

I.

28 U.S.C. § 1500 precludes this court from exercising jurisdiction over a plaintiff's claim if the plaintiff "has pending in any other court" another suit against the United States (or against individuals acting under the authority of the United States) "for or in respect to" that claim. The statute, titled "Pendency of claims in other courts," provides as follows:

The United States Court of Federal Claims shall not have jurisdiction of any claim for or in respect to which the plaintiff or his assignee has pending in any other court any suit or process against the United States or any person who, at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or professing to act, directly or indirectly under the authority of the United States.

The purpose and scope of section 1500 was addressed in the Supreme Court's recent decision in United States v. Tohono O'Odham Nation, ___ U.S. ___, 131 S. Ct. 1723 (2011). There, the Court noted that section 1500 "effects a significant jurisdictional limitation" on this court, designed to "save the Government from burdens of redundant litigation." Id. at 1729–30. Consistent with this purpose, the Court ruled that under section 1500, "[t]wo suits are for or in respect to the same claim, precluding jurisdiction in the [Court of Federal Claims], if they are based on substantially the same operative facts, regardless of the relief sought in each suit." Id. at 1731. Defendant maintains that plaintiff's district court action and the instant action engage substantially the same operative facts, thus precluding jurisdiction in this court. On this ground then, defendant seeks dismissal of plaintiff's complaint.

Plaintiff does not dispute that both actions—its suit in district court and its suit here—allege a breach of trust on the part of the United States. Nor does plaintiff dispute that the trust assets involved here—monies, lands, and natural resources—are the same in both actions. Despite this identity, however, plaintiff insists that the suits do not engage the same set of operative facts because, according to plaintiff, they focus on different trust duties. The thrust of the district court action, plaintiff explains, is upon the government's duty to maintain records of account and to provide plaintiff with a full and complete audit or accounting with respect to the origin and use of all trust assets. Accordingly, the trial in the district court, plaintiff notes, "will be dominated by accounting issues presented by forensic accounting and trust accounting experts." By contrast, the thrust of the suit in this court, plaintiff continues, is upon the government's fiduciary obligation to manage specific tribal assets. Hence, the trial in this court, plaintiff explains, will address "specific contracts, leases, and similar agreements detailing how trust assets were handled and disposed of." The former case then, centers on the duty to account for trust assets; the latter on the duty to properly manage those assets. In plaintiff's view, therefore,

each case focuses on different conduct; hence, plaintiff argues, each necessarily involves different operative facts.

We do not find plaintiff's argument persuasive. The same argument in fact was considered and rejected in Ak-Chin Indian Community v. United States, 80 Fed. Cl. 305, 319 (2008), in which the court observed that it was "not apparent to the court how it could address facts related to the government's duty to invest and deposit plaintiff's trust funds without considering the facts related to the government's overall trust obligations owed to plaintiff, including its duty to account." This court shares the same concern. The issue that plaintiff seeks to litigate here is the government's alleged failure to have managed trust assets in the manner required of a competent trustee. This case, in other words, focuses on what the government, as trustee, should have done. But that contention cannot be successfully established without at the same time demonstrating what the government actually did (or failed to do). Of necessity then, plaintiff's proof in this court must revisit the same facts that make up the substance of its district court case. Indeed, this very point is explicitly recognized in plaintiff's district court complaint where it states as follows: "The Tribe may have claims to damages that cannot be ascertained until after the Defendants make a reconciliation and accounting of the Tribe's trust property and accounts. Some of these claims, should they exist, will have to be filed in the United States Court of Federal Claims." The necessity for an accounting as a prelude to a suit for damages in this court that is recognized in the quoted text means, in simple terms, that a case here is dependent upon what the accounting data shows. And given this acknowledged evidentiary overlap, it is simply not correct to assert that the two actions—plaintiff's suit in the district court and its suit in this court—turn on different operative facts.

II.

For the reasons set forth above, defendant's motion to dismiss the complaint for lack of subject-matter jurisdiction pursuant to 28 U.S.C. § 1500 is granted. The Clerk is directed to enter judgment accordingly.

s/John P. Wiese
John P. Wiese
Judge