

# UNITED STATES V NAVAJO NATION

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Supreme Court of the United States of America (Scalia, Souter and Stevens JJ)

6 April 2009

556 US \_\_\_ (2009)

**United States of America – compensation claims for mineral leases on Indian land – reasonable rates of compensation – fiduciary obligations of the Federal Government – whether ss 635(a) and 638 of the *Navajo-Hopi Rehabilitation Act of 1950*, Pub L No 81-474, 64 Stat 44 (1950) and s 1300(e) of the *Surface Mining Control and Reclamation Act of 1977*, Pub L No 95-87, 91 Stat 445 (1977) imposed duties on the Federal Government – whether there are common law duties arising from the Federal Government’s comprehensive control over tribal coal**

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## Facts:

The Navajo Nation is an Indian tribe that occupies an Indian reservation in the American Southwest that contains significant coal deposits. In 1964, the Secretary of the Interior approved Lease 8580 signed by the Tribe and the predecessor of the Peabody Coal Company, which allowed the coal company to engage in coalmining on a tract of the reservation in exchange for royalty payments to the Tribe. The royalty rates were set at US37.5c per tonne, subject to reasonable adjustment by the Secretary after 20 years, then every 10 years.

A dispute arose after the first 20-year period expired when the Tribe asked the Secretary to exercise the power to increase the royalty rate. The Director of the Bureau of Indian Affairs issued an opinion letter that the rate should be set at 20 per cent of gross proceeds. Peabody Coal Company filed an administrative appeal, and while the appeal was pending it reached a negotiated agreement with the Tribe to set the rate at 12.5 per cent of gross proceeds. The Secretary approved the lease amendments.

In 1993, the Tribe launched a claim that the Secretary’s actions regarding the approval of the lease amendments constituted a breach of trust and a violation of the United States’ fiduciary duty to act in the Indians’ best interests. The Tribe invoked the *Indian Tucker Act*, 28 USC §1491 (1887) (*Indian Tucker Act*) to bypass sovereign immunity and sought US\$600 million in damages from the United States Government.

The Supreme Court held in *United States v Navajo Nation* 535 US 1111 (2002) (*Navajo 1*) that neither the *Indian Mineral Leasing Act of 1938*, 25 USC 396a et seq (*Indian Mineral Leasing Act*) nor the *Indian Mineral Development Act of 1982*, 25 USC 2101 et seq (*Indian Mineral Development Act*) imposed any concrete fiduciary obligations on the Government and, therefore, the Tribe could not invoke the *Indian Tucker Act*. On remand, the United States Court of Appeals for the Federal Circuit allowed the Tribe’s claim that a network of other statutes, treaties and regulations could provide the basis for its claims to succeed, finding violations of duties imposed by ss 635(a) and 638 of the *Navajo-Hopi Rehabilitation Act of 1950*, Pub L No 81-474, 64 Stat 44 (1950) (*Navajo-Hopi Rehabilitation Act*) and s 1300(e) of the *Surface Mining Control and Reclamation Act of 1977*, Pub L No 95-87, 91 Stat 445 (1977) (*Surface Mining Control and Reclamation Act*), as well as common law duties arising from the Government’s ‘comprehensive control’ over tribal coal. Section 638 of the *Navajo-Hopi Rehabilitation Act* provides that tribal councils ‘shall be kept informed and afforded opportunity to consider from their inception plans pertaining to the program authorized by this subchapter. In the administration of the program, the Secretary of the Interior shall consider the recommendations of the tribal councils and shall follow such recommendations whenever he deems them feasible and consistent with the objectives of this subchapter’.

There were two main issues for the Supreme Court to determine in this case. First, the Court had to determine whether the Court had definitively terminated the Tribe’s claim

in *Navajo 1*, rendering the lower court's later resurrection of the suit inconsistent with its mandate. If not, the Court had to then decide whether the Secretary of the Interior's approval of the Navajo mineral lease amendment violated a common-law fiduciary duty that gave rise to an actionable claim for damages.

**Held, dismissing the claim for compensation, per Scalia J, Souter and Stevens JJ agreeing:**

1. In *Navajo 1* the Court's mandate did not completely foreclose the possibility that the Tribe may succeed on remand. In that case the Court did not analyse any statutes beyond the *Indian Mineral Leasing Act*, *Indian Mineral Development Act* and 25 USC §399. It is thus conceivable, albeit unlikely, that some other relevant statute might provide grounds for the case. Nevertheless, the emphasis in the reasoning on specific rights-creating or duty-imposing statutory prescriptions in *Navajo 1* left no room for that result based on the sources of law relied on by the lower court: 8.

2. Lease 8580 was not issued under the authority of s 635(a) of the *Navajo-Hopi Rehabilitation Act*, so the Tribe cannot invoke that law as the source of the duties owed. The language of Lease 8580 closely mirrors the language of the *Indian Mineral Leasing Act*, namely 'for terms not to exceed ten years and as long thereafter as minerals are produced in paying quantities.' This indefinite lease term strongly suggests it was negotiated by the Tribe and approved by the Secretary under the powers authorised by the *Indian Mineral Leasing Act*, not the *Navajo-Hopi Rehabilitation Act*: 9–10.

3. A program in this instance according to s 631 of the *Navajo-Hopi Rehabilitation Act* refers to basic improvements for the conservation and development of the Tribe's resources. The Secretary did not violate the provisions of s 638 of the *Navajo-Hopi Rehabilitation Act* 1960 by failing to promptly abide by the Tribe's recommendations to affirm the order to increase the royalty rate to by 20 per cent. To read s 638 as imposing a duty on the Secretary to follow recommendations of the Tribe as to royalty rates under coal leases executed pursuant to another Act, and to allow for the enforcement of that duty through the *Indian Tucker Act*, would simply be too far a stretch: 11–12.

4. Section 1300(e) of the *Surface Mining Control and Reclamation Act* does not apply in the circumstances, as the section is limited to leases issued after its enactment

in 1977. Lease 8580 was issued in 1964; therefore s 1300(e) is categorically inapplicable and cannot give rise to duties: 12–13.

5. The Federal Government's comprehensive control over coal on Indian land does not give rise to enforceable fiduciary duties based on common-law trust principles. Liability cannot be premised on control alone. The the analysis must begin with specific rights-creating or duty-imposing statutory or regulatory prescriptions. If a statute or regulation imposes a trust relationship then common law principles are relevant in determining whether damages are available for breach of duty. However, because the Tribe cannot identify a specific, applicable, trust-creating statute or regulation that the Government violated, neither the common-law trust principles nor the Government's control over coal are relevant here: 13–14.

