

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

THE ESTATE OF ELOUISE PEPION COBELL,)
by and through her administrator, TURK COBELL,)
et. al.,)

Plaintiffs,)

v.)

Civil Action No.
1:96CV01285 (TFH)

SALLY JEWELL, Secretary of the Interior, *et al.*,)

Defendants.)

**PLAINTIFFS’ REPORT TO THE COURT REGARDING THE
STATUS OF HISTORICAL ACCOUNTING AND TRUST ADMINISTRATION
DISTRIBUTIONS**

Introduction

On November 5, 2015, the Governor of Montana proclaimed November 5 as “Elouise Cobell Day,” in recognition of her monumental perseverance against seemingly impossible odds in pursuing this litigation to its ultimate historic conclusion. As her son, Turk Cobell, noted in commenting on the proclamation, this lawsuit “wasn’t filed because she was looking for recognition . . . [or] because she was looking forward to spending the next 14 years traveling to Washington, D.C., to fight the U.S. government’s endless resources . . . It was, however, filed, simply because it was the right thing to do.”¹

¹ Sanjay Talwani, *Governor Proclaims Elouise Cobell Day in Montana: ‘A Warrior for All’*, KRTV (Nov. 5, 2015), <http://www.krtv.com/story/30450450/governor-procolaims-elouise-cobell-day-in-montana-a-warrior-for-all>.

The settlement that Ms. Cobell helped negotiate and that Congress ratified and this Court approved, “has touched the lives of every Native American in this country .”² It is the same level of perseverance that Elouise Cobell exemplified in pursuing this litigation that has also been required in seeing that the settlement terms are fulfilled and the distributions to almost 500,000 individual Indian beneficiaries achieved. Six years after the Settlement Agreement was signed, five years after it was approved by Congress, and three years after Final Approval from the courts and the first distributions were commenced, this report is being filed to advise this Court of the status of the distributions to date.

The Challenges in Making a Distribution

In November 2012, after the *Cobell* settlement received Final Approval from this Court and the Court of Appeals for the D.C. Circuit, Plaintiffs’ Counsel and the Claims Administrator, the Garden City Group, Inc. (“GCG”), received final data from the Department of Interior (“Interior”) regarding individuals Interior understood were entitled to receive payment under the Settlement Agreement. It was evident both from the preliminary data GCG had received from Interior after the settlement was executed and the final data received upon Final Approval of that settlement that there would be significant challenges in making a successful distribution. The information provided regarding Class Members was limited – often little more than a name and tribal affiliation.

Moreover, historically, the Office of Special Trustee (“OST”) of Interior, itself, had difficulty in locating a significant number of its own trust beneficiaries, maintaining a list of what it called the “Whereabouts Unknown” (“WAU”) list.³ In December 2009, at the time of settlement, there were 82,638 Individual Indian Money (“IIM”) account holders on the WAU

² *Id.* (quoting Harry Barnes, Chairman of the Blackfeet Tribal Business Council).

³ *See* Is OST Holding Money for You?, <https://www.doi.gov/ost/wau>.

list, an increase of over 40,000 since 2005.⁴ This constituted over 21% of the known account holders.⁵ Efforts by Interior and others to locate those on the WAU list had not made a significant dent in the overall number of missing individual beneficiaries.⁶

The challenges faced in making the *Cobell* settlement distributions were compounded by further complicating factors including that many of the identified Class Members had not been trust beneficiaries since the 1980's and their accounts were closed, many had no knowledge they were trust beneficiaries, a significant number were deceased and their heirs unknown, and the trust records upon which a distribution was to be based were recognized by this Court and the Court of Appeals to be broken.⁷ In many respects, in order to make a fulsome distribution of settlement funds, Class Counsel and GCG would be required to do what Interior had been unable to do for decades. A successful distribution, consequently, necessitated efforts well beyond those that had been attempted previously to locate individual Indian trust beneficiaries.

Therefore, while a typical class action notice program may be premised solely on “adequate” notice,⁸ which commonly is limited to the mailing of notice to a class member’s last known address, if available, supplemented with advertisements in a publication of general circulation, this action is not a “typical” settlement. Likewise, typical class actions,

⁴ Office of Inspector General, U.S. Department of the Interior, Report No. WR-IS-OST-0006-2009, *Whereabouts Unknown: An evaluation of actions taken to locate Whereabouts Unknown individuals by the Office of the Special Trustee for American Indians* 2, 4 (2010) (“IG Report”).

⁵ Comment, Bradley Richardson, *Presumed Dead: Laying to Rest the Whereabouts Unknown*, 58 S.D. L. Rev. 375, 380-381 (2013).

⁶ The Inspector General hired two private investigators, one to locate the top 100 individuals on the WAU list and the other to locate 4,000 individuals on the list, all at a cost in excess of \$1 million. The investigator hired to locate the top 100 individuals found 31 of them. No data was made available on the efforts of the second investigator. IG Report at 1, 9.

⁷ See *Cobell v. Norton*, 240 F.3d 1081, 1089 (D.C. Cir. 2001).

⁸ *In re Fed. Nat'l Mortg. Assoc. Secs, Derivative and “ERISA” Litig.*, 4 F. Supp. 3d 94, 101 (D.D.C. 2013), *appeal dismissed*, 2014 WL 1378762 (D.C. Cir. Apr. 3, 2014).

unfortunately, often result in distributions to 15% or less of the intended Class Members.⁹

However a “typical” class action distribution would be completely unacceptable here for a myriad of reasons.

First, this action was brought, in part, to rectify the historical exclusion of individual Indians who were the intended beneficiaries of the individual Indian trust – what Ms. Cobell characterized as Interior’s wrongful treatment of individual Indian beneficiaries as “nobodies, even though it was [their] own money.”¹⁰ Ms. Cobell worked tirelessly to see this injustice rectified. The settlement that is her legacy needs to be fulfilled and every reasonable effort must be made so that individuals wrongfully excluded from participation in the benefits of the trust likewise not be excluded from participation in the settlement when eligible.

Second, when beneficiaries who were left off the trust system are located, we often are able to identify the reasons that led to their exclusion. Therefore, each time we identify a Class Member, we get one step closer to correcting the issues that have historically plagued the trust system. A key element both of the litigation and the settlement was the continued reform of the individual Indian Trust.

Third, under the terms of the settlement, those funds due a Class Member deemed WAU by Interior, where an address had not been identified at the time of distribution, were placed in that Class Members’ IIM account. After 5 years, if Interior has not found an address after

⁹ A recent study looking at class action settlement distributions in five cases identified claims rates ranging from 0.000006% to 12%. The low percentage was attributed to the lack of addresses for class members and the failure of class members to file claim forms. Mayer Brown, LLP, *Do Class Actions Benefit Class Members? An Empirical Analysis of Class Actions*, pp. 9-10, located at <http://www.instituteforlegalreform.com/uploads/sites/1/Class-Action-Study.pdf>.

¹⁰ See Elouise Pepion Cobell: Banker-Warrior, <http://montanawomenshistory.org/elouise-pepion-cobell-banker-warrior/>.

reasonable efforts, those funds will go to the Cobell Scholarship Fund.¹¹ While the Scholarship Fund is certainly an important and worthy endeavor, all reasonable efforts must be undertaken to identify the intended beneficiary before that transfer to the Scholarship Fund takes place.

Finally, and not least importantly, the distribution of these funds has, and will continue to have, a significant economic benefit on many individual Class Members and Indian Country, in general.

Because of the magnitude and seriousness of the challenges, Class Counsel has taken a leadership role with GCG during the post-settlement period in the administration of the settlement and in locating eligible Class Members. The good news is that today, despite the considerable challenges faced, over 94% of the settlement funds available for distribution have been distributed to Class Members or their heirs and almost \$1.2 billion has been distributed to individual Indians across Indian Country. This status report details the efforts that have been undertaken to date and the plans for future outreach efforts as presented to the Special Master.

The State of the Trust Data in 2012

Plaintiffs have previously identified the condition of the Class Member data received by GCG in November 2012.¹² There was no current contact information for 315,349 of the total 488,112 Class Members, almost 4 times higher than Interior's own WAU list in December 2009. However, after considerable investigation and outreach even more problems with the records were identified.

¹¹ Settlement Agreement at E.1.i.

¹² See Plaintiffs' May 30, 2014 Status Report to the Court ("May 30, 2014 Status Report") [Dkt. No. 4048]. The numbers provided in this report vary from those in the May 30, 2014 Report because of the information regarding the Class Members and their accounts that has been discovered in the past 17 months through the continuing outreach that has been undertaken.

First, through meetings and conversations with trust beneficiaries it was determined that the list Interior provided was incomplete. Ultimately, Class Counsel, after requesting additional information from Interior, determined there were over 12,600 Historical Accounting Class members who were left off of Interior's list.¹³

Second, once again after discussions with trust beneficiaries, Class Counsel and GCG determined there had to be an error in Interior's trust land records as beneficiaries entitled to a payment were not scheduled to receive it. After bringing it to the attention of Interior, it was discovered there existed a significant error in existing land records which affected the eligibility of thousands of potential Trust Administration Class members.¹⁴

Third, Interior had divided the list of Class Members between those that were living and those that were deceased. However, through the present date Class Counsel and GCG have determined that 26,880 of those Class Members Interior listed as alive had, in fact, passed away, and 1,313 of those Class Members listed as deceased are very much alive. In fairness to Interior, a number of these individuals had not been trust beneficiaries for some time and there would have been no reason for it to have kept up with their status.

Fourth, we have discovered 22,522 cases of multiple records for the same beneficiary, which means that more than one account was opened for the same beneficiary as Interior did not realize they were the same person.¹⁵ This had the potential for multiple payments to mistakenly

¹³ Order on Plaintiffs' Unopposed Motion to Include and Authorize Payment to Additional Individuals in the Historical Accounting Class dated January 23, 2014 [Dkt. No. 4030]; Order Approving Payments to Members of the Trust Administration Class dated September 11, 2014 [Dkt. No. 4067] at ¶ 3.

¹⁴ See Plaintiffs' Status Report Regarding Progress on Efforts to Commence Trust Administration Class Payments dated July 14, 2014 [Dkt. No. 4054] at ¶ 1.

¹⁵ As we have discovered, there could be many reasons for this including a misspelling of a name, a name change by a man or woman, an adoption, a remarriage, or simply a failure to realize there was an existing account.

go to a single beneficiary. Similarly, 24,004 cases have been identified of improperly merged accounts, meaning that Interior, believing that multiple people were the same person, combined the accounts. This had the potential for payments owed to multiple individuals to go to a single person.

Fifth, Interior had coded certain accounts as “N” Accounts meaning they were non-Indian. This designation was typically used when a tribal member had a non-Indian spouse. However, unfortunately we have also determined that the practice of using “N” Accounts varied by region. In some cases “N” accounts were used for individual Indians who were not tribal members, requiring that we look beyond the account designation to determine class membership.

Finally, in many cases, trust land records were not updated, particularly in Oklahoma, requiring extensive outreach in those areas to identify Class Members.

The Nature of Outreach Efforts

The National Commission on Indian Trust Administration and Reform, established by Secretary Salazar pursuant to Secretarial Order 3292 upon settlement of the *Cobell* litigation in December 2009, issued a Final Report dated December 10, 2013, in which it made certain recommendations regarding the longstanding problems with the WAU list. One of those recommendations we found to be particularly relevant – to work with tribal organizations in locating missing beneficiaries and their heirs.¹⁶

The Indian Trust system cannot be fixed and missing beneficiaries cannot be identified by staring at a computer screen. The key is outreach, and over the past five years, Class Counsel and GCG have made extensive efforts to reach individual Indian beneficiaries, to work with local tribal and allottee associations, and to research tribal and local BIA agency records where

¹⁶ See Dep’t of the Interior, *Report of the Commission on Indian Trust Administration and Reform* 45 (Dec. 10, 2013), <https://www.doi.gov/cobell/commission>).

permitted in an effort to identify Class Members or their heirs. In doing so, we have put aside the adversarial relationship between the Plaintiffs and Interior that so often characterized the litigation. Interior has frequently provided us access to records and officials at local agencies have often worked with GCG and Class Counsel in identifying helpful information, pulling probate orders determined by the Office of Hearings and Appeal, and assisting in finding contact information so payment can be made to Class Members or their heirs.

The outreach has included the following steps:

1. Immediately after announcement of the settlement in December 2009, Class Counsel made extensive trips to Indian Country to advise individual Indian beneficiaries of the settlement and to begin collecting necessary contact information. These trips were undertaken independent of GCG.

2. Again, in 2011, after Congressional approval but prior to approval of the settlement by this Court in July 2011, Class Counsel and their representatives undertook trips throughout Indian Country.

3. As set forth in the Table below, prior to approval of the settlement by this Court approximately 87 meetings were held by Class Counsel and their representatives throughout Indian Country within the exterior borders of 16 states. Many of the meetings were in some of the most geographically remote areas of this country where there were likely a significant number of potential Class Members. Once again, information was collected regarding Class Members and heirs of Class Members to use in considering future distributions and, where necessary, translators accompanied Class Counsel in order to overcome language barriers.

Date	Meeting	State
03/07/2010	Pine Ridge/Oglala Sioux	SD
03/08/2010	Rosebud Sioux	SD
03/09/2010	Standing Rock	ND

03/09/2010	Cheyenne River Sioux	SD
03/10/2010	Sisseton-Wahpeton	SD
03/11/2010	Santee Sioux	NE
03/11/2010	Yankton	SD
03/11/2010	Winnebago	NE
03/17/2010	San Carlos Apache	AZ
03/17/2010	White Mountain Apache	AZ
03/18/2010	shi shi keyah (Navajo)	NM
03/18/2010	Church Rock Chapter (Navajo)	NM
03/19/2010	Farmington (Navajo)	NM
03/19/2010	Blackfeet	MT
03/20/2010	Rapid City, SD / Plains tribes	SD
03/21/2010	Flathead – Salish Kootenai	MT
03/23/2010	Fort Belknap	MT
03/23/2010	Fort Peck	MT
03/29/2010	Crow	MT
03/29/2010	Northern Cheyenne	MT
03/29/2010	Nez Perce	ID
03/29/2010	Tohono O'odham	AZ
03/29/2010	Salt River	AZ
03/29/2010	Colville	WA
03/30/2010	Yakama	WA
03/31/2010	Wind River Reservation tribes (Eastern Shoshone and Northern Arapaho)	WY
04/01/2010	Shoshone-Bannock	ID
05/06/2010	Meeting of Oklahoma Tribes in Oklahoma City	OK
05/19/2010	Three Affiliated Tribes mid-year meeting	ND
06/14/2010	United Southern and Eastern Tribes (USET)	
10/27/2010	Presentation to ILWG Symposium in Spokane, WA	WA
02/02/2011	Agua Caliente	CA
02/02/2011	Morongo	CA
02/02/2011	Ho Chunk	WI
02/03/2011	Bad River	WI
02/03/2011	Lac Courte Oreilles Tribe	WI
02/04/2011	Fond du Lac Band	MN
02/08/2011	Pueblo of Laguna	NM
02/08/2011	Navajo Church Rock Chapter House	NM
02/09/2011	Farmington/Navajo	NM
02/09/2011	Torreon Chapter House/Navajo	NM
02/14/2011	White Mountain Apache Tribe	AZ

02/14/2011	Spirit Lake Tribe	ND
02/14/2011	San Carlos Apache Indian Reservation	AZ
02/15/2011	Gila River Indian Community	AZ
02/15/2011	Salt River	AZ
02/15/2011	Turtle Mountain Band of Chippewa	ND
02/16/2011	Tohono O'odham Nation	AZ
02/16/2011	Three Affiliated Tribes - Fort Berthold	ND
02/16/2011	Fort Peck	MT
02/18/2011	Fort Belknap	MT
02/22/2011	Santee Sioux	NE
02/22/2011	Yankton Sioux	SD
02/23/2011	Rosebud Sioux	SD
02/24/2011	Pine Ridge/Oglala	SD
02/25/2011	Cheyenne River Sioux	SD
02/26/2011	Standing Rock	ND
02/27/2011	Sisseton Wahpeton	SD
03/01/2011	Quinault	WA
03/02/2011	Makah	WA
03/02/2011	Squaxin Island	WA
03/08/2011	Blackfeet	MT
03/09/2011	Flathead - Salish Kootenai	MT
03/10/2011	Nez Perce	ID
03/11/2011	Colville	WA
03/14/2011	Anadarko - Cheyenne-Arapahoe, Apache, Wichita, Caddo and Kiowa	OK
03/14/2011	Lawton/Comanche	OK
03/15/2011	Choctaw	OK
03/16/2011	Muskogee - Eastern Creek/Creek, Cherokee, Chickasaw	OK
03/16/2011	Tulsa Creek	OK
03/21/2011	Uintah & Ouray	UT
03/22/2011	Shoshone-Bannock	ID
03/23/2011	Eastern Shoshone	WY
03/23/2011	Northern Arapaho	WY
03/24/2011	Crow	MT
03/24/2011	Northern Cheyenne	MT
03/31/2011	Anchorage	AK
04/01/2011	Fairbanks	AK
04/11/2011	Ojibwa/Keneenaw Bay	MI
04/11/2011	Yakama	WA

04/12/2011	Warm Springs	OR
04/12/2011	Lac du Flambeau	WI
04/13/2011	Hoopa Valley	CA
04/13/2011	Yurok	CA
04/13/2011	Red Lake Band of Chippewa	MN
04/14/2011	Leech Lake Band	MN
04/14/2011	White Earth Band of Chippewa	MN

4. The outreach by Class Counsel in advance of Final Approval of the settlement, coupled with publicity about the lawsuit generally, had a significant effect on the number of trust beneficiaries considered WAU by Interior. By the time of Final Approval that number had decreased 20% from 82,638 to 66,846.¹⁷

5. Class Counsel maintained a toll free number and an email address devoted to potential Class Members during the course of the litigation. They have continued to use it during the post-settlement period and have publicized it at meetings throughout Indian Country. During the post-settlement period a paralegal has been monitoring the *Cobell* phone line and email address and referred potential or existing Class Members to GCG or Class Counsel for response where appropriate. In addition, Class Counsel has regularly received phone calls directly and correspondence from existing or potential Class Members to which they have responded. They estimate that during the post-settlement period to date they have handled in excess of 10,000 phone calls, emails and letters in an effort to assist existing Class Members with the status of payments or potential Class Members to determine eligibility.

6. Class Counsel retained noted communications and media expert Kathy Kinsella to devise a notice program. The notice program consisted of six parts:

- a. Direct mail notice to Class Members with identifiable addresses;

¹⁷ May 30, 2014 Status Report at 2.

- b. Newspaper, radio, television and other paid media advertisements;
- c. Outreach to tribes and other organizations that could assist with notice;
- d. A national public relations campaign;
- e. Electronic notice through an internet website; and
- f. Two separate notice periods, one prior to court approval and one in

advance of the Trust Administration Class payments.

It has been described as the most robust Class Member notice ever provided.¹⁸ The Class notice has been immensely successful.

7. During the course of the litigation, Class Counsel maintained a website to keep Class Members updated regarding the course of the litigation. After settlement, on December 8, 2009, GCG took over responsibility for the website and used it as a means of outreach to potential Class Members. Since the settlement, the website has received 5,346,257 visits. The website has been maintained and updated with current relevant information on the settlement and its status. It housed a list of WAU individuals and estates without documentation so that Class Members could review. The website was continually updated with important Court documents as the case evolved and the Special Master made rulings for estate distribution.

8. GCG has also maintained a toll free number during the post-settlement period for existing or potential Class Members. It has received approximately 3,410,385 calls in the call center and spent over 25,275,000 minutes on the phone with actual or potential Class Members answering questions and explaining the settlement or distribution process. Outside the call center, GCG has had another 72,305 calls as part of outreach efforts. GCG set up a special Toll Free number just for WAU Class Members and heirs of estates where we did not have

¹⁸ See Declaration of Kathy Kinsella [Dkt. No. 3762; Exhibit 2] at ¶ 72.

documentation to distribute. GCG has received over 244,100 emails to which it promptly responded by email, phone or letter where required. GCG has also sent 219,081 emails and 126,804 letters in addition to the initial 336,671 notice and claim form packets sent to those with known addresses and 485,000 determination letters sent regarding claim determination.

9. After Final Approval, Class Counsel and GCG continued outreach efforts to identify Class Members and heirs of those who had passed away. In addition to phone calls, emails and correspondence with actual and potential Class Members, outreach to tribes and tribal organizations and efforts to publicize the settlement in local and national publications, Class Counsel and GCG again went back out to Indian Country and held town hall meetings to reach out to areas where there were significant missing Class Members. A listing of those outreach efforts is attached hereto as Exhibit 1. These included the following:

- a. Meetings in Oklahoma City, Oklahoma, for Oklahoma Tribes on June 12, 2013.
- b. Meetings on the Navajo Reservation on July 15, 2013.
- c. Meetings on the Navajo Reservation on September 9-10, 2013.
- c. Meetings in Anadarko, Oklahoma, for various Oklahoma tribal members on June 2, 2014.
- d. Meetings at the Choctaw Nation on June 3, 2014.
- e. A meeting at the Otoe-Missouria Tribe in Oklahoma on June 4, 2014.
- a.. Meetings in Oklahoma City, Oklahoma, for Oklahoma tribes on June 4, 2014.
- f. Meetings in Anchorage, Alaska, on June 9-10, 2014.
- g. Meetings at the Three Affiliated Tribes in Fort Berthold, North Dakota, on June 27, 2014.
- h. Meetings at the Pine Ridge Reservation in South Dakota on July 10, 2014.

- i. A meeting at the Fort Belknap Indian Community in Montana on August 1, 2014.
- j. A meeting with the Blackfeet Tribe in Montana on August 20, 2014.

10. By April 2015, tremendous progress had been made. 93% of all Historical Accounting Class payments and 84% of the Trust Administration Class payments had been distributed. However, there remained 46,325 unidentified Class Members and 33,070 estates for which there was no documentation on which to make a distribution.¹⁹ Therefore, Class Counsel looked to other methods by which Class Members and heirs could be identified. Community tribal meetings and publications regarding the settlement had been important in conveying information to a wide group of potential beneficiaries. Similarly, publicizing the lists of WAU Class Members was key to having potential Class Members or their relatives and heirs contact Class Counsel or GCG. However, publicizing the lists also caused frustration when an individual with the identical name as one on the list contacted GCG only to find out it was someone else. Moreover, due to the inaccuracy of the information received from Interior, some of the individuals on the WAU list turned out not to be Class Members at all. Therefore, future efforts had to be more focused.

11. Class Counsel, with the assistance of GCG, identified those Tribes which had significant numbers of Class Members who had not yet been located and estates with no identifiable heirs where efforts to obtain tribal records had not been successful. Many of those efforts are identified in Exhibit 1. Specific outreach efforts subsequent to April 2015 by Class Counsel included the following:

- a. A meeting with the enrollment office of the Kiowa Tribe in Oklahoma on May 4, 2015.

¹⁹ Plaintiffs' Status Report Regarding Distribution of Historical Accounting and Trust Administration Class Payments and the Cobell Scholarship Fund [Dkt. No. 4121] at ¶¶ 2-5.

- b. A meeting with the enrollment office of the Osage Tribe in Pawhuska, Oklahoma, on May 5, 2015.
- c. A meeting at the Poarch Creek Tribe in Atmore, Alabama, on May 6, 2015.
- d. A meeting with the enrollment director of the Ponca Tribe of Indians in Oklahoma on June 4, 2015.
- e. A meeting with the Pawnee Tribe of Oklahoma on June 4, 2015.
- f. A meeting with the enrollment office of the Choctaw Nation in Durant, Oklahoma, on June 5, 2015.
- g. A meeting with the enrollment office of the Fort Berthold Reservation in North Dakota on June 22, 2015.
- h. A meeting with the Council of the Omaha Tribe of Nebraska on June 23, 2015.
- i. A meeting with the enrollment office of the Sisseton-Wahpeton Tribe of the Lake Traverse Reservation in South Dakota on June 23, 2015.
- j. A meeting with the enrollment office of the Santee Sioux Tribe in Nebraska on June 24, 2015.
- k. A meeting with the enrollment office of the Yankton Sioux Tribe in South Dakota on June 25, 2015.
- l. A meeting with the enrollment office at the Rosebud Reservation in South Dakota on June 26, 2015.
- m. A meeting with the enrollment office of the White Earth Band of Chippewa Indians in Ogema, Minnesota, on September 15, 2015.

- n. A meeting with the enrollment office of the Leech Lake Tribe in Cass Lake, Minnesota, on September 15, 2015.
- o. A meeting with the enrollment office of the Red Lake Band of Chippewa Indians in Red Lake, Minnesota, on September 15, 2015.
- p. A review of enrollment records for Minnesota Chippewa Tribes (except Red Lake) at the offices of the Great Lakes Inter-Tribal Council in Cass Lake, Minnesota, on September 23-24.
- q. A meeting with the enrollment director of the Umatilla Reservation in Oregon on October 8, 2015.
- r. A review of enrollment records for Minnesota Chippewa Tribes (except Red Lake) at the offices of the Great Lakes Inter-Tribal Council in Cass Lake, Minnesota, on October 19-22, 2015.
- s. A meeting scheduled with the San Carlos Apache Tribe of Arizona for January 5, 2016.

12. The information collected was extremely helpful in identifying Class Members and heirs. In addition, it was discovered that, in reviewing enrollment lists, many of those individuals identified by Interior as living were deceased and had, in fact, been deceased for decades, affecting class eligibility.

13. In addition, as Class Counsel developed a closer working relationship with Interior it became apparent that, while Interior had provided updates on Class Member status and probate information, much of the information helpful in identifying Class Members and the heirs of those who had passed away was located at the local agency level. As a consequence, Class Counsel requested permission to have GCG review relevant records at certain local BIA

agencies where there remained large numbers of missing Class Members and unidentified heirs of those who are deceased. This permission was allowed by the Department of Justice and Interior and GCG has spent significant time and efforts successfully reviewing BIA records at the following locations:

- a. At the Osage Agency in Oklahoma on June 30 to July 4, 2015;
 - b. At the Yankton Agency in South Dakota on August 5-6, 2015;
 - c. At the Bemidji Agency in Minnesota in September 2015;
 - d. At the Everett Agency in Washington on September 10, 2015;
 - e. At the Crownpoint Agency on the Navajo Nation in New Mexico on September 20-23, 2015;
 - f. At the Sells Agency on the Tohono O'odham Reservation in Arizona on September 29-30, 2015;
 - g. At the Yakama Agency in Toppenish, Washington, on October 14-16, 2015;
 - h. At the Turtle Mountain Agency in North Dakota on November 16 – 20;
- and
- i. At the Sault Ste. Marie BIA Agency in Michigan on December 7-11.

14. These efforts have been extremely successful. In particular, we have found that tribal and BIA records, alone, are often insufficient to identify Class Members and heirs as neither have the complete picture. However, when we have both sets of records, the pieces fit together and Class Members are more likely identified and located. The following are specific examples:

a. Class Counsel obtained permission from the Osage Tribe of Oklahoma to gain access to enrollment records for the Tribe. In addition, they received permission for GCG to review relevant records at the BIA Osage Agency. Those records were reviewed by GCG from June 30 to July 3, 2015. GCG visited the Osage Tribal Enrollment Office the first week of July 2015. By reason of the visit, GCG is in the process of distributing an additional \$4,469,806.81 to Osage Tribal members or their heirs.

b. Class Counsel obtained permission to review enrollment records for the Leech Lake, Fond du Lac, Mille Lac, and White Earth Bands of Chippewa Indians in Minnesota and received permission for GCG to review records at the local BIA agency in Bemidji. GCG reviewed the records at the agency in September 2015 and Class Counsel and GCG reviewed the tribal records in September and October 2015. Because of the success of that trip we were able to locate 3,500 additional Class Members or their heirs with a potential additional distribution of \$4.8 million.

c. While working in South Dakota it became apparent to Class Counsel that there were key records available at the BIA Regional Office in Yankton, South Dakota. Class Counsel obtained permission for GCG to visit that agency in August 2015. During this visit, GCG was able to review and collect data and documentation to support payment to previously unpayable Class Members of the Yankton Sioux Tribe. From the information reviewed, GCG was able to identify 425 previously unpayable Class Members owed approximately \$653,736.

GCG was also able to determine that 157 of those tribal Class Members identified as living and without contact information were duplicates to other records and that 76 of those listed as living were actually deceased. Probate documents for 51 of these 76 were located. In total, GCG was able to reduce the list of Class Members without contact information by about

half. GCG also reviewed files and probate records for the 492 estates where we previously had not been provided documentation for distribution to heirs. GCG was able to obtain 120 additional probate orders so that distributions could occur to heirs, and confirm duplicate records for 53 estate records.

d. In October 2015, GCG visited the BIA Agency in Toppenish, Washington, to review records for the Confederated Tribes and Bands of the Yakama Nation. GCG was able to obtain probate orders, wills, and OHA-7 forms for 316 estates. GCG also obtained contact information for the potential heirs of 50 other estates, which GCG is using to attempt to obtain distributable documentation. GCG was able to also obtain contact information for 48 living Class Members. This will potentially result in additional distributions to Class Members or their heirs of \$1,693,921.

e. Class Counsel arranged for GCG to visit the Eastern Navajo Agency office in Crownpoint, New Mexico, in September 2015. This visit to the Navajo Nation resulted in GCG identifying almost 1,100 Class Members with a total amount now distributable of \$2,151,338.44.

The Status of Historical Accounting and Trust Administration Distributions

GCG and Class Counsel are in the final phase of the distribution efforts. They will soon exhaust all reasonable efforts at locating Class Members. They are continuing to focus their efforts on the small number of tribes and agencies where there remain significant numbers of missing Class Members and older unpaid estates. They expect these efforts will be concluded in the early part of the second quarter of 2016.

It would be an understatement to say that the distribution and outreach efforts to date by Class Counsel and GCG have been incredibly extensive. Indeed, we cannot locate one other

settlement where such intensive efforts have occurred or where the location of previously unidentified class members has been so successful. To date, over 96% of the Historical Accounting Class Members have been paid or are in the process of being paid. Approximately 88% of the Trust Administration Class Members have been paid or are in the process of being paid. 90% of the total Trust Administration Class Funds have been distributed, and GCG has documentation or contact information to distribute an additional 3% of the funds to Class Members for an anticipated total distribution of 93%.

In order to achieve this result, over 80% of the individuals on Interior's own WAU list have been located. There remain approximately 37,793 unidentified living Class Members and 22,339 estates without documentation upon which a distribution can be made at this time. Many of those estates are likely pending at Interior. As noted, an intensive and focused effort will be made by GCG and Class Counsel over the next four months in cooperation with the BIA to further reduce these numbers. However, based on our experience to date it is likely that a significant number of those remaining in the data provided by Interior as living Class Members are, in fact, deceased, are duplicate accounts or are not, in fact, Class Members.

As a result, GCG and Class Counsel are striving to conclude all reasonable efforts by April 30, 2016.

Respectfully submitted this 18th day of December, 2016.

/s/ David C. Smith
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **PLAINTIFFS' REPORT REGARDING STATUS OF HISTORICAL ACCOUNTING AND TRUST ADMINISTRATION DISTRIBUTIONS** was served on the following via facsimile, pursuant to agreement, on this 18th day of December, 2015.

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