# In the United States Court of Federal Claims

No. 04-580C
Filed February 18, 2005
**NOT TO BE PUBLISHED**

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| ANDRE DEEKS, | * | Jurisdiction; |
| | * | Motion to Dismiss; |
| Plaintiff, | * | *Pro se*; |
| | * | RCFC 12(b)(1); |
| v. | * | Standing; |
| | * | Statute of Limitations; |
| THE UNITED STATES, | * | Tucker Act, 28 U.S.C. § 1491(a)(1). |
| | * | |
| Defendant. | * | |
| | * | |

**Andre Deeks**, *pro se*, plaintiff.

**Doris S. Finnerman**, Washington, D.C., for defendant, United States Department of Justice.

## MEMORANDUM OPINION AND ORDER

**BRADEN, *Judge*.**

## FACTUAL BACKGROUND[1]

On October 25, 1781, Colonel Marinus Willett, in his capacity as Acting Brigadier General of the Continental Army, promised that he would give sixty members of the Oneida Tribe a blanket in exchange for their assistance in overtaking the British troops in the Battle of Johnstown. *See* BERTHOLD FERNOW, COLONIAL HISTORY OF THE STATE OF NEW YORK 87 (1887); *see also* *Johnstown Streets, Fields Erupt in Serious Battle Sunday*, THE LEADER-HERALD, September 21, 1996, *available at* http://www.johnstown.com/batljohn.html. The tribal members agreed and joined Colonel Willett's forces. *See* William M. Willett, A NARRATIVE OF THE MILITARY ACTIONS OF COLONEL MARINUS WILLETT 85 (1831) and DANIEL E. WAGER, COL. MARINUS WILLETT: THE HERO OF MOHAWK VALLEY 34 (1891).

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[1] The relevant facts recited herein were derived from: the April 5, 2004 Complaint ("Compl.") and Exhibits thereto.

On April 14, 1782, the Senate and Assembly of the State of New York passed, at the Fifth Session, "An Act for the payment of certain contingent expenses of this State." *See* Compl. Exh. 1 at 491. Among the payments authorized was:

> To Colonel Marinus Willett, or such other officer as shall command the levies, to be raised for the defense of the frontiers of this State, to serve to the first day of January next the sum of one hundred and fifty pounds–on account for contingent expenses during the ensuing campaign.

*Id.* at 495.

The legislative record does not indicate whether the blankets or money Colonel Willett owed the Oneida Tribe members was to be paid from this allocation, but it is reasonable to infer that is the case given the proximity of the Battle at Johnstown and the New York State's Act authorization. It appears, however, that Colonel Willett did not use the 150 pounds to fulfill his promise to the Oneida Tribe members, because he issued a handwritten note on January 26, 1792, reaffirming his October 25, 1781 promise and inability to perform:

> I do hereby certify that in a pursuit of the enemy in the county of Montgomery the latter end of October in the year 1781. In order to stimulate a party of the Oneida Indians then with me. I promised in case of exerting themselves to overtake the enemy who were put to flight. That they should each of them have a blanket. That in conveyance of this promise they began a vigorous pursuit and in a short time overtook and killed a number of the enemy. That at my return it was not in my power to comply with the promise I had made in behalf of the public. Nor have I since been able to have that engagement complied with. New York, January 26th, 1792.
>
> M. Willett
> note there were sixty Indians in the party.
> M. Willett

Exh. 1 at 1. ("The Willett Note").[2]

## PROCEDURAL HISTORY

On April 5, 2004, *pro se* Plaintiff Andre Deeks filed a Complaint in the United States Court of Federal Claims asserting that the United States failed to honor payment to the Oneida Tribe members who came to Colonel Willett's aid. *See* Compl. ¶¶ 1-2, 4.

[2] Although Plaintiff has submitted no evidence to verify the authenticity of the Willett Note, a report from a forensic document examiner was submitted, wherein the signature on the Willett Note was verified as matching Willett's signature on other documents. *See* Compl. Exh. 4A.

The Complaint alleges the cost of a blanket in 1781 was 100 pounds in sterling, equivalent to 500 continental dollars. *See* Compl. ¶ 4. The money claim at issue is estimated to be the equivalent of $30,000. *Id.* Because of the passage of time, the Complaint alleges that this amount "by default of payment became $3,000,000." *Id.* Due to the accumulation of interest at six percent, Plaintiff also seeks a cash payment of"ten times the full amount the Defendant is obligated to pay." Compl. ¶ 10.

On June 9, 2004, the United States ("the Government") filed a Motion to Dismiss for lack of subject matter jurisdiction. *See* Gov't Mot. to Dismiss at 1. On June 10, and June 16, 2004, Plaintiff filed a Motion for Default Judgment. On June 28, 2004, Plaintiff filed a Motion to Dismiss or Vacate the Government's Motion to Dismiss.

## DISCUSSION

### A. Jurisdiction.

The United States Court of Federal Claims is a court of limited jurisdiction. *See Terran ex rel. Terran* v. *Sec'y of Health & Human Services*, 195 F.3d 1302 (Fed. Cir. 1999). Under the Tucker Act, 28 U.S.C. § 1491(a)(1), the court is authorized to render judgment and money damages on any claim against the United States based on the United States Constitution, an Act of Congress, a regulation of an executive department, or an express or implied contract with the United States. *See United States* v. *Testan*, 424 U.S. 392, 397-98 (1976). The United States Supreme Court, however, has held that the Tucker Act does not create any substantive right for monetary damages in *United States* v. *Mitchell*, 445 U.S. 535, 538 (1980). Instead, a plaintiff must identify and plead an independent contractual relationship, constitutional provision, federal statute, and/or executive agency regulation that provides a substantive right to money damages in order for the court to have jurisdiction. *See Khan* v. *United States,* 201 F.3d 1375, 1377 (Fed. Cir. 2000).

### B. Pleading Requirements For *Pro Se* Plaintiff.

Traditionally, a *pro se* plaintiff's pleadings have been held to a less stringent standard than a litigant represented by counsel. *See Hughes* v. *Rowe*, 449 U.S. 5, 9 (1980). Indeed, it has long been the traditional role of this court to examine the record "to see if [a *pro se*] plaintiff has a cause of action somewhere displayed." *Ruderer* v. *United States*, 188 Ct. Cl. 456, 468 (1969).

### C. Standard Of Review.

Rule 12(b)(l) of the Rules of the United States Court of Federal Claims governs dismissal of a claim for lack of subject matter jurisdiction. *See* RCFC 12(b)(l). In ruling on a motion to dismiss, the court generally is "obligated to assume all factual allegations to be true and to draw all reasonable inferences in plaintiff's favor." *See Henke* v. *United States*, 60 F.3d 795, 797 (Fed. Cir. 1995) (quoting *Scheuer* v. *Rhodes*, 416 U.S. 232, 236-37 (1974)). Plaintiff, as the non-moving party, however, bears the burden of establishing jurisdiction by a preponderance of the evidence. *See Reynolds* v. *Army & Air Force Exch. Serv.*, 846 F.2d 746, 748 (Fed. Cir. 1988) ("[O]nce the [trial]

court's subject matter jurisdiction was put in question it [is] incumbent upon [plaintiff] to come forward with evidence establishing the court's jurisdiction.").

## D. The United States Court Of Federal Claims Does Not Have Jurisdiction To Adjudicate Plaintiff's Claims In This Case.

### 1. The United States Court Of Federal Claims Does Not Have Jurisdiction To Adjudicate Plaintiff's Claims Because The Six Year Statute Of Limitations Has Run.

The United States Court of Federal Claims also has jurisdiction only if a complaint is filed within six years after a claim accrues. *See* 28 U.S.C. § 2501 (2004); *see also Forman* v. *United States*, 329 F.3d 837, 841 (Fed. Cir. 2003) (quoting *Hart* v. *United States,* 910 F.2d 815, 817 (Fed. Cir. 1990) ("The claim first accrues when all events have occurred that fix government liability and entitle the claimant to institute an action.")). The six-year statute of limitations is an express limitation on the Tucker Act's waiver of sovereign immunity. *See* 28 U.S.C. § 1491 (2004); *see also Hart* v. *United States*, 910 F.2d 815, 817 (Fed. Cir. 1990) ("Exceptions cannot be engrafted on the statute of limitations so as to allow claims to be asserted beyond the six year time limit set forth in [26 U.S.C. § 2501.]"). "Only Congress can lengthen the time period for bringing suit against the United States." *Id.*

On March 1, 1781, the Continental Congress adopted the Articles of Confederation providing: "Article XII. All bills of credit emitted, monies borrowed and debts contracted by, or under the authority of Congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States, and the public faith are hereby solemnly pledged." *Lunaas* v. *United States*, 936 F.2d 1277, 1278 (Fed. Cir. 1991). The Articles included a provision that protected creditors who had made loans to the United States prior to the adoption of Article XII. This protection of creditors subsequently was included in the United States Constitution. *See* U.S. CONST. art. VI, cl. 1 ("All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be valid against the United States under this Constitution, as under the Confederation."). Due to the precarious financial situation of the infant government, the first Continental Congress sought to adopt a plan to settle debts incurred by the Confederation and the individual states. *See Lunaas*, 936 F.2d at 1278.

On August 4, 1790, the Congress of the United States adopted a plan drafted by Secretary of the Treasury Alexander Hamilton that required creditors to consent to an enlargement of the term when payment was due. Subsequent congressional enactments renewed this plan, until it expired on March 3, 1837. *See, e.g.,* Act of July 14, 1832, ch. 245, 4 Stat. 602, 25th Cong.; J. Res. 5, 5 Stat. 200, 25th Cong. (1837), *cited in Lunaas*, 936 F.2d at 1278**.**

It was not until 1855 that Congress enacted legislation to create the United States Court of Claims to adjudicate claims against the federal government for money damages. Prior to 1855, the federal government was immune from suits for money. Any such claims could only be resolved by

a private bill of Congress, similar to that enacted by the New York Senate and Assembly in 1782. In fact, at its inception, the United States Court of Claims did not have jurisdiction to render final judgments against the United States. Congress recognized this deficiency and in 1863 authorized the court to issue final judgments against the federal government, but also enacted a six-year statute of limitations. *See* Act of March 3, 1863, ch. 92, § 3, 12 Stat. 765, 38th Cong. (1863), *cited in Lunaas*, 936 F.2d at 1278; *see also United States* v. *Wardwell*, 172 U.S. 48, 52 (1898) (holding that the statue of limitations is a jurisdictional limitation on the ability of the Court of Claims to hear the case).

The Savings Clause, however, provided that claims that accrued six years before enactment would not be barred, but only if the plaintiff filed within three years after enactment, *i.e.*, by 1866. *See* Act of March 3, 1863, ch. 92, § 10, 12 Stat. 767, 38th Cong. (1863), *cited in Lunaas*, 936 F.2d at 1278. The Savings Clause also included exceptions for the claims of married women, persons under the age of twenty-one years, and persons "beyond the seas" at the time the claim accrued. *See* Act of March 3, 1863, ch. 92, 38th Cong., amending that of Feb. 24, 1855, ch.122, 38th Cong. (1863), *cited in Kendall* v. *United States*, 107 U.S. 123, 124 (1883). The Act of March 3, 1863 further states: "But no other disability than those enumerated shall prevent any claim from being barred, nor shall any of the said disabilities operate cumulatively." *Id.* In 1874, Congress did not renew the Savings Clause. *See Lunaas*, 936 F.2d at 1278.

The sixty Oneida Indians or their descendants knew or should have known about the claim that was fixed and accrued following the Battle of Johnston in 1781. *See Hopland Band of Pomo Indians* v. *United States*, 855 F.2d 1573, 1577 (Fed. Cir.1988) (A claim does not begin to accrue unless the claimant "knew or should have known that the claim existed."). No action was taken by the Tribal members to pursue this claim by 1866, after the United States Court of Claims was formed during the extension of the statute of limitations afforded by the Savings Clause. Therefore, as a matter of law, the United States Court of Federal Claims no longer has jurisdiction to adjudicate Plaintiff's claim, because it is barred by the statute of limitations.

### 2. The United States Court Of Federal Claims Also Does Not Have Jurisdiction Because Plaintiff Lacks Standing.

Even if the statute of limitations did not bar Plaintiff's claim in this action, in order to invoke federal jurisdiction, a plaintiff has the burden to establish standing under Article III of the Constitution at the time a complaint is filed. *See, e.g., Media Technologies Licensing, LLC* v. *Upper Deck Co.*, 334 F.3d 1366, 1370 (Fed. Cir. 2003) (quoting *Keene Corp.* v. *United States*, 508 U.S. 200, 207 (1993) ("[T]he jurisdiction of the Court depends upon the state of things at the time of the action brought."); *Paradise Creations, Inc.* v. *UV Sales, Inc.*, 315 F.3d 1304, 1308 (Fed. Cir. 2003) ("Article III standing, like other bases of jurisdiction, generally must be present at the inception of the lawsuit."). In determining whether a plaintiff has standing, the litigant must be entitled to have the court decide the merits of the dispute. *See Warth* v. *Seldin*, 422 U.S. 490, 498 (1975). Standing requires that the plaintiff must show "'a case or controversy' between himself and the defendant within the meaning of Article III." *Id.* In addition, the plaintiff "generally must assert his own legal

rights and interests, and cannot rest his claim to relief on the legal interest of third parties." *Id.* at 499.

To demonstrate standing under Article III, a plaintiff must satisfy three elements. First, a plaintiff "must have suffered an 'injury in fact' – an invasion of a legally protected interest." *See Paradise Creations, Inc.* 315 F.3d at 1308 (quoting *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). Second, "there must be a causal connection between the injury and the conduct complained of." *Id.* And, third, "it must be 'likely' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'" *Id.* (quoting *Simon* v. *E. Ky. Welfare Rights Org.*, 426 U.S. 26, 38 (1976)). When a plaintiff is not the object of the government action or inaction that he challenges, standing is ordinarily "substantially more difficult to establish." *Lujan*, 504 U.S. at 562.

Therefore, the Nation's waiver regarding the Willett Note is irrelevant. *See* Compl. ¶ 7; *see also* Exhibit List Table of Contents, Exh. 13.

Plaintiff has failed to show that he has suffered an "injury in fact" due to the failure of Colonel Willett to honor his October 25, 1781 promise. Neither the Complaint nor any of the accompanying exhibits explain Mr. Deeks' relationship to the Oneida Tribe members at issue or why he, rather than the Tribe, would be entitled to payment. The fact that Plaintiff has possession of the Willett Note does not establish that he has standing to pursue the claims asserted in the Complaint. *See* Compl. ¶ 7. Therefore, even if the court had jurisdiction, it would be compelled to dismiss Plaintiff's claim for lack of standing.

**CONCLUSION**

For the reasons stated herein, Plaintiff's April 4, 2004 Complaint and June 10 and 16, 2004 Motions for Default Judgment are dismissed. The Government's June 9, 2004 Motion to Dismiss is granted. The Clerk is hereby directed to dismiss the April 4, 2004 Complaint.

**IT IS SO ORDERED**.

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**SUSAN G. BRADEN**
**Judge**

## ADDENDUM*

Since Plaintiff and his Principal Executive, Mr. Raymond J. Fallica, did a great deal of historical research to prepare the April 4, 2004 Complaint and Exhibits, perhaps the following may be of interest.

Robert Morris was born in January 1733 in Lancashire, England. His father, Thomas Morris, a successful Liverpool merchant, moved to Oxford, Maryland when Robert was 13. Orphaned at 15, Robert began as an apprentice in the counting-house of Mr. Charles Willing, one of the first merchants of Philadelphia. In 1754, Morris began a partnership with Mr. Thomas Willing, which grew to become one of the largest merchant firms with its own fleet of ships that sailed to Europe and the West Indies.

In 1775, Morris was elected by the Pennsylvania legislature to serve as a Delegate to the Second Continental Congress in Philadelphia, where he became a member of a secret committee that was importing arms, ammunition, sulphur, and saltpetre. On July 4, 1776, as a representative of the State of Pennsylvania, Morris together with 46 others in an act of open treason against the King of Great-Britain signed the Declaration of Independence and "mutually pledge[d] to each other our Lives, our Fortunes, and our sacred Honor." The Revolutionary War ensued.

In 1778, General George Washington wrote Morris to request a loan of $10,000 to maintain troops in Delaware opposite Trenton and obtain intelligence on the Hessian Troops. Morris raised and personally guaranteed the money and sent it to General Washington. In late 1779, General Washington wrote to Judge Peters, Secretary of the War Board, requesting lead for the guns of the Continental Army. Judge Peters asked Morris if he could help. Morris gave 45 tons of lead that he owned to General Washington and purchased an additional 45 tons secured by a personal note. In 1780, General Washington again turned to Morris to supply the Continental Army with 5,000 barrels of flour, which was secured by Morris' personal credit.

In early 1781, the Continental Congress named Morris as Superintendent of Finance. The financial affairs of the infant government were in a state of disarray and already $25 million in debt. The States stopped paying taxes. Foreign lenders were tapped out. Benjamin Franklin was unable to secure additional loans from France. John Jay was unable to borrow from Spain. John Adams was refused further assistance by the Dutch Government. In short, the Continental Congress was unable to raise money to cover the expenses to allow General Washington to move his 6,000 remaining troops south to Yorktown. Morris somehow arranged to purchase flour, corn, salt meat, rum, tobacco, and hay and sent them to General Washington and arranged for boats to carry soldiers

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* *See* CLARENCE L. VER STEEG, ROBERT MORRIS, REVOLUTIONARY FINANCIER: WITH AN ANALYSIS OF HIS EARLIER CAREER (1954); ELLIS PAXSON OBERHOLTZER, ROBERT MORRIS, PATRIOT AND FINANCIER (1903); WILLIAM GRAHAM SUMNER, THE FINANCIER AND THE FINANCES OF THE AMERICAN REVOLUTION (1891); REV. CHARLES A. GOODRICH, LIVES OF THE SIGNERS TO THE DECLARATION OF INDEPENDENCE (1856).

over the waterways. A few weeks later, General Washington wrote again to Morris, this time he needed an inducement to get the soldiers to march the last miles to Yorktown: "The service they are going upon is disagreeable to the northern regiments, but I make no doubt that a little hard money could put them in a proper temper." Morris turned to his friend French Field Marshall Rochambeau, who was in Philadelphia, to loan him the money, provided Morris personally guarantee that it would be repaid by October 1, 1781. Morris agreed and "strongboxes of oak were built with 1,500–2,000 crowns packed in each box. Groups of twenty boxes were then placed in huge chests made of oak boards, the tops were nailed down, and the chests were fixed to the axles of oxcarts with welded iron straps." The trip turned out to take almost two months, but it turned out that more money was needed. And, again Morris raised the money by pledging his personal credit. With this additional payment, George Washington was able to rouse the troops to march to Yorktown. General Cornwallis surrendered on October 18, 1781.

On January 24, 1783, Morris resigned his position as Superintendent of Finance to return his attentions to business and settle the debts he assumed. In a letter to the Governor of Pennsylvania, Morris wrote: "The late movements of the army have so entirely drained me of money that I have been obliged to pledge my personal credit very deeply in a variety of instances, besides borrowing money from my friends and advancing to promote the public service every shilling of my own."

On December 30, 1786, the Pennsylvania Assembly named Morris as a Delegate to the Constitutional Convention. Morris participated and voted for the Bill of Rights on December 15, 1791 and later served one term as a United States Senator for Pennsylvania. By 1795, Morris had acquired over 6 million acres primarily in the Washington, D.C. area, hoping to be able to sell it at a profit to pay off his debts. The area, however, did not develop in time and Morris became unable to pay mortgages, taxes, or his other debts. Morris was sentenced to a Philadelphia debtor's prison from 1798 to 1801. He died on May 6, 1806 humiliated and broke. Shortly thereafter, Morris' daughter married John P. Braden, a landowner, merchant, and later an early investor in the Pennsylvania railroad. The couple moved to Beaver County, Pennsylvania where they built a home and schoolhouse in 1810, which became a major landmark of the Darlington–Beaver Falls Road in Chippewa Township.

Although the contributions of the Oneida Indians and Robert Morris perhaps never were recognized, they stand among many as examples that have inspired countless citizens over the past two centuries to contribute their money, property, and lives in an attempt to secure this Republic and ensure its continuation for the benefit of all. Robert Morris was the great-great grandfather of the judge that authored this Memorandum Opinion and Order.