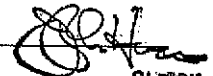


UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED

AUG 1 6 2002


CLERK

CASIMIR LEBEAU & VERNON ASHLEY,
on behalf of themselves and all
other persons similarly situated,
Plaintiffs,

VS

Civil No. 99-4106

UNITED STATES OF AMERICA,
Defendant.

**PLAINTIFFS' BRIEF PROPOSING AN INTEREST CALCULATION TAKING
INTO ACCOUNT THE RULE THAT PLAINTIFFS ARE NOT ENTITLED TO
RECOVER INTEREST ON ANY INTEREST PORTION OF THE DAMAGES
AWARDED.**

INTRODUCTION

Apparently, plaintiffs are not entitled to prejudgment interest on the entire damage award of \$482.79 as of January 1, 1983, because there are two elements contained in said amount. One element represents principal from the date of the inception of the trust fund (1972) and another element represents interest earned on said principal from said date. Stated differently, the plaintiffs are only entitled only to the interest earned on the principal amount of the trust fund from and after January 1, 1983, together with the \$482.79 already awarded.

PRINCIPAL/INTEREST CALCULATION

In order to make this calculation, one must know what amount of the original judgment fund was awarded to the lineal descendants. The Government is the only party with access to this information. We know the statute provided, in part: "After deducting the amount authorized in section 1300d of this title, the funds derived from the judgment awarded in Indian Claims Commission docket numbered 142 and the one-half remaining from the amount awarded in docket numbered 359, plus accrued interest, shall be

apportioned...as follows: All other Sisseton and Wahpeton Sioux.....25.0225%." 25 U.S.C. Sec. 1300d-4 (1983) (amended 1998). I will call the amount originally awarded to the lineal descendants - A.

We need to know the amount available to the lineal descendants, at the time in 1982 when the Aberdeen Area Office was prepared to distribute a portion of said amount at the rate of \$1,700 to each of 1,900 eligible lineal descendants ($\$1,700 \times 1,900 = \$3,230,000.00$). I will call the amount available for distribution in 1982 - B. Again, the Government is the only party with access to this information.

If one subtracts A (amount originally awarded) from B (amount available for distribution in 1982), one comes up with the amount of interest earned from 1972 thru 1982. I will call the amount of interest earned - C.

A (amount originally awarded) divided by B (amount available for distribution in 1982) equals percentage of B (amount available for distribution in 1982) that is principal. I will call this amount or percentage - D.

D (percentage that is principal) multiplied by \$482.79 equals amount on which interest is to be calculated as of January 3, 1983. I will call this amount - F.

Since the Government is the only party with access to the amount originally awarded and the amount available for distribution in 1982, plaintiffs will have to rely on it for said information before it can make the above calculations.

INTEREST

As the Court stated, the Government owes the plaintiffs interest, not as interest on their damages, but as part of the damage award itself. In other words, plaintiffs are entitled to interest as a part of their damages for breach of trust. The principal (F), held in trust by the Government since January 1, 1983 is subject to the specific interest provisions in 25 U.S.C. Sec. 161a, to-wit:

All funds held in trust by the United States and carried in principal accounts on the books of the United States Treasury to the credit of Indian

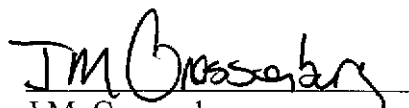
tribes shall be invested by the Secretary of the Treasury, at the request of the Secretary of the Interior, in public debt securities with maturities suitable to the needs of the fund involved, as determined by the Secretary of the Interior, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

Again, since the Government is the only party with access to the interest figures of the entire fund awarded to the lineal descendants, plaintiffs will have to rely on it for the information to determine this element of damage. Once the amount of interest earned since January 1, 1983 is known, one could prorate the amount of interest owed plaintiffs much like was done above when prorating principal from interest.

CONCLUSION

Hopefully, the Government in its brief will provide the information necessary to complete the above calculations. If so, plaintiffs will complete the calculations in its responsive brief.

August 13th, 2002.


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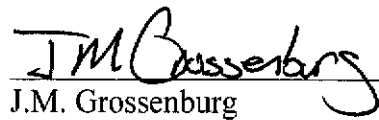
CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a copy of THE ABOVE DOCUMENT(S) upon the person(s) herein next designated, on the date below shown by depositing a copy thereof in the United States mail at Winner, South Dakota, postage prepaid, on an envelope addressed to each said addressee, to-wit:

Jan L. Holmgren
Assistant United States Attorney
PO Box 5073
Sioux Falls, SD 57117-5073

which address is the last address of each addressee known to the subscriber.

August 13th, 2002



J.M. Grossenburg