

**IN THE UNITED STATES COURT
OF FEDERAL CLAIMS**

WILLIAM FLETCHER;)	
TARA DAMRON;)	
KATHRYN RED CORN; and)	
RICHARD LONSINGER,)	
)	
Plaintiffs,)	Case No. <u>19-1246 L</u>
)	Class Action
v.)	Attorney Lien Claimed
)	
UNITED STATES OF)	
AMERICA,)	
)	
Defendant.)	

COMPLAINT

1. Plaintiffs, by and through their undersigned attorneys, file this Complaint seeking monetary restitution for Defendant's breach of statutorily-imposed trust obligations, which resulted in a loss of trust funds to Plaintiffs and to the Putative Class.

I. INTRODUCTION

2. Plaintiffs embarked on this journey almost two decades ago seeking to hold Defendant accountable for its mismanagement of trust funds rightfully owing to Plaintiffs and the Putative Class.

3. Plaintiffs battled against Defendant—the trustee over their trust funds—for an accounting of the fund for fourteen years, during which time Defendant recycled numerous arguments and defenses uniformly rejected by courts across the country.

Finally, Defendant produced—only because of a court order—a time-limited accounting of the trust account for Osage Headright Owners. It is the first time in the nearly 200 years since Defendant’s unilaterally-imposed trusteeship for Indians, with the concomitant assumption of fiduciary duties concerning trust funds and resources, that Defendant has *ever* rendered an accounting of trust funds to any such Indian beneficiary. *See e.g.* “Misplaced Trust: The Bureau of Indian Affairs’ Mismanagement of the Indian Trust Fund,” H.R. Rep. No. 499, 102nd Cong., 2nd Sess. (1992) (herein “Misplaced Trust” report).

4. Upon reviewing the time-limited accounting, Plaintiffs were dismayed—although unsurprised—to find glaring mismanagement of their trust funds. Accordingly, Plaintiffs seek damages for themselves and those similarly situated to remedy the gross mismanagement of the Osage Headright trust fund.

II. JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1491 and 1505, and because this is an action arising under the Constitution, treaties, and laws of the United States, including Section 4 of the Act for the division of the lands and funds of the Osage Indians in Oklahoma Territory, and for other purposes, Pub. L. No. 321 (June 28, 1096) (herein the “1906 Act”) and other acts of Congress set forth in Appendices A & B, attached hereto and incorporated by reference.

6. The statutes and regulations defining Defendant’s duties in managing Indian trust funds create specific fiduciary duties that provide for compensation for

damages in the event of the breach of these duties. *See, e.g., Jicarilla Apache Nation v. United States*, 100 Fed. Cl. 726, 738-39 (2011) (holding that the court had jurisdiction over claims based upon a breach in fiduciary duty “to maximize trust income by prudent investment”).

7. This Court also has jurisdiction over the subject matter of this action under the Department of the Interior and Related Agencies Appropriations Act, Public Law No. 108–7 (herein the “Appropriation Acts”).¹

8. Plaintiffs obtained some accounting, for the first time in the 113 years that

¹ The term “Appropriations Acts” refers to a series of acts passed by Congress waiving the United States’ sovereign immunity and deferring accrual of potential claims until an Indian beneficiary receives a meaningful accounting. *Shoshone Indian Tribe of Wind River Reservation v. United States*, 364 F.3d 1339 (Fed. Cir. 2004). By way of example, in 2014 the appropriations act provided:

[N]otwithstanding any other provision of law, the statute of limitations shall not commence to run on any claim, including any claim in litigation pending on the date of the enactment of this Act, concerning losses to or mismanagement of trust funds, until the affected tribe or individual Indian has been furnished with an accounting of such funds from which the beneficiary can determine whether there has been a loss.

Pub. L. No. 113-76, 128 Stat. 5, 305-306 (2014). Since 1991 until 2015, Congress each year passed similar language protecting both tribal and individual Indian claims. *See* Pub. L. 101-512, 104 Stat. 1915, 1930 (1990); Pub. L. No. 102-154, 105 Stat. 990, 1004 (1991); Pub. L. 102-381, 106 Stat. 1374, 1389 (1992); Pub. L. No. 103-138, 107 Stat. 1379, 1391 (1993); Pub. L. No. 103-332, 108 Stat. 2499, 2511 (1994); Pub. L. No. 104-134, 110 Stat. 1321, 1321-175 (1996); Pub. L. No. 104-208, 110 Stat. 3009, 3009-197 (1996); Pub. L. No. 105-83, 111 Stat. 1, 17 (1997); Pub. L. No. 105-277, 112 Stat. 2681, 2681-251 (1998); Pub. L. No. 106-113, 113 Stat. 1501, 1501-A153 (1999); Pub. L. No. 106-291, 114 Stat. 922, 939 (2000); Pub. L. No. 107-63, 115 Stat. 414, 435 (2001); Pub. L. No. 108-7, 117 Stat. 11 (2003); Pub. L. No. 108-108, 117 Stat. 1241 (2003); Pub. L. No. 108-447, 118 Stat. 2809 (2004); Pub. L. No. 109-54, 119 Stat. 499 (2005); Pub. L. No. 110-161, 121 Stat. 1844 (2007) Pub. L. No. 111-88, 123 Stat. 2904 (2009); Pub. L. No. 112-74, 125 Stat. 786, 1002 (2011); Pub. L. No. 113-76, 128 Stat. 5, 305-306 (2014).

the United States managed these funds, and are filing this Complaint well within the six-year statute of limitations after having received such an accounting for the very first time. 28 U.S.C. § 2501.

III. PARTIES

9. William Fletcher is an Osage Headright Owner and citizen of the Osage Nation, a federally-recognized Indian tribe.

10. Richard J. Lonsinger is an Osage Headright Owner and citizen of the Ponca Tribe of Indians of Oklahoma, a federally-recognized Indian tribe.

11. Tara Damron is an Osage Headright Owner and citizen of the Osage Nation, a federally-recognized Indian tribe.

12. Kathryn Red Corn is an Osage Headright Owner and citizen of the Osage Nation, a federally-recognized Indian tribe.

13. Putative Class Members are Osage Headright Owners and citizens of more than one federally-recognized Indian tribe.

14. Defendant is the United States of America, acting through the Department of the Interior (“DOI” or “Interior”), including the Bureau of Indian Affairs (“BIA”), the Office of Trust Funds Management (“OTFM”), the Special Trust for American Indians (“Special Trustee”), and other federal agencies, departments, bureaus, and offices.

IV. BACKGROUND

A. A Brief History of the Relevant Federal Indian Policies in General and Those Specifically Relevant to Osages

15. Over the last century, federal policies relating to Indians, generally, and to the Osage, particularly, changed dramatically. Because Defendant's trust obligation stem from those policies, this section provides a brief discussion of the shifting federal policies at play.

16. The first federal policy directly relevant to this matter is the policy of "assimilation," whereby Defendant sought to force Native Americans to abandon tribal traditions and adopt European-American culture. Allotment, one tool used during this assimilation period, apportioned a Tribe's communal lands among its Tribal members. As the Commissioner of Indian Affairs wrote in relation to the assimilation policy generally, "The American Indian is to become the Indian American." *See* Comm'r Ind. Aff. Ann. Rep. H.R. Exec. Doc. No. 1, 51st Cong., 2d Sess VI (1890). On December 2, 1901, President Theodore Roosevelt in his message to Congress described the allotment process as "a mighty pulverizing engine to break up the tribal mass."

17. In the smog of President Roosevelt's "great pulverizing machine," Congress passed *An Act for the Division of the Lands and Funds of the Osage Indians in Oklahoma Territory and for Other Purposes*, 34 Stat. 539 (June 25, 1906) (herein the "1906 Act"). However, the 1906 Act did not terminate the Oklahoma Indian Tribes. *See, e.g., Harjo v. Kleppe*, 420 F. Supp. 1110 (D.D.C. 1976) *aff'd*, *Harjo v. Andrus*, 581 F.2d 949 (C.A.D.C. 1978). Though *Harjo* addresses the "Five Tribes Act" in relation to the Creek

Indians, the United States' administration of Indian policy was similar in the matter of the Osage Indians. As the Court in *Harjo* noted,

The available evidence clearly reveals a pattern of action on the part of the Department [of the Interior] and its Bureau of Indian Affairs designed to prevent any tribal resistance to the Department's methods of administering those Indian affairs delegated to it by Congress. This attitude, which can only be characterized as bureaucratic imperialism, manifested itself in deliberate attempts to frustrate governments expressly preserved by §28 of the [Five Tribes Act].

Harjo at 1130 (emphasis added).

18. While Defendant's bureaucratic imperialism applies equally to Osage Nation, the manner of the Osage allotment differed from the Creek Nation allotment. Specifically, "[t]he 1906 Osage Allotment Act severed the mineral estate from the surface estate of the reservation and placed it in trust for the tribe. [See 1906 Act] at §§ 2-3." *See Osage Nation v. Irby*, 597 F.3d 1117, 1120 (10th Cir. 2010). Discussing the Osage Allotment process, the Tenth Circuit noted, "[a] primary concern during the negotiations [of the 1906 Act] was a desire to *ensure that some tribal members were not unfairly enriched at the expense of other tribal members. These concerns were addressed by* allotting land in several rounds, *severing the mineral estate and placing it in trust for the tribe*, and providing for a form of tribal government." *Id.* at 1125 (emphasis added).

19. Generally, when assimilation was intended in full, the funds of an Indian tribe were divided among the members. *See, e.g.,* Felix S. Cohen, *Handbook of Federal Indian Law* 138 (1982 Ed., R. Strickland, Ed) (hereinafter "Cohen's"). But, in the case of the Osage, Congress created a stand-alone asset – the mineral estate – and placed it in trust for the Tribe, with the proceeds to benefit Osage Headright Owners. *See* 1906

Act § 4. This lawsuit stems from Defendant’s bureaucratic imperialism in the management—or, more aptly, *mismanagement*—of the mineral estate funds placed in trust for the benefit of Osage Headright Owners.

20. The assimilation period serves as a dark stain on U.S. history. In addition to stripping Tribes of property, the federal government forcibly removed Indian children from their homes and placed them in boarding schools to “provide Indian children with a substitute for a civilized home life.” *See* Cohen’s at 139.² Defendant withheld citizenship from Native Americans unless and until a tribal member either received an allotment (a process that took twenty-five (25) years) or “adopted the habits of a civilized life.” *See* General Allotment Act of 1887, 24 Stat. 388, 390 (codified, as amended by the Burke Act, at 25 U.S.C. § 349).

21. However, federal policy shifted before the 25-year allotment condition expired. The late 1920s federal policy regarding Indians sought to nurture Indian culture, “rather

² Captain Richard Henry Pratt, who founded the first Indian School, the Carlisle Indian School in Pennsylvania, is reported to have coined the phrase, “Kill the Indian and Save the Man.” This guiding principle appears to be a direct response to the Commissioner of Indian Affairs’ directive, “The American Indian is to become the Indian American.”

While not necessarily relevant to this case, and while also not entirely irrelevant since many class members attended Indian Boarding schools, and because the Indian Boarding School process was a part not only of the denial of civil rights to the class, but also a method that led in no small part to the problematic stripping of the wealth of the Osage Mineral Estate from Osages as complained about in this case, the education included forcible removal of children from their families against a parent’s consent, or coerced attendance at such schools where an entire family’s rations of food would be withheld if a child did not attend school. Other atrocities, which are not repeated here, are alleged to have occurred at Indian Boarding Schools throughout the last century. *See, e.g., Zephier v. United States*, Case No. 03-768, Docket No. 1, Complaint (Ct. Cl.) (dismissed on procedural grounds).

than to crush out all that is Indian.” *See* Institute for Governmental Research, *The Problem of Indian Administration* 22 (L. Meriam, Ed. 1928) (commonly referred to as the “Meriam Report”). The U.S. adopted a number of significant reforms based on the Meriam Report, including the Indian Reorganization Act of 1934, 48 Stat. 984 (codified as amended at 25 U.S.C. §§ 461-479) (herein the “IRA”), which encouraged economic development, self-determination, cultural plurality, and the revival of Indian tribalism. *See* Cohen’s at 147. While the IRA itself did not apply to Indians in Oklahoma, the Oklahoma Indian Welfare Act, 49 Stat. 1967, passed in 1936, extended similar rights to Oklahoma Indians.

22. Following from the title of the IRA, this period of Indian Policy, beginning in the late 1920s, is commonly called the period of “Reorganization.” Along with the passage of the IRA, Congress abolished sections of United States law that restricted civil liberties in Indian Country. *See* Act of May 21, 1934, 48 Stat. 787 (repealing 25 U.S.C. §§ 171-173, 186 & 219-226).

23. The law and policy of Reorganization was mixed, and occurred during and just before a time of extreme social, economic, and political upheaval. A backlash to Reorganization grew in the 1940s and 1950s, and a policy of “Termination” followed as the United States stumbled through other tragic post-world-war policies. The economic rationale for plundering Indian property through a policy of Termination – again – is undeniable. One Oklahoma Historian described it as “the most concerted drive against Indian property and Indian survival since the removals following the acts of 1830 and the liquidation of the Tribes and reservations following 1887.” *See* Angie Debo, *A*

History of the Indians of the United States 349 (1970). Cohen's also chronicles the economic motives of western interests in terminating Indian ownership of property in order to access additional resources. *See* Cohen's at 172. Whatever the motives, whether they were a mix of economic, social, or theological underpinnings, the Termination Policy, generally, intended to terminate the political existence of Indian Tribes, while transferring further Indian wealth to non-Indian interests. House Concurrent Resolution 108 (Aug. 1 1953), *which has no legal effect*, summed up the policy as some within Congress would – but did not – have it in 1953:

Whereas it is the policy of Congress, as rapidly as possible, to make the Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, to end their status as wards of the United States, and to grant them all the rights and prerogatives pertaining to American citizenship.

See H.R. Con. Res. 108, 83d Cong., 1st Sess. 67 Stat. B132 (1953). The period of Termination was short-lived, and one that nearly—but did not—terminate the trust responsibility of the United States to the Osage Tribe and to Plaintiffs.

24. In the 1960s, the United States' Indian policy of "Self-Determination" began, likely from a growing sensitivity to the concerns of political minorities. By the 1970s, Congress passed various statutes largely repudiating and undoing the Termination policies of the 1950s. *See* Cohen's at 186-187. The starter's pistol was sounded, for good, when *Harjo v Kleppe*, 420 F. Supp. 1110 (D.D.C. 1976) *aff'd*, *Harjo v. Andrus*, 581 F.2d 949 (C.A.D.C. 1978) was decided and the "bureaucratic imperialism" of the Department of the Interior and the Bureau of Indian Affairs was placed squarely and

legally in juxtaposition to the rule of law by an impartial Federal Court.

25. With the maturation of the policy of Self-Determination, the question of addressing the financial and economic consequences of Interior's and the Bureau's century of bureaucratic imperialism became a cause of concern to Congress. That the issue arose is not surprising; the problem of the United States' mis-management of Indian Property was not a new one. In 1915, Congress reported:

This has been the situation with which the Indian service has been for more than a century -- the Indian during all this time having his rights and properties to greater or less extent neglected; the guardian, the Government, in many instances, passive to conditions which have contributed to his undoing.

See Business & Accounting Methods, Indian Bureau, Report of the Joint Commission of the Congress of the United States, 63 Cong. 3d Sess., at 2 (1915).

26. In the early 1990s, in an effort led in part by Oklahoma Congressman Mike Synar, Congress found Interior's and the Bureau's management of Indian property to have failed to abide by legal requirements. *See Misplaced Trust report.*

27. In response to the Misplaced Trust report, Congress enacted the American Indian Trust Fund Management Reform Act of 1994 (herein the "1994 Act"), which included significant accounting provisions. Among the most relevant provisions, the 1994 Act mandates the "proper discharge" by the United States of the following trust duties:

Trust responsibilities of Secretary of the Interior

The Secretary's proper discharge of the trust responsibilities of the United States shall include (but are not limited to) the following:

(1) Providing adequate systems for accounting for and reporting

trust fund balances.

(2) Providing adequate controls over receipts and disbursements.

(3) Providing periodic, timely reconciliations to assure the accuracy of accounts.

(4) Determining accurate cash balances.

(5) Preparing and supplying account holders with periodic statements of their account performance and with balances of their account which shall be available on a daily basis.

(6) Establishing consistent, written policies and procedures for trust fund management and accounting.

(7) Providing adequate staffing, supervision, and training for trust fund management and accounting.

(8) Appropriately managing the natural resources located within the boundaries of Indian reservations and trust lands.

See 25 U.S.C. § 162a(d).

28. The accounting required by law was to be completed by 1996. Due to Interior's failure to account as the 1994 Act required, for the following two decades, Congress enacted subsequent Appropriation Acts which included the following language for the Interior:

[N]otwithstanding any other provision of law, the statute of limitations shall not commence to run on any claim, including any claim in litigation pending on the date of the enactment of this Act, concerning losses to or mismanagement of trust funds, until the affected tribe or *individual Indian* has been furnished with an accounting of such funds from which the beneficiary can determine whether there has been a loss.

Pub. L. No. 113-76, 128 Stat. 5, 305-306 (2014) (emphasis added). As the United States District Court for the Western District of Oklahoma recently held, "The plain language of the [1994] Act clearly expresses an intent to suspend all statutes of limitations until

an accounting has been provided.” *Otoe-Missouria Tribe v. Kempthorne*, 2008 WL 5205191 at * 5.18.

B. Law Applicable to Defendant’s Management of the “Segregated Fund”

29. The United States Congress exercises plenary power with respect to Indian Tribes, and has enacted a number of laws providing for the special treatment of Osage Indians. *See*, U.S. CONST. Art. I, Sec. 8 and Appendix B. In 1906, Congress passed a law permitting development of the large, and very valuable, oil and gas deposits underlying the Osage Nation’s lands, specifically reserving the sub-surface resources for the use and benefit of the Osage Nation(herein the “Osage Mineral Estate”). *See generally*, the 1906 Act.³

30. Section 4 of the 1906 Act imposed a trust whereby the royalties received by the United States from the production of minerals by third parties on the Osage Mineral Estate (herein “Section 4 Royalty Payments”), *after* deducting and withholding some portion of the Osage Mineral Estate royalty for Osage Tribal purposes, were to be distributed from a trust to Osage tribal members (hereinafter “Osage Indians”) as beneficiaries. *See* the 1906 Act § 4. The money to be distributed to individual Osage Indians is referred to herein as the “Segregated Fund.” This trust indenture provided that the Section 4 Royalty Payments are to be made to the members of the Osage Tribe.

³ While this Section describes a number of statutes, regulations, and case decisions occurring in relation to the Osage Nation, and it is intended to be an accurate restatement of much of the law, it is not pretended by the undersigned counsel that all of the legal authorities that are relevant to this matter are, or can be, described or even cited herein. Rather, in the spirit of notice-pleading, this section endeavors to provide a brief description of the laws that generally outline Plaintiffs’ claims.

31. The quarterly per capita distribution of Section 4 Royalty Payments to Osage Indians fulfilled an important governmental purpose and provided a benefit to the Osage Indians. According to the expressions of congressional intent compelling the relevant legislation, Osage Indians, then and now, were dispossessed of their original homelands and forced to abandon their communal notions regarding the ownership of property. Defendant's administration of Section 4 Royalty Payments on behalf of Osage Indians was intended to provide a unique benefit to Plaintiffs, *i.e.*, a trust that was to ensure Plaintiffs' and other class members' sustenance.

32. There are no fewer than fifteen (15) statutes, enacted subsequent to the 1906 Act, dealing with Osage affairs (collectively, the "Osage Acts") that are relevant to this dispute, based on research and investigation of counsel, and are identified and summarized in Appendix B.⁴

33. In addition, on August 25, 1937 Congress passed the following statute, which states in its entirety:

That the employment of Harry W. Blair as an attorney or counselor specially employed, retained, or appointed by the Attorney General or under authority of the Department of Justice to assist in the conduct of legal proceedings appertaining to claims in behalf of Osage Indians for the recovery of royalties on oil produced from tribal lands, including all proceedings therein and any other case or proceeding, appellate or otherwise, that may arise out of or pertain to the right of said Indians to royalties on oil produced from tribal lands, shall not be construed to be employment within the meaning of sections 109 and 113 of the Criminal Code of the United States, as amended (U.S.C., title 18, secs. 198 and 203), or section 190 of the Revised Statutes of the United States (U.S.C.,

⁴ Not every statute relating to the Osage Tribe or its members is repeated here. Instead, only those thought at this time to be relevant are provided. For a fuller listing of all Osage-related statutes, *See* Cohen's 788-797.

title 5, sec. 99).

See August 25, 1937, 50 Stat., 805.

34. Further, in 1971 the Osage Tribe obtained an Indian Claims Commission judgment for more than \$15,000,000. Under the Act of Oct. 27, 1972, 86 Stat., 1295, other than \$1,000,000 set aside, the remainder was distributed per capita to the then-living descendants of the persons identified on the 1906 Roll of the Osage Tribe.

35. Class Members, as Indians, are entitled with respect to the interpretation and application of the Osage Acts, to have ambiguous provisions interpreted to their benefit. It is well-settled that, where Indian rights and claims are at stake, federal “statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit.” *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 766 (1985). As such, Defendant may not argue that any perceived ambiguity in the relevant legislation permits it to take actions that harm Class Members.

36. Plaintiffs are each persons entitled to receive a payment of money each quarter of each year *under* Section 4 of the 1906 Act. Plaintiffs bring this action on behalf of themselves and all other Indians entitled to payments under Section 4 of the 1906 Act.

C. Plaintiffs’ Previous Legal Action

37. Plaintiffs filed an action in the United States District Court for the Northern District of Oklahoma in 2002 seeking, *inter alia*, an accounting for the money handled by Defendant under Defendant’s trust responsibility created under Section 4 of the 1906 Act. Plaintiffs alleged that the government had improperly managed,

and was improperly managing, the Section 4 Royalties. The government's failure to perform an accounting of the Section 4 Royalties pursuant to federal law (including 25 U.S.C § 4011, herein "§ 4011") made it impossible for Plaintiffs to determine if they incurred a loss according to Defendant's management of the money.

38. Thus, Plaintiffs sought to compel the government to perform an accounting. The United States District Court for the Northern District of Oklahoma dismissed Plaintiffs' accounting claim because it found that § 4011 only required the government to account for deposits, not withdrawals, and that such an accounting would not reveal whether Plaintiffs incurred a loss resulting from Defendant's management of the money. *Fletcher v. United States*, No. 02-CV-427-GKF-FHM, 2012 WL 1109090, at *7 (N.D. Okla. Mar. 31, 2012) (unpublished).

39. The Tenth Circuit Court of Appeals, in an opinion written by now-Justice Gorsuch, reversed and remanded because an accounting of only the deposits and not also the withdrawals would be incomplete and of little use. *Fletcher v. United States*, 730 F.3d 1206, 1212 (10th Cir. 2013) ("*Fletcher II*").

40. "The 1906 Act clearly creates a trust relationship—and not just a trust relationship between the federal government and the Osage Nation, but also between the federal government and the individual Osage headright owners who are plaintiffs in this case. Though the language of the Act is both arcane and antiquated, after laboring through it there's no question about this much. The Act requires the government to collect royalties, place them "to the credit of" each individual

headright owner, and then disburse them to each individual headright owner on a quarterly basis, with interest. *See* 1906 Act § 4(1)-(2), 34 Stat. at 544. A small slice of royalty income may be diverted to tribal operations, *id.* § 4(3), (4), but all else is “placed ... to the credit” of headright owners and distributed to them personally. In short, the 1906 Act imposes an obligation on the federal government to distribute funds to individual headright owners in a timely (quarterly) and proper (pro rata, with interest) manner. Over the years both Congress and this court have repeatedly recognized that, in this way, the 1906 Act created a trust relationship between the government and individual headright owners.” *Fletcher II*, 730 F.3d at 1209.

41. The Tenth Circuit also provided general guidance about the design of any accounting on remand: the accounting “must give some sense of where money has come from and gone to.” *Id.* at 1215. The trial court’s overarching task, the Tenth Circuit said, is to “balance the often warring (and admittedly incommensurate) considerations of completeness and transparency, on the one hand, and speed, practicality, and cost, on the other.” *Id.* at 1214. The Tenth Circuit explained that Plaintiffs are “entitled . . . to some measure of information about the government’s handling of deposits [and] . . . disbursements.” *Id.* But the accounting need not include “information that only loosely relates to [trust beneficiaries’] own personal beneficial interests, or to information that is unlikely (because it is so old, or so de minimis, say) to have a meaningful effect on their beneficial interests.” *Id.* at 1215. The Tenth Circuit further cautioned that the accounting should not be a “green eye-shade death march through every line of every account over the last one hundred

years.” *Id.* at 1214.

42. On remand, the Northern District of Oklahoma ordered that Defendant’s accounting to Plaintiffs (1) “run from the first quarter of 2002 until the last available quarter;” (2) “be divided and organized either by month or by quarter;” (3) “state the date and dollar amount of each receipt and distribution;” (4) “briefly identify and describe the source of each trust receipt (i.e., the name of the payer/lessee and the contract number for the oil and/or gas lease on which the payment is made);” (5) “state the name of the individual or organization to whom each trust distribution was made;” (6) “state the headright interest that each beneficiary possessed at the time of distribution” for headright distributions; and (7) “state the amount of interest income generated from the tribal trust account and the date on which such interest was credited to the account.” *Fletcher v. United States*, 153 F. Supp. 3d 1354, 1372 (N.D. Okla. 2015).

43. Both parties moved to amend judgment, and then both parties appealed, and the Tenth Circuit held that it “cannot say that the district court abused its discretion” and affirmed the District Court’s order. *Fletcher v. United States*, 854 F.3d 1201, 1206 (10th Cir. 2017) (“*Fletcher III*”).

44. On or about October 10, 2017, the United States provided information intended to comply with the requirements of *Fletcher III*. Plaintiffs hired professional consultants to review that information, and learned that they indeed suffered a loss as a result of the United States’ mismanagement of the Section 4 Royalties.

D. Plaintiffs' Claims Unaffected by Osage Nation's Settlement

45. In 1999, the Osage Nation sued the United States in this Court for damages relating to the United States breaching various trust duties. The Osage Nation alleged that the United States violated its duty as trustee of the Osage mineral estate by failing to collect all moneys due from Osage oil leases and to deposit and invest those moneys as required by statute and according to the fiduciary duty owed to the Osage Tribe. The Osage Nation's action survived the United States' motion to dismiss, and the Osage Nation was found to have standing to bring suit against the United States. *Osage Nation v. United States* (“*Osage I*”), 57 Fed. Cl. 392, 395, 398 (2003).

46. Subsequently, this Court held the plain language of the 1906 Act “for the division of the lands and funds of the Osage Indians in Oklahoma Territory” imposed on the government, as trustee, fiduciary duties which included a specific duty to verify that “all moneys due” under terms of mineral leases were in fact paid to the government and deposited to the account of the Osage Tribe as trust beneficiary. This Court also held the statutes and regulations which impose on the government a fiduciary duty to ensure that mineral lessees met their contractual obligations to the Tribe as lessor by verifying the accuracy of royalty payments could fairly be interpreted as mandating compensation by the government for damages sustained from violation of its duty, for purposes of jurisdiction before this Court. This Court further held the Tribe's claims that the government breached its

fiduciary duty by failing to collect mineral royalty payments due to the tribe fell within the ambit of § 4011 providing that the statute of limitations on claims concerning losses or mismanagement of tribal trust funds does not commence to run until the Tribe has been furnished with an accounting. The case was divided into two parts, or tranches. *Osage Tribe of Indians of Okla. v. United States* (“*Osage II*”), 68 Fed. Cl. 322, 330–31 (2005).

47. The United States was subsequently found to owe fiduciary duties as trustee to the Osage Nation as a trust beneficiary. This Court found, *inter alia*, that the United States government: 1) breached its fiduciary duty to Osage Nation by not collecting oil royalties based on highest “offered prices”; 2) breached its fiduciary duty by failing to apply the highest posted price or offered price paid to producers of unregulated stripper oil to the calculation of royalty payments during months when federal price controls on the sale of crude oil were in effect; 3) breached its fiduciary duty by its failure to promptly deposit royalty funds; 4) breached its fiduciary duty by failing to prudently invest cash balances of income in excess of \$25,000; and 5) breached its fiduciary duty by failing to obtain highest available investment yields on funds derived from royalties during certain time frames. *Osage Tribe of Indians of Oklahoma v. United States*, 72 Fed. Cl. 629 (2006).

48. In 2007, some citizens of the Osage Nation sought to intervene in the Osage Nation’s case. The proposed intervenors, represented by Counsel that had been discharged previously by the Osage Nation in the case, moved under Rule 24, seeking intervention as a right or permissively. This Court held that because “the

organization of which Proposed Intervenors are members, the Osage Nation, is a party to this litigation ... Proposed Intervenors are simply not an ‘identifiable group’ pursuant to 28 U.S.C. § 1505, but are, rather, members of a tribe.” *Osage Tribe of Indians of Oklahoma v. United States*, 85 Fed. Cl. 162, 168 (2008). The proposed intervenors were denied intervention because the Court held “the Osage Tribe [wa]s the real party in interest in [that] litigation and that the Osage Tribe owns **the minerals which are the subject of th[at] action**.” Therefore, Proposed Intervenors do not have an interest which the substantive law recognizes as belonging to or being owned by them.” *Osage Tribe of Indians of Oklahoma v. United States*, 85 Fed. Cl. 162, 170 (2008) (citations, alterations, quotations omitted) (emphasis added). “Proposed Intervenors [were] simply ‘adopting the complaint’ brought by the [Osage Nation] in the action.” *Id.* Effectively, the counsel who was terminated by the Osage Nation rustled up some headright holders in an attempt to overtake the Osage Nation’s lawsuit – a tactic this Court rejected.

49. Unlike the proposed intervention in the *Osage* cases, the minerals of the Osage Nation are not a subject of this litigation. *Osage Tribe of Indians of Oklahoma v. United States*, 85 Fed. Cl. 162, 170 (2008) (“the minerals which are **the subject** of [that] action”).)

50. Plaintiffs are suing the United States seeking monetary restitution based upon instances of mismanagement of their trust funds found and interpreted from the accounting the United States provided to them in the *Fletcher* litigation in the United States District Court for the Northern District of Oklahoma. There is no other

pending litigation concerning the subject of this current litigation.

V. CLASS ACTION ALLEGATIONS

51. This action is brought as a class action, pursuant to Fed. R. Civ. P. 23 on behalf of all Indians who lawfully receive distributions of trust property from the Osage Mineral Estate as determined and calculated by Defendant, as trustee, pursuant to the 1906 Act § 4 (as amended). Specifically, Plaintiffs seek to certify a class of similarly situated persons defined as follows:

All Indians who currently, or during the pendency of this litigation have received Section 4 Royalty payments from the segregated fund as determined and calculated by the Defendants, as trustee, pursuant to the 1906 Act § 4 (as amended).

52. The putative members are so numerous that joinder of all the individual class members is impracticable. Originally, there were 2,229 individual Osage Indians receiving Section 4 Royalty Payments. However, those 2,229 interests receiving trust property distribution of the Section 4 Royalty Payments have become fractionated among many persons over time. It is believed that there are more than 5,000 putative class members at this time.

53. The claims of Plaintiffs and the Class raise common questions of law and fact that predominate over any questions affecting only individual putative Class members.

These questions include, but are not limited to, the following:

- a. Whether Defendant breached its fiduciary duties by making improper distributions of trust property from Section 4 Royalty Payments;
- b. Whether Defendant collected all interest necessary and as required by the law on the Section 4 Royalty Payments;

- c. Whether Defendant over paid gross production taxes from the Section 4 Royalty Payments;
- d. The total amount of money that should have been paid to the Class as Section 4 Royalty Payments;
- e. Whether Defendant misreported costs and expenses;
- f. Whether Defendant's accounting is flawed; and
- g. Whether Defendant should be required to account further and more specifically to the Class.

54. Plaintiffs' claims are typical, and are in fact identical, to the claims of the Class and are based upon the same factual and legal theories. Specifically, each Class Member is entitled to receive trust property distributions of the Section 4 Royalty Payments and the only differences between Class Members is the respective share size of each headright holder (i.e. how many "headrights" each person holds). The mismanagement by the United States, which results in a loss of trust funds, diminishes on a dollar-for-dollar basis the trust property that should otherwise have been available for distribution to Plaintiffs and class members.

55. Plaintiffs will fairly and adequately represent the interests of the Class. Plaintiffs are committed to prosecute this action vigorously and have retained competent counsel experienced in class action litigation of this nature. Plaintiffs are members of the Class and do not have interests antagonistic to, or in conflict with, other members of the Class with respect to this litigation or claims being raised herein.

56. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The prosecution of separate actions by individual Class members could create a risk of inconsistent and varying adjudications, establish

incompatible standards of conduct for Defendant, and/or substantially impair or impede the ability of Class members to protect their interests.

57. A class action will result in an orderly and expeditious administration of this controversy and of Plaintiffs' and the Class Members' claims; it will save the Court and the parties economies of time, effort, and expense; and assure uniformity of decisions.

58. Plaintiffs do not anticipate any difficulty in the management of this litigation as a class action.

VI. COUNTS

Count I. Defendant Failed to Provide Adequate Systems and Controls for Accounting for and Reporting Trust Fund Balances

59. Plaintiffs on behalf of themselves and all persons similarly situated incorporate herein by reference the allegations above.

60. Throughout all relevant time periods, Defendant possessed and exercised, and continues to possess and exercise, comprehensive authority, control, and supervision over funds that were to be placed to Plaintiffs' credit under Section 4 of the 1906 Act as a fiduciary pursuant to applicable and governing treaties, statutes, regulations, executive orders, and other federal law which establish and impose a full range of specific enforceable, money-mandating fiduciary duties on Defendant of the highest order concerning the management and disposition of Plaintiffs' trust assets.

61. Defendant routinely failed (and continues to fail) to fulfill Defendant's fiduciary duties concerning Plaintiffs' trust assets, causing economic loss to Plaintiffs, Plaintiffs' trust funds, and other trust assets of Plaintiffs.

62. For example, Defendant under-paid interest accrued by the Segregated Fund and, as a result, underpaid Plaintiffs and the Putative Class. Plaintiffs believe a review of documents older than 2002, those not produced as a part of the time-limited accounting, will show additional under-collection of interest by Defendant.

63. Additionally, Defendant overcharged Plaintiffs and the Putative Class gross production taxes. The Act of April 25, 1940, 54 Stat. 168, authorized the State of Oklahoma “to levy and collect a gross-production tax . . . upon all oil and gas produced in Osage County, Oklahoma . . . The gross-production tax on the royalty interests of the Osage Indians shall be at the rate levied by said State but in no event to exceed 5 per centum and said tax shall be paid by the Secretary of the Interior, through the proper officers of the Osage Agency, to the State of Oklahoma from the amount received by the Osage Indians from the production of oil and gas.”

64. Upon information and belief, Defendant overcharged Plaintiffs and Class members for gross-production tax by charging the maximum gross-production tax of 5 per centum, regardless if such amount was in excess of the tax levied by the State of Oklahoma.

65. Upon information and belief, Defendant did not accurately report funds transferred from Plaintiffs’ trust funds to the Osage Nation causing losses to the Plaintiffs’ trust funds.

66. Upon information and belief, Defendant failed to account to Plaintiffs and Class Members for costs associated with Defendant’s administration of the trust fund. However, the expense and income balanced in Defendants’ accounting

indicating that income the Plaintiffs and the Class were entitled to was not received by the Plaintiffs and the Class.

***COUNT II. Defendant Failed to Establish
Written Policies and Procedures or
Provide Adequate Staffing, Supervision, and
Training for Trust Fund Management and Accounting***

67. Plaintiffs on behalf of themselves and all persons similarly situated incorporate herein by reference the allegations above.

68. Defendant's utter failure to abide by its trust obligations has been well-documented for over a century.

69. On October 20, 2014, the Office of Inspector General provided Defendant a Final Evaluation Report regarding Defendant's management of the Osage Energy Resources. The Report found sweeping changes necessary to remedy a "fundamentally flawed program." Further, the Report found Defendant "has nonexistent or vague policies and procedures."

***Count III. Defendant Failed to Provide
Accurate Periodic Statements of
Headright Owners' Accounts***

70. Plaintiffs on behalf of themselves and all persons similarly situated incorporate herein by reference the allegations above.

71. There are numerous instances in which Defendant erred in reporting expenses and simply adjusted the revenue so as to balance the account of Osage Headright Owners.

72. Plaintiffs believe further discovery will reveal additional breaches of

Defendant's trust obligations concerning the Defendant's failure to accurately provide any accounting to the Class.

Count IV. Damages for Breach of Trust

73. Plaintiffs on behalf of themselves and all persons similarly situated incorporate herein by reference the allegations above.

74. Defendant's breach of its fiduciary obligations resulted in (and continues to result in) losses to, as well as mismanagement of, Plaintiffs' money, which is held in trust and managed by the Defendant.

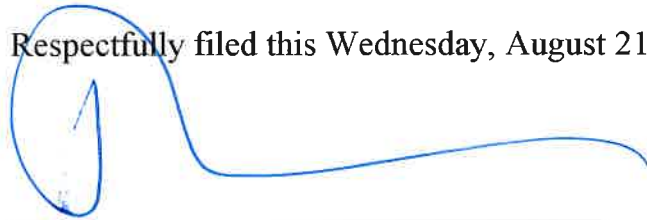
75. Due to Defendant's failure to fulfill its fiduciary duties to Plaintiffs arising under treaties, executive orders, statutes, regulations, and other federal law in the proper management of Plaintiffs' trust assets, on the basis of information made available to Plaintiffs, Class members have suffered damage caused by Defendant's breach of fiduciary obligations in an amount exceeding One Hundred Million Dollars (\$100,000,000.00).

WHEREFORE, Plaintiffs respectfully request the Court to award the following relief:

1. To take jurisdiction of this action;
2. To award the Class such amount as the Class may prove at trial in damages as monetary restitution against Defendant;
3. To order Defendant to accurately account to the Class;
4. To Order Defendant to repair its flawed trust management systems as they relate to the Segregated Fund;

5. To grant pre-judgment interest as a component of the Class's damages, post judgment interest, costs and expenses, and attorneys fees as provided by law, including without limitation the Equal Access to Justice Act and the Class Action Fairness Act.
6. To grant such other and further relief as the Court deems proper and appropriate.

Respectfully filed this Wednesday, August 21, 2019,

A handwritten signature in blue ink, consisting of a large, stylized 'J' followed by a long, horizontal, wavy line that tapers off to the right.

Jason B. Aamodt, Esq., OBA No. 16974

Krystina Phillips, OBA No. 30111

Dallas Strimple, OBA No. 30226

Matt Alison, OBA No. 32723

The Indian & Environmental Law Group

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and

G. Steven Stidham, OBA No. 8633

406 South Boulder Avenue, Ste. 830

Tulsa, Oklahoma 74103

VERIFICATION OF COMPLAINT

We, the signatories below, believe, based on reasonable inquiry, that the foregoing statements of fact in this Complaint are true and correct to the best of our knowledge, information and belief.

We verify under penalty of perjury that the foregoing is true and correct.

Executed on 8/16/2019

Tara Damron
Signature

8-16-19
Date

TARA DAMRON
Print Name

113 W. Evergreen St.
Address

Skiatook
City

OK
State

74070
Zip



Signature

16, AUGUST 2019

Date

RICHARD J. LONSINGER

Print Name

4029 CROSSGATE CT.

Address

Lawrence

City

KS

State

66047-3050

Zip

William S. Fletcher
Signature

8-16-2019
Date

WILLIAM S. FLETCHER
Print Name

403 So. Price Ave.
Address

Honolulu
City

OK.
State

74035
Zip


Signature

16 August 19
Date

Matthew RedCorn
Print Name

Box 822
Address

Pawhuska
City

OK
State

74054
Zip

Cell # 918 604 1870

APPENDIX A
ACTS OF CONGRESS ESTABLISHING
DEFENDANT'S TRUST OBLIGATIONS
BREACHED BY DEFENDANT

- a. The several Acts of Congress between December 22, 1987 (Pub. L. 100-202, 101 Stat. 1329), and August 2, 2005 (Pub. L. 109-54, 119 Stat. 499), including the Act of September 27, 1988, Pub. L. No. 100-446, requiring the Bureau of Indian Affairs ("the Bureau") to audit and reconcile Individual Indian trust funds and to provide Individual Indians with an accounting of such funds.
- b. The Act of October 23, 1989, Pub. L. 101-121, the Act of November 5, 1990, Pub. L. 101-512, and the Act of November 13, 1991, Pub. L. 102-154, requiring the Bureau to audit, reconcile, and certify through an independent party the results of a reconciliation of Individual Indian trust funds as the most complete reconciliation of such funds possible and to provide Individual Indians with an accounting of such funds.
- c. The Act of October 25, 1994 (the American Indian Trust Fund Management Reform Act of 1994), Pub. L. No. 103-412, codified at 25 U.S.C. §§ 4001-4061, pertinent sections of which require the following, among other things:

- i. Section 101 charges the Secretary of interior (“Secretary”) with a duty to provide periodic, timely reconciliations of Individual Indian trust funds to assure the accuracy of accounts and with a duty to determine accurate cash balances of Individual Indian trust funds;
 - ii. Section 102(c) requires the Secretary to cause an annual audit of all Individual Indian trust funds to be conducted;
 - iii. Section 301 provides for appointment of a Special Trustee for the American Indians to provide for more effective management of and accountability for the proper discharge of trust responsibilities to Individual Indians, and to oversee and coordinate reforms within the Department of the Interior of practices relating to the management and discharge of such responsibilities;
 - iv. Section 303(b)(2)(A) charges the Special Trustee with a duty to monitor the reconciliation of trust accounts to ensure that the Bureau provides Individual Indian account holders with a fair and accurate accounting of all trust funds;
 - v. Section 303(d) charges the Special Trustee with a duty to provide such guidance as necessary to assist Department personnel in identifying problems and options for resolving problems;
- d. Other statutes describe specifically and generally the United States’ duties as a fiduciary to Plaintiffs in managing Plaintiffs’ trust funds

(e.g., 25 U.S.C. §§ 161a, 161b, 162a).

- e. Other relevant treaties, executive orders, statutes, and regulations form additional jurisdictional bases for Plaintiffs' claims regarding the trust funds and other trust assets managed by Defendant. Among other authorities, these include the Trade and Intercourse Act, 25 U.S.C. § 177; the 1906 Act; the Budget and Procedures Act of 1950, 31 U.S.C. § 66b, as amended 31 U.S.C. §§ 3511-15, 3521 (which requires the Treasury Department of the United States to maintain all accounts (including Indian trust funds) and to make reports on all receipts and disbursements of the federal government); the Treasury Fiscal Requirements Manual (through which the Department of the Treasury issues codified instructions for the guidance of federal departments and agencies, including without limitation the requirement of Section 4020 that the deposit of all funds received for credit to the account of the United States Treasury should be made without delay, generally no more than one or two days at the most); the Department of the Interior's Departmental Manual (including Chapter 1, Section 337(D), which states that whoever, having money of the United States in his possession or under his control, fails to deposit it when required to do so by the Secretary of the Treasury or the head of any other proper department or agency of the General Accounting Office is guilty of embezzlement); 31 U.S.C. §§ 3511 and 3512 (which require that the

head of each executive agency observe the accounting principles, standards, and related requirements as stated by the Comptroller General of the United States, and the related requirements of the Comptroller in the Government Accounting Manual, Appendix III, and other relevant requirements); 25 C.F.R. Part 115 (trust funds for tribes and individual Indians); and 25 C.F.R. Part 1200 (regulations under the American Indian Trust Fund Reform Act).

APPENDIX B THE OSAGE ACTS

The first amendment to the 1906 Act occurred in 1912 and, relevant to this matter, substantively provides:

§ 4: “That nothing herein shall be construed as in any way changing the rights of the Osage Tribe in oil, gas, coal, and other minerals as fixed in the Osage act of June twenty-eighth, nineteen hundred and six, or in any manner be construed to change or amend the provisions of said act in regard to oil, gas, coal, or other minerals.”

§ 5: “That the Secretary of the Interior, in his discretion, hereby is authorized, under rules and regulations to be prescribed by him and upon application therefor, to pay to Osage allottees, including the blind, insane, crippled, aged, or helpless, all or part of the funds in the Treasury of the United States to their individual credit: Provided, That he shall be first satisfied of the competency of the allottee or that the release of said individual trust funds would be to the manifest best interests and welfare of the allottee: Provided further, That no trust funds of a minor or a person above mentioned who is incompetent shall be released and paid over except to a guardian of such person duly appointed by the proper court and after the filing by such guardian and approval by the court of a sufficient bond conditioned to faithfully administer the funds released and the avails thereof.”

§ 7: “...That no lands or moneys inherited from Osage allottees shall be subject to or be taken or sold to secure the payment of any indebtedness incurred by such heir prior to the time such lands and moneys are turned over to such heirs: Provided, however, That inherited moneys shall be liable for funeral expenses and expenses of last illness of deceased Osage allottees, to be paid upon order of the county court of Osage County, State of Oklahoma”

§ 8: “That any adult member of the Osage Tribe of Indians not mentally incompetent may dispose of any or all of his estate, real, personal, or mixed, including trust funds, from which restrictions as to alienation have not been removed, by will, in accordance with the laws of the State of Oklahoma: Provided, That no such will shall be admitted to probate or have any validity unless approved before or after the death of the testator by the Secretary of the Interior.”

§ 9: “The word “competent,” as used in this act, shall mean a person to

whom a certificate has been issued authorizing alienation of all the lands comprising his allotment, except his homestead.”

See Act of April 18, 1912, 37 Stat. 86-87.

- (b) The second amendment to the 1906 Act occurred in 1918 and substantively provides, though not particularly relevant to this matter, that Osage allottees could switch designations of homestead to land previously held as surplus upon application to the Secretary.

See Act of May 25, 1918, 40 Stat. 561, 578, 579.

- (c) The third amendment to the 1906 Act occurred in 1921, and substantively provides, relevant to this matter:

§ 3: “That all members of the Osage Tribe of Indians are hereby declared to be citizens of the United States, but this shall not affect their interest in tribal property or the control of the United States over such property as is now or may hereafter be provided by law, and all restrictions against alienation of their allotment selections, both surplus and homestead, of all adult Osage Indians of less than one-half Indian blood, are hereby removed, and the Secretary of the Interior shall, within four months after the passage of this Act, determine what members of said tribe are of less than one-half Indian blood, and their ages, and his determination thereof shall be final and conclusive. The homestead allotments of the members of the Osage Tribe shall not be subject to taxation if held by the original allottee prior to April 8, 1931.”

§ 4: “That from and after the passage of this Act the Secretary of the Interior shall cause to be paid at the end of each fiscal quarter to each adult member of the Osage Tribe having a certificate of competency his or her pro rata share, either as a member of the tribe or heir of a deceased member, of the interest on trust funds, the bonus received from the sale of leases, and the royalties received during the previous fiscal quarter, and so long as the income is sufficient to pay to the adult members of said tribe not having a certificate of competency \$1,000 quarterly except where incompetent adult members have legal guardians, in which case the income of such incompetents shall be paid to their legal guardians, and to pay for maintenance and education to the parents or natural guardians or legal guardians actually having minor members under twenty-one years of age personally in charge \$500 quarterly out of the income of said minors all of said quarterly payments to legal guardians and adults, not having certificates of competency to be paid under the supervision of the

Superintendent of the Osage Agency, and to invest the remainder after paying all the taxes of such members either in United States bonds or in Oklahoma State, county, or school bonds, or place the same on time deposits at interest in banks in the State of Oklahoma for the benefit of each individual member under such rules and regulations as the Secretary of the Interior may prescribe:³ Provided, That at the beginning of each fiscal year there shall first be reserved and set aside out of the Osage tribal funds available for that purpose a sufficient amount of money for the expenditures authorized by Congress out of the Osage funds for that fiscal year: Provided further, That all just existing individual obligations of adults not having certificates of competency outstanding upon the passage of this Act when approved by the Superintendent of the Osage Agency, shall be paid out of the money of such individual as the same may be placed to his credit in addition to the quarterly allowance provided for herein.”

See Act of March 3, 1921, 41 Stat. 1249.

- (d) The fourth amendment to the 1906 Act occurred in 1924 and in its entirety provides:

“That any right to or interest in the lands, money, or mineral interests, as provided in the Act of Congress approved June 28, 1906 (Thirty-fourth Statutes at Large, page 539), entitled “An Act for the division of the lands and funds of the Osage Indians in Oklahoma, and for other purposes,” and in Acts amendatory thereof and supplemental thereto, vested in, determined, or adjudged to be the right or property of any person not an Indian by blood, may with the approval of the Secretary of the Interior and not otherwise be sold, assigned, and transferred under such rules and regulations as the Secretary of the Interior may prescribe.”

See Act of April 12, 1924, 43 Stat. 94.

- (e) The fifth amendment to the 1906 Act occurred in 1925, and it attempted to deal with the increased defrauding of Osages and the wrongful taking of their property. Substantively, and relevant to this matter, the amendment provides:

§ 1: “That the Secretary of the Interior shall cause to be paid at the end of each fiscal quarter to each adult member of the Osage Tribe of Indians in Oklahoma having a certificate of competency his or her pro rata share, either as a member of the tribe or heir or devisee of a deceased member, of the interest on trust funds; the bonus received from the sale of oil or gas

leases, the royalties therefrom, and any other moneys due such Indian received during each fiscal quarter, including all moneys received prior to the passage of this Act and remaining unpaid; and so long as the accumulated income is sufficient the Secretary of the Interior shall cause to be paid to the adult members of said tribe not having a certificate of competency \$1,000 quarterly ... All payments to adults not having certificates of competency, including amounts paid for each minor, shall, in case the Secretary of the Interior finds that such adults are wasting or squandering said income, be subject to the supervision of the superintendent of the Osage Agency: Provided, That if an adult member, not having a certificate of competency so desires, his entire income accumulating in the future from the sources herein specified may be paid to him without supervision, unless the Secretary of the Interior shall find, after notice and hearing, that such member is wasting or squandering his income, in which event the Secretary of the Interior shall pay to such member only the amounts hereinbefore specified to be paid to adult members not having certificates of competency. ...”

§ 4: “Whenever the Secretary of the Interior shall find that any member of the Osage Tribe of more than one-half Indian blood, to whom has been granted a certificate of competency, is squandering or misusing his or her funds, he may revoke such certificate of competency after notice and hearing in accordance with such rules and regulations as he may prescribe, and thereafter the income of such member shall be subject to supervision and investment as herein provided for members not having certificates of competency to the same extent as if a certificate of competency had never been granted: Provided, That all just indebtedness of such member existing at the time his certificate of competency is revoked shall be paid by the Secretary of the Interior, or his authorized representative, out of the income of such member, in addition to the quarterly income hereinbefore provided for: And provided further, That such revocation or cancellation of any certificate of competency shall not affect the legality of any transactions theretofore made by reason of the issuance of any certificate of competency.”

§ 5: “No person convicted of having taken, or convicted of causing or procuring another to take, the life of an Osage Indian shall inherit from or receive any interest in the estate of the decedent, regardless of where the crime was committed and the conviction obtained.”

§ 6: “No contract for debt hereafter made with a member of the Osage Tribe of Indians not having a certificate of competency, shall have any validity, unless approved by the Secretary of the Interior. In addition to

the payment of funds heretofore authorized, the Secretary of the Interior is hereby authorized in his discretion to pay, out of the funds of a member of the Osage Tribe not having a certificate of competency, any indebtedness heretofore or hereafter incurred by such member by reason of his unlawful acts of carelessness or negligence.”

§ 7: “Hereafter none but heirs of Indian blood shall inherit from those who are of one-half or more Indian blood of the Osage Tribe of Indians any right, title, or interest to any restricted lands, moneys, or mineral interests of the Osage Tribe: Provided, That this section shall not apply to spouses under existing marriages.”

See Act of February 27, 1925, 43 Stat. 1008.

- (f) The sixth amendment to the 1906 Act occurred in 1928, and in relevant part provides:

“Osage murder trials, Oklahoma: For expenses in connection with the prosecution of the person or persons implicated in the crimes resulting in the murder of Osage, citizens, for witness fees and expenses, records, additional investigations, and all other purposes, \$10,000, or so much as may be necessary, to be paid from funds on deposit in the United States Treasury to the credit of the Osage Tribe, and to remain available until June 30, 1929: Provided, That no part of this sum shall be expended for the compensation of attorneys.”

Act of May 29, 1928, 45 Stat. 883

- (g) The seventh amendment to the 1906 Act occurred in 1929, and substantively provides:

§ 1: That all that part of the Act of June 28, 1906 (Thirty-fourth Statutes at Large, page 539), entitled ‘An Act for the division of the lands and funds of the Osage Indians in Oklahoma, and for other purposes’, which reserves to the Osage Tribe the oil, gas, coal, or other minerals, covered by the lands for the selection and division of which provision is made in that Act is hereby amended so that the oil, gas, coal, or other minerals, covered by said lands are reserved to the Osage Tribe, until the 8th day of April, 1958, unless otherwise provided by Act of Congress, and all royalties and bonuses arising therefrom shall belong to the Osage Tribe of Indians, and shall be disbursed to members of the Osage Tribe or their heirs or assigns as now provided by law, after reserving such amounts as are now or may hereafter be authorized by Congress for specific purposes.”

The lands, moneys, and other properties now or hereafter held in trust or under the supervision of the United States for the Osage, Tribe of Indians, the members thereof, or their heirs and assigns, shall continue subject to such trust and supervision until January 1, 1959, unless otherwise provided by Act of Congress.”

§ 5: “The restrictions concerning lands and funds of allotted Osage Indians, as provided in this Act and all prior Acts now in force, shall apply to unallotted Osage Indians born since July 1, 1907, or after the passage of this Act, and to their heirs of Osage Indian blood, except that the provisions of section 6 of the Act of Congress approved February 27, 1925, with reference to the validity of contracts for debt, shall not apply to any allotted or unallotted Osage Indian of less than one-half degree Indian blood: Provided, That the Osage lands and funds and any other property which has heretofore or which may hereafter be held in trust or under supervision of the United States for such Osage Indians of less than one-half degree Indian blood not having a certificate of competency shall not be subject to forced sale to satisfy any debt or obligation contracted or incurred prior to the issuance of a certificate of competency: Provided further, That the Secretary of the Interior is hereby authorized in his discretion to grant a certificate of competency to any unallotted Osage Indian when in the judgment of the said Secretary such member is fully competent and capable of transacting his or her own affairs.

See Act of March 2, 1929, 45 Stat. 1478.

- (h) The eighth amendment to the 1906 Act occurred in 1938, and substantively the amendment provides:

§ 1: “That hereafter the Secretary of the Interior shall cause to be paid to each adult member of the Osage Tribe of Indians not having a certificate of competency his or her pro rata share, either as a member of the tribe or heir or devisee of a deceased member, of the interest on trust funds, the bonus received from the sale of oil or gas leases, and the royalties therefrom received during each fiscal quarter, not to exceed \$1,000 per quarter ... Whenever minor members of the Osage Tribe of Indians have funds or property subject to the control or supervision of the Secretary of the Interior, the said Secretary may in his discretion pay or cause to be paid to the parents, legal guardian, or any person, school, or institution having actual custody of such minors, such amounts out of the income or funds of the said minors as he deems necessary, and when such a minor is eighteen years of age or over, the Secretary of the Interior may in his

discretion cause disbursement of funds for support and maintenance or other specific purposes to be made direct to such minor.”

§ 3: That all that part of the Act of June 28, 1906 (34 Stat. L. 539), entitled 'An Act for the division of the lands and funds of the Osage Indians in Oklahoma, and for other purposes', which reserves to the Osage Tribe the oil, gas, coal, or other minerals, covered by the lands for the selection and division of which provision is made in that Act is hereby amended so that the oil, gas, coal, or other minerals, covered by said lands are reserved to the Osage Tribe, until the 8th day of April, 1983, unless otherwise provided by Act of Congress, and all royalties and bonuses arising therefrom shall belong to the Osage Tribe of Indians, and shall be disbursed to members of the Osage Tribe or their heirs or assigns as now provided by law, after reserving such amounts as are now or may hereafter be authorized by Congress for specific purposes.

The lands, moneys, and other properties now or hereafter held in trust or under the supervision of the United States for the Osage Tribe of Indians, the members thereof, or their heirs and assigns, shall continue subject to such trusts and supervision until January 1, 1984, unless otherwise provided by Act of Congress.”

See Act of June 24, 1938, sec. 3, 52 Stat. 1034.

- (i) The ninth amendment to the 1906 Act occurred in 1948, and provides in its entirety:

“That section 5 of the Osage Act (S. 4039, Public, Numbered 360, Sixty-sixth Congress; 41 Stat. 1249) be amended to read as follows:

SEC. 5. That the State of Oklahoma is authorized from and after the passage of this Act to levy and collect a gross-production tax, not to exceed the existing rate, upon all oil and gas produced in Osage County, Oklahoma, except as herein otherwise provided, and all taxes so collected shall be paid and distributed, and shall be in lieu of all other State and county taxes levied upon the production of oil and gas as provided by the laws of Oklahoma. The gross-production tax on the royalty interests of the Osage Indians shall be at the rate levied by said State but in no event to exceed 5 per centum and said tax shall be paid by the Secretary of the Interior, through the proper officers of the Osage Agency, to the State of Oklahoma from the amount received by the Osage Indians from the production of oil and gas to be distributed in like manner as gross-production tax under the laws of said State and the Secretary shall pay the

tax herein authorized upon the condition and not otherwise that an additional one-fifth of said sum or sums paid by the Secretary in pursuance of this Act shall be delivered over to Osage County, Oklahoma, at the same time or times as the other payment or payments herein provided for are made to said county, one-half thereof to be apportioned to a fund to be used by said county only for the construction and maintenance of roads and bridges therein, the other one-half thereof to be used for the maintenance of common schools of said county as provided by law.”

See Act of April 25, 1940, 54 Stat. 168.

- (j) The tenth amendment to the 1906 Act occurred in 1948, and the amendment provides in its entirety:

“That the Secretary of the Interior shall issue a certificate of competency to each member of the Osage Tribe of less than one-half Indian blood heretofore or hereafter attaining the age of twenty-one years; and shall thereupon pay and deliver to such member, or to his legal guardian if such member has been declared incompetent by a court of competent jurisdiction, all money, property, and funds theretofore accrued or hereafter accruing to the individual credit of such member; and all payments to the legal guardian of such member may be expended without the approval of the superintendent of the Osage Agency: Provided, That all restrictions against alienation of the property of every kind and character, except headright shares or interests in the Osage tribal mineral estate, of members of the Osage Tribe who now have, or may hereafter receive, a certificate of competency, are hereby removed.”

See Act of February 5, 1948, 62 Stat. 18.

- (k) The eleventh amendment to the 1906 Act occurred in 1950, and the amendment provides in its entirety:

“That section 7 of the Act of February 27, 1925 (43 Stat. 1008, 1011), which imposes an inheritance restriction with relation to lands and funds of the Osage Indians, is amended by striking out the portion of said section after the comma following the word ‘Provided’ and inserting in lieu thereof the following: ‘That (except in cases where a person claiming as such heir is a party to judicial proceedings pending on the date of the enactment of this proviso in which the claimant has filed a formal pleading alleging Indian blood) no claim of heirship shall be recognized unless the claimant shall establish that he is a citizen of the United States and is enrolled on a membership, census, or other roll prepared under the

direction of the Secretary of the Interior, or has a lineal Indian ancestor so enrolled. Provided further, That this section shall not apply to spouses under marriages existing on February 27, 1925”

See Act of September 1, 1950, 64 Stat. 572.

- (l) The twelfth amendment to the 1906 Act occurred in 1957, and the amendment provides in its entirety:

“That section 9 of the Act of Congress approved June 28, 1906 (34 Stat. 539), as amended by section 7 of the Act of March 2, 1929 (45 Stat. 1478), is hereby amended by striking therefrom the words ‘January 1, 1959’ and substituting therefor the words ‘January 1, 1984’”.

See Act of August 28, 1957, 71 Stat. 471.

- (m) The thirteenth amendment to the 1906 Act occurred in 1964, and the amendment provides in its entirety:

“That section 3 of the Act of June 24, 1938 (52 Stat. 1034), which extends the mineral estate reserved to the Osage Tribe by the Act of June 28, 1906 (34 Stat. 539), until April 8, 1983, unless otherwise provided by Act of Congress, is hereby amended by striking the word ‘unless’ and substituting therefor ‘and thereafter until’”

See Act of October 6, 1964, 78 stat. 1008.

- (n) The fourteenth amendment to the 1906 Act occurred in 1978, and substantively the amendment extended the reservation of the mineral estate into perpetuity and restated the preexisting prohibition that none but heirs of Indian blood, legally-adopted children, and spouses could inherit any right to share in the SECTION 4 ROYALTY PAYMENTS from Osage Indians.

See Act of October 21, 1978, 92 Stat. 1660.

- (o) The fifteenth amendment to the 1906 Act occurred in 1984, and substantively the amendment restated the preexisting prohibition on the receipt of any SECTION 4 ROYALTY PAYMENTS in line with the 1978 Act. The 1984 Act was technical in nature, amending what amounted to “typos” in the 1978 Act.

See Act of Oct. 30, 1984, 98 Stat. 3163.

In The United States Court of Federal Claims

Cover Sheet

Plaintiff(s) or Petitioner(s)

19-1246 L

Names: William Fletcher (see attached document for additional plaintiffs)Location of Plaintiff(s)/Petitioner(s) (city/state): Hominy, Oklahoma

(If this is a multi-plaintiff case, pursuant to RCFC 20(a), please use a separate sheet to list additional plaintiffs.)

Name of the attorney of record (See RCFC 83.1(c)): Jason B. AamodtFirm Name: Indian and Environmental Law Group, PLLC

Contact information for pro se plaintiff/petitioner or attorney of record:

Post Office Box:

Street Address:

City-State-ZIP:

Telephone & Facsimile Numbers:

E-mail Address:

406 South Boulder Ave., Suite 830Tulsa, Oklahoma 74103(918) 347-6169 & (918) 948-6190jason@iaelaw.com

Is the attorney of record admitted to the Court of Federal Claims Bar?



Yes



No

Nature of Suit Code: 504

Select only one (three digit) nature-of-suit code from the attached sheet.

Agency Identification Code: DOI

Number of Claims Involved: _____

Amount Claimed: \$ 900,000,000.00

Use estimate if specific amount is not pleaded.

Bid Protest Case (required for NOS 138 and 140):

Indicate approximate dollar amount of procurement at issue: \$ _____

Is plaintiff a small business?



Yes



No

Was this action preceded by the filing of a protest before the GAO?



Yes



No

GAO Solicitation No. _____

If yes, was a decision on the merits rendered?



Yes



No

Income Tax (Partnership) Case:

Identify partnership or partnership group: _____

Takings Case:

Specify Location of Property (city/state): _____

Vaccine Case:

Date of Vaccination: _____

Related Case:

Is this case directly related to any pending or previously filed case(s) in the United States Court of Federal Claims? If yes, you are required to file a separate notice of directly related case(s). See RCFC 40.2.



Yes



No

Tara Damron

Richard Lonsinger

Kathryn Redcorn

Nature-of-Suit Codes for General Jurisdiction Cases

100 Contract - Construction - (CDA)	206 Tax - Excise	348 Military Pay - Reinstatement
102 Contract - Fail to Award - (CDA)	208 Tax - Gift	350 Military Pay - Relocation Expenses
104 Contract - Lease - (CDA)	210 Tax - Income, Corporate	352 Military Pay - Retirement
106 Contract - Maintenance - (CDA)	212 Tax - Income, Individual	354 Military Pay - SBP
108 Contract - Renovation - (CDA)	213 Tax - Income, Individual (Partnership)	356 Military Pay - Other
110 Contract - Repair - (CDA)	214 Tax - Informer's Fees	
112 Contract - Sale - (CDA)	216 Tax - Preparer's Penalty	500 Carrier - transportation
114 Contract - Service - (CDA)	218 Tax - Railroad	502 Copyright
116 Contract - Supply - (CDA)	Retirement/Unemployment Tax Act	504 Native American
118 Contract - Other - (CDA)	220 Tax - TEFRA Partnership - 28:1508	506 Oil Spill Clean Up
	222 Tax - Windfall Profit	507 Taking - Town Bluff Dam
120 Contract - Bailment	Overpayment - Interest	508 Patent
122 Contract - Bid Preparation Costs	224 Tax - 100% Penalty - 26:6672 -	509 Taking - Addicks & Barker Reservoirs
124 Contract - Medicare Act	Withholding	510 Taking - Personalty
125 Contract - Affordable Care Act	226 Tax - Other	512 Taking - Realty
126 Contract - Realty Sale		513 Taking - Rails to Trails
128 Contract - Subsidy	300 Civilian Pay - Back Pay	514 Taking - Other
130 Contract - Surety	302 Civilian Pay - COLA	515 Unjust Conviction and Imprisonment
132 Contract - Timber Sale	303 Civilian Pay - Disability Annuity	516 Miscellaneous - Damages
134 Contract - Other	304 Civilian Pay - FLSA	518 Miscellaneous - Lease
	306 Civilian Pay - Overtime Compensation	520 Miscellaneous - Mineral Leasing Act
136 Contract - Other - Wunderlich	308 Civilian Pay - Relocation Expenses	522 Miscellaneous - Oyster Growers
	310 Civilian Pay - Suggestion Award	Damages
138 Contract - Protest (Pre Award)	312 Civilian Pay - Other	524 Miscellaneous - Safety Off. Ben. Act
140 Contract - Protest (Post Award)		526 Miscellaneous - Royalty/Penalty Gas
	340 Military Pay - Back Pay	Production
200 Tax - Allowance of Interest	342 Military Pay - CHAMPUS	528 Miscellaneous - Other
202 Tax - Declaratory Judgment - 28:1507	344 Military Pay - Correct records	535 Informer's Reward
204 Tax - Estate	346 Military Pay - Correct/Reinstate	536 Spent Nuclear Fuel

Nature-of-Suit Codes for Vaccine Cases

449 Injury - Hepatitis A	485 Injury - Hemophilus Influenzae	477 Death - Pertussis
453 Injury - Pneumococcal Conjugate	486 Injury - Varicella	478 Death - Polio - inactive
456 Injury - DPT & Polio	490 Injury - Rotavirus	479 Death - Polio - other
457 Injury - D/T	492 Injury - Thimerosal	480 Death - Rubella
458 Injury - DTP/DPT	494 Injury - Trivalent Influenzae	481 Death - Tetanus & Diphtheria
459 Injury - Measles	496 Injury - Meningococcal	482 Death - Tetanus & Tox.
460 Injury - M/M/R	498 Injury - Human Papillomavirus	483 Death - Other
461 Injury - Measles/Rubella		487 Death - Hepatitis B
462 Injury - Mumps	452 Death - Hepatitis A	488 Death - Hemophilus Influenzae
463 Injury - Pertussis	454 Death - Pneumococcal Conjugate	489 Death - Varicella
464 Injury - Polio - inactive	470 Death - DPT & Polio	491 Death - Rotavirus
465 Injury - Polio - other	471 Death - D/T	493 Death - Thimerosal
466 Injury - Rubella	472 Death - DTP/DPT	495 Death - Trivalent Influenzae
467 Injury - Tetanus & Diphtheria	473 Death - Measles	497 Death - Meningococcal
468 Injury - Tetanus & Tox.	474 Death - M/M/R	499 Death - Human Papillomavirus
469 Injury - Other	475 Death - Measles/Rubella	
484 Injury - Hepatitis B	476 Death - Mumps	

AGR	Agriculture	TRN	Department of Transportation
AF	Air Force	TRE	Department of Treasury
ARM	Army	VA	Department of Veterans Affairs
AEC	Atomic Energy Commission	VAR	Various Agencies
COM	Department of Commerce	O	Other
DOD	Department of Defense		
DOE	Department of Energy		
ED	Department of Education		
EPA	Environmental Protection Agency		
GPO	Government Printing Office		
GSA	General Services Administration		
HHS	Health and Human Services		
HLS	Homeland Security		
HUD	Housing and Urban Development		
DOI	Department of the Interior		
ICC	Interstate Commerce Commission		
DOJ	Department of Justice		
LAB	Department of Labor		
MC	Marine Corps		
NAS	National Aeronautical Space Agency		
NAV	Navy		
NRC	Nuclear Regulatory Commission		
PS	Postal Service		
STA	State Department		
SBA	Small Business Administration		