

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOISE COBELL, ET AL,	.	DOCKET NUMBER: CA 96-1285
	.	
Plaintiffs,	.	
	.	
vs.	.	Washington, D.C.
	.	October 15, 2010
DEPARTMENT OF INTERIOR,	.	10:00 a.m.
	.	
Defendant.	.	
.	

TRANSCRIPT OF STATUS CALL
BEFORE THE HONORABLE THOMAS F. HOGAN
A UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:	DENNIS M. GINGOLD, ESQUIRE 607 14th Street, NW 9th Floor Washington, D.C. 20005 (202) 824-1448 (202) 318-2372 (fax) dennismgingold@aol.com
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FOR THE DEFENDANT:	ROBERT E. KIRSCHMAN, JR., ESQUIRE U.S. DEPARTMENT OF JUSTICE 1100 L Street, NW Suite 10008 Washington, D.C. 20005 (202) 616-0328 robert.kirschman@usdoj.gov
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THE COURT REPORTER: SUSAN PAGE TYNER, CVR-CM
 Official Court Reporter
 United States District Court
 333 Constitution Avenue, N.W.
 Room 6523
 Washington, D.C. 20001
 (202) 354-3267

Computer aided transcript prepared with the aid of
SpeechCAT.

SUSAN PAGE TYNER, CVR-CM
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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P R O C E E D I N G S

THE COURTROOM DEPUTY: All rise. This Honorable Court is now in session. The Honorable Judge Thomas F. Hogan presiding. Please be seated and come to order.

THE COURT: Call the case.

THE COURTROOM DEPUTY: Civil action 96-1285, Eloise Cobell, et al, versus the United States.

Counsel, please approach the lectern stating your names and who you represent for the record?

MR. KIRSCHMAN: Your Honor, Robert Kirschman representing the defendants.

THE COURT: Thank you, Mr. Kirschman.
Mr. Gingold?

MR. GINGOLD: Your Honor, Dennis Gingold for the Cobell plaintiffs.

THE COURT: Thank you. From your status call this morning, having had a chance to talk with counsel, and the representatives of the government, and of Ms. Cobell in the class in my chambers concerning the efforts to effectuate the settlement that was approved last year by the parties after some dealings with the Senate, the House having approved this settlement and having extended the authority for it, the Senate had not done so, and through the efforts of the plaintiffs and the support of the administration, it is hoped that the concerns that have been evidenced about

1 settlement in the Senate would be alleviated and be
2 approved.

3 It was not reached prior to their recess for the
4 fall. It was reported to me the hope that the lame duck
5 session would consider this settlement, and that may be the
6 last opportunity that is presented to approve this before we
7 would have to go back into litigation.

8 It is concerning to the court that the Senate did
9 not complete the settlement that had been negotiated at
10 arm's length for over many years of litigation, and I won't
11 repeat the history -- the extensive history of this
12 litigation. The case number alone shows the history of it
13 -- it is a 1996 case number, and the tremendous work that
14 was done by counsel in the case.

15 Judge Lamberth and Judge Robertson both have
16 expended tremendous efforts in an attempt to get this matter
17 resolved, and Judge Robertson had been particularly
18 concerned about the settlement being finalized before he
19 retired, and he had hoped to, in fact, eventually convene a
20 session if the members of Congress would be so kind to
21 attend to explain to him, and to the Indian country and the
22 American people why the approval required by the settlement
23 agreement had not been given.

24 The settlement I believe was announced last
25 December, and has -- will reach its year's deadline this

1 December without yet -- if not approved in the lame duck.
2 It is hopeful that in the lame duck session that the Senate
3 would seriously consider taking up the Cobell settlement on
4 its own merits, independent of any other issues and consider
5 it.

6 My review of all of the decisions that have been
7 rendered, and I think that there are nine appeals at least,
8 eight and a half reversals of the District Court, but
9 multiple appeals, multiple litigation.

10 But underlying that, the merits are very clear as
11 to the need for restitution of the funds lost through the
12 mismanagement of the Indian Trust Royalty funds, and I am
13 not sure of the concern.

14 If the budgetary issues are satisfied, the
15 rationale for not approving what has been called the Cobell
16 settlement, named for Ms. Cobell, the lead plaintiff, the
17 Cobell settlement -- by the Senate, separate and apart from
18 any other matters.

19 It is the court's hope that the Congress will, and
20 the Senate particularly, act after November 15th before they
21 close to effectuate the settlement.

22 I have been assured, and I accept the assurances
23 given the good faith, and present today is Under Secretary -
24 -

25 DEPUTY SECRETARY HAYES: Deputy.

1 THE COURT: Deputy Secretary Hayes from the
2 Department of Interior. He has been very influential in
3 helping to move this matter forward to fruition, and at
4 this status conference in chambers, as well as the first one
5 I had, I have been assured that the administration from --
6 the Secretary of Interior has personally been involved
7 through the Justice Department and from the highest levels
8 of the White House, desire this settlement to be completed
9 as has been agreed to.

10 The plaintiffs' counsel have been working overtime
11 in attempts to satisfy issues Congress may have had, and by
12 that I mean the legislative generally have had, and trying
13 to explain the importance of this settlement.

14 It is just not to the Indian country, but it is
15 also the entire country, for something that is owed and due
16 by the United States to its citizens.

17 I have asked the parties to extend the settlement
18 briefly in an attempt -- the settlement agreement terms
19 rather than having a deadline where it will end and we will
20 be back in litigation, because litigation will be -- again,
21 multiple years of litigation will be facing the parties on
22 each side with an uncertain results.

23 In any event, I have requested that they extend
24 the settlement for another several weeks so that Congress
25 would be given perhaps the one last chance, particularly the

1 Senate, to approve the settlement.

2 I need to ask plaintiff's' counsel, have you had
3 an opportunity to discuss the final date that we could work
4 out as to the extension?

5 MR. GINGOLD: Your Honor, I briefed Ms. Cobell on
6 the issues, and she concurs with Your Honor's request to
7 extend it to the 7th.

8 THE COURT: I appreciate that very much.

9 I had requested the plaintiffs' counsel and the
10 plaintiffs lead individual, Ms. Cobell, to extend the
11 settlement time to beyond what perhaps they considered was
12 reasonable after waiting almost a year to get this
13 completed, and in an effort to get this done they have now
14 agreed with that.

15 The government has also agreed to extend the time
16 of the settlement to January 7, 2011, the date I felt was
17 appropriate, because if the Congress approves the settlement
18 in November or December, there are going to be matters to
19 resolve to make sure it can be all accomplished. If they
20 don't, it gives a little time to see if there are any
21 alternative mechanisms that are available to solve this
22 matter.

23 I can only urge the responsible parties to this,
24 and not just the plaintiffs and the defendants who are the
25 representatives, but that the Senate and the Congress, but

1 particularly the Senate, to take up the settlement over the
2 lame duck session.

3 It is -- if you read the history of this
4 litigation, the findings by the District judges uniformly
5 as to the liability that the government has in this matter,
6 and the findings of the mismanagement that occurred over the
7 hundred years or so, it is clear that there should be a
8 negotiated settlement as has been affected between the
9 parties to compensate for the losses incurred.

10 The settlement, despite its size, is only
11 reflective of some of the damages that are claimed by the
12 plaintiffs that have occurred over the years, and the
13 additional part of the settlement as to the land
14 consolidation fund is absolutely necessary for the agency to
15 be able to carry out its statutory duties and to
16 satisfactorily and adequately handle the lands that are
17 under their management as trustee.

18 So the court, I would urge in the strongest terms,
19 for the Legislative Branch to take up these matters. The
20 Executive and the Judicial Branch have spent a phenomenal
21 amount of efforts on these matters, and it is time that the
22 Legislature resolve them as soon as possible.

23 That being said, I will agree to extend the
24 settlement until the close of business on January 7, 2011.
25 Additionally, I will set up a status call at this time so

1 that the parties can come back and advise the court as to
2 the situation at that time. If anything occurs between now
3 and then, the parties are obviously free to call the court
4 and schedule an earlier hearing.

5 Is January 7 available for the parties?

6 MR. KIRSCHMAN: Yes, Your Honor.

7 THE COURT: I gave you till the close of business,
8 because things could still happen until then, but I think we
9 should do a status call January 7 to see where we are. So
10 January 7 at 10:00 a.m. we will do a status call. I
11 will be in town then.

12 Again, I appreciate the efforts of both sides,
13 the Department of the Interior and the Administration, and
14 all of the efforts of Mr. Gingold and Kilpatrick and
15 Stockton in an attempt to resolve these matters, and Ms.
16 Cobell.

17 The efforts should not go in vain. It is my hope
18 that the Legislative Branch will take up this matter, and I
19 think it is essential that they do so during the lame duck
20 session. Otherwise, I think the settlement could not go
21 forward, and we would be in, again, years over very
22 expensive, time-consuming litigation with uncertain results
23 for both sides.

24 I only can urge in the utmost terms for the
25 consideration of Cobell on its own merits the Cobell

1 settlement after all of this litigation to move forward with
2 the settlement.

3 Thank you all for coming in. There is nothing
4 else. I appreciate it.

5 **(Whereupon, the proceedings were adjourned.)**

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7 CERTIFICATE OF COURT REPORTER

8 I certify that the foregoing is a correct transcript of
9 the proceedings in the above-captioned case.

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