to time thereafter, including the Act of September 9, 1850 (9 Stat. 446), the Act of September 30, 1850 (9 Stat.

544, 556), the Act of February 27, 1851 (9 Stat. 574, 587), the Treaty of July 1852 (10 Stat. 979), the Respondent at all times mentioned herein has exercised and now is exercising in respect to the land and other property of the petitioners the power of a guardian and trustee in possession.

BREACHES OF FIDUCIARY OBLIGATIONS, TRESPASSES AND
UNFAIR AND DISHONORABLE DEALINGS

11. Commencing immediately after the execution of the aforesaid treaty of February 2, 1848, and during the years that followed, the United States has permitted and encouraged divers private persons to enter upon the ancestral lands of the petitioners, to use the lands and the appurtenances thereto and products thereof, including the minerals, water, timber, fish and wild game, and to exclude the petitioners therefrom, has neglected to collect rentals, fees, damages, and compensation due to the petitioners, has sold, leased, franchised, given away and otherwise disposed of the lands and other property of the petitioners and has not accounted to the petitioners for the receipts derived from such sales and leases, franchises and other dispositions, all to the great damage of the petitioners.

Paragraphs 12 through 26 of the petition set out a series of allegations of breaches of fiduciary obligations, trespasses and unfair and dishonorable dealings, all of which, except for the last sentence of what is quoted below, relate to events occurring within the aboriginal lands of the plaintiffs prior to the date of extinguishment of their title. The excepted language appears in paragraph 26 within the context of an allegation of unfair and dishonorable dealings on the part of the defendant which, it is alleged, included the following:

. . . as a result of the acts of the United States and of its officers and agents, the petitioners were placed in a destitute and weakened condition. Thereupon, the United States through its officers and agents embarked on

a course of action and program by means of force and arms, of compelling the petitioners to move from their ancestral lands and to concentrate the petitioners upon reservations outside of their ancestral lands. When the petitioners resisted said program, the United States, through its officers and agents, embarked upon a course of action of exterminating the petitioners. When the petitioners resisted this, the United States, through its army and through its officers and agents, seized and imprisoned all known members of the petitioners. Said imprisonment continued for a period of twenty-seven years.

Paragraph 27 of the petition asserts several claims for relief based upon the preceding allegations. Common to all these claims except the last is the reference to the "lands" and "property" of plaintiffs. The last alleges gross negligence on the part of the United States ". . . in the performance of its duties as a guardian and trustee in possession. . .". This last claim must be read, however, together with paragraph 10 of the petition, supra, which states that ". . .the Respondent at all times mentioned herein has exercised and now is exercising in respect to the land and other property of the petitioners the power of a guardian and trustee in possession". (Emphasis added.)

Paragraph 28 contains the following prayers for relief:

A. That an account be taken of the United States from February 2, 1848 until August 13, 1946; that this account shall set out what lands, rights and interests therein, and other property have been taken from the petitioners by private persons acting without restraint from the Respondent and without compensation to petitioners, what funds, receipts, royalties and other fees and compensation were received by Respondent for the use and disposition of lands and other property of petitioners and not paid over to petitioners, what damages, waste and injury was committed to the lands and other property of

petitioners by private persons acting without restraint from the Respondent, what property unlawfully taken from the lands of the petitioners was purchased by or converted by Respondent to its own use and advantage.

B. For a determination that Respondent is obligated to make payment to the petitioners by way of damages or compensation, as the case may be, together with interest.

C. That Respondent be required to pay over to petitioners all damages the petitioners may have suffered or sustained as a result of each and all of the violations of the rights of the petitioners as aforesaid.

The majority have indicated they have given some weight to the background leading up to the present posture of the parties with respect to the matters raised in the motion. It is, therefore, also necessary to review the procedural history of this docket to show how the parties and the Commission have previously construed the petition filed herein. On June 28, 1962, the defendant, in a motion to extend the time to answer or otherwise plead, stated as grounds therefor, that ". . . the plaintiffs ask for a general accounting of all funds and moneys alleged due" and that reports from the General Accounting Office on this matter were not yet available. On July 11, 1962, the Commission issued an order directing the defendant ". . . to plead to the part of [the] petition involving the accounting" within 60 days of receipt by the Attorney General of the report from the General Accounting Office, to file notice of receipt of the report with the Commission and to mail a copy of the report to plaintiffs' counsel. The Commission made a statement in the order that it

appeared ". . . that petitioners seek, among other things, an accounting of the funds and property handled by defendant". There the matter rested until May 28, 1970, when the Commission issued an order resetting the date of ". . . trial on liability and accounting".

A one-page accounting report had been sent by the General Services Administration to the Attorney General on June 13, 1969, and this report was filed with the Commission on June 16, 1970. However, the defendant did not, upon receipt of the report, either plead to the accounting claim or mail a copy of the report to plaintiffs' counsel. Subsequently, in orders dated June 9, 1971, and October 27, 1971, the Commission set the trial over "on liability and accounting".

The next reference to the accounting claim appears in plaintiffs' motion of March 31, 1972, for an order postponing the trial for four months on the grounds, inter alia, that defendant had not yet filed the accounting report with the Commission, and that plaintiffs needed time to consider whether to file exceptions to the report. In this motion, the plaintiffs, at page 2, characterized the accounting claim as one ". . . for an accounting with respect to funds belonging to plaintiffs which were received by defendant and with respect to lands and other property taken from plaintiffs". In response to this motion, the defendant first developed its argument that ". . . plaintiffs have never demanded an 'accounting' as that term is used in connection with the general accounting cases, but has merely demanded an 'accounting' for the use of plaintiffs' aboriginal lands". See defendant's Response

To Plaintiffs' Motion To Reschedule Date Of Trial, filed April 4, 1972. The plaintiffs replied that same day to the defendant's response stating, with respect to the accounting claim, that the language in paragraphs 11 and 28, supra, of the petition set forth a claim for general accounting. On April 7, 1972, the plaintiffs filed a Supplemental Reply in connection with their motion to reschedule the date of trial. In note 1 at page 2 thereof, plaintiffs for the first time in the history of this docket made reference to the presence of plaintiffs' ancestors upon the Fort Sill Military Reservation in Oklahoma for a period of some 20 years beginning in 1894 and the fact that defendant ". . . has not accounted with respect to plaintiffs' funds during this period . . ." nor ". . . for the lands of the reservation and the improvements thereon and appurtenances thereto, or the dispositions thereof". Again on that same day, the defendant filed a response indicating its position that plaintiffs' claim for accounting ". . . related solely to their aboriginal title land claim, rather than an account for money due under treaties or statutes".

At this point the Commission ordered that the trial be held, the trial was so held as described earlier in the majority opinion, and the plaintiffs filed the motion now before us.

The cases relied upon by the majority as support for their conclusion stand for the principle that broadly pleaded allegations in petitions timely filed with the Commission may be supplemented after the statutory period for filing petitions has run by specific allegations which fit within those broadly pleaded--a wise policy dictated by the nature of

Indian Claims Commission litigation. These cases do not, however, support the proposition that the language of allegations in a pleading, which language taken alone is very broad but which, in the context of the entire petition, clearly relates to certain transactions and occurrences, may, after the period for filing petitions has run, be applied to transactions and occurrences different from those described in the petition merely because the language, taken in vacuo, is broad.

The issue here is whether the language of the petition's allegations may reasonably be construed to include those claims denominated by plaintiff as Group B claims which arose out of transactions and occurrences upon the Fort Sill Military Reservation after the plaintiffs were taken from their aboriginal lands.*

It is true that paragraph 11 of the petition does contain an allegation that the defendant has not "accounted" to the plaintiffs and that the prayer for relief demands an accounting. However, it is very clear that the failure to account pleaded in paragraph 11 and the prayer for accounting in paragraph 28A relate only to the aboriginal "lands and other property of the petitioners". How can the language be construed otherwise when everything appearing in the petition before and after the allegation of failure to account relates to these aboriginal lands, when the language of the prayer for accounting can only be interpreted as a reference to the descriptions earlier in the petition of the defendant's actions

* The problem here is not that of amending the petition which involves the doctrine of relation-back. Thus, the question of defendant having notice of the possibility of being required to defend claims is irrelevant. The plaintiffs' contention is that the Group B claims were pleaded in the original petition.

with respect to the plaintiffs' aboriginal lands, and when the petition nowhere mentions the Fort Sill Military Reservation or any land or other property which the plaintiffs acquired there?

It must also be borne in mind that at the time the petition herein was filed no determination had yet been made by the Commission that the lands claimed by the plaintiffs in Arizona and New Mexico were aboriginally owned by the plaintiffs and that these lands were taken by the United States. These determinations were made much later by the Commission in proceedings under other claims filed by these plaintiffs. See Dockets 30-A and 48-A, 19 Ind. Cl. Comm. 212 (1968). Implicit in the majority's reasoning is the theory that, since the aboriginal lands of the plaintiffs were, in fact, taken by the United States, those portions of the petition which can be construed to include events occurring after the date of taking must contemplate events on the Fort Sill Reservation. This reasoning could only be valid if it had already been determined at the time the petition was filed that the plaintiffs' lands had been taken. Such was not the case here.

Furthermore, the fact that the defendant may have previously construed the petition to include a claim for accounting carries no weight. The defendant's previous statements cannot have the effect of creating Commission jurisdiction where such jurisdiction does not otherwise exist. See Lipan Apache Tribe v. United States, Docket 22-C, 22 Ind. Cl. Comm. 1, 3 (1969).

