



Rules of Civil Procedure that authorizes discovery at this time. Instead, Plaintiffs rely solely on the language from this Court's September 17, 2002 Order which reinstated their "full discovery" rights. See Opposition at 7-8. The September 17 Order, however, merely restored the usual discovery rights that had been denied Plaintiffs by a previous order. After entry of the September 17 Order Plaintiffs were back in the same position as any other litigant would be with regard to their discovery rights. Plaintiffs do not, and cannot, explain how the September 17 Order granted them discovery rights that exceed the limits established by the Federal Rules of Civil Procedure. Simple incantation of language from the September 17 Order does not magically bestow upon them discovery powers that are unavailable to other litigants. Rather, Plaintiffs are bound by the Federal Rules, which forbid discovery prior to a Rule 26(f) planning conference, as described in the Motion for Protective Order.<sup>2</sup> See Fed. R. Civ. P. 26(d).

Plaintiffs also fail to identify any genuine issue in this case to which the requested Anson Baker Discovery would be relevant. This Court has expressly recognized, and it is the law of the case, that appraisals relate to trust asset management obligations. Cobell v. Babbitt, 91 F. Supp. 2d 1, 18 (D.D.C. 1999) (appraisals "are important for evaluating whether the trustee is managing the underlying assets prudently"). This Court has also already determined that "asset management is not part of this lawsuit." Id. (emphasis added). Even if this were not the case, however, these general trust obligations would only be relevant to the Phase 1 or Phase 1.5 trials

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<sup>2</sup> One exception to this prohibition is that Rule 27(b) permits a district court to allow, upon motion that sets forth certain prescribed information, the taking of depositions of witnesses to perpetuate testimony "for use in the event of further proceedings in the district court," pending appeal of a judgment. Fed. R. Civ. P. 27(b). Plaintiffs have not filed any such motion for the Anson Baker deposition and have obviously not met the requirements of Rule 27.

and those proceedings have already been completed, and thus further discovery is neither required nor permitted.

Plaintiffs assert that an appraisal is relevant to an accounting, see Opposition at 2-4, but make no effort to demonstrate how it is relevant.<sup>3</sup> Interior disputes the relevance of appraisals to an accounting. See Interior Defendants' Response and Objections to Special Master's Site Visit Report to the Office of Appraisal Services in Gallup, New Mexico and the Bureau of Indian Affairs Navajo Realty Office in Window Rock, Arizona at 5-10 (filed September 4, 2003); Motion for Protective Order at 3. The issue of relevance does not need to be decided now, however. Under any circumstances, the only appropriate time for the Anson Baker Discovery would be after the scope of some future proceeding, and the discovery needed to address the issues in any such proceeding, have been identified by the Court.

Interior has demonstrated that the requested Anson Baker Discovery is both untimely and not germane to any currently disputed issue in this case. Good cause for a protective order preventing such discovery at this time has thus been shown and Interior's Motion for a Protective Order should be granted.<sup>4</sup>

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<sup>3</sup> Instead of discussing how an appraisal is relevant to an accounting, Plaintiffs go to great lengths, see Opposition at 2-4, 9-10, explaining what Interior conceded in its Motion for a Protective Order: that an appraisal is relevant to the management of trust assets and might be relevant to a damages claim, neither of which is a justiciable issue here. See Motion for a Protective Order at 3.

<sup>4</sup> It is unclear whether Plaintiffs have withdrawn some of their document requests. They refer to an agreement they have made with Anson Baker's personal counsel that "personal" issues are not the subject of the current discovery. See Opposition at 5. But the discovery requests were made both to Mr. Baker and to the Interior Defendants. See Notice of Deposition and Request for Production of Documents at 1-2. As of the date of this submission Plaintiffs have not unambiguously withdrawn any request directed to Interior Defendants.

**CONCLUSION**

For these reasons, Interior's Motion for a Protective Order should be granted.

Dated: October 14, 2003

Respectfully submitted,

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CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on October 14, 2003, I served the foregoing *Interior Defendants' Reply in Support of Motion for a Protective Order Regarding Plaintiffs' Notice of Deposition of Anson Baker And Request for Production of Documents* by facsimile in accordance with their written request of October 31, 2001 upon:

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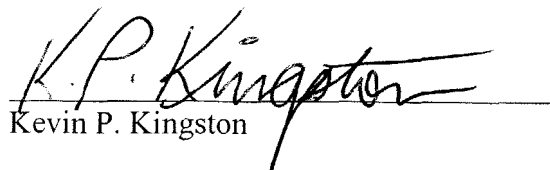
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