

In the United States Claims Court

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Nos. 102-63 & 460-78

Filed: September 15, 1992

PIRTLE, MORISSET
SCHLOSSER & AYLE

JESSIE SHORT, ET AL.

Plaintiffs,

v. No. 102-63

THE UNITED STATES,

Defendant,

and

THE HOOPA VALLEY TRIBE OF INDIANS,

Defendant-Intervenor.

CHARLENE ACKLEY, ET AL.,

Plaintiffs,

v. No. 460-78

THE UNITED STATES,

Defendant,

and

THE HOOPA VALLEY TRIBE OF INDIANS,

Defendant-Intervenor.

ORDER

The facts of this case are set forth in *Jessie Short, et al., v. United States*, 202 Ct. Cl. 870, 884, 486 F.2d 561, 568 (1973), *cert. denied*, 416 U.S. 961 (1974) (*Short I*) (establishing liability of the defendant United States); *Jessie Short, et al. v. United States*, 228 Ct. Cl. 535, 550-51, 661 F.2d 150, 158-59 (1981), *cert. denied*, 455 U.S. 1034 (1982) (*Short II*) (directing the trial judge to develop standards to determine which plaintiffs were "Indians of the Reservation" entitled to recover); *Jessie Short, et al. v. United States*, 719 F.2d 1133, 1143 (Fed. Cir. 1983), *cert. denied*, 467 U.S. 1256 (1984) (*Short III*) (affirming the qualification standards); *Short, et al., v. United States*, 12 Cl. Ct. 36 (1987) (*Short IV*) (determining damages calculation and entitlement to interest), *aff'd on reh'g*, Nos. 102-63 & 460-78 (Cl. Ct. April 13, 1992).

Pursuant to *Short IV*, this court has determined that the plaintiffs are entitled to interest on the amounts owed to them by the government. Before the court are plaintiffs' brief to establish the reasonable interest rates and defendant's motion for adoption of principles governing prejudgment interest. On June 10, 1992, the court ruled from the bench on these motions. This written order follows.

The court must determine the applicable interest rate for the years the government wrongfully excluded plaintiffs from disbursement of timber profits and other Reservation income. The first per capita payment made to the Hoopa Valley Indians, from which plaintiffs were wrongfully excluded, was made in 1958. Interest rates for each year from 1958 to 1992 must be determined in order to calculate final damages.

In *Short IV*, the court stated, "[t]he award of an interest rate higher than that provided by [25 U.S.C.] §§ 161a, 161b is available for funds invested by the Secretary in banks under § 162a. However, the recovery of a higher interest rate under § 162a is premised upon a showing of higher investment opportunities available to the government during the years in question." *Short*, 12 Cl. Ct. at 44.

Plaintiffs and defendant basically agree that pursuant to 25 U.S.C. § 161a, 161b and this court's damages opinion, the applicable interest rate for the years 1958 to 1965 is 4 percent.¹

¹ In order to avoid compound interest, which is unavailable to plaintiffs, interest is to be calculated only on the per capita distribution made from the principal for all years in question. *Short*, 12 Cl. Ct. at 44; *see also United States v. Mescalero Apache Tribe*, 207 Ct. Cl. 369, 404 (1975). No interest is to be calculated on the portion of the

Interest rates for the remaining years, 1966 to present, remain at issue. Several principles are relevant to a determination of these rates. The plaintiffs have not alleged that the government mismanaged investment funds², as was in case in *Cheyenne-Arapaho Tribes v. United States*, 206 Cl. Ct. 340, 345 (1975). Also, the plaintiffs are not entitled to the highest interest rates available. To place this investment standard on the government would be impracticable and unreasonable. No investor is guaranteed the highest available return on his investment. Moreover, § 162a states that the Secretary of the Interior is authorized, "in his discretion" to make investments of Indian money held in trust by the government. 25 U.S.C. § 162a (1990).³ Finally, plaintiffs should not receive an interest rate lower than the rate actually earned on Hoopa Valley Tribe funds in a given year. This lower interest rate would result in the government profiting from its breach of trust. Considering these factors, the court adopts the rates of interest actually earned, proposed by the government for the years 1966 to present.⁴

per capita payment attributed to the interest earned on the funds up to the point of payout.

Plaintiffs and defendant agree that, contrary to plaintiffs' initial submission that interest be awarded for the year 1957, it is unnecessary for the court to determine an interest rate for that year.

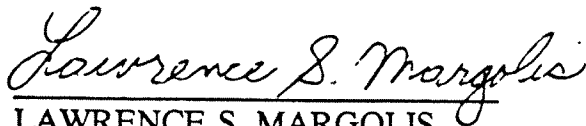
² Not only do the investment rates earned on plaintiffs' funds appear reasonable, the interest rate earned by the government in some years actually *exceeds* the rate plaintiffs requested in their submissions to this court.

³ Section 162a places rigorous requirements on the investments the government chooses for Indian funds, and requires that the investment be unconditionally guaranteed or heavily collateralized. 25 U.S.C. § 162a. The interest rates proposed by defendant were invested pursuant to § 162a and subject to its rigorous requirements.

⁴ Although plaintiff has presented evidence of interest rates available to the government which are higher than those presented by defendant, the court concludes that plaintiffs are not entitled to the higher interest rates. The defendant's evidence, including the actual investment vehicles and affidavits attesting to the accuracy of the process used to arrive at the actual interest rates, supports adopting the interest rates it has proposed.

Plaintiffs also stated at oral argument that they had no reason to doubt the accuracy of defendant's calculations and have not challenged them.

1966: 4.0000%
1967: 4.0000%
1968: 5.0000%
1969: 6.0308%
1970: 7.4706%
1971: 6.2900%
1972: 5.7963%
1973: 7.3597%
1974: 9.8772%
1975: 10.1005%
1976: 6.5502%
1977: 5.8650%
1978: 7.0926%
1979: 9.9341%
1980: 11.2417%
1981: 15.0950%
1982: 15.4329%
1983: 10.1954%
1984: 12.0242%
1985: 10.9260%
1986: 8.7896%
1987: 6.7117%
1988: 7.5087%
1989: 7.8000%
1990: 8.7800%
1991: 9.0200%
1992: ⁵


LAWRENCE S. MARGOLIS
Judge, U.S. Claims Court

⁵ The court directs the defendant to submit to plaintiffs the interest rate calculated for the year 1992 (to the date of judgment) for plaintiffs' review pursuant to this order.