

BEFORE THE INDIAN CLAIMS COMMISSION

THE CONFEDERATED TRIBES OF THE)	
COLVILLE RESERVATION,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 178-A
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: October 22, 1976

Appearances:

I. S. Weissbrodt, Attorney for the Plaintiff.

Craig A. Decker, with whom was Assistant Attorney General, Peter A. Taft, Attorneys for Defendant.

OPINION OF THE COMMISSION

Kuykendall, Chairman, delivered the opinion of the Commission.

This case is before the Commission on defendant's motion to dismiss the case on the grounds that the Commission lacks jurisdiction over the subject matter of the plaintiff's claim.

The circumstances of this case arise out of the compromise settlement reached in Docket No. 178 on September 17, 1970. 23 Ind. Cl. Comm. 493. That compromise settled all of plaintiff's accounting claims through June 30, 1951. The claims in that case from and after July 1, 1951, were severed therefrom and were continued before the Commission in this docket. 23 Ind Cl. Comm. 507-08. The original petition in Docket 178 was carried over as the petition in Docket 178-A. Neither party had taken any action

in Docket 178-A when defendant filed its motion to dismiss on July 19, 1976.

The Indian Claims Commission Act provides that ". . . No claim accruing after August 13, 1946, shall be considered by the Commission." 25 U.S.C. §70a. Defendant contends that since all claims or demands which plaintiff asserted or could have asserted prior to June 30, 1951, were settled, plaintiff has no claims remaining except those which accrued after June 30, 1951, and such claims are beyond the Commission's jurisdiction.

Plaintiff replies that the claims which survive in this docket are those arising out of specific wrongdoings by defendant which began before August 13, 1946, and continued without interruption until after June 30, 1951. Plaintiff argues that the Commission has jurisdiction over such claims citing, inter alia, Blackfeet and Gros Ventre Tribes v. United States, Docket 279-C, et al., 22 Ind. Cl. Comm. 65 (1973).

The circumstances of this case are substantially identical to those in Yankton Sioux Tribe v. United States, Docket No. 332-D, 37 Ind. Cl. Comm. 64 (1975). In that case we considered whether the final judgment in the previous docket (332-B) settling claims through June 30, 1951, would estop the plaintiff from having the opportunity of showing that there were continuing wrongs which had begun prior to August 13, 1946, and continued uninterrupted until after June 30, 1951. In that case we held

that logic required that plaintiff be permitted to show such continuing wrongdoings because the post-1951 claim had been specifically preserved in the compromise settlement. Id. at 74-75. The Colville claim is indistinguishable on this issue.

In the Yankton case we ordered plaintiff to show cause why their claim for a post-1951 accounting should not be dismissed. The Commission felt that because the Yankton plaintiff was in possession of an accounting through June 30, 1951, and because their attorneys had extensive knowledge of each and every account,

. . . plaintiff should be readily able to show specific wrongdoing which began before August 13, 1946, and did, in fact, continue without interruption until June 30, 1951. If plaintiff is able to show such wrongdoing over that period, it should not be too difficult for the plaintiff to convince the Commission that these wrongs can be reasonably expected to have continued after June 30, 1951. [Id. at 76.]

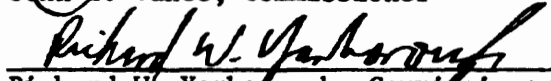
We are of the opinion that such an order is required here. Although plaintiff has listed six of its continuing wrong claims in its opposition to the motion to dismiss, it has done so in a very sketchy, general manner. This, we find, is insufficient in light of the careful examination and analysis plaintiff's attorneys made of the accounting report before entering into the lengthy settlement negotiations with the Department of Justice. See generally, "Report to Confederated Tribes of the Colville Reservation on a proposed settlement of Claims in Docket No. 178." Exhibit No. S-12.

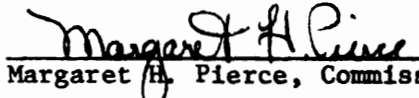
As in Docket 332-D, we consider it appropriate to order the plaintiff to show cause why the claim herein should not be dismissed. We will so order.


Jerome K. Kuykendall, Chairman

We concur:


John T. Vance, Commissioner


Richard W. Yarbofough, Commissioner


Margaret A. Pierce, Commissioner

Brantley Blue, Commissioner