

**CHEYENNE-ARAPAHO TRIBES OF  
INDIANS OF OKLAHOMA et al.**

v.

**The UNITED STATES.**

Nos. 342-70, 343-70.

United States Court of Claims.

March 19, 1975.

Indian tribes brought action against the United States to recover damages for alleged failure of United States to properly manage certain funds held in trust for the tribes. On tribe's motion for partial summary judgment and United States' cross motion for summary judgment, the Court of Claims, Davis, J., held that where the evidence presented to the Court was not meaningfully correlated to the ultimate issues of breach of fiduciary duty, the court would rule on several specific points and return the case to the trial division for further proceedings.

So ordered.

Nichols, J., concurred with opinion.

**1. Courts ⇌462**

Where United States agreed to accept Indian tribe as representative of confederated band of tribes as test plaintiff in action challenging Government's performance of its fiduciary duties as trustees of funds belonging to Indian tribes, United States waived its initial opposition to such representation.

**2. United States ⇌105**

Funds appropriated to Indians to satisfy judgments of Indians Claims Commission or Court of Claims as well as funds produced by tribal activities are, when kept in Treasury, held in trust for the Indians.

**3. United States ⇌110**

Four percent interest attainable by retaining funds held in trust in Treasury for Indians is a floor rather than a ceiling. 25 U.S.C.A. §§ 161a, 161b.

**4. United States ⇌105, 113**

Fiduciary duty which United States undertook with respect to funds held in trust for Indian tribes includes obligation to maximize trust income by prudent investment and trustee had burden of proof to justify less than maximum return. 25 U.S.C.A. §§ 160, 161a.

**5. United States ⇌105**

As trustee for funds of Indian tribes, United States has duty to keep informed so that when previously proper investment becomes improper, perhaps because of opportunity for better and equally safe investment elsewhere, funds can be reinvested. 25 U.S.C.A. § 160.

**6. Trusts ⇌217.1**

When trustee has reasonable time in which to make initial investment or reinvest, he becomes liable for breach of trust if that reasonable time is exceeded.

**7. United States ⇌105**

In determining whether United States breached fiduciary duty to Indian tribes by failing to obtain adequate return on money held in trust for tribes, in assessing return available outside of Treasury, considerations include availability of eligible investments through secondary markets as well as directly from issuer and length of time which it would have been reasonable for United States to make funds available for investment, to make actual investments, and to reinvest where appropriate. 25 U.S.C.A. § 160.

**8. United States ⇌105**

United States could not escape liability for breach of fiduciary duty to properly manage funds held in trust for Indian tribes by showing that agency of government other than Bureau of Indian Affairs was responsible for mismanagement of funds.

**9. United States ⇌105**

Where funds held by United States in trust for Indians were invested at rates less than maximum available, question whether United States breached its fiduciary duty to Indian tribes by not making switch in investments would be

determined by standard of man of ordinary prudence dealing with his own property. 25 U.S.C.A. §§ 160, 161a.

**10. United States ⇌105**

In determining whether United States mismanaged funds held in trust for Indian tribes, claimed liquidity needs of tribe should be considered in light of actual history of tribes' funds in absence of showing by United States specific immediate budgetary commitments by the tribes.

**11. United States ⇌105**

Funds held in trust by United States for Indian tribes were eligible for investment as public debt obligations of United States and securities guaranteed by United States. 25 U.S.C.A. § 162a.

**12. United States ⇌105**

United States was duty bound to make maximum productive investment of funds held in trust for Indian tribe unless and until specifically told not to by tribe, and until United States also made independent judgment that tribe's request was its own best interests.

**13. United States ⇌105**

In acting as trustee of funds for Indian tribes, United States would be held to strict standard of fiduciary duty, and thus, if eligible investments were available at higher yields, United States would be liable to tribes for difference between what interest United States paid for funds and maximum funds could have legally and practically earned as properly invested outside. 25 U.S.C.A. §§ 160, 161a.

**14. United States ⇌113**

Where there were outside investments available which would have yielded some substantial return on interest accumulated by money held by Treasury in trust for Indian tribes, United States was liable for lost profits on such interest. 25 U.S.C.A. § 161a.

**15. United States ⇌105**

Bureau of Indian Affairs had authority to invest funds held in trust for Indian tribes in government guaranteed

securities of certain agencies, including Home Owners' Loan Corporation and Federal Farm Mortgage Corporation. 25 U.S.C.A. § 162a.

**16. Courts ⇌470**

Where evidence before Court of Claims was not meaningfully correlated to ultimate issues of case, Court would deny summary judgment, but decide several specific points and remand case to trial division for further proceedings. Court of Claims Rules, rules 101(e), 131(c)(2), 28 U.S.C.A.

Pierre J. LaForce, Washington, D. C., for plaintiffs.

I. S. Weissbrodt, Washington, D. C., attorney of record for the Confederated Tribes of the Colville Reservation, and others; Weissbrodt & Weissbrodt, Ruth Duhl and Howard L. Sribnick, Washington, D. C., of counsel.

Glen A. Wilkinson, Washington, D. C., attorney of record for Cheyenne-Arapaho Tribes of Indians, and others; Wilkinson, Cragun & Barker, E. Foster DeReitzes, Angelo A. Iadarola, Frances L. Horn, and Charles H. Gibbs, Jr., Washington, D. C., of counsel.

Herbert Pittle, Washington, D. C., with whom was Asst. Atty. Gen., Wallace H. Johnson, for defendant.

Before DAVIS, NICHOLS, and KUNZIG, Judges.

**ON PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AND DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT**

DAVIS, Judge.

[1] These consolidated cases, before us on cross-motions for summary judgment as to liability, challenge the Government's performance of its fiduciary duties as trustee of funds belonging to various Indian tribes. The suits are brought on behalf of a number of tribes either for themselves or as representatives of large or aboriginal groups, but for the purpose of these motions the parties have agreed that two tribes for each

suit will be considered representative "test plaintiffs." No. 342-70 challenges the Government's management of judgment funds in the Treasury belonging to plaintiffs Southern Ute Tribe and Southern Ute Tribe as representative of the Confederated Bands of Ute Indians.<sup>1</sup> No. 343-70 challenges defendant's conduct with respect to other trust funds of plaintiffs Southern Ute Tribe and Hoopa Valley Tribe.

[2] Both petitions allege that defendant breached its fiduciary duties in the care of plaintiffs' funds by not making the funds productive (by not investing moneys ready for investment and also by delay in making funds available for investment), by not maximizing the productivity of funds, and by using the funds to its own benefit and to the detriment of the tribes. It is clear from past opinions of this court and of the Supreme Court, and from the actions of both Congress and the Executive Branch, that funds appropriated to Indians to satisfy judgments of the Indian Claims Commission or of this court, as well as funds produced by tribal activities, are, when kept in the Treasury, held in trust for the Indians. See *United States v. Mason*, 412 U.S. 391, 398, 93 S.Ct. 2202, 37 L.Ed.2d 22 (1973); *Seminole Nation v. United States*, 316 U.S. 286, 296-97, 62 S.Ct. 1049, 86 L.Ed. 1480 (1942); *Menominee Tribe of Indians v. United States*, 59 F.Supp. 137, 102 Ct.Cl. 555, 562 (1945); 10 Cong.Rec. 214 (1880) (statement of Senator Edmunds); S.Rep. No.1396, 70th Cong., 2d Sess. 1-2 (1929) (letter from Sec'y of the Interior West); 34 Op.Atty.Gen. 439, 442 (1925). We have ruled that the United States as

trustee has undertaken an obligation "of the highest responsibility and trust," *Seneca Nation of Indians v. United States*, 173 Ct.Cl. 917, 925 (1965), an obligation doubly strict when the defendant, by retaining Indian moneys in the Treasury, in effect borrows those funds. *Menominee Tribe of Indians v. United States*, *supra*, 59 F.Supp. at 140, 102 Ct.Cl. at 562; see *Navajo Tribe of Indians v. United States*, 364 F.2d 320, 324, 176 Ct.Cl. 502, 507-08 (1966); *Menominee Tribe of Indians v. United States*, 101 Ct.Cl. 10, 19-21 (1944). We have also held that because the United States in effect imposes trust status on the Indian funds, our jurisdiction to review discretionary acts of the Secretaries of the Interior and of the Treasury in administering the trust is broad enough to cover the types of claims made here. See *United States v. Seminole Nation*, 173 F.Supp. 784, 789-90, 146 Ct.Cl. 171, 179-80 (1959); § 24 of the Indian Claims Commission Act, 60 Stat. 1049, 1055, 28 U.S.C. § 1505.

Test plaintiff Southern Ute Tribe is (or was during the relevant period) the beneficial owner of two judgment fund accounts, a proceeds of labor account,<sup>2</sup> a fourth principal account and five interest accounts held in the Treasury. The balances in the accounts at times totaled several million dollars. Even larger amounts were held in the accounts of the Consolidated Ute Tribes, represented here by the Southern Utes. The Hoopa Valley Tribe was the owner of a proceeds of labor account, the balance of which never fell below \$1,000,000 from July 1964 to early 1970, and which at times held as much as \$3,000,000, and an

1. The Confederated Bands of Ute Indians is an aboriginal grouping of Indians which exists for litigation purposes only. The Southern Ute Tribe is a constituent of the group and eligible to share in awards to the Confederated Bands, see 25 U.S.C. § 676a (1970). Earlier in this litigation, defendant opposed the representation of the Confederated Bands by the Southern Utes. We hold that, by agreeing to accept the Southern Utes as a representative of the Confederated Bands as a test plaintiff, after our earlier refusal to dismiss the representative claim, defendant has waived its initial op-

position to this representation. See Trial Judge's Memorandum of Jan. 24, 1972 and the court's order of Sept. 29, 1972.

2. A proceeds of labor account holds "All miscellaneous revenues derived from Indian reservations, agencies, and schools \* \* \* and not the result of the labor of any member of such tribe. \* \* \*" 25 U.S.C. § 155 (1970). Since 1930, money held in the Treasury in proceeds of labor accounts has earned four percent simple interest. 25 U.S.C. § 161b (1970).

