

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

ELOUISE PEPION COBELL, et al.,)
on their own behalf and on behalf of)
all persons similarly situated,)

Plaintiffs,)

vs.)

GALE NORTON, Secretary of)
the Interior, et al.,)

Defendants.)
_____)

Case No.96CV1285 (RCL)

**PLAINTIFFS REQUEST FOR EMERGENCY STATUS CALL TO PREVENT FURTHER
RETALIATION TO INDIVIDUAL INDIAN TRUST BENEFICIARIES**

Plaintiffs request an emergency status call to prevent the government from taking retaliatory action against the individual Indian trust beneficiaries. Apparently, the defendants, in reaction to this Court’s September 29, 2004 Memorandum Opinion, have taken the position that they will no longer communicate with class members “on virtually any subject related to the trust.” *See* Plaintiffs’ Exhibit 1. According to Special Trustee, Ross Swimmer:

It could, for instance, mean **we cannot send checks out until we either have a waiver or have a court approved notice to go out with each check**, we could not hold community meetings or meet with beneficiaries until we a court approved notice is provided the beneficiary or they have provided us a written waiver. . . . it could be some time before this is resolved. For the time being, **it is essential that NO communication be held with a class member until further notice.**

Id. at 1 (emphasis added, capital emphasis in original). *See also id.* (“[I]t is critical that any activity that may result in communication with beneficiaries be put on hold until further notice.”).

Plaintiffs request this status call on an expedited basis because without Court intervention, there is an imminent risk that checks **will** be withheld in to punish individual Indian trust beneficiaries because they are enforcing their vested rights in this litigation. Defendants’ rationale for such a tortured interpretation of this Court’s order is disingenuous; no reasonable interpretation supports the conclusion reached by Mr. Swimmer et al. This attitude is yet another wrong-headed

and cynical attempt to retaliate against beneficiaries and undermine the integrity of the judicial process. A status call requiring the presence of Mr. Swimmer is the most effective way to discuss this problem and the irreparable harm that will surely occur if defendants do what they **again** threaten to do – withhold distribution of desperately needed trust funds.

Respectfully submitted,

/s/ Dennis Gingold

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Attorneys for Plaintiffs

September 30, 2004

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing PLAINTIFFS REQUEST FOR EMERGENCY STATUS CALL TO PREVENT FURTHER RETALIATION TO INDIVIDUAL INDIAN TRUST BENEFICIARIES was served on the following via facsimile, pursuant to agreement, on this day, September 30, 2004.

Earl Old Person (*Pro se*)
Blackfeet Tribe
P.O. Box 850
Browning, MT 59417
406.338.7530 (fax)

/s/ Geoffrey Rempel

Geoffrey M. Rempel

FYI take notice about outreach meetings.
— Forwarded by Doug Lords/OST/QS/DOJ on 09/30/2004 08:06 AM —

Ross Swimmer
09/30/2004 07:54 AM

To: OST_Sr_Mgr

cc:
Subject: New Court Order

We have just been blessed with a new order from Judge Lamberth regarding communication with beneficiaries. There are several parts to the order and it will be discussed in D.C. this afternoon to try and glean what he is talking about. However, it is critical that any activity that may result in communication with beneficiaries be put on hold until further notice.

It is Ordered that, pursuant to Rule 23(d) of the Federal Rules of Civil Procedure, this Court's Order of December 23, 2002, is hereby supplemented as it applies to communications between the Interior defendants and class members related to the sale, exchange, transfer or conversion of Indian trust land as follows:

During the pendency of the instant litigation, the parties to the litigation, their agents, representatives, employees, officials, and counsel shall not communicate, through the United States mail or any other mode of communication, with any member of the plaintiff class in this litigation regarding the sale, exchange, transfer, or conversion of any Indian trust land unless such communication is conspicuously marked with a notice that has been previously submitted to and approved by this Court. (It then goes on to list 7 items to be put into the notice)

IT IS FURTHER ORDERED: that henceforth, communications between the Interior defendants, their agents, representatives, employees, officers, and counsel and members of the plaintiff class may proceed only if a Court-approved version of the above-described notice is conspicuously displayed on such communications and then only between the Interior defendants, their agents, representatives, officers, and counsel and plaintiffs' counsel unless the class member with whom communication is sought has waived his or her right to consult class counsel, in which case communication may proceed between the Interior defendants, their agents, representatives, employees, officers, and counsel and the individual class member.

This would appear to prohibit all communications with class members on virtually any subject related to the trust. It could, for instance, mean we cannot send checks out until we either have a waiver or have a court approved notice to go out with each check, we could not hold community meetings or meet with beneficiaries until a court approved notice is provided the beneficiary or they have provided us a written waiver. We have 10 days to provide a draft of such a notice, the court will review and plaintiffs will likely object so it could be some time before this is resolved. For the time being, it is essential that NO communication be held with a class member until further notice. We will be meeting with counsel at noon and 5pm EST to discuss and I will send advisories as soon as available. Thank you for your attention to this very serious matter.