

NewsPros
"Cobell Indian Trust Call"

Tuesday, December 08, 2009 1:00 PM ET
Keith Harper
Elouise Cobell
Jamie Moss

NewsPros
"Cobell Indian Trust Call"

Tuesday, December 08, 2009 1:00 PM ET
Keith Harper
Elouise Cobell
Jamie Moss

OPERATOR: Good afternoon and welcome to the Cobell Indian Trust Conference Call. All participants will be in listen-only mode. Should you need assistance please signal a conference specialist by pressing the "*" key followed by "0." After today's presentation, there will be an opportunity to ask questions. To ask a question, you may press the "*" then "1" on your touchtone phone. To withdraw your question please press "*" then "2." Please note, this event is being recorded.

I would now like to turn the conference over to Jamie Moss of NewsPros. Please go ahead.

JAMIE MOSS: Hi. Thank you for joining us today. We are going to have two brief statements, one from Elouise Cobell, the named plaintiff in Cobell v Salazar and class representative and from Keith Harper, a class counsel partner at Kilpatrick Stockton. Elouise Cobell will start and then Keith will follow and then we will take questions. Elouise?

ELOUISE COBELL: Hi this is Elouise Cobell and today is a monumental day for all of the people in Indian Country that have waited so long for justice. And as you know, we've been involved in this class-action lawsuit since 1996 and many of us have worked prior to...prior to 1996 trying to get the government to do the right thing. I think that everyone knows that this involves over 500,000 individual Indian accountholders who have suffered deeply for hundreds of years for the mismanagement of their Indian Trust assets.

So today is a day that finally we had an Administration that is listening and has to come the table and on the prompting of Judge Robertson of bringing the two sides together to start working out a settlement, I guess maybe, and my understanding is that there really wasn't a judicial solution because, you know, after years and years of litigation and trials and on and on and breaks that, you know, this case could have gone on for another 30, 20 years and, you know, how much longer can we go on?

I think that if it was me personally, I would probably litigate for another 100 years, but I am not the only individual Indian that's at stake here. There are, you know hundreds of thousand of individual Indians and...and the majority of the individual Indian accountholders are living in poverty and so we had to compromise and come to a settlement with the United States Government Department of Interior and the Department Treasury. So, we finished that settlement yesterday evening.

Did we get all the money that was due us? Probably not, you know, but like I said is there is too many individual Indian beneficiaries that are dying every single day without their money and this is their own money. So, at least, this settlement will give those particular people a payment that money is due them for a number of years.

I think the other thing that this settlement does is the fact that the Secretary has issued a Secretarial Order committing to trust reform for the future that this will never ever happen again to individual Indians. That they will correct all the systems that are broken out there and so, we will be watching closely to make sure that that our Trust assets are fixed for the future.

On the other area I think that gave me some comfort in this settlement is the fact that we have a scholarship fund for our grandchildren and our children and as many times that I have went out to Indian Country even though the parents and the grandparents that own these accounts were living in poverty, they continue to think about the future for their grandchildren or their children, you know, what is going to happen to them. So, at least we will have an opportunity to provide a scholarship fund for individual Indian accountholders' children.

So, I guess maybe I would like to stop there and give other people an opportunity to talk. I know we have Keith Harper, one of our attorneys that has been with us from the very beginning of time and I will hand it over to Keith to give some briefing.

KEITH HARPER:

Thank you, Elouise. It's good to join everybody today. I am just going to have some very brief comments and then I think we will start question and answers.

First, let's be clear. We...after...there are times to fight wars and there are times to make peace. We fought for 14 years...through 14 years of litigation in what has been an extraordinary journey and we found a way to get to resolution and that wasn't easy. It took the leadership of many people and it began at the top with President Obama. He committed during the campaign to resolving these cases fairly and he made sure that he put people in place and sent the right messages to them that he thought that this was an important agenda item and we thank him for his leadership.

Second, we thank the leadership of Secretary Salazar. On January 19th before and thereafter, but on January 19th the day before he took office he committed to resolving this case and he made it top priority and that is yet another reason why we are here today. There have been many attempts to resolve this matter and none have been successful. But now, we had people on the other side that we could trust and could have a good faith conversation with.

I also want to thank...we also want to thank and recognize the leadership of Attorney General, Eric Holder, who we think put forward in good faith many a proposal and also put in line Mr. Perrelli, he was instrumental in...both him and Deputy Secretary, David Hayes, along with Solicitor of the Department of Interior, first native solicitor of the Department of Interior, Hilary Tompkins spent a lot of their personal time on this and we think that that was critical to getting this done.

This we hope will lay the foundation for a far more effective and healthy relationship between the federal government and the Administration. There is much to be done in Indian Country and we think that this is an important first step, both in resolving this case, we still have to get, of course, congressional approval and court approval, but we think that this is a critical first step, both in resolving the matter but also laying a foundation for a healthier relationship with individual Indian Trust beneficiaries.

And the Solicitor, Hilary Tompkins was exactly right when she said that what she thought was most important was at the end of the day this was building a foundation of trust and not in a legal sense, but trust in the real sense that we use everyday and that is a critical message and we take that to heart and we appreciate her articulation of it.

But let me be clear, there is one thing that we know more than anything else, if you study the history of this nation. There has never been fundamental change without an iconic figure who refuses to get to the back of the bus, refuses to pick that next grape, and for this important critical matter for native people that person has been the person sitting next to me here, Elouise Cobell.

She refused to see the difficult fight ahead and turn back. At many critical junctures in the decade that she has been involved in this, she persevered on and on. And I think I speak for everybody on the legal team when we say we are deeply honored and humbled to have represented her and the many other individual Indians that she represents. So, with that, we are going to end this part of it and take some questions.

Q&A

OPERATOR: Anyone who wishes to ask a question may press "*" and then "1" on a touchtone telephone. Our first question is from Matthew Daly at the Associated Press.

MATTHEW DALY: Hi, this is Matthew Daly at the AP. Wanted to just ask you, I guess, why now? Why this amount...I know that there is some talk about, you know, there was \$47 billion was out there, there's all kinds of numbers out there and just why this number and why now?

KEITH HARPER: We felt given the current posture of the litigation and the prospects of getting a resolution in the near term that and all the other considerations of litigation risks that a \$3.4 billion figure with \$1.4 billion going directly to beneficiaries was fair, in light of, again, the posture of the case.

As Elouise has just stated, we think people are owed more, but you have to assess also the impact on beneficiaries, just your elder beneficiaries who haven't received anything in this 14 years and we felt it important to turn the page and try to build a foundation so that we have a more effective management in the future.

One of the things I didn't mention in my opening comments but we should emphasize is, it was critically important to Elouise and critically important to our legal team that there be actions taken to address future management. The government has spent a considerable amount of money in trying to do reform; more is needed, more reforms are needed. That's understood. That's admitted to by the Secretary and we congratulate him for being candid about that. His idea of establishing a commission was deeply important to us. So, we felt that we are addressing the future but at the same time we are setting aside the (inaudible).

Yes. Could you make an argument that with years more litigation more would have been obtained? Yes. Could less have been obtained? Yes, that's true too. And so, one has to assess your litigation risk along with the posture of the case and make a judgment as to whether or not it's fair. At the end of the day, we thought given the posture that it is. Elouise?

ELOUISE COBELL: Yes, I guess, I would like to add that, you know, I worried towards the end of some of the rulings that was being made by the Judge. You know, the Judge ordered \$455 million and then, of course, the Appellate Court came back and said, "Well, you know, we don't know who has the authority to award this money." You know, we outlined an accounting that only looks at the accounts that have larger amounts of money and I worried that there would be so many people left out if that was the strategy of the Department of Interior or the Department of Justice and we all know that the Department of Justice will litigate this case till hell-freezes over because we are all paying their wages and so, you know, they didn't have any incentive to stop. So, we could have been in litigation for years and years and I just don't think it was fair to the individual Indian account holders that are elderly and really needed a solution to this long, long trial and the lawsuit and so, at least, they will have some money and some peace of mind that will mean a lot to them.

MATTHEW DALY: Could I follow-up on that?

KEITH HARPER: Yes, please do.

MATTHEW DALY: If you could just maybe just walk us through how the \$1.4 billion breaks down? In other words, is there going to be a certain amount that goes to the lawyers, and then if you had...if you were just sort of a typical...I don't know if there is such a thing as a typical tribe member but if someone is in that group who is going to be getting money, how much are they going to get per person approximately?

ELOUISE COBELL: Well, the...the actual settlement of this case is \$3.4 billion, and \$1.4 billion is of course the accounting portion of our case and what will happen is initially there will be a...every person that has an IIM account opened will receive \$1000 and then there is a distribution model that will look at the individual Indians that had the activity in their account and they will be awarded accordingly.

Of course, all of this has to be approved by the judge. There will be a Fairness Hearing. This settlement has to go out to Indian Country and it has to be explained to all the individual Indian account holders for their acceptance and then the judge of course will have a Fairness Hearing.

MATTHEW DALY: And then the legal team will also get a portion of that or how does that work?

ELOUISE COBELL: Well, the judge, of course will be making the decision on the legal fees. But yes, of course, you know, our lawyers have to be paid. They haven't been paid in 14 years and so we do have to pay.

MATTHEW DALY: Is that true, there's no...there's been payment in 14 years?

ELOUISE COBELL: Yes. There was one small payment after our first trial in 1999, but they have not...they have not been paid. So, yes, it will have to be paid out of this settlement. That's the way it works I think.

MATTHEW DALY: And then if you could just briefly explain and the Interior folks tried to explain this to me but it might be just helpful for other reporters as well to hear about this but how that \$2 billion land consol., how that really works? If you could just sort of outline it for someone who is not intimately familiar with how that Land Consolidation Plan and the \$2 billion is going to work?

KEITH HARPER: So, first of all, well let's start with, you know, it is a...it's for willing sellers. We are not talking about they are going to go out and seek voluntary sales of fractionated lands. So, the Interior Department will make appraisals, valuation to establish what is fair market value and they give an offer to a beneficiary and that beneficiary can then decide whether or not to sell...to sell that away.

MATTHEW DALY: Who does the appraisal? Then I guess that seems odd if they do the appraisal and they make the offer?

KEITH HARPER: Yes, but to understand it, you know, there when the government buys land of that nature they fail...if they fail to...one, if they fail to give an adequate appraisal the individual does not have to accept. So, it was very critical to us that it would be a...that it would be on a voluntary basis and the meat of the program is that this will be a voluntary...a voluntary sale of their land. So, part of the check is that people have to accept.

The second piece of it is is that there will be appraisals consistent with existing federal laws.

MATTHEW DALY: Let me just back-up for a second, I am sorry, once they sell the land then what happens to it?

- KEITH HARPER: Okay. Once the land is sold and let me make...I just want to add one thing on the selling part because this is very important to us, to our side. For a...when they sell the land for a fair market value, an additional, not part of the sale price, but an additional 5% approximately of the sale of that land will then get deposited up to \$60 million into a fund for Indian scholarships. That's really critical for us because we think that that that will incentivize people to sell these highly fractionated lands and at the same time, it will have the benefit of establishing a scholarship fund that will aid other Indians and our children and grandchildren, so...
- MATTHEW DALY: So, if they are fractionated like that, I mean, I guess, if you could just maybe give me a hypothetical. If there is a land, say it's a 10-acre parcel that could have 'x' number of owners. I mean, you have to get all of the...I don't even know how many there might be but there might be quite a few, would you have to get all of them to agree to the sale?
- KEITH HARPER: No. You would have to buy each interest...
- MATTHEW DALY: And can you then just give me what...what you consider a...an example to walk me through it?
- KEITH HARPER: Let me answer your...yeah, I am going to answer your question.
- MATTHEW DALY: Okay.
- KEITH HARPER: They...there are all kind of different situations out there. Some, there are places where you have somebody that owns 50% of the allotment and the other 50% is owned by 20 people. Some times you have 200 people that all have the same amount but they are just...so, there is all kinds of different scenarios.
- Each interest is a piece of property that has a value and each interest must be bought. Now I think what they are going to do and this is consistent with existing law, the Indian Land Consolidation Act, there is an existing statute that allows them to do this. They are going to go out and they are going to try to consolidate allotments. So to the extent feasible buy all the small interests so that they have own undivided single interest and then that land would go to the tribe that has jurisdiction over that territory. That's the idea. The idea is to consolidate land to the extent feasible, to the extent that you have willing buyers.
- In some...so, it doesn't require every individual to sell their land but, of course, it inures to the benefit of the United States to put out effective offers out there, attractive offers so that they can do this consolidation.
- MATTHEW DALY: Once this land is sold it goes back to the tribe?
- KEITH HARPER: Once it's consolidated it goes back to the tribe, yes, and that's the intent. The purpose is to make this more productive land by having it consolidated and then under tribal control and then at the same time compensating the individual Indians who own the land.
- From our vantage point, it's the...it holds the advantage of putting additional funds in the hands of individual beneficiaries. Do you have any follow-up on that?
- MATTHEW DALY: I just want to make sure because it's hard to explain this in like a sentence?
- KEITH HARPER: Yeah, I would agree.
- MATTHEW DALY: That just the idea [multiple speakers].

- KEITH HARPER: You have my sympathies on that.
- MATTHEW DALY: I am just trying to look at an example, so for the reader to get that if there is a parcel of 'X' number of acres that the landowners will get whatever the value is but then ultimately the land itself goes back to the tribe, so you kind of get a double win?
- KEITH HARPER: Well...
- MATTHEW DALY: Is that what you are looking at?
- KEITH HARPER: We do think it's a double win but it's a win for different people. The tribes and then there is the individual Indians.
- MATTHEW DALY: Right.
- KEITH HARPER: The individual Indians own the property, so yes; it's a win for them. It's actually a triple win, right because it's a win for the Department of Interior because it costs them a lot less money to manage these lands if they are consolidated. It's a win for the tribes who have additional protected productive land and it redresses what is long...you know, having all these checkerboard reservations and it's a win for the beneficiaries because...
- MATTHEW DALY: Is this all over the country or is there a specific area where there is more, I mean, I know it's a national program but does this...these sales, are they going to tend to be in the West?
- KEITH HARPER: The allottees generally tend to be in the West anyway, west of the Mississippi. There is a few allotments east of the Mississippi, but predominantly they are in the west. Fractionation is worse in certain areas than others although it's a problem in many places. I would identify specifically the plain states, the Dakotas, Montana and also Oklahoma as places where you have particularly significant fractionated land.
- MATTHEW DALY: Okay. That's...that was my next question, so that helps me.
- ELOUISE COBELL: Yeah. And, I guess, I would add that, you know, this is not a forced you know, this is all voluntary and so it's up to the individual Indians that have fractionated ownership lands that are, for instance, I have fractionated-ownership lands that are all over the Blackfoot Indian Nation and they are not productive, some of them are not productive and so it probably would be in my best interests to try to sell those to make sure that is converted over to the tribe and at least it becomes some sort of production in land. In most of these fractionated ownership lands, we are not receiving any money for them, now, because the government is out of control. They don't...know how to account for this fractionated ownership land and so sometimes these are not even leased, they are just sitting idle. So it is the best [technical difficulty] of individual Indian landowners.
- MATTHEW DALY: And then, one other question. This is just a numbers...another numbers question but in their press release, the Interior Department talks about the \$1.4 billion goes to more than 300,000 individual Indians. But I've been hearing 500,000 in this call and earlier, so I am trying to...which number is right?
- KEITH HARPER: There are...it's not clear exactly how many beneficiaries there are. I mean, look we are dealing with imperfect information.
- MATTHEW DALY: Right.
- KEITH HARPER: That's part...that's been part of the problem, right, is that...

- MATTHEW DALY: Right.
- KEITH HARPER: When you don't have accounting systems that do this right, you get imperfect information. So, I think what will happen is through this process we will provide notice both via media and to the extent feasible written notice and through that process we hope to identify as many beneficiaries as possible. So that's an ongoing...that is an ongoing process. We've tried to start that already and it will be accelerated greatly once we get preliminary approval to sell them.
- MATTHEW DALY: That, I guess, that's a political question, but it seems like have you got any idea or thought that Congress will approve this?
- ELOUISE COBELL: Well, you know, I would hope that Congress sees the value of approving this settlement, you know, certainly they have tried for hundreds of years to try to get some sort of handle on this mismanagement of Indian resources and so I would think that they would see the value of it and move forward on it.
- MATTHEW DALY: I don't know if there is anybody else who wants to ask a question?
- OPERATOR: Our next question comes from Leslie Linthicum from Albuquerque Journal.
- LESLIE LINTHICUM: Hi, this is Leslie from the Albuquerque Journal. I had two questions about the issue of Trust. One is, how do you expect this settlement to sell in Indian Country given that there has been a lot of mistrust over two decades about how the government is dealing with this. How do you expect individual Indians and tribes to accept that this is finally a fair settlement that they should support?
- ELOUISE COBELL: Well, first of all, this is not a tribal case, so it wouldn't be accepted by the tribes, it's individual Indians. This is all on individual Indians. And, I am an individual Indian account holder and I think that in the numerous reservations in Indian communities that I have visited, it's long overdue. I think that people will accept you know, this settlement is for the historical past but I think that what the Secretary of Interior has put forth in his Secretarial Order is that the Trust Reform going forward will mean a lot to individual Indian account holders. It doesn't mean that individual Indians trust the government. I think that they have to continue to make sure that they monitor and oversee how their resources are managed in the future. But it will put in the background all of this horrible history that we've had. And so I think that the majority of individual Indian account holders will accept and will continue to watch on how their trusts are managed into the future.
- LESLIE LINTHICUM: Okay and if I could follow-up with another question?
- KEITH HARPER: Sure.
- LESLIE LINTHICUM: I think you both mentioned that the turning point here was that you finally had people on the other side that you could trust and I am wondering if both of you could kind of put...could go into a little bit more detail on just how those relationships were built or what you specifically saw differently in this Administration?
- ELOUISE COBELL: Well, since I've been working on this case way back from the inception, this was the first time ever that the Secretary of Interior and the number two person in line at Justice Department that represent President Obama said they wanted to come to the table and settle. You know, for years we put settlement proposals on the table and the Justice Department and Interior snubbed their nose and just walked away. So, this is the first time that the Department of Interior and Justice said "let's sit down and settle this." And

of course, Judge Robertson played a very important role and he brought the two sides together and we went into darkrooms and fought it out and so, I guess, I do have to give a lot of credit to the Judge to bring both sides together. But this...this Administration, the Obama Administration has been the only Administration that said "let's sit down and work together to figure out a settlement."

KEITH HARPER: You know, I think it's often easy to kind of...see the past as necessarily being what you are going to face in the future. And that we've faced a past and not so far past that has been quite difficult. As Elouise said there we've never seen the kind of leadership brought to bear in an Administration where they've made resolution and coming to the table a priority, not merely in words but in deeds. Having people like Tom Perrelli, the third in line at the Department of Justice, repeatedly involved on a day-to-day basis, having Hilary Tompkins, the Solicitor of the Department of Interior spending day-in and day-out on this in negotiation personally. That's the kind of leadership that needs to be brought to the table to get something like this done. And in our estimation that's the reason it got done in this time and had never been...it never reached successful resolution before.

LESLIE LINTHICUM: I am curious, had any...under the previous Administrations, had there ever been...had they ever put an offer on the table?

KEITH HARPER: No. You know, a lot of people talk about how the Bush Administration put an offer on the table, but they put a number of things in that offer that made it absurd to use in that...I hate to use a term that's so harsh but it really was. They wanted to not only resolve all past claims but all future claims, imagine that, and I imagine that you would resolve claims that they haven't even committed for the future. So, they also wanted to resolve and by...with one set amount all the tribal claims. Well, how do you figure all that out? So...and frankly, we never had the kind of faith because they never showed the kind of leadership that has been brought to bear this time.

LESLIE LINTHICUM: And I guess a follow-up question to that would be is this \$3.4 billion the best offer yet or the best number that's ever been talked about?

ELOUISE COBELL: Well, it's in my understanding and Keith can maybe talk about this but this is one of the largest settlements in the history of the United States that has...if you combined all the Indian settlements throughout the entire United States, this is still the largest ever.

KEITH HARPER: Let me put a little context on that. We have litigated i.e., when I say we, I was talking about tribes and individual Indians, have litigated many, many times against the United States and received many judgments against the United States and I am including in this...in what I am about to say, all the treaty claims and things of that nature, the Indian Claims Commission Act Claims, all those tribal claims that have been brought prior to this point, if you add all those judgments and settlements together, they still are considerably less than the resolution and the numbers in this case. So, the aggregate of all other Indian cases combined against the United States is less than this case. That tells you something important about what has been achieved here and whether or not this was worthwhile as a resolution.

LESLIE LINTHICUM: I just had two numbers clarifications and then I'll step aside. The first is, did I understand you to say that the scholarship fund tops out at \$60, 6-0-million or \$16, 1-6 million?

ELOUISE COBELL: It's \$60 million.

LESLIE LINTHICUM: 6 0?

KEITH HARPER: 6 0, yes.

LESLIE LINTHICUM: Okay. And then do you know...do you have a guesstimate on the number of the fractionalized owners, how many there are?

KEITH HARPER: You know we...that may be a question better for the Interior Department.

LESLIE LINTHICUM: Okay. Thank you.

KEITH HARPER: You're welcome.

OPERATOR: As a reminder to ask a question, you may press "*" and then "1" on your touchtone phone. It seems we have no further questions at this time. I would like to turn the conference back over to Jamie Moss for any additional remarks.

JAMIE MOSS: I just want to thank everybody for joining and let you know that at www.cobellsettlement.com there is information that will be useful by way of background of the case, original documents, information about class claims et cetera. So, cobellsettlement.com is the place to go for further information and thank you all for attending the call.

OPERATOR: Thank you very much for participating in this conference call. This concludes today's event. Thank you for attending.