# SUPREME COURT OF THE UNITED STATES

No. 01–1375

UNITED STATES, PETITIONER *v.* NAVAJO NATION

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

[March 4, 2003]

JUSTICE SOUTER, with whom JUSTICE STEVENS and JUSTICE O'CONNOR join, dissenting.

The issue in this case is whether the Indian Mineral Leasing Act and its regulations imply a specific duty on the Secretary of the Interior's part, with a cause of action for damages in case of breach. The Court and I recognize that if IMLA indicates that a fiduciary duty was intended, it need not provide a damages remedy explicitly; once a statutory or regulatory provision is found to create a specific fiduciary obligation, the right to damages can be inferred from general trust principles, and amenability to suit under the Indian Tucker Act. See *United States* v. *White Mountain Apache Tribe*, *ante*, at 4–6; *United States* v. *Mitchell*, 463 U. S. 206, 226 (1983) *(Mitchell II)*. I part from the majority because I take the Secretary's obligation to approve mineral leases under 25 U. S. C. §396a as raising a substantial fiduciary obligation to the Navajo Nation (Tribe), which has pleaded and shown enough to survive the Government's motion for summary judgment. I would affirm the judgment of the Federal Circuit.

IMLA requires the Secretary's approval for the effectiveness of any lease negotiated by the Tribe with a third party. §396a; see also 25 CFR §211.2 (1985). The Court accepts the Government's position, see Brief for United States 38, that the IMLA approval responsibility places no substantive obligation on the Secretary, save for a minimal duty to withhold assent from leases calling for less than the minimum royalty rate set by IMLA regulations, whatever that may be. *Ante*, at 20. Since that rate is merely a general standard, which may be a bargain rate when applied to extractable material of high quality, the obligation to demand it may not amount to much. The legislative history and purposes of IMLA, however, illuminated by the Secretary's historical role in reviewing conveyances of Indian lands, point to a fiduciary responsibility to make a more ambitious assessment of the best interest of the Tribe before signing off.

The protective purpose of the Secretary's approval power has appeared in our discussions of other statutes governing Indian lands over the years. In *Tiger* v. *Western Investment Co.*, 221 U. S. 286 (1911), for example, we upheld the constitutionality of the Act of Apr. 26, 1906, ch. 1876, §22, 34 Stat. 145, which made alienation of certain allotted lands by citizen Indians "subject to the approval of the Secretary of the Interior." Although allotment and conferral of citizenship had given tribal members greater responsibility for their own interest, see, *e.g.*, *Choteau* v. *Burnet*, 283 U. S. 691, 694 (1931), we nevertheless understood that the requirement of prior approval was supposed to satisfy the National Government's trust responsibility to the Indians, *Tiger*, *supra*, at 310–311; accord, *Sunderland* v. *United States*, 266 U. S. 226, 233 (1924) (restraints on alienation of Indian property are enacted "in fulfillment of [Congress's] duty to protect the Indians"). Shortly after *Tiger*, in *Anicker* v. *Gunsburg*, 246 U. S. 110 (1918), we held that the Secretary's authority to approve leases of allotted lands under the Act of May 27, 1908, ch. 199, §2, 35 Stat. 312, was "unquestionably . . . given to him for the protection of Indians against their own improvidence and the designs of those who would obtain their property for inadequate compensation." 246 U. S., at 119. The Secretary's approval power was understood to be a significant component of the Government's general trust responsibility. See Clinton, Isolated in Their Own Country: A Defense of Federal Protection of Indian Autonomy and Self-Government, 33 Stan. L. Rev. 979, 1002–1003 (1981); Chambers & Price, Regulating Sovereignty: Secretarial Discretion and the Leasing of Indian Lands, 26 Stan. L. Rev. 1061, 1061–1068 (1974).

Congress's decision in IMLA to give the Secretary an approval authority is well understood in terms of this background, for in the enactment of IMLA, Congress devised a scheme of divided responsibility reminiscent of the old allotment legislation. While it changed the prior law by transferring negotiating authority from the Government to the tribes, it hedged that augmentation of tribal authority in leaving the Secretary with certain powers of oversight including the authority to approve or reject leases once the tribes negotiated them. 25 U. S. C. §§396a–g. The Secretary's signature was the final step in a scheme of "uniform leasing procedures designed to protect the Indians," *Montana* v. *Blackfeet Tribe*, 471 U. S. 759, 764 (1985), and imposed out of a concern that existing laws were not "adequate to give the Indians the greatest return from their property," S. Rep. No. 985, 75th Cong., 1st Sess., 2 (1937); H. R. Rep. No. 1872, 75th Cong., 3d Sess., 2 (1938). The "basic purpose" of the Secretary's powers under IMLA is thus to "maximize tribal revenues from reservation lands." *Kerr-McGee Corp.* v. *Navajo Tribe*, 471 U. S. 195, 200 (1985); see *Blackfeet Tribe*, *supra*, at 767, n. 5. Consistent with this aim, the Secretary's own IMLA regulations (now in effect) provide that administrative actions, including lease approvals, are to be taken "[i]n the best interest of the Indian mineral owner." 25 CFR §211.3 (2002); see also §211.1 (stating that the overarching purpose of IMLA regulations is to ensure that Indians' mineral resources "will be developed in a manner that maximizes their best economic interests").[1] Thus, viewed in light of IMLA's legislative history and the general trust relationship between the United States and the Indians, see *Mitchell II*, 463 U. S., at 224–225, §396a supports the existence of a fiduciary responsibility to review mineral leases for substance to safeguard the Indians' interest.[2]

I do not mean to suggest that devising a specific standard of responsibility is any simple matter, for we cannot ignore the tension between IMLA's two objectives. If we thought solely in terms of the aim to ensure that negotiated leases "maximize tribal revenues," *Kerr-McGee*, *supra*, at 200, we would ignore the object of IMLA to provide greater tribal responsibility, against which the Secretary's oversight is acting as a hedge. See Royster, Mineral Devel-

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[1] In addition, the Interior Department at all times relevant to this case had in place an internal policy providing that mineral leases would be approved only if "the terms and conditions of the lease are in the best interest of the Indian landowner." App. 2, 133–134.

[2] The majority seeks to distinguish *Mitchell II*, saying that the timber management statutes at issue there gave the Secretary a "comprehensive managerial role" and stated explicitly that timber sales had to be made in consideration of "'the needs and best interests of the Indian owner and his heirs.'" *Ante*, at 16–17. The comprehensiveness of the Secretary's role just described is what made *Mitchell II* an easy case. *Mitchell II* did not say, however, that fiduciary duties can only be found where the Government has "elaborate control." 463 U. S., at 225. Nor does *Mitchell II*'s reference to the statute's explicit "best interests" language foreclose the use of standard interpretive tools like legislative history to determine whether a statute establishes a fiduciary duty.

The majority proceeds to discount IMLA's legislative history, suggesting that Congress's concern for Indian revenues was limited to the elimination of certain constraints peculiar to Indian mineral leases. *Ante*, at 21, n. 16. But the cited IMLA legislative reports do not indicate that Congress's aims were restricted to curing these specific deficiencies of prior law, and they do nothing to detract from the consistent recognition in our precedents that IMLA's leasing procedures were designed to protect Indian interests in mineral resources.

opment in Indian Country: The Evolution of Tribal Control Over Mineral Resources, 29 Tulsa L. Rev. 541, 558–580 (1994) (noting the twin aims of IMLA). The more stringent the substantive obligation of the Secretary, the less the scope of tribal responsibility. The Court, however, errs in the opposite direction, giving overriding weight to the interest of tribal autonomy to the point of concluding that the Secretary's approval obligation cannot be an onerous one, *ante*, at 17–18, thus losing sight of the mixture of congressional objectives. The standard of responsibility simply cannot give the whole hog to the one congressional policy or the other.

While this is not the case to essay any ultimate formulation of a balanced standard, even a reticent formulation of the fiduciary obligation would require the Secretary to withhold approval if he had good reason to doubt that the negotiated rate was within the range of reasonable market rates for the coal in question, or if he had reason to know that the Tribe had been placed under an unfair disadvantage at the negotiating table by his very own acts. See Restatement (Second) of Trusts §§170, 173, 174, 176 (1957). And those modest standards are enough to keep the present suit in court, for the Tribe has pleaded a breach of trust in each respect and has submitted evidence to get past summary judgment on either alternative.

The record discloses serious indications that the 12½ percent royalty rate in the lease amendments was substantially less than fair market value for the Tribe's high quality coal. In the course of deciding that 20 percent would be a reasonable adjustment under the terms of the lease, the Area Director of the Board of Indian Affairs (BIA) considered several independent economic studies, each one of them recommending rates around 20 percent, and one specifically rejecting 12½ percent as "inadequate."

App. 6–7.[3] These conclusions were confirmed by the expert from the BIA's Energy and Mineral Division, in a supplemental report submitted after Peabody appealed the Area Director's decision. That report not only endorsed the 20 percent rate, but expressly found that the royalty rate "should be much higher than the 12.5% that the Federal Government receives for surface-mined coal" because the Navajo coal is "extremely valuable." *Id.*, at 22. No federal study ever recommended a royalty rate under 20 percent, and yet the Secretary approved a rate little more than half that. *Id.*, at 134. When this case was before the Federal Circuit, Judge Schall took the sensible position that the Secretary was obligated to obtain an independent market study to assess the rate in these circumstances, see 263 F. 3d 1325, 1340 (2001) (opinion concurring in part and dissenting in part), and the record as it stands shows the Secretary to be clearly open to the claim of fiduciary breach for approving the rate on the information he is said to have had. Of course I recognize that the Secretary's obligation is to approve leases, not royalty rates in isolation, but an allegation that he approved an otherwise unjustified rate apparently well below market for the particular resource deposit certainly

[3] The United States Bureau of Mines recommended an adjusted royalty rate of 20 percent, while the BIA's Division of Energy and Mineral Resources recommended 24.44 percent in a separate report. Several private studies also endorsed rates in the 20 percent range: one, conducted by the Council of Energy Resource Tribes, concluded that the rate should be between 15 and 20 percent, and another, prepared by a private management consultant firm at the request of the Navajo, advocated a rate of between 17.08 and 22.77 percent. The only report with a significantly lower rate was the report submitted by Peabody, which recommended a rate of 5.57 to 7.16 percent. This figure was based not on current fair value but rather on what rate would "restore the benefits that were originally contemplated when the 1964 lease was signed by both parties." *Id.*, at 16–18.

raises a claim of breach.

What is more, the Tribe has made a powerful showing that the Secretary knew perfectly well how his own intervention on behalf of Peabody had derailed the lease adjustment proceeding that would in all probability have yielded the 20 percent rate. After his *ex parte* meeting with Peabody's representatives, the Secretary put his name on the memorandum, drafted by Peabody, directing Deputy Assistant Secretary Fritz to withhold his decision affirming the 20 percent rate; directing him to mislead the Tribe by telling it that no decision on the merits of the adjustment was imminent, when in fact the affirmance had been prepared for Fritz's signature; and directing him to encourage the Tribe to shift its attention from the Area Director's appealed award of 20 percent and return to the negotiating table, where 20 percent was never even a possibility. App. 117–118. The purpose and predictable effect of these actions was to induce the Tribe to take a deep discount in the royalty rate in the face of what the Tribe feared would otherwise be prolonged revenue loss and uncertainty. The point of this evidence is not that the Secretary violated some rule of procedure for administrative appeals, *ante*, at 21–22, or some statutory duty regarding royalty adjustments under the terms of the earlier lease. What these facts support is the Tribe's claim that the Secretary defaulted on his fiduciary responsibility to withhold approval of an inadequate lease accepted by the Tribe while under a disadvantage the Secretary himself had intentionally imposed.[4]

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[4] The possibility that the Secretary could have set aside Fritz's rejection of Peabody's appeal does not, despite the Court's suggestion, *ante*, at 22, defeat the Tribe's claim under §396a. As an initial matter, whatever formal authority the Secretary may have had, nothing cited by the parties suggests that the Secretary was considering such action, which would have painted him plainly as catering to Peabody. Hence

All of this is not to say that the Tribe would end up with a recovery at the end of the day. Disputed facts have not been tried; the negotiations affected not only the 1964 lease that was subject to adjustment on demand, but also other leases apparently not subject to the same option for the Tribe's benefit; and the renegotiated terms affected lease provisions other than royalties (including tax terms). For all we can say now, the net of all these changes may have been an overall bargain in the Tribe's interest, despite the smaller royalty figure in the lease as approved. But the only issue here is whether the Tribe's claims address one or more specific statutory obligations, as in *Mitchell II*, at the level of fiduciary duty whose breach is compensable in damages. The Tribe has pleaded such duty, the record shows that the Tribe has a case to try, and I respectfully dissent.

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the cautious qualification in the memorandum to Fritz, emphasizing that his intervention was "not intended as a determination of the merits" of the 20 percent rate adjustment. App. 118. Given that the federal economic surveys unanimously endorsed 20 percent, it is unclear what basis the Secretary would have had to reject the rate on the merits. More importantly, the gravamen of the Tribe's claim is not that it is entitled to the 20 percent rate adjustment under the lease. Rather, it is that the Secretary's actions in deceiving the Tribe about the status of Peabody's appeal skewed the subsequent bargaining process, and the resulting royalty rate, in Peabody's favor. On that issue, whether the Secretary might have ultimately favored Peabody's appeal, while perhaps a subject of relevant evidence, is not dispositive.