

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

ELOUISE PEPION COBELL, et al.,)
on her own behalf and on behalf of)
all those similarly situated,)
)
Plaintiffs,)
)
v.)
)
GALE NORTON,)
Secretary of the Interior, et al.,)
)
Defendants.)
_____)

Civil Action No. 96-1285 (RCL)

ORDER

Upon consideration of: (1) the Interior defendants’ First Submission [2600] in Compliance With May 28, 2004 Memorandum and Order Regarding Historical Statements of Account; (2) the Interior defendants’ Second Submission [2628] in Compliance With May 28, 2004 Memorandum and Order Regarding Historical Statements of Account; (3) the plaintiffs’ Motion [2647] for Reconsideration of the Court’s May 28, 2004 Order Regarding Historical Statements of Account; (4) the Interior defendants’ Motion [2682] to Strike Plaintiffs’ Motion for Reconsideration of the Court’s May 28, 2004 Order Regarding Historical Statements of Account and To Admonish Plaintiffs’ Counsel to Comply With the D.C. Bar’s Voluntary Standards for Civility in Professional Conduct; (5) the Plaintiffs’ Proposed Notice [2725] for Communications to Individual Indian Trust Beneficiaries submitted pursuant to this Court’s September 29, 2004 Order as clarified by this Court’s October 1, 2004 Order; and (6) the Interior

Defendants' Proposed Notices [2724] for Class Communications submitted pursuant to this Court's September 29, 2004 Order as clarified by this Court's October 1, 2004 Order; the oppositions thereto; the replies; the entire record herein; and for the reasons set forth in the Memorandum Opinion issued this date; it is hereby

ORDERED that the plaintiffs' Motion [2647] for Reconsideration of the Court's May 28, 2004 Order Regarding Historical Statements of Account is DENIED; and it is further

ORDERED that the Interior defendants' Motion [2682] to Strike Plaintiffs' Motion for Reconsideration of the Court's May 28, 2004 Order Regarding Historical Statements of Account and To Admonish Plaintiffs' Counsel to Comply With the D.C. Bar's Voluntary Standards for Civility in Professional Conduct is DENIED; and it is further

ORDERED that the Interior defendants' First Submission [2600] in Compliance With May 28, 2004 Memorandum and Order Regarding Historical Statements of Account is APPROVED IN PART AND DENIED IN PART subject to the conditions set forth in this Order and the Memorandum Opinion issued this date; and it is further

ORDERED that the Interior defendants' Second Submission [2628] in Compliance With May 28, 2004 Memorandum and Order Regarding Historical Statements of Account is APPROVED subject to the conditions set forth in this Order and the Memorandum Opinion issued this date.

With respect to the Historical Statements of Account, and in accordance with this Court's Memorandum and Order issued May 28, 2004, the Memorandum Opinion issued this date, and this Order, it is hereby

ORDERED that the Interior defendants shall send out supplemental notices to the 1,208

IIM account holders to whom it has already mailed historical statements of account in accordance with the procedure outlined in this Court's May 28, 2004 Memorandum and Order, the Memorandum Opinion issued this date, and this Order; and including the following notice:

Please be aware that many Individual Indian Money ("IIM") account holders are members of a class action lawsuit, Cobell v. Norton, No. 1:96CV01285 (D.D.C.) (Judge Lamberth). In October 2002 the above-referenced IIM account holder received a historical statement of account, along with a cover letter notifying the account holder of the action they should take if they wanted to challenge the accuracy of that statement. Nothing in this notice, the notice, historical statement of account and other documents the above-referenced IIM account holder received in October 2002, or any other letter, document, or communication to which this notice may be attached will eliminate or adversely affect any rights that the above-referenced IIM account holder may have if he or she is a class member in the Cobell litigation. The above-referenced IIM account holder will not eliminate or adversely affect any rights that he or she may have as a class member by failing to challenge the historical statement of account he or she received in October 2002.

As a potential class member, the above-referenced IIM account holder has the right to consult with the class counsel in the Cobell litigation about the historical statement of account he or she received in October 2002 or any other matter. For further information you may contact the lawyers for the class members: Dennis M. Gingold, Esq., 607 14th Street, N.W., 9th Floor, Washington, DC 20005, phone: (202) 824-1448, fax: (202) 318-2372, email: dennismgingold@aol.com, or Keith Harper, Esq., Native American Rights Fund, 1712 N Street N.W., Washington, DC 20036-2976, phone: (202) 785-4166, fax: (202) 822-0068, email: harper@narf.org. You may also access further information at the plaintiffs' website, www.indiantrust.com.

It is FURTHER ORDERED that the defendants are hereby permitted to send the 17,096 historical statements of account described in the Interior defendants' First Submission [2600] in Compliance With May 28, 2004 Memorandum and Order Regarding Historical Statements of Account; in accordance with the procedure outlined in this Court's May 28, 2004 Memorandum and Order, the Memorandum Opinion issued this date, and this Order; and including the following notice:

Please be aware that the Individual Indian Money (“IIM”) account holder for whom the historical statement of account to which this notice is attached was prepared may be a member of a class action lawsuit, Cobell v. Norton, No. 1:96CV01285 (D.D.C.) (Judge Lamberth). Nothing in this notice, the attached historical statement of account, or any letter, document, or other communication to which this notice may be attached will eliminate or adversely affect any rights that the IIM account holder for whom the attached historical statement of account was prepared may have if he or she is a class member in the Cobell litigation. The IIM account holder for whom the attached historical statement of account was prepared will not eliminate or adversely affect any rights that he or she may have as a class member by failing to challenge the attached historical statement of account.

As a potential class member, the IIM account holder for whom the attached historical statement of account was prepared has the right to consult with the class counsel in the Cobell litigation about this historical statement of account or any other matter. For further information you may contact the lawyers for the class members: Dennis M. Gingold, Esq., 607 14th Street, N.W., 9th Floor, Washington, DC 20005, phone: (202) 824-1448, fax: (202) 318-2372, email: dennismgingold@aol.com, or Keith Harper, Esq., Native American Rights Fund, 1712 N Street N.W., Washington, DC 20036-2976, phone: (202) 785-4166, fax: (202) 822-0068, email: harper@narf.org. You may also access further information at the plaintiffs’ website, www.indiantrust.com.

It is FURTHER ORDERED that the Interior defendants are not permitted to send out 8,435 additional historical statements of account that are described as “expected to be completed by July 6, 2004” in the Interior defendants’ First Submission [2600] in Compliance With May 28, 2004 Memorandum and Order Regarding Historical Statements until this Court grants final approval on the conditions outlined in this Court’s May 28, 2004 Memorandum and Order, the Memorandum Opinion issued this date, and this Order.

It is FURTHER ORDERED that any and all subsequent mailings of historical statements of account shall first be submitted to this Court as required by this Order, the Memorandum Opinion issued this date, the Court’s May 28, 2004 Memorandum and Order, and the Court’s Memorandum and Order issued December 23, 2002.

With respect to this Court's Order issued September 29, 2004, as clarified by the Court's Order issued October 1, 2004, it is hereby

ORDERED that neither the Court's Order issued December 23, 2002 nor the Court's Order issued September 29, 2004, as clarified by the Court's Order issued October 1, 2004, places any restriction on communications, written or oral, between Defendants, their agents, representatives, employees, officers, and counsel and members of the plaintiff class regarding:

1. Encumbrances, leasing, lease sales, permitting, rights-of-way, and timber sales of or on individually-owned Indian trust land;
2. The investment of trust funds in IIM accounts;
3. Estate planning, will drafting and the probate of or relating to Indian trust assets;
4. The surveying or appraisal of trust assets;
5. Title to trust lands;
6. Ownership of trust funds or lands; or
7. Physical improvement or alteration of trust assets.

It is FURTHER ORDERED that the Court's Order issued September 29, 2004, as clarified by the Court's Order issued October 1, 2004, is not applicable to oral communications, either in person or by telephone, between the defendants, their agents, representatives, employees, officers, and counsel and members of the plaintiff class.

With respect to communications between Interior and individual Indians regarding the sale, exchange, transfer or conversion of Indian trust land; and in accordance with the Court's Order issued September 29, 2004, as clarified by the Court's Order issued October 1, 2004, and the Memorandum Opinion issued this date; it is hereby

ORDERED that any and all communications between the Defendants, their agents, representatives, employees, officers, and counsel and members of the plaintiff class related to the sale, exchange, transfer, or conversion of Indian trust land that are not excepted by this Order must include the following notice:

Please be aware that the Indian trust land owner to whom the communications or documents to which this notice is attached were directed may be a member of a class action lawsuit, Cobell v. Norton, No. 1:96CV01285 (D.D.C.) (Judge Lamberth). Nothing in this notice or any letter, document, or other communication to which this notice may be attached will eliminate or adversely affect any rights that the Indian trust land owner who received this notice may have if he or she is a class member in the Cobell litigation. The Indian trust land owner who received this notice will not eliminate or adversely affect any rights that he or she may have as a class member by entering into any transaction or communication with any other person or organization, including the Department of the Interior or the Bureau of Indian Affairs, related to the sale, exchange, transfer, or conversion of Indian trust land.

As a potential class member, the Indian trust land owner who received this notice has the right to consult with the class counsel in the Cobell litigation prior to any proceeding with any further communication or transaction. For further information you may contact the lawyers for the class members: Dennis M. Gingold, Esq., 607 14th Street, N.W., 9th Floor, Washington, DC 20005, phone: (202) 824-1448, fax: (202) 318-2372, email: dennismgingold@aol.com, or Keith Harper, Esq., Native American Rights Fund, 1712 N Street N.W., Washington, DC 20036-2976, phone: (202) 785-4166, fax: (202) 822-0068, email: harper@narf.org. You may also access further information at the plaintiffs' website, www.indiantrust.com. The Indian trust land owner who received this notice may also choose to waive his or her right to consult with class counsel. If the Indian trust land owner who received this notice wishes to do so, he or she must mark the blank below, sign, and return this notice to the Bureau of Indian Affairs office from which you received it within ten (10) days. Waiver of the right to consult with class counsel will not eliminate or adversely affect any rights that the Indian trust land owner who received this notice may have as a class member in the Cobell litigation.

____ I, the undersigned, hereby waive my right to consult with class counsel in the Cobell litigation before continuing with communications or transactions involving or resulting in the sale, exchange, transfer, or conversion of Indian trust land.

SO ORDERED.

Signed by Royce C. Lamberth, United States District Judge, October 22, 2004.