

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

WILLIAM S. FLETCHER,)
CHARLES A. PRATT, JUANITA W.)
WEST, CORA JEAN JECH, BETTY)
WOODY, Individually, and on behalf of)
themselves and all others similarly)
situated,)

Plaintiffs,)

v.)

Case No. 02-CV-427(K)(M)

THE UNITED STATES OF AMERICA;)
THE DEPARTMENT OF THE)
INTERIOR; DIRK KEMPTHORNE,)
Secretary of the Interior;)
THE BUREAU OF INDIAN AFFAIRS;)
Assistant Secretary of the Interior –)
Indian Affairs,)

**CLASS ACTION
ATTORNEY LIEN**

Defendants.)

FIRST AMENDED COMPLAINT

1. The Plaintiffs, William S. Fletcher, Charles A. Pratt, Juanita W. West, Cora Jean Jech, and Betty Woody (collectively the “Plaintiffs”), on their own behalf and on behalf of all others similarly situated, make the following claims for relief against the Department of the Interior; Dirk Kempthorne, Secretary of the Interior; The Bureau of Indian Affairs; and the Assistant Secretary of the Interior – Indian Affairs (collectively the “Defendants” or the “USA”):

INTRODUCTION

2. The Plaintiffs bring this claim because the Defendants have breached statutorily imposed trust obligations owed to the Plaintiffs by failing to distribute Osage mineral royalties *only* to persons who are Osage Indians by blood, and those who may by statute be allowed to receive distributions of trust property. The Defendants have also breached

their statutorily imposed trusteeship obligations by failing to account to the Plaintiffs and Class Members as to the distribution of Osage mineral royalties to recipients who are not Osage Indians.

A. Basis for Plaintiffs' Claims against Their Trustee

3. In 1906, the U.S. Congress passed a law permitting development of the large, and very valuable, oil and gas deposits comprising the mineral estate located on the Osage Tribe's lands (herein the "Osage Mineral Estate").¹ See, 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"). A trust was imposed in section 4 of the 1906 Act whereby the royalties ("Royalty" or "Royalties," as the case may be) received by the United States from the production of minerals by third parties on the Osage Mineral Estate, *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 Indians by blood (hereinafter "Osage Indians") as beneficiaries. See **Exhibit A**, the 1906 Act § 4 (as amended).²

4. 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 this legislation, Osage Indians, then and now, were dispossessed of their original homelands and required to abandon their communal notions regarding the ownership of property. In addition, the Plaintiffs and those similarly situated have, for the most part, had their certificates of

¹ A copy of all relevant statutes is attached hereto as "**Exhibit A**."

² Hereafter, these specific mineral interest Royalty payments to Members will be referred to as "SECTION 4 ROYALTY PAYMENTS."

competency revoked. The Defendants' administration of SECTION 4 ROYALTY PAYMENTS on their behalf was intended to provide a unique benefit to the Plaintiffs, *i.e.*, a trust that was to ensure the Plaintiffs and other class member's sustenance.³

5. When the Osage Nation was required to give up its homeland under the 1906 Act, the federal government attempted to provide an economic legacy to the Osage Indians in the form of the SECTION 4 ROYALTY PAYMENTS based on the consumption of mineral resources within the Osage Nation. However, whether by design or defect, the Defendants ignored the requirements of federal law constraining the trust distribution from the SECTION 4 ROYALTY PAYMENTS only to Osage Indians. By distributing SECTION 4 ROYALTY PAYMENTS from the Osage Mineral Estate to recipients who are not Osage Indians, the Defendants have frustrated the Congressional purposes for statutorily creating a limited trust meant to only benefit the Plaintiffs and those similarly situated.

B. *Plaintiffs' Claims to Prevent Wrongful Trust Distributions*

6. Pursuant to the federal statutes cited in this First Amended Complaint, the Plaintiffs (*i.e.*, the putative class members) make no claim against the Osage Nation or the Osage Mineral Estate itself; nor is there any dispute with the amounts which the Osage Nation has obtained from the Osage Mineral Estate. Instead, the Plaintiffs' claims relate only to the Defendants' practice(s) with regard to the method used to determine statutorily proper recipients of such trust property distributions.

³ The specific abuses that further necessitate this protection represent a moral trough in our nation's history; however, they are well-known and will not be cataloged again containing all substantive sections cited herein.

7. The Plaintiffs do not seek money damages in this lawsuit, but instead seek an accounting and the restoration of any and all trust assets the Defendants wrongfully depleted by improperly distributing the trust property generated from the Osage Mineral Estate. As set out below, this malfeasance resulted in the Defendants annually misdirecting substantial amounts of SECTION 4 ROYALTY PAYMENTS to improper recipients, all in violation of The 1906 Act § 4 (as amended).

8. According to the law of this case, as set out by the Tenth Circuit Court of Appeals, this claim is for equitable relief and not money damages and extends back to the date of the filing of this complaint. *See Fletcher v. USA*, 2005 WL 3551108 (10th Cir. 2005). *See Exhibit B*.

STATEMENT OF JURISDICTION AND PARTIES

9. The Plaintiffs' claims arise under U.S. Const. Amend. V; 5 U.S.C. § 702 and 706, and 28 U.S.C. §§ 1343, 1346, 1361 and 1362, all as more fully set forth below. This Court has jurisdiction by reason of these aforementioned laws and under Title 28, United States Code, Section 1331.

10. Plaintiffs are descendants of individuals who were listed on the rolls of the Osage Tribe, and are Osage Indians. The Plaintiffs have been deprived of SECTION 4 ROYALTY PAYMENTS as a result of the Defendants' illegal distribution of such trust assets to persons who are not Osage Indians.

11. The Department of the Interior (the "Interior") is a United States agency with the responsibility to provide for oversight and superintendence of federally recognized Indian tribes, a part of which is encompassed in Interior's trust responsibility to Osage Indians.

Dirk Kempthorne has recently been appointed as the Secretary of Interior, but has not yet been confirmed by the Senate, and is being named in his official capacity.

12. The Bureau of Indian Affairs (the “Bureau”) is a sub-bureau, and an agency within Interior that has the responsibility for executing upon and faithfully discharging substantial trust responsibilities owed to Osage Indians. There is currently no officially named Assistant-Secretary for Indian Affairs.

COMMON ALLEGATIONS

This section contains allegations common to all for which relief is sought. Paragraphs 1 through 12 are incorporated by reference.

A. The Defendants’ Erroneous Statutory Interpretation of Section 4

13. An Osage Indian is a person who descends from those persons named in the rolls of members prepared under section 1 of the 1906 Act.

14. The United States government by federal statute took on to itself the authority for the management of the Osage Mineral Estate and the distribution of Royalties to Osage Indians. The right to receive a distribution of Royalties from the Osage Mineral Estate was erroneously linked by the Defendants to the ownership of a so-called “headright.” The key distinction for the instant controversy is that ownership of a headright is not determinative of an individual’s entitlement to receive a distribution of SECTION 4 ROYALTY PAYMENTS from the Osage Mineral Estate pursuant to the 1906 Act § 4 (as amended). The Osage Mineral Estate and the distributions required under Section 4 of the 1906 Act involves a closed trust established by federal law and is specifically

intended only to benefit Osage Indians (and in some limited circumstances the “heirs” of Osage Indians who would not be Osage Indians under the original 1906 Act).⁴

15. By 1948, the term “headright” became understood to mean a right to receive a distribution of royalties flowing from the Osage Mineral Estate. Erroneously treating the owner of a headright as possessing rights legally equivalent to, and interchangeable with, the rights of an Osage Indian appears to be the root cause of the Defendants’ malfeasance harming the Plaintiffs as alleged in this Amended Complaint.

16. With certain very limited exceptions, an Osage Indian’s right to receive trust distributions of SECTION 4 ROYALTY PAYMENTS was restricted against alienation and the Osage Indians receiving such distributions are largely required by the Defendants to agree that their certificates of competency are revoked before such payments commence. Accordingly, the Plaintiffs and Class Members whose certificates of competency have been revoked are the personal wards of the Defendants.

17. To date, there has been no accounting provided to the Plaintiffs by the Defendants regarding the distribution of SECTION 4 ROYALTY PAYMENTS to any person or entity, including those recipients who are not Osage Indians.

B. Defendants Breach of Trust by Distributing Royalties to Non-Members

18. The Defendants have breached their trust responsibilities and acted in violation of federal law by improperly distributing SECTION 4 ROYALTY PAYMENTS to persons who are not Osage Indians (or heirs).

⁴ The term “heir” as used in federal law referring to SECTION 4 ROYALTY PAYMENTS does not have the same meaning that it might under Oklahoma or other state law. Instead the term “heir” is confined narrowly to Osage Indians, their spouses, and Indians by blood. ***See Exhibit A.***

19. The federal obligation to distribute the subject trust assets only to “members of the Osage Tribe of Indians” can be found where Congress stated, in relevant part, that the Royalties from mineral extraction:

[S]hall be placed in the Treasury of the United States to the credit of the members of the Osage tribe of Indians as other moneys of said tribe are to be deposited under this act, and the same shall be distributed to the individual members of said Osage tribe according to the roll provided for herein, in the manner and at the same time that payments are made of interest on other moneys held in trust for the Osages by the United States....”

See, the 1906 Act § 4, ¶ 2. The statute has never been codified, but has been amended to provide that a member of the Osage Tribe may, with federal approval, devise his right to receive SECTION 4 ROYALTY PAYMENTS to a certain limited group of persons of Indian Blood, spouses, and for a life estate interest to others.

20. The exclusive right of an Osage Indian to receive trust distributions of SECTION 4 ROYALTY PAYMENTS has never lapsed since the closed trust benefit was created in 1906. Furthermore, Congress expressly recognized the Plaintiffs’ exclusive right as Osage Indians to receive SECTION 4 ROYALTY PAYMENTS in perpetuity.

FIRST COUNT
BREACH OF THE FEDERAL TRUST RESPONSIBILITY

21. Paragraphs 1 through 20 are incorporated by reference.

22. Plaintiffs complain against Defendants and for a first claim for relief allege:

23. Congress created a closed trust involving the Osage Mineral Estate. This act created a fiduciary relationship between the Plaintiffs and the Defendants by statute that dedicated to the Defendants elaborate and extensive control over the administration of the royalties to be distributed from the Osage Mineral Estate.

24. The Defendants have breached their trust obligations to the Plaintiffs and others similarly situated by improperly distributing trust assets comprised of the SECTION 4 ROYALTY PAYMENTS to persons who are not Osage Indians, all in violation of The 1906 Act § 4, ¶ 2 (as amended).

25. The Defendants are required by federal law to account to the Plaintiffs for the management of assets managed by the Defendants for the Plaintiffs' benefit. *See, e.g.*, 25 U.S.C. § 4011. The Defendants have breached this obligation by failing to account to the Plaintiffs and Class Members for all funds held in trust by the United States for the Plaintiffs, which includes all funds resulting from the Osage Mineral Estate and available to be distributed as trust property from SECTION 4 ROYALTY PAYMENTS.

SECOND COUNT
DEPRIVATION OF PROPERTY

26. Paragraphs 1 through 25 are incorporated by reference.

27. Plaintiffs complain against Defendants and for a second claim for relief allege:

28. The Plaintiffs and others similarly situated have been denied by the Defendants' wrongful action or inaction the right to fully participate in distributions from the Osage Mineral Estate because the Defendants have allowed SECTION 4 ROYALTY PAYMENTS to be distributed to many persons who are not otherwise entitled to receive SECTION 4 ROYALTY PAYMENTS from the Osage Mineral Estate.

29. The Defendant's failure to properly manage the Tribe's trust assets, accounts and funds, coupled with Defendants' inability to keep SECTION 4 ROYALTY PAYMENTS from passing into the hands of those who are not Osage Indians, constitutes a deprivation of the Plaintiffs' property by Interior and its sub-agencies in violation of the Fifth Amendment of the United States Constitution.

30. The Defendants' failure to account to the Plaintiffs for all funds held in trust by the United States for the Plaintiffs, which includes all funds resulting from the Osage Mineral Estate, has deprived the Plaintiffs' of their ability to sooner claim that they are entitled to a larger SECTION 4 ROYALTY PAYMENT, further depriving the Plaintiffs' and Class Members of property to which they are entitled.

THIRD COUNT
ADMINISTRATIVE ACTION NOT IN ACCORDANCE WITH LAW AND
SHORT OF THE PLAINTIFFS' CONSTITUTIONAL RIGHTS

31. Paragraphs 1 through 30 are incorporated by reference.

32. Plaintiffs complain against Defendants and for a third claim for relief allege:

33. The Defendants have acted, or failed to act, in ways that are not in accordance with law and are contrary to the Plaintiffs' constitutionally and statutorily guaranteed property rights.

34. The Defendants distribution of SECTION 4 ROYALTY PAYMENTS to persons who are not Osage Indians constituted, and continues to constitute, a taking of the Plaintiffs' and others rights to fully share in these trust property distributions that are dedicated exclusively to them as Osage Indians.

35. The Defendants failure to account to the Plaintiffs for all funds resulting from the Osage Mineral Estate is in direct violation of federal laws, including 25 U.S.C. § 4011, which requires such an accounting.

CLASS ALLEGATIONS

36. This action is brought as a class action, pursuant to Fed. R. Civ. P. 23 on behalf of all Osage Indians who lawfully receive distributions of trust property from the Osage

Mineral Estate as determined and calculated by the Defendants, as trustee, pursuant to The 1906 Act § 4 (as amended).

37. The putative members of the Class are so numerous that joinder of all the individual members is impracticable. Originally, there were 2,229 Osage Indians and their interests in the Osage Mineral Estate viz-viz receiving trust property distribution of the SECTION 4 ROYALTY PAYMENTS have become fractionated among many persons over time. It is believed there are more than 5,000 putative class members at this time.

38. 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 Defendants have properly distributed SECTION 4 ROYALTY PAYMENTS from the Osage Mineral Estate to the proper persons and in the proper amounts; and
- (b) Whether Defendants complied with federal statutory trust obligations in making trust distributions of SECTION 4 ROYALTY PAYMENTS to the Plaintiffs and Class Members as Osage Indians.
- (c) Whether Defendants have properly accounted to Plaintiffs for all funds held in trust by the United States for the Plaintiffs, which includes all funds resulting from the Osage Mineral Estate and available to be distributed as SECTION 4 ROYALTY PAYMENTS.
- (d) Whether the Defendants have breached their fiduciary duties by making distributions trust property from SECTION 4 ROYALTY PAYMENTS to recipients who are not Osage Indians.

39. The 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 of the Plaintiffs are entitled to receive trust property distributions of the SECTION 4 ROYALTY PAYMENTS. The wrongful distribution of royalties to persons who are not Osage Indians (and not members of this class) diminishes on a dollar-for-dollar basis the trust property

that should otherwise have been available for distribution *only* to the Plaintiffs and class members *qua* Osage Indians.

40. The 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.

41. 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 Defendants and/or substantially impair or impede the ability of Class members to protect their interests.

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

43. Plaintiff does not anticipate any difficulty in the management of this litigation as a class action.

RELIEF REQUESTED

Wherefore, Plaintiffs request on their own behalf, and on behalf of all those persons similarly situated, the following relief:

1. An order compelling the Defendants to provide to the Plaintiffs an accounting of the SECTION 4 ROYALTY PAYMENTS distributed from the Osage Mineral Estate;

2. An order requiring that such accounting determine whether SECTION 4 ROYALTY PAYMENTS distributed from the Osage Mineral Estate have been distributed only to Osage Indians as required by section 4 of the 1906 Act, amended;
3. A reformation of the Plaintiffs and Class Members' trust funds relating to the SECTION 4 ROYALTY PAYMENTS found to be due and owing to them, after an accounting has been completed which shows that the Defendants' failed to abide by the requirements of federal statutes relating to the distribution of Osage Mineral Estate Royalties only to Osage Indians;
4. An order from this Court compelling the Defendants to prospectively distribute trust property from the SECTION 4 ROYALTY PAYMENTS only to Osage Indians.
5. An order from this Court directing the Defendants to pay the Plaintiffs' attorney fees and costs under the Equal Access to Justice Act, 28 U.S.C.A. § 2412.
6. On all of Plaintiff's claims for relief, such other relief as this Court deems necessary and equitable.

Respectfully submitted,

/s/ Jason B. Aamodt

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J. Randall Miller, Esq. OBA # 6214

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(918) 743-6689 - Facsimile

ATTORNEYS FOR THE PLAINTIFFS

Tuesday, April 04, 2006

⁵ Mr. Pedigo, an attorney licensed to practice in the State of Texas, has been admitted to practice in the Western District of Oklahoma and will seek and obtain admission in the Northern District of Oklahoma before service of this amended

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CLASS ACTION
ATTORNEY LIEN

Defendants.)

VERIFICATION

I, **WILLIAM S. FLETCHER**, do hereby verify that the factual allegations set forth in the Amended Complaint styled as set forth above, and filed on Tuesday, April 04, 2006 are to the best of my knowledge true and correct statements.

/s/ WILLIAM S. FLETCHER
Signature

WILLIAM S. FLETCHER
Print Name

Signed and sworn before me this ____ day of _____, 2006

notarized on original _____

Notary Public

My Commission Expires on the __ day of _____, 20__.

Copies of original signatures and notaries are maintained at the offices of counsel for the Plaintiffs.

complaint. Mr. Miller is entering his appearances in this case contemporaneously with the filing of this amended complaint.

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ATTORNEY LIEN**

Defendants.

VERIFICATION

I, CHARLES A. PRATT, do hereby verify that the factual allegations set forth in the Amended Complaint styled as set forth above, and filed on Tuesday, April 04, 2006 are to the best of my knowledge true and correct statements.

/s/ CHARLES A. PRATT
Signature

CHARLES A. PRATT
Print Name

Signed and sworn before me this ____ day of _____, 2006

notarized on original
Notary Public

My Commission Expires on the __ day of _____, 20__.

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VERIFICATION

I, JUANITA W. WEST, do hereby verify that the factual allegations set forth in the Amended Complaint styled as set forth above, and filed on Tuesday, April 04, 2006 are to the best of my knowledge true and correct statements.

JUANITA W. WEST
Signature

JUANITA W. WEST
Print Name

Signed and sworn before me this ___ day of _____, 2006

notarized on original
Notary Public

My Commission Expires on the ___ day of _____, 20__.

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CLASS ACTION
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Defendants.)

VERIFICATION

I, CORA JEAN JECH, do hereby verify that the factual allegations set forth in the Amended Complaint styled as set forth above, and filed Tuesday, April 04, 2006 are to the best of my knowledge true and correct statements.

/s/ CORA JEAN JECH
Signature

CORA JEAN JECH
Print Name

Signed and sworn before me this ____ day of _____, 2006

notarized on original
Notary Public

My Commission Expires on the __ day of _____, 20__.

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**CLASS ACTION
ATTORNEY LIEN**

Defendants.

VERIFICATION

I, BETTY WOODY , do hereby verify that the factual allegations set forth in the Amended Complaint styled as set forth above, and filed on Tuesday, April 04, 2006 are to the best of my knowledge true and correct statements.

/s/ BETTY WOODY
Signature

BETTY WOODY
Print Name

Signed and sworn before me this ____ day of _____, 2006

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Notary Public

My Commission Expires on the __ day of _____, 20__.

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