

Cobell v. Salazar

Overview of Proposed Settlement

Presented by Inter-Tribal Monitoring Assoc.

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Brief Litigation History

- Lawsuit filed in 1996 as a Class Action lawsuit on behalf present and former beneficiaries of Individual Indian Money (IIM) accounts in United States District Court, DC District
- Named class representatives were:
 - Eloise Pepion Cobell - Browning, Montana
 - Earl Old Person – Browning, Montana
 - Mildred Cleghorn – Apache, Oklahoma
 - Thomas Maulson – Lac Du Flambeau, Wisconsin
 - James Louis LaRose - Winnebago, Nebraska

Relief Requested

- Order Certifying named plaintiffs as representatives of a class consisting of all present and former beneficiaries of IIM accounts
- Decree construing the trust obligations of defendants to class members and directing the institution of an accounting
- Decree restraining defendants from hindrance or interference with the Special Trustee in carrying out statutory duties

Relief Requested Cont.

- Decree ordering an accounting and to make whole the IIM accounts of the class members,
- Award of plaintiff's cost of suit, including attorney's fees under Equal Access to Justice Act.

Summary of Orders Determining Scope of Lawsuit

- For case to remain in Federal District Court, to certify the class, and for a waiver of the United States Sovereign Immunity:
 - Plaintiffs repeatedly stated they do not seek to recover money damages (to comply with § 702 of APA),
 - Court found a waiver of U.S. sovereign immunity and retained jurisdiction in U.S. District after amending plaintiffs’ complaint to seek “other than money damages” for accounting claims.

Scope of Litigation

- Based on Court's ruling that case is for "other than money damages" Case focused on:
 - the United States breach of trust for failing to provide IIM beneficiaries with an accounting,
 - the United States failure to produce adequate records to conduct accounting,
 - Requiring the United States to develop systems to provide accounting (trust reform).

Court Rulings

- That United States had breached its trust duty to provide an accounting;
- That United States provide a full transaction by transaction accounting of IIM accounts back to creation of accounts;
- That United States had failed to develop processes and systems to properly account for IIM funds.

Congressional Involvement

- Congress attempted to settle litigation through legislation from 2005 and 2008 with S.1439 and SCIA's 2008 settlement proposal of \$8 billion.
- However, Congress has not appropriated adequate funds for the Department of Interior to comply with the Court mandated transaction by transaction accounting.

Status of Litigation prior to Settlement

- August 2009, Court ruled that Plaintiffs were entitled to \$455 million (as restitution) and that an accounting was not possible.
- Both parties appealed ruling and Court of Appeals remanded to Court to approve a plan that efficiently uses limited government resources to achieve an accounting. (\$455 million set aside, ruling that accounting impossible due to limited funds also set aside).

Proposed Settlement of Cobell v. Salazar

- Class Action Settlement Agreement signed by Plaintiffs and United States on December 7, 2009,
- Requires accompanying Congressional action for Agreement to become effective,
- Deadline for Congressional action was December 31, 2009,
- Deadline extended until February 28, 2010.

Settlement Terms

- Allows Plaintiff to file an amended complaint that:
 - Maintains claims for historical accounting of IIM accounts,
 - Maintains claims to restate IIM account balance in accordance with historical accounting,
 - Allows claims for breach of trust for mismanagement of trust funds and trust assets requesting damages and monetary relief,

Settlement Funds

- Provides that \$1.412 billion will be paid to:
 - Compensate plaintiffs,
 - Cover all expenses associated with settlement,
 - Pay past and future attorney fees – at SCIA hearing, DOJ attorneys stated fees between \$50 and \$99 million,
 - Pay incentive payments to the four named class representatives – appears \$15 million base for each,
 - Establish a scholarship fund – \$60 million.

Settlement Funds, cont.

- Provides \$2 billion to the Department of Interior for the purchase of fractionated land interests:
 - Over a 10 year period,
 - Purchases will be done by BIA with BIA personnel,
 - Land must be purchased at Fair Market Value (appears to require full appraisals).
 - ILCO has not expended more than \$34 million in any given year.

Creates 2 classes of Plaintiffs

- 1st class of Plaintiffs – Historical Accounting Class
 - Includes everyone alive on 9-30-2009 that had and IIM account with at least one cash transaction between 10-25-1994 and 9-30-2009
 - Will pay \$1000 to each person (per capita) in this class regardless of size of interest
 - Members of this class will not be allowed to ‘opt out’ of the settlement (will not receive accounting)

2nd Class of Plaintiffs

- New class called - Trust Administration Class
 - Includes persons who were alive as of 9-30-2009 who have or had an IIM account from 1985 to present, or
 - Had an interest in land as of 9-30-2009 whether or not the landowner had an IIM account or any proceeds/revenue from the land

2nd Class Payments

- Will receive 2nd round of payments of
 - A baseline payment of \$500, plus
 - An amount based on an average of the 10 highest revenue generating years in an IIM account – after DOI determines the highest average amount of all class members – will take remaining funds and pay all Class 2 members an equal percentage
 - Members of this class may “opt out”

Release of Claims

- Release by Historical Accounting Class
 - Upon final approval, all members shall be deemed to have released, waived and forever discharge U.S. from obligation to perform a historical accounting,
- Release by Trust Administration Class
 - Upon approval, all members forever barred and precluded from bringing claims for mismanagement of trust resources (land, minerals, water)

Class Notice

- Following Congressional Approval and Court's Preliminary approval:
 - A Notice Contractor will notify the members of the Classes in the Agreement with
 - Description of classes, litigation and claims
 - Class counsel's request for attorney fees
 - Class representative's incentive awards
 - Option to participate in Class 2 payments
 - Scope of Class 2 opt out rights
 - Date, time and location of fairness hearing

Conclusion

- ITMA invites you to participate in the February 24, 2010 Tribal Leaders Meeting in Las Vegas, Nevada.
- ITMA is not promoting a position, only intending to insure Indian Country is informed on this important issue as it pertains to the management of the Indian trust.