

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

No. 2009-5084

HOOPA VALLEY TRIBE on its own behalf, and in its capacity  
as *parens patriae* on behalf of its members,  
OSCAR BILLINGS, BENJAMIN BRANHAM, JR.,  
WILLIAM F. CARPENTER, JR., MARGARET MATTZ DICKSON,  
FREEDOM JACKSON, WILLIAM J. JARNAGHAN, SR.,  
JOSEPH LEMIEUX, CLIFFORD LYLE MARSHALL,  
LEONARD MASTEN, JR., DANIELLE VIGIL-MASTEN,  
LILA CARPENTER, and ELTON BALDY,  
Plaintiffs-Appellants,

v.

UNITED STATES,  
Defendant/Third Party Plaintiff-  
Appellee,

v.

YUROK TRIBE,  
Third Party Defendant-Appellee.

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**BRIEF FOR APPELLEE THE UNITED STATES**

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## STATEMENT OF RELATED CASES

- (a) No appeal in or from the same civil action or proceeding in the lower court was previously before this or any other appellate court. However, this case involves the Hoopa-Yurok Settlement Act of 1988, which has been addressed by this Court in other contexts in *Short v. United States*, 50 F.3d 994 (Fed. Cir. 1995) (Circuit Judges Mayer, Michel and Rader), and *Karuk Tribe of California v. United States*, 209 F.3d 1366 (Fed. Cir. 2000) (Circuit Judges Newman, Rader and Schall).
- (b) There is no case known to counsel to be pending in this or any other court that will directly affect or be directly affected by this court's decision in the pending appeal.

## STATEMENT OF JURISDICTION

This Court has jurisdiction over an appeal from a final decision of the United States Court of Federal Claims pursuant to 28 U.S.C. § 1295(a)(3).

## STATEMENT OF THE ISSUE

Whether the Court of Federal Claims correctly held that the plaintiffs were not beneficiaries of the Settlement Fund created by the Hoopa-Yurok Settlement Act of 1988 (“Settlement Act”),<sup>1/</sup> could not have been injured when the Department of the Interior paid to the Yurok Tribe its apportioned share of the Settlement Fund, and therefore had no standing to litigate whether the Settlement Act authorized Interior to make that payment.

## STATEMENT OF THE CASE

Twelve individual members of the Hoopa Valley Tribe, and the Hoopa Valley Tribe (“Hoopa Tribe”) in its alleged capacity as *parens patriae* for its remaining individual members,<sup>2/</sup> collectively “Hoopa Plaintiffs,” sued the United

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<sup>1/</sup> The relevant provisions of the Hoopa-Yurok Settlement Act of 1988, Pub. L. No. 100-580, 102 Stat. 2924, codified as amended at 25 U.S.C. § 1300i *et seq.*, are in the Addendum. Provisions of the Settlement Act are referred to herein by their U.S. Code section numbers.

<sup>2/</sup> While the Hoopa Tribe filed its complaint “on its own behalf” as well as “in its capacity as *parens patriae* on behalf of its members,” the Tribe subsequently acknowledged that it has no claim on its own behalf. *See* A8 n.1 (“Plaintiffs concede that the Hoopa Valley Tribe has no residual entitlement to the Fund.”).

States in the Court of Federal Claims on February 1, 2008, alleging that Interior breached its trust responsibility to them by disbursing the balance of the Settlement Fund to the Yurok Tribe on April 20, 2007. The Hoopa Tribe had received its apportioned share of the Settlement Fund in 1991. On January 15, 2008, the Yurok Tribe made a per capita distribution of a portion of that money to its members. Hoopa Plaintiffs claim, in effect, that under the law of the *Short* case,<sup>3/</sup> the Yurok Tribe should have included members of the Hoopa Tribe in that distribution. Interior had no statutory or regulatory obligation to approve the Yurok Tribe's decision to make a per capita distribution after Interior disbursed the Settlement Fund balance to the Yurok Tribe. Nevertheless, the Hoopa Plaintiffs claim that when the Yurok Tribe did not include them in the per capita distribution, they became entitled to damages from the United States Treasury in

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Thus, only individual claims were before the Court of Federal Claims, not a tribal claim.

<sup>3/</sup> *Short v. United States*, 486 F.2d 561 (Ct. Cl. 1973) ("*Short I*"); 661 F.2d 150 (Ct. Cl. 1981) (*en banc*) ("*Short II*"); 719 F.2d 1133 (Fed. Cir. 1983) ("*Short III*"); 12 Cl. Ct. 36 (1987) ("*Short IV*"); 25 Cl. Ct. 722 (1992) ("*Short V*"); 28 Fed. Cl. 590 (1993) ("*Short VI*"); 50 F.3d 994 (Fed. Cir. 1995) ("*Short VII*"). In *Short*, as explained below, this Court held that individual Yurok Indians and other non-Hoopa members were entitled to share in per capita distributions of revenues from a joint reservation in northern California set aside for the benefit of Hoopa, Yurok and other Indians (the "Joint Reservation"). However, as explained below, the Settlement Act supplanted the holding in *Short* with respect to post-Settlement Act distributions.

the amount of the distribution they would have received had the Yurok Tribe included them in the distribution.

Congress enacted the Settlement Act to resolve longstanding disputes regarding the ownership, management and revenue of the Joint Reservation. As directed by the Settlement Act, Interior made payments from the Settlement Fund to the Hoopa Tribe and to specified classes of individual Indians (which did not include individual members of the Hoopa Tribe). In decisions dated March 1, 2007 and March 21, 2007, Ross O. Swimmer, Special Trustee for American Indians at the Department of the Interior, concluded that the Settlement Act authorized payment to the Yurok Tribe of the balance of the Settlement Fund.

Because the Hoopa Tribe had argued to Interior that the Settlement Act did not authorize Interior to make that payment to the Yurok Tribe, Interior afforded the Hoopa Tribe 30 days from its March 21, 2007 decision to file suit in federal district court under the Administrative Procedure Act (“APA”) to challenge the decision and move to enjoin the payment. The Hoopa Tribe did not file suit and Interior disbursed the balance of the Settlement Fund to the Yurok Tribe on April 20, 2007. Hoopa Plaintiffs waited nine months – until the Yurok Tribe distributed a portion of the money to its members on January 15, 2008 – and then filed suit in the Court of Federal Claims claiming that, upon the Yurok Tribe’s per

capita distribution, in which they did not share, they became entitled to damages from the United States. Hoopa Plaintiffs base their claim on the law of the *Short* case, which they say survived enactment of the Settlement Act and applies to the January 15, 2008 per capita distribution.<sup>4/</sup>

Hoopa Plaintiffs filed in the Court of Federal Claims a Motion for Partial Summary Judgment (Dkt. No. 9, filed April 2, 2008), asking for “judgment as a matter of law that the United States is liable for breach of fiduciary obligation resulting from its discriminatory distribution of the proceeds of timber sales and management of the former Joint Hoopa Valley Indian Reservation to fewer than all of the Indians of the Reservation for whom the Indian trust funds were collected.”

The United States countered with Defendant’s Combined Motion to Dismiss, or in the Alternative for Summary Judgment (Dkt. No. 20, filed July 22, 2008). That motion was based on several legal grounds, the first of which was that the Hoopa Plaintiffs had no interest in the Settlement Fund balance and could not have been injured by the 2007 disbursement to the Yurok Tribe or by the Yurok Tribe’s 2008 per capita distribution, and thus had no standing to litigate the

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<sup>4/</sup> The United States filed a third-party complaint against the Yurok Tribe alleging that it properly distributed the Settlement Fund balance to the Yurok Tribe, but in the event it was determined that it made the disbursement through a mistake of fact or law, the United States sought to recover the money erroneously paid to the Yurok Tribe. Dkt. No. 27, filed August 26, 2008.

question whether those actions were authorized by the Settlement Act. It has been the consistent position of the United States – and the Hoopa Plaintiffs have conceded – that Interior paid to the Hoopa Tribe in 1991 all the money the Settlement Act apportioned to it, such that the Hoopa Tribe “has no residual entitlement to the Fund.” A8 n.1; Hoopa Br. 36. It has also been the consistent position of the United States that the Settlement Act did not grant the individual members of the Hoopa Tribe any interest in the Fund at all. And it has been the consistent position of the United States that the law of the *Short* case only applies to pre-Settlement Act per capita distributions from Joint Reservation revenues, not to any post-Settlement Act distributions from the Settlement Fund.

The Court of Federal Claims agreed, concluding that the Settlement Act determined rights to the money in the Settlement Fund, and under the “plain meaning” of that Act, the Hoopa Tribe had in 2007 already received its full entitlement from the Settlement Fund and individual Hoopa members had no entitlement to the Settlement Fund at all. A8-9. Accordingly, the Court held that the Hoopa Plaintiffs were not injured by Interior’s 2007 disbursement to the Yurok Tribe or by the Yurok Tribe’s 2008 per capita distribution, and thus lacked standing to bring this suit. *Id.* The Court granted the United States’ motion for

