

Case Summary: Flute v. United States

The case of *Flute v. United States* arose due to an unprovoked attack by the United States Army on a group of unarmed Indians in 1864.¹ This attack later became known as the Sand Creek Massacre since it resulted in the deaths of many Indians, including women and children.² After the attack, the United States government publicly acknowledged its role in the attack and agreed to pay reparations to survivors of the massacre, but these reparations were never paid.³ The plaintiffs in this class action suit were descendants of the victims of the Sand Creek Massacre who sought an accounting of the reparation payments that they alleged the United States government held in trust for them.⁴ The district court dismissed this suit for lack of subject matter jurisdiction, and the plaintiffs appealed.⁵

The main issue the Tenth Circuit had to decide was whether the United States had waived its sovereign immunity in the Appropriations Acts.⁶ The relevant language of the Appropriations Acts for this case stated:

[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

¹ *Flute v. United States*, 808 F.3d 1234, 1237 (10th Cir. 2015).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 1237-39.

⁶ *Id.* at 1240.

accounting of such funds from which the beneficiary can determine whether there has been a loss.⁷

The plaintiffs argued that this language waived the United States' sovereign immunity and deferred the accrual of their claim until they received an accounting of the funds allegedly held in trust by the United States.⁸ The Eleventh Circuit disagreed, stating that the plaintiffs had "improperly conflate[d] the inherent immunity of the sovereign with the general limitations on the time in which an action must be brought."⁹ Since "waivers of immunity must be unequivocally expressed," the Eleventh Circuit concluded that the Appropriations Acts had not waived the United States' immunity from suit in this case.¹⁰

The Eleventh Circuit then ruled on what the outcome of this case would have been if they had decided that the United States had waived its immunity under the Appropriations Act.¹¹ The Appropriations Act of 2009 only applies to claims that deal with the "losses to or mismanagement of *trust funds*."¹² Thus, the Eleventh Circuit had to decide if the reparation payments promised in the Treaty of Little Arkansas constituted trust funds.

The Eleventh Circuit determined that "neither the general trust relationship between the federal government and Indian Tribes nor the mere invocation of trust language in a statute . . . is sufficient to create a cause of action for breach of trust."¹³

⁷ *Id.* at 1240 (citing Act of Oct. 30, 2009, Pub.L. No. 111-88, tit. I, 123 Stat. 2904, 2922).

⁸ *Flute*, 808 F.3d at 1240.

⁹ *Id.*

¹⁰ *Id.* at 1242.

¹¹ *See Id.*

¹² *Id.* (internal quotations omitted).

¹³ *Id.* at 1244 (internal quotation omitted).

Therefore, the court had to focus on whether the express language of the particular statute expressly creates right or “imposes duties of a fiduciary nature.”¹⁴

The plaintiffs argued that the Treaty of Little Arkansas, combined with appropriation of funds by Congress to make reparation payments, created an enforceable trust relationship which entitled them to an accounting from the Secretary of the Interior.¹⁵ The Eleventh Circuit disagreed, noting that neither the Treaty nor the Appropriations Act contained any express trust language, and that the mere appropriation of funds by Congress was not enough to conclude that Congress had intended to create a specific trust relationship.¹⁶ As a result, The Eleventh Circuit affirmed the District Court’s dismissal of this action for lack of subject matter jurisdiction.¹⁷

The main takeaways from this case are that the Appropriations Acts have no express language that waives the United States’ sovereign immunity and that statutes or treaties must have either express language or show clear Congressional intent in order to create an enforceable trust relationship.

¹⁴ *Id.*

¹⁵ *Id.* at 1245.

¹⁶ *Id.* at 1245-47.

¹⁷ *Id.* at 1247.