

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: November 29, 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.

The matter now before the Commission in this docket is the defendant's motion, filed on August 16, 1972, for an order dismissing the claims raised by plaintiffs' Exceptions to Accounting Report, filed on August 1, 1972, or, in the alternative, for an order striking plaintiffs' Exceptions to Accounting Report, or for an order that the plaintiffs make the claims presented in said Exceptions to Accounting Report more definite and certain. On October 10, 1972, the plaintiffs filed their response to said motion and,

at the same time, filed a motion for leave to amend their petition. The reason plaintiffs have given for the filing of the latter motion is to satisfy the request of the defendant that the claims presented in plaintiffs' Exceptions to Accounting Report be made more definite and certain. We will consider both motions together.

Subsequent to the filing of defendant's motion, the Commission, on September 13, 1972, issued an order granting plaintiffs' prior motion herein to separate the claims in this docket into Group A claims and Group B claims. See 28 Ind. Cl. Comm. 433, rehearing denied, 29 Ind. Cl. Comm. 126. The motions presently under consideration relate only to the Group B claims as described in the above-cited order. Most of the matters raised in the motion involve only the accounting portion of the Group B claims; one relates to that portion of the Group B claims seeking damages or compensation arising out of the defendant's actions in dealing with plaintiffs' lands and other property within the Fort Sill Reservation. In the discussion which follows we will delineate the portion of the Group B claims to which the various matters raised in defendant's motion are directed.

That portion of defendant's motion which seeks the dismissal of plaintiffs' accounting claim rests on several grounds. Defendant first asserts that the Commission lacks jurisdiction of the subject matter of these claims because, having accrued while the plaintiffs were prisoners of war confined to the Fort Sill Military Reservation in Oklahoma, such

claims are individual rather than tribal. See Fort Sill Apache Tribe v. United States, Docket 49, 26 Ind. Cl. Comm. 281 (1971) and Fort Sill Apaches v. United States, Docket 30, 1 Ind. Cl. Comm. 137 (1949). Defendant next asserts that the United States is under no duty to account to these Indians because they were prisoners of war. In addition, defendant raises the defense of res judicata, relying upon the two cases cited above wherein claims for arrest and imprisonment were dismissed as individual rather than tribal claims. Further, defendant asserts that plaintiffs are attempting to split their cause of action by bringing the accounting claim separately from the arrest and imprisonment claims brought in the separate dockets cited above. Finally, defendant again asserts (as it did in opposing plaintiffs' motion to separate or sever the claims) that the accounting claim is barred by the five-year statute of limitations because this claim was not pleaded in the original petition.

We reject these arguments of the defendant. The Commission has recently held that the Group B claims were included in the original petition. See 28 Ind. Cl. Comm. at 441-42. This is the law of the case. Secondly, the prior cases cited by defendant represent the principle that ". . . any claim for damages suffered as a result of the wrongful acts of the United States in arresting and imprisoning members of an Indian tribe (or the whole tribe) is individual in nature . . ." (26 Ind. Cl. Comm. at 287). Neither of the Group B claims fall within this definition. The Group B claims are related chronologically not causally to the Indians' arrest and imprisonment and these Group B

claims arose out of Government treatment of these Indians as an entity. Therefore, the Commission does possess subject matter jurisdiction and the cited cases are not the basis for a defense of res judicata. For the same reasons, the Group B claims are claims distinct from those raised in the cases cited. Thus there is no splitting of one cause of action.

Finally, in their original petition, the plaintiffs recited generally the existence of various statutes and executive orders which they alleged created a fiduciary relationship and a duty to account to these Indians. In response to defendant's motion for more definite statement, the plaintiffs have moved to amend their petition to state with more particularity the bases for the fiduciary relationship and the duty to account. We will grant plaintiffs' motion. See Lower Sioux Indian Community v. United States, Docket 363, 26 Ind. Cl. Comm. 267 (1971); Same v. Same, 22 Ind. Cl. Comm. 226 (1969). If, as alleged, the Government assumed obligations toward these Indians, we see no reason why their status as prisoners of war would alter the Government's assumed obligations or eliminate the Government's duty to account. The amended petition thus states a claim.

One additional matter in defendant's motion merits brief comment. Defendant has stated that the plaintiffs have attempted to assert for the first time, by way of their exceptions to the accounting report, a new claim for lands and other property and that such procedure is improper in an accounting action. Such is not the case. As pointed out earlier

in this opinion, the Commission has recently held that both Group B claims were included in the original petition. See 28 Ind. Cl. Comm. at 441-42. Therefore, it is clear that the plaintiffs are not attempting to introduce the other Group B claim for the first time in their exceptions to the accounting report.

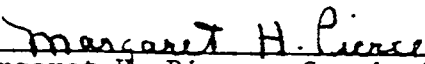
On the basis of the foregoing opinion, the Commission will issue an order denying the defendant's Motion to Dismiss or to Strike Exceptions or for More Definite Statement and granting plaintiffs' Motion for Leave to Amend Petition. The defendant may now proceed with the filing of its answer to plaintiffs' exceptions to the accounting report.

  
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 Brantley Blue, Commissioner

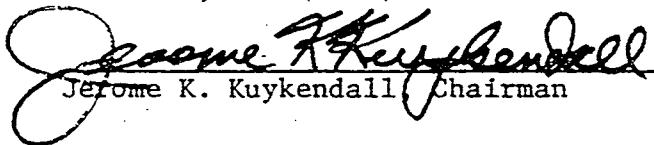
We concur:

  
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 John T. Vance, Commissioner

  
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 Richard W. Yarborough, Commissioner

  
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 Margaret H. Pierce, Commissioner

I adhere to the position set forth in my dissent to the Commission's prior decision in this docket holding that the Group B claims were properly pleaded. See 28 Ind. Cl. Comm. 433, 443 (1972).

  
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 Jerome K. Kuykendall, Chairman