

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

ELOUISE PEPION COBELL, et al.,	)	
	)	
Plaintiffs,	)	
v.	)	No. 1:96CV01285(TFH)
	)	
SALLY JEWELL, Secretary of the Interior, et al.,	)	
	)	
Defendants.	)	
	)	

**PLAINTIFFS’ MAY 30, 2014 STATUS REPORT TO THE COURT**

**I. Introduction**

In December 2009, this case settled after over 13 years of litigation. The settlement has been aptly characterized by this Court as “historic,”<sup>1</sup> and it has resulted in remarkable efforts at trust reform. However, this case did not end when the ink on the settlement agreement dried. Once the lengthy process of Congressional approval was completed and the appeals from this Court’s judgment expired, Class Counsel had the task of distributing settlement funds to approximately 500,000 Class Members.

This action was premised, in part, on the failure of the federal government, in its capacity as trustee, to maintain adequate records of beneficiaries. The government’s neglect of this fiduciary duty was confirmed in numerous decisions of this Court and the DC Circuit during the course of this litigation.<sup>2</sup> However, unfortunately, the starting point for any distribution to Class Members is those same broken records.

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<sup>1</sup> June 20, 2011 Hrg. Tr. at 220:16

<sup>2</sup> See *Cobell v. Norton*, 240 F.3d 1081, 1089 (D.C. Cir. 2001)

Therefore, in late 2009 the Claims Administrator, the Garden City Group (“GCG”), inherited the trust records of the Department of Interior (“Interior”) which had suffered from decades of mismanagement. The bad news is that, while tremendous efforts had been undertaken by Interior to improve those records during the course of this litigation, the condition of those records, as received by GCG, exceeded our worst fears. However, the good news is that, while this Court has in the past noted the tension among the parties and their counsel, over the past several years the Claims Administrator, Interior, the Department of Justice and Class Counsel have worked together to fix these deficiencies and have made great strides in doing so. While there remains much work to be done, as we have expressed previously, we believe that in the very near future the records will be in sufficient condition that a Trust Administration distribution can be made.

## **II. How Bad Were Interior’s Records?**

The following data reveals the problems that GCG faced when presented with Interior’s data on Class Members.

- a. There was insufficient contact information for 315,349 Class Members. No addresses were provided for 174,909 individuals. 73,594 individuals had wrong addresses. 66,846 were officially classified by Interior as “Whereabouts Unknown” (“WAU”).<sup>3</sup> Therefore, there was no contact information for approximately 63% of the entire class.
- b. GCG determined that 21,974 individuals listed by Interior as alive were actually deceased.
- c. GCG determined that 1,313 individuals listed by Interior as dead were actually alive.

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<sup>3</sup> Interior defines “Whereabouts Unknown” as those accountholders for whom the Office of Special Trustee “does not have current address information.” <http://www.doi.gov/ost/index.cfm>

- d. In 14,649 cases, multiple records were identified as belonging to a single individual.
- e. In roughly 15,746 instances, accounts identified as belonging to a specified individual actually belonged to another individual.
- f. Interior had the wrong number of Historical Accounting Class Members. Since receiving Interior's records, approximately 13,306 additional Historical Accounting Class Members have been identified.
- g. Delays in transferring land records from the probate system to the land records system resulted in inaccurate Class Membership data.
- h. Individuals identified as non-Indian by Interior actually proved to be Indian.
- i. Interior had no records of thousands of Class Members in Oklahoma and Alaska because of the absence of trust land records on Interior's systems.

### **III. Efforts to Clean Up Interior's Records**

Over the past several years, GCG and Class Counsel have worked to fix the records that had not been adequately addressed for decades. Critical updates have been provided by Interior. Since the December 2012 Historical Accounting distribution, three updates – in August 2013, February 2014, and March 2014 - have been delivered to GCG. Importantly, this has included updated probate information. However, the only way to effectively identify and correct the systemic problems in the records is through extensive outreach to Indian Country. The following steps have been undertaken:

- a. Approximately \$11 million has been spent on the original and supplementary notice programs designed by Kinsella Media, Inc. ("Kinsella") and approved by this Court, which targeted native population centers.

b. Class Action notices and Claim Forms have been mailed to over 375,000 potential claimants and included in over 245,000 additional outreach mailings to tribal communities.

Additional Claim Forms were downloaded from the settlement website, [www.indiantrust.com](http://www.indiantrust.com).

c. GCG maintains a call center which averages 15,000 calls per week. To date, 2,760,251 have been received. 3,219,477 images have been reviewed.

d. Class Counsel maintains a toll free number dedicated to Class Members and has responded to tens of thousands of emails, calls and letters.

e. Class Counsel and GCG have held dozens of meetings in Indian Country designed to identify potential claimants.

f. Class Counsel and GCG have worked with Tribes, Alaska Native Corporations and other Native American communities to identify class members and heirs of estates.

g. Class Counsel and GCG have arranged for dozens of newspaper publications, tribal publications and tribal public service announcements listing Class Members for whom there exists no contact information.

h. The *Cobell* settlement website is updated frequently. Missing Class Members can be searched by name on a tribal basis. Since January 2014, this website has received on average almost 5000 hits per day.

#### **IV. Historical Accounting Distributions**

There are presently 339,206 individuals or estates that have received or are designated to receive Historical Accounting payments. Distributions have been made by check or by wire into IIM accounts for 307,861, or approximately 91%, of these Class Members. Undistributed funds consist of the following:

a. 28,707 Estates are pending distribution

- b. 573 checks were undeliverable
- c. 2,479 Class Members have no addresses
- d. 159 checks have been withheld due to liens.

**V. The Trust Administration Claims Process**

On December 11, 2012, this Court ordered that Kinsella proceed with the required supplementary notice campaign and that all Claim Forms be postmarked by March 1, 2013. 12/11/12 Order [Dkt. No. 3923] at ¶¶ 3, 4(a). That order set forth a schedule for consideration of claims by GCG, opportunities for production of additional information by claimants, and review of adverse determinations by the Special Master.

On April 10, 2013, that schedule was modified to accommodate claimants having difficulty obtaining documentation to support their claims. 4/10/13 Order [Dkt. No. 3950]. Under the terms of that Order, the deadline for appeals from final determinations of GCG to the Special Master was extended to September 4, 2013. *Id.* at ¶ 1(d).

Approximately 467,208 Claim Forms constituting 382,520 unique claims were received by GCG. Of these, 113,082 were determined to be personally eligible and 73,597 were determined to be potential heirs to an eligible Class Member estate. The remaining claimants were not determined to be eligible based on the information provided to GCG. From this mailing, 85,979 claimants requested reconsideration by GCG of which 53,169 were determined to be eligible based on receipt of additional information. There have been 2,451 appeals, consisting of 1,149 individuals appealing, from a determination of ineligibility by GCG to the Special Master. These claims have a total estimated value of approximately \$1.5 million.

## **VI. Trust Administration Class Members**

There are presently 493,755 identified Trust Administration Class Members. Of these, there currently exists contact information for 360,149, or 73% of those Class Members. An additional 32,152 or 7% will have their funds wired in to an IIM account because they are minors, in restricted status, or officially designated as “Whereabouts Unknown” by Interior. There are 101,454 or 20% of the Class Members for whom there exists no deliverable address.

## **VII. Identifying Class Members With No Contact Information**

Interior’s records are particularly problematic with respect to Class Members with no contact information. Often the only identifying information is a name and a tribal affiliation. As set forth above, extensive efforts have been undertaken to identify missing Class Members through extensive outreach in Indian Country. Those efforts have been particularly effective.

Of the original 315,349 individuals in Interior’s database for whom there was either no or inaccurate contact information, through the efforts of GCG and Class Counsel, 177,526 or over 56% of these individuals have been located. Additionally, when Class Member data was received by GCG in November 2012, there were 66,846 individuals officially identified as WAU. Through outreach to Indian Nations and tribal members, all but 13,890, or 20%, have been located. In November 2012, the largest number of WAU in Interior’s data were identified as Navajo tribal members. Specifically, 6,382 of the 33,994 Navajo who were identified as Trust Administration Class Members were WAU. Through publication of the list in local newspapers and meetings throughout the Navajo Nation, today only 1,859 Navajo are designated as WAU. Similarly, initially 3,282 members of the Turtle Mountain Band of Chippewa Indians were identified as WAU out of 22,933 Class Members. Today, only 574 are considered WAU.

However, work remains on identifying remaining Class Members. We continue to do extensive outreach to tribal members and hold meetings in Indian Country. During the week of June 2, 2013, we will be in Anadarko, Durant and Red Rock, Oklahoma, in efforts to identify missing Class Members among tribes within the exterior borders of that state. We will be undertaking similar efforts in Alaska during the week of June 9, 2014, and North Dakota, during the week of June 23, 2014.

### **VIII. Estates**

GCG has identified 61,588 deceased Class Members. Working with Judge Levie, we have made efforts to facilitate distribution of payments to heirs in a cost effective manner. Therefore, in addition to state and tribal probate orders as approved by this Court,<sup>4</sup> other means of distribution have been authorized, including:

- a. Procedures under state law for small estates. [Dkt. No. 3963].
- b. Federal probate orders. [Dkt. No. 3964].
- c. Determinations by Tribal governments. [Dkt. No. 4022].
- d. Determinations pursuant to 25 CFR 11.700 [Dkt No. 3969 ].
- e. Distributions based on Form OHA 7. [Dkt. No. 4021].

Tremendous efforts have been undertaken to identify the heirs of deceased Class Members. The Claim Form, which asked that individuals identify if they were the heir of a deceased class member, was included in over 620,000 mailings. As noted above, approximately \$11 million has been spent on the original and supplementary notice programs designed by Kinsella, once again which encouraged the identification of the heirs of deceased Class Members. Dozens of meetings have been held by Class Counsel and GCG in Indian Country in

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<sup>4</sup> *Order Granting Unopposed Motion to Modify Distribution of Settlement Proceeds to Estates and Heirs of Deceased Class Members* dated June 19, 2013 [Dkt. No. 3958] at ¶ 2.

which information has been sought on Class Members and their heirs. In addition, Class Counsel and GCG have worked with tribal governments, allottee associations and other groups and individuals to identify the families of class members who have passed away.

To date, GCG has received documentation to distribute to 22,411 estates. There are 6,657 estates where GCG has received contact information from an heir but there are no documents upon which a distribution can be made. Distributions to heirs of deceased Class Members is an ongoing effort. There are 32,520 estates on which GCG has received no documentation at all. Earlier federal probate orders are often paper records and are not readily available. Interior continues to provide GCG with updates on more recent probate decisions, and a motion is before Judge Levie to permit the deposit of estate funds for which there is no distribution documentation into an estate account where a federal probate proceeding is pending. [Dkt. No. 4039].

### **Conclusion**

The *Cobell* litigation has often been characterized as a case unlike any other in terms of its length, volume of pleadings, days for hearings and trial, appellate decisions and the result achieved for Class Members. The same can be said with respect to the challenges faced in distributing the settlement award given the time and energy necessitated in order to correct the trust records upon which any distribution must be based. While the final distribution should commence within the next few months, significant challenges remain with respect to continuing to locate Class Members and distributing funds to the heirs of those Class Members who passed away during the pendency of the litigation. However, we firmly believe that we can continue to make substantial progress in overcoming those obstacles and are committed to doing so. Never before has any private litigant had an opportunity to actually see the true condition of the



individual Indian Trust records. The opportunity that is now presented – to correct those records and distribute funds to individual Indians who have been improperly denied participation in the trust system for decades – will likely never happen again. Indian Country deserves nothing less.

Respectfully submitted this the 29th day of May, 2014.

/s/ David C. Smith  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing PLAINTIFFS' MAY 30, 2014 STATUS REPORT TO THE COURT was served on the following via facsimile, pursuant to agreement, on this day, May 29, 2014.

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