SUPREME COURT OF THE UNITED STATES

No. 01–1067

UNITED STATES, PETITIONER *v.* WHITE MOUNTAIN APACHE TRIBE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

[March 4, 2003]

JUSTICE SOUTER delivered the opinion of the Court.

The question in this case arises under the Indian Tucker Act: does the Court of Federal Claims have jurisdiction over the White Mountain Apache Tribe's suit against the United States for breach of fiduciary duty to manage land and improvements held in trust for the Tribe but occupied by the Government. We hold that it does.

I

The former military post of Fort Apache dates back to 1870 when the United States established the fort within territory that became the Tribe's reservation in 1877. In 1922, Congress transferred control of the fort to the Secretary of the Interior (Secretary) and, in 1923, set aside about 400 acres, out of some 7,000, for use as the Theodore Roosevelt Indian School. Act of Jan. 24, 1923, ch. 42, 42 Stat. 1187. Congress attended to the fort again in 1960, when it provided by statute that "former Fort Apache Military Reservation" would be "held by the United States in trust for the White Mountain Apache Tribe, subject to the right of the Secretary of the Interior to use any part of the land and improvements for administrative or school

purposes for as long as they are needed for the purpose." Pub. L. 86–392, 74 Stat. 8 (1960 Act). The Secretary exercised that right, and although the record does not catalog the uses made by the Department of the Interior, they extended to about 30 of the post's buildings and appurtenances, a few of which had been built when the Government first occupied the land. Although the National Park Service listed the fort as a national historical site in 1976, the recognition was no augury of fortune, for just over 20 years later the World Monuments Watch placed the fort on its 1998 List of 100 Most Endangered Monuments. Brief for Respondent 3.

In 1993, the Tribe commissioned an engineering assessment of the property, resulting in a finding that as of 1998 it would cost about $14 million to rehabilitate the property occupied by the Government in accordance with standards for historic preservation. This is the amount the Tribe sought in 1999, when it sued the United States in the Court of Federal Claims, citing the terms of the 1960 Act, among others,[1] and alleging breach of fiduciary duty to "maintain, protect, repair and preserve" the trust property. App. to Pet. for Cert. 37a.

The United States moved to dismiss for failure to state a claim upon which relief might be granted and for lack of subject matter jurisdiction. While the Government acknowledged that the Indian Tucker Act, 28 U. S. C. §1505, invested the Court of Federal Claims with jurisdiction to render judgments in certain claims by Indian tribes against the United States, including claims based on an Act of Congress, it stressed that the waiver operated only when underlying substantive law could fairly be inter-

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[1]These included the Snyder Act, 42 Stat. 208, as amended, 25 U. S. C. §13, and the National Historic Preservation Act, 80 Stat. 915, 16 U. S. C. §470 *et seq*.

preted as giving rise to a particular duty, breach of which should be compensable in money damages. The Government contended that jurisdiction was lacking here because no statute or regulation cited by the Tribe could fairly be read as imposing a legal obligation on the Government to maintain or restore the trust property, let alone authorizing compensation for breach.[2]

The Court of Federal Claims agreed with the United States and dismissed the complaint for lack of jurisdiction, relying primarily on the two seminal cases of tribal trust claims for damages, *United States* v. *Mitchell,* 445 U. S. 535 (1980) *(Mitchell I)*, and *United States* v. *Mitchell,* 463 U. S. 206 (1983) *(Mitchell II)*. *Mitchell I* held that the Indian General Allotment Act (Allotment Act), 24 Stat. 388, as amended, 25 U. S. C. §331 *et seq*. (1976 ed.) (§§331–333 repealed 2000) providing that "the United States does and will hold the land thus alloted . . . in trust for the sole use and benefit of the Indian," §348, *Mitchell I*, 445 U. S., at 541, established nothing more than a "bare trust" for the benefit of tribal members. *Mitchell II, supra*, at 224. The general trust provision established no duty of the United States to manage timber resources, tribal members, rather, being "responsible for using the land," "occupy[ing] the land," and "manag[ing] the land." 445 U. S., at 542–543. The opposite result obtained in *Mitchell II*, however, based on timber management statutes, 25 U. S. C. §§406–407, 466, and regulations, 25 CFR pt. 163 (1983), under which the United States assumed "elaborate control" over the tribal forests. *Mitchell II*, *supra,* at 209, 225. *Mitchell II* identified

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[2] Although it appears that the United States has not yet relinquished control of any of the buildings, the United States concedes that "some buildings have fallen into varying states of disrepair, and a few structures have been condemned or demolished." Brief for United States 4. For present purposes we need not address whether or how this affects the Tribe's claims.

a specific trust relationship enforceable by award of damages for breach. 463 U. S., at 225–226.

Here, the Court of Federal Claims compared the 1960 Act to the Allotment Act in *Mitchell I*, as creating nothing more than a "bare trust." It saw in the 1960 Act no mandate that the United States manage the site on behalf of the Tribe, and thus no predicate in the statutes and regulations identified by the Tribe for finding a fiduciary obligation enforceable by monetary relief.

The Court of Appeals for the Federal Circuit reversed and remanded, on the understanding that the United States's use of property under the proviso of the 1960 Act triggered the duty of a common-law trustee to act reasonably to preserve any property the Secretary had chosen to utilize, an obligation fairly interpreted as supporting a claim for money damages. The Court of Appeals held that the provision for the Government's exclusive control over the building actually occupied raised the trust to the level of *Mitchell II*, in which the trust relationship together with Government's control over the property triggered a specific responsibility.

Chief Judge Mayer dissented on the understanding that the 1960 Act "carve[d] out" from the trust the portions of the property that the Government is entitled to use for its own benefit, with the consequence that the Tribe held only a contingent future interest in the property, insufficient to support even a common law action for permissive waste. 249 F. 3d 1364, 1384 (2001).

We granted certiorari to decide whether the 1960 Act gives rise to jurisdiction over suits for money damages against the United States, 535 U. S. 1016 (2002), and now affirm.

II

A

Jurisdiction over any suit against the Government requires a clear statement from the United States waiving

sovereign immunity, *Mitchell I*, *supra,* at 538–539, together with a claim falling within the terms of the waiver, *Mitchell II, supra,* at 216–217. The terms of consent to be sued may not be inferred, but must be "unequivocally expressed," *Mitchell I, supra,* at 538 (quoting *United States* v. *King,* 395 U. S. 1, 4 (1969)) (internal quotation marks omitted), in order to "define [a] court's jurisdiction," *Mitchell I*, *supra,* at 538 (quoting *United States* v. *Sherwood,* 312 U. S. 584, 586 (1941)) (internal quotation marks omitted). The Tucker Act contains such a waiver, *Mitchell II*, *supra,* at 212, giving the Court of Federal Claims jurisdiction to award damages upon proof of "any claim against the United States founded either upon the Constitution, or any Act of Congress," 28 U. S. C. §1491(a)(1), and its companion statute, the Indian Tucker Act, confers a like waiver for Indian tribal claims that "otherwise would be cognizable in the Court of Federal Claims if the claimant were not an Indian tribe," §1505.

Neither Act, however, creates a substantive right enforceable against the Government by a claim for money damages. *Mitchell I*, *supra,* at 538–540; *Mitchell II*, *supra,* at 216. As we said in *Mitchell II*, a statute creates a right capable of grounding a claim within the waiver of sovereign immunity if, but only if, it "can fairly be interpreted as mandating compensation by the Federal Government for the damage sustained." 463 U. S., at 217 (quoting *United States* v. *Testan,* 424 U. S. 392, 400 (1976)) (internal quotation marks omitted).

This "fair interpretation" rule demands a showing demonstrably lower than the standard for the initial waiver of sovereign immunity. "Because the Tucker Act supplies a waiver of immunity for claims of this nature, the separate statutes and regulations need not provide a second waiver of sovereign immunity, nor need they be construed in the manner appropriate to waivers of sovereign immunity." *Mitchell II*, *supra,* at 218–219. It is enough, then,

that a statute creating a Tucker Act right be reasonably amenable to the reading that it mandates a right of recovery in damages. While the premise to a Tucker Act claim will not be "lightly inferred," 463 U. S., at 218, a fair inference will do.

B

The two *Mitchell* cases give a sense of when it is fair to infer a fiduciary duty qualifying under the Indian Tucker Act and when it is not. The characterizations of the trust as "limited," *Mitchell I*, 445 U. S., at 542, or "bare," *Mitchell II, supra*, at 224, distinguish the Allotment Act's trust-in-name from one with hallmarks of a more conventional fiduciary relationship. See *United States* v. *Navajo Nation, post,* at ___ (slip op., at ___) (discussing §§1 and 2 of the Allotment Act in *Mitchell I* as having "removed a standard element of a trust relationship"). Although in form the United States "h[e]ld the land . . . in trust for the sole use and benefit of the Indian," 25 U. S. C. §348, the statute gave the United States no functional obligations to manage timber; on the contrary, it established that "the Indian allottee, and not a representative of the United States, is responsible for using the land," that "the allottee would occupy the land," and that "the allottee, and not the United States, was to manage the land." *Mitchell I*, 445 U. S., at 542–543. Thus, we found that Congress did not intend to "impose any duty" on the Government to manage resources, *id*., at 542; cf. *Mitchell II*, *supra*, at 217–218, and we made sense of the trust language, considered without reference to any statute beyond the Allotment Act, as intended "to prevent alienation of the land" and to guarantee that the Indian allottees were "immune from state taxation," *Mitchell I, supra,* at 544.

The subsequent case of *Mitchell II* arose on a claim that did look beyond the Allotment Act, and we found that statutes and regulations specifically addressing the man-

agement of timber on allotted lands raised the fair implication that the substantive obligations imposed on the United States by those statutes and regulations were enforceable by damages. The Department of the Interior possessed "comprehensive control over the harvesting of Indian timber" and "exercise[d] literally daily supervision over [its] harvesting and management," *Mitchell II*, *supra,* at 209, 222 (quoting *White Mountain Apache Tribe* v. *Bracker,* 448 U. S. 136, 145, 147 (1980)) (internal quotation marks omitted), giving it a "pervasive" role in the sale of timber from Indian lands under regulations addressing "virtually every aspect of forest management," *Mitchell II*, *supra,* at 219, 220. As the statutes and regulations gave the United States "full responsibility to manage Indian resources and land for the benefit of the Indians," we held that they "define[d] . . . contours of the United States' fiduciary responsibilities" beyond the "bare" or minimal level, and thus could "fairly be interpreted as mandating compensation" through money damages if the Government faltered in its responsibility. 463 U. S., at 224–226.

III

A

The 1960 Act goes beyond a bare trust and permits a fair inference that the Government is subject to duties as a trustee and liable in damages for breach. The statutory language, of course, expressly defines a fiduciary relationship[3] in the provision that Fort Apache be "held by the

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[3]Where, as in *Mitchell II,* 463 U. S. 206, 225 (1983), the relevant sources of substantive law create "[a]ll of the necessary elements of a common-law trust," there is no need to look elsewhere for the source of a trust relationship. We have recognized a general trust relationship since 1831. *Cherokee Nation* v. *Georgia*, 5 Pet. 1, 16 (1831) (characterizing the relationship between Indian tribes and the United States as "a ward to his guardian"); *Mitchell II, supra,* at 225 (discussing "the undisputed existence of a general trust relationship between the United

United States in trust for the White Mountain Apache Tribe." 74 Stat. 8. Unlike the Allotment Act, however, the statute proceeds to invest the United States with discretionary authority to make direct use of portions of the trust corpus. The trust property is "subject to the right of the Secretary of the Interior to use any part of the land and improvements for administrative or school purposes for as long as they are needed for the purpose," *ibid.,* and it is undisputed that the Government has to this day availed itself of its option. As to the property subject to the Government's actual use, then, the United States has not merely exercised daily supervision but has enjoyed daily occupation, and so has obtained control at least as plenary as its authority over the timber in *Mitchell II*. While it is true that the 1960 Act does not, like the statutes cited in that case, expressly subject the Government to duties of management and conservation, the fact that the property occupied by the United States is expressly subject to a trust supports a fair inference that an obligation to preserve the property improvements was incumbent on the United States as trustee. This is so because elementary trust law, after all, confirms the commonsense assumption that a fiduciary actually administering trust property may not allow it to fall into ruin on his watch. "One of the fundamental common-law duties of a trustee is to preserve and maintain trust assets," *Central States, Southeast & Southwest Areas Pension Fund* v. *Central Transport, Inc.,* 472 U. S. 559, 572 (1985) (citing G. Bogert & G. Bogert, Law of Trusts and Trustees §582, p. 346 (rev. 2d ed. 1980)); see *United States* v. *Mason,* 412 U. S. 391, 398 (1973) (standard of responsibility is "such care and skill as a man of ordinary prudence would exercise in dealing with his own property") (quoting 2 A. Scott, Trusts 1408 (3d ed.

States and the Indian people").

1967) (internal quotation marks omitted)); Restatement (Second) of Trusts §176 (1957) ("The trustee is under a duty to the beneficiary to use reasonable care and skill to preserve the trust property"). Given this duty on the part of the trustee to preserve corpus, "it naturally follows that the Government should be liable in damages for the breach of its fiduciary duties."[4] *Mitchell II*, *supra,* at 226.

B

The United States raises three defenses against this conclusion, the first being that the property occupied by the Government is not trust corpus at all. It asserts that in the 1960 Act Congress specifically "carve[d] out of the trust" the right of the Federal Government to use the property for the Government's own purposes. Brief for United States 24–25 (emphasis deleted). According to the United States, this carve-out means that the 1960 Act created even less than the "bare trust" in *Mitchell I*. But this position is at odds with a natural reading of the 1960 Act. It provided that "Fort Apache" was subject to the trust; it did not read that the trust consisted of only the property not used by the Secretary. Nor is there any apparent reason to strain to avoid the straightforward reading; it makes sense to treat even the property used by

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[4] The proper measure of damages is not before us. We mean to imply nothing about the relevance of any historic building or preservation standards. Neither do we address the significance of the fact that a trustee is generally indemnified for the cost of upkeep and maintenance. See Restatement (Second) of Trusts §244 (1957) ("The trustee is entitled to indemnity out of the trust estate for expenses properly incurred by him in the administration of the trust"). Nor do we reach the issue whether a rent-free occupant is obligated to supply funds to maintain the property it benefits from. See Restatement of Property §187, Comment *b* (1936) ("When the right of the owner of the future interest is that the owner of the estate for life shall do a given act, as for example, . . . make repairs . . . then this right is made effective through compelling by judicial action the specific doing of the act").

the Government as trust property, since any use the Secretary would make of it would presumably be intended to redound to the benefit of the Tribe in some way.

Next, the Government contends that no intent to provide a damages remedy is fairly inferable, for the reason that "[t]here is not a word in the 1960 Act—the only substantive source of law on which the Tribe relies—that suggests the existence of such a mandate." Brief for United States 28. The argument rests, however, on a failure to appreciate either the role of trust law in drawing a fair inference or the scope of *United States* v. *Testan,* 424 U. S. 392 (1976), and *Army and Air Force Exchange Service* v. *Sheehan,* 456 U. S. 728 (1982), cited in support of the Government's position.

To the extent that the Government would demand an explicit provision for money damages to support every claim that might be brought under the Tucker Act, it would substitute a plain and explicit statement standard for the less demanding requirement of fair inference that the law was meant to provide a damage remedy for breach of a duty. To begin with, this would leave *Mitchell II* a wrongly decided case, for one would look in vain for a statute explicitly providing that inadequate timber management would be compensated through a suit for damages. But the more fundamental objection to the Government's position is that, if carried to its conclusion, it would read the trust relation out of Indian Tucker Act analysis; if a specific provision for damages is needed, a trust obligation and trust law are not. And this likewise would ignore *Mitchell I*, where the trust relationship was considered when inferring that the trust obligation was enforceable by damages. To be sure, the fact of the trust alone in *Mitchell I* did not imply a remedy in damages or even the duty claimed, since the Allotment Act failed to place the United States in a position to discharge the management responsibility asserted. To find a specific duty, a further

source of law was needed to provide focus for the trust relationship. But once that focus was provided, general trust law was considered in drawing the inference that Congress intended damages to remedy a breach of obligation.

Sheehan and *Testan* are not to the contrary; they were cases without any trust relationship in the mix of relevant fact, but with affirmative reasons to believe that no damages remedy could have been intended, absent a specific provision. In *Sheehan*, specific authorization was critical because of a statute that generally granted employees the damages remedy petitioner sought, but "expressly denie[d] that cause of action" to Army and Air Force Exchange Service personnel, such as petitioner. 456 U. S., at 740. In *Sheehan,* resting in part on *Testan*, the Tucker Act plaintiffs unsuccessfully asserted that the Court of Claims had jurisdiction over a claim against the United States for money damages for allegedly improper job classifications under the Classification Act. We stressed that no provision in the statute "expressly makes the United States liable," *Testan,* 424 U. S., at 399, and rather, that there was a longstanding presumption against petitioner's argument. "The established rule is that one is not entitled to the benefit of a position until he has been duly appointed to it . . . . The Classification Act does not purport by its terms to change that rule, and we see no suggestion in it or in its legislative history that Congress intended to alter it." *Id.*, at 402. Thus, in both *Sheehan* and *Testan* we required an explicit authorization of a damages remedy because of strong indications that Congress did not intend to mandate money damages. Together they show that a fair inference will require an express provision, when the legal current is otherwise against the existence of a cognizable claim. But that was not the case in *Mitchell II* and is not the case here.

Finally, the Government argues that the inference of a damages remedy is unsound simply because damages are

inappropriate as a remedy for failures of maintenance, prospective injunctive relief being the sole relief tailored to the situation. Reply Brief for United States 19. We think this is clearly wrong. If the Government is suggesting that the recompense for run-down buildings should be an affirmative order to repair them, it is merely proposing the economic (but perhaps cumbersome) equivalent of damages. But if it is suggesting that relief must be limited to an injunction to toe the fiduciary mark in the future, it would bar the courts from making the Tribe whole for deterioration already suffered, and shield the Government against the remedy whose very availability would deter it from wasting trust property in the period before a Tribe has gone to court for injunctive relief. *Mitchell II*, 463 U. S., at 227 (quoting *Mitchell I*, 445 U. S., at 550) ("Absent a retrospective damages remedy, there would be little to deter federal officials from violating their trust duties, at least until the allottees managed to obtain a judicial decree against future breaches of trust" (internal quotation marks omitted)).

IV

The judgment of the Court of Appeals for the Federal Circuit is affirmed, and the case is remanded to the Court of Federal Claims for further proceedings consistent with this opinion.

It is so ordered.