

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

Chemehuevi Indian Tribe,)	
)	
Plaintiff,)	No. 16-492L
v.)	
)	Hon. Matthew H. Solomson
United States of America,)	
)	
Defendant.)	

CHEMEHUEVI TRIBE'S SUPPLEMENTAL BRIEF

Plaintiff, the Chemehuevi Indian Tribe, files this Supplemental Brief in compliance with this Court's May 14, 2020 order.

1. Description of additional documents that the Government provided the Tribe as part of the Arthur Andersen Report

The approximately 6,000 images accompanying the Report included: about 400 Deposit Tickets,¹ about 60 Vouchers and Schedules of Payment,² about 40 Reconciliation Checklists,³ about 15 Notices for Missing Deposit Tickets, two decisions of the Indian Claims Commission, a cover letter from the Bureau of Indian Affairs, a report summary (discussed herein), a report for fiscal years 1993-1995, correspondence regarding the Coopers & Lybrand closeout letter, and miscellaneous documents concerning the preparation of the report.

These additional documents were saved as TIFF (Tagged Image File Format) images, and to view them required specialized software that the Tribe does not possess. The Report and images were not accompanied by explanations of the transaction codes, transaction types, elements and components, nor any explanation why 156 transactions bore an incorrect date of

¹ Ex. 1 is a representative example.

² Ex. 2 is four representative pages of a 25-page document.

³ Ex. 3 is four representative pages of a nine-page document.

1899. The Tribe had no one that could interpret the financial transactions that appeared on the thousands of pages of financial data that accompanied the Report.

In addition, the Arthur Andersen images included support for only 929 of the 1,356 posted transactions —roughly 69%. And even fewer—888 of the 1,356 transactions—included the “C” code, which indicates that Arthur Andersen reviewed a complete packet of supporting documentation.⁴ Only 36 of the disbursements (\$587,778 out of the total disbursements of \$3 million) were supported by a complete disbursement package.⁵ The Chemehuevi Indian Tribe never submitted an Attestation Form accepting the Report.

2. The Government first provided these documents to the Tribe on March 1, 1996

The Tribe received the Arthur Andersen Report in the mail on March 1, 1996. The Tribe did not attend the National Meeting held at the Sheraton Hotel in Albuquerque, New Mexico on February 14-15, 1996, as the Government incorrectly asserts, and did not receive the Report at that time.⁶ And the Government’s claim that it held an individual meeting with the Tribe while in Albuquerque to review their report, answer questions, and document issues for follow-up is mistaken, since no one from the Tribe was present. The mail receipt cited by the Government, dated January 18, 1996, acknowledged receipt of a general report summarizing Arthur Andersen’s results for all tribes—not the Arthur Andersen Report for the Chemehuevi Tribe that the Government relies on for its statute of limitations defense in this case.

⁴ See Report at 8.

⁵ *Id.* at 9.

⁶ The Government incorrectly contends that the Chemehuevi Tribe was not federally recognized until 1970. In fact, the Tribe was recognized at least by 1907, when its reservation was established.

3. The Arthur Andersen Report was not a meaningful accounting under Shoshone

The Arthur Andersen Report contains no information relating to any of the Tribe's claims in this case for loss or mismanagement of funds held in trust, including the Government's duties to collect, safeguard, properly invest and account for them, and fails to put the Tribe on notice of the losses it asserts in this case, as is required in a meaningful accounting. The Tribe's claims therefore are not time barred because the statute of limitations did not start to run in 1996.⁷

This is not surprising since the Arthur Andersen Report itself did not purport to be an accounting, nor to provide any professional accounting opinions, rather it was an agreed-upon procedures report on terms specified by the Government, in which "a practitioner performs specific procedures on subject matter and reports the findings without providing an opinion or conclusion."⁸ The Report accepted as correct the existing 1972 account balances provided by the Government, and any account activity before or after the 1972-1992 period covered was not audited. Instead, Arthur Andersen merely provided a list of receipts and disbursements with various unexplained codes—admitting that upwards of 30% of the transactions, including the vast majority of the disbursements, could not be reconciled.⁹

4. The Government has a statutory duty to account for tribal trust funds

Standing alone, this Court lacks jurisdiction to order the Government to perform an accounting, which the Government discusses in its Supplemental brief, and in support of that

⁷ The American Trust Management Reform Act of 1994, with which the Government starts its brief, requires accountings "beginning in 1995 on a prospective basis." Gov's Suppl. Br. in Supp. of its Mot. to Dismiss Plaintiff's Second Am. Compl. (May, 28, 2020) (ECF No. 90). The Reform Act has no relevance to the Arthur Andersen Report, which covered fiscal years 1972-1992.

⁸ See SSAE Agreed-Upon Procedures Requirements, <https://www.aicpa.org/content/dam/aicpa/research/standards/auditattest/downloadabledocuments/ssae-19.pdf> visited June 3, 2020.

⁹ See Report at 8-9.

proposition quotes from *Klamath & Modoc Tribes v. United States*.¹⁰ But the Government fails to quote from the rest of that decision, which makes clear that this Court does have jurisdiction to provide a tribal plaintiff with accounting records necessary to prove its breach of trust claims:

We emphasize that our action today does not leave the Klamath Tribe and the individual Indians without a forum for the recovery of any damages to which they are entitled because of the Government's mishandling of tribal funds and property. No special jurisdictional act is required to provide that relief. In its brief, defendant states that it has already furnished to plaintiffs all the records pertaining to the termination of Federal supervision of the Klamath Indians, but if defendant refuses to provide on plaintiffs' request additional documents and records that are needed by plaintiffs in presenting their case as to defendant's liability, discovery is available to plaintiffs under the rules of this court.¹¹

Likewise, in other cases, incident to rendering money judgments, this Court has ordered the Government to provide accountings of funds and property it holds in trust.¹²

As the parties agree, and the *Shoshone* court held: “[A] trustee must keep clear and accurate accounts, showing what he has received, what he has expended, what gains have accrued, and what losses have resulted.”¹³ And as this Court has further explained, this duty would indeed be a hollow exercise if the Government move for dismissal of trust loss claims because the tribe has no records to support its claims: “The final accounting process would surely be a hollow exercise if the Government could obtain a dismissal of trust fund loss claims merely by demonstrating that it has no records of funds the Government itself was entrusted to deposit and maintain for the benefit of the Tribe.”¹⁴

¹⁰ *Klamath & Modoc Tribes & Yahooskin Band of Snake Indians v. United States*, 174 Ct. Cl. 483, 487-88 (1966).

¹¹ *Id.* at 491-92.

¹² See, e.g. *White Mountain Apache Tribe of Arizona v. United States*, 26 Cl.Ct. 446 (1992); *Sioux Tribe of Indians v. United States*, 105 Ct.Cl. 725 (1946).

¹³ *Shoshone Indian Tribe of the Wind River Reservation v. United States*, 364 F.3d 1339, 1351 (Fed. Cir. 2004).

¹⁴ *Quapaw Tribe of Oklahoma v. United States*, 111 Fed. Cl.725, 730 (2013).

In short, the duty to provide an accounting standing alone may not be money-mandating. But where (as here, the Tribe asserts substantive claims of failure to properly collect and invest tribal funds) the Court has the ability to compel the Government to produce records and accountings relevant to these claims.

Respectfully submitted

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CERTIFICATE OF SERVICE

I certify that on June 4, 2020, I electronically transmitted this Chemehuevi Tribe's Supplemental Brief using the ECF system for filing and transmission of a Notice of Electronic Filing to the ECF registrants in this case.

s/Roger J. Marzulla
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