1460.1

IN THE

UNITED STATES COURT OF CLAIMS

NOV 1 1951

No. .....

THE NAVAJO TRIBE OF INDIANS, Plaintiff,

v.

THE UNITED STATES, Defendant.

PETITION

To the Honorable, the United States Court of Claims:

The plaintiff, The Navajo Tribe of Indians, respectfully represents to this Honorable Court as follows:

CLAIM NUMBER ONE

1. Plaintiff is a tribe of American Indains residing in the United States and possessing a tribal organization recognized by the Secretary of the Interior as having authority to represent and act for the plaintiff in all matters presented in this petition.

2. The jurisdiction of this Honorable Court is invoked under Title 28, United States Code, Sec. 1505, and the claims presented herein accrued subsequent to August 13, 1946.

3. No other action has been had upon these claims in Congress or by any of the departments of the United States Government, or in any other judicial proceeding.

4. The plaintiff is the sole owner of the claims and no other person is the owner of any part thereof; no assignment or transfer thereof, or of any part thereof or interest therein, has been made.

5. The United States is sued herein on claims for liquidated or unliquidated damages not sounding in tort, as authorized by Sections 1505 and 1491(5), Title 28, United States Code.

6. At all times herein material, the United States was the guardian and trustee of the property and affairs of the plaintiff, had exclusive management and control of plaintiff's property and had exclusive custody of all books of account and records relating to transactions concerning the plaintiff.

7. At all times herein material, defendant has held plaintiff's tribal funds in trust. Tribal trust funds of the plaintiff carried in Treasury Department accounts bear interest at the rate of 4% per annum, pursuant to Title 25, U.S. Code, Sections 161(a) and 161(b), and have borne such interest at

all times material hereto. (However, Title 31, U.S. Code, Section 547(a), provides that "all funds held in trust by the United States . . . shall be invested in stocks of the United States bearing a rate of interest not less than 5 per centum per annum." Also, the defendant was authorized to invest tribal trust funds in commercial bank deposits, U.S. Treasury Notes and obligations of certain agencies of the United States, all of which at divers times material hereto, paid interest in excess of 4%.) Plaintiff further alleges that at divers times defendant has held interest bearing trust funds of the plaintiff for intervals of more than thirty (30) days after their receipt before covering them, to the plaintiff's credit, in the U.S. Treasury. An interval of more than thirty (30) days between receipt and crediting of tribal trust funds by the defendant is excessive and unreasonable. Plaintiff's trust funds do not begin to draw interest until they are credited to plaintiff's accounts in the U.S. Treasury. The plaintiff, therefore, has been wrongfully deprived by the defendant at divers times of the interest lost as a result of defendant's failure to credit plaintiff's Treasury accounts within the prescribed time, in violation of defendant's strict fiduciary duty to the plaintiff.

As an example of defendant's excessive delay in covering plaintiff's funds to its credit in the U.S. Treasury, the following is an account of payments made by the El Paso

Natural Gas Company to the defendant on behalf of plaintiff as consideration for leases of rights-of-way over plaintiff's reservation:

Date Received by Defendant	Bill of Collection Number	Date Credited to Tribal Accounts	Amount Involved
June 11, 1963	363356	Aug. 26, 1969	$10,100.00
June 20, 1963	363353	Aug. 26, 1969	55.00
Jan. 10, 1964	363919	Aug. 26, 1969	59.50
March 30, 1965	449194	Aug. 26, 1969	314.30
March 30, 1965	449195	Aug. 26, 1969	3,000.00
1965 (exact date unknown)	503444	Aug. 21, 1969	505.00
Jan. 14, 1966	449291-2	June 7, 1969	15,000.00
Sept. 15, 1966	558365	August 21, 1969	8,762.00
Dec. 14, 1966	559169	August 26, 1969	96.05
			$37,891.85

Another example of such excessive delay involves bonus payments derived from the following described oil and gas leases. The leases were all finally approved and executed sometime between June 17, 1968 and July 3, 1968. The lease bonus payments, although in the possession of the defendant since the opening of bids, had not been credited to plaintiff's tribal accounts as of March 28, 1969. The bonus payments were subsequently credited, but it is now known when.

Leasing Company	Lease Numbers	Amount of Bonus Payment
Humble Oil Company	14-20-0603-1503 and 14-20-0603-1504	$26,515.20

an unreasonable and excessive length of time in advance of their expenditure -- i.e., more than 30 days. The defendant is required to expend plaintiff's trust funds with reasonable promptness after they are withdrawn from interest bearing accounts. Plaintiff's trust funds cease drawing interest once they are withdrawn from interest bearing accounts. The plaintiff, therefore, has been wrongfully deprived by the defendant at divers times of the interest lost as a result of defendant's withdrawal of plaintiff's funds from interest bearing accounts an excessive and unreasonable length of time in advance of their expenditure, in violation of defendant's strict fiduciary duty to the plaintiff.

Although herewith alleged to exist, the instances of excessive and unreasonable interval between withdrawal of interest bearing funds and their expenditure cannot be identified or evaluated without an accounting of plaintiff's trust funds for this purpose.

WHEREFORE, the plaintiff prays judgment against the United States for the loss so sustained because of defendant's premature withdrawal of plaintiff's funds from interest bearing accounts; and plaintif further prays that the court order the defendant, in its capacity as a trustee, to render an accounting so as to enable the court to determine the instances of such premature withdrawal of funds, and the amount which plaintiff is entitled to recover.

CLAIM NUMBER THREE

9. Plaintiff restates and reaffirms each and every allegation of the first eight paragraphs, and further respectfully represents and alleges as follows:

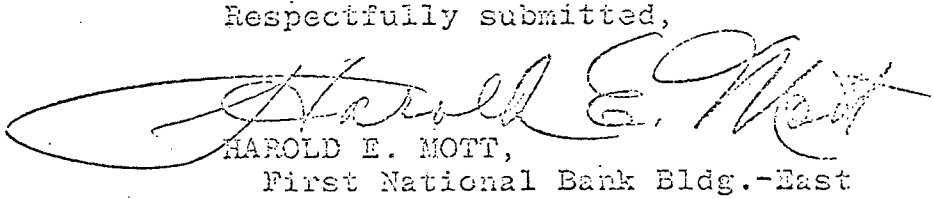
At divers times, defendant has made expenditures from plaintiff's interest bearing accounts when non-interest bearing funds were available. The defendant is required to make expenditures from non-interest bearing funds if such funds are available. The defendant having made such disbursements from interest bearing funds when non-interest bearing funds were available, the plaintiff has been, at divers times, wrongfully deprived by the defendant of the interest lost thereby, in violation of defendant's strict fiduciary duty to the plaintiff.

Although herewith alleged to exist, the instances of defendant's expenditures from plaintiff's interest bearing accounts when non-interest bearing funds were available cannot be identified or evaluated without an accounting of plaintiff's trust funds for this purpose.

WHEREFORE, the plaintiff prays judgment against the United States for the loss so sustained because of defendant's expenditures from plaintiff's interest bearing accounts when non-interest bearing funds were available; and plaintiff further prays that the court order the defendant, in its capacity as trustee, to render an accounting so as to enable

the court to determine the instances of such unauthorized expenditures, and the amount which plaintiff is entitled to recover.

Respectfully submitted,



HAROLD E. MOTT,
First National Bank Bldg.-East
Suite 304
5301 Central Avenue, N.E.
Albuquerque, New Mexico 87108

Claims Attorney,
Navajo Tribe of Indians

Attorney of Record.

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