

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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TIMOTHY C. PIGFORD, <u>et al.</u> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No.
	)	97-1978 (PLF)
ANN M. VENEMAN, Secretary,	)	
The United States Department	)	
of Agriculture,	)	
	)	
Defendant.	)	

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CECIL BREWINGTON, <u>et al.</u> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No.
	)	98-1693 (PLF)
ANN M. VENEMAN, Secretary,	)	
The United States Department	)	
of Agriculture,	)	
	)	
Defendant.	)	

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MONITOR'S MARCH 2001 REPORT  
REGARDING REGISTERS OF PETITIONS

I. INTRODUCTION

This report is filed pursuant to the Court's Order of November 8, 2000, to explain the implementation progress of the case regarding Registers of Petitions.

II. BACKGROUND

Background regarding Registers of Petitions and the Monitor's obligation to report on same can be found in the

Monitor's Initial Report Regarding Registers of Petitions, filed on December 26, 2000.

The Court's Order of November 8, 2000, provided that the Monitor shall report regularly to the Court about the progress being made by the lawyers or law firms that filed Registers listing more than 400 claimants. Only two law firms filed Registers listing more than 400 claimants: Conlon, Frantz, Phelan, & Pires, LLP (the Conlon, Frantz law firm) and Chestnut, Sanders, Sanders, Pettaway, Campbell and Albright, P.C. (the Chestnut, Sanders law firm). The Court's Order of December 22, 2000, allowed the two firms' Registers to be combined to become one Register.

Pursuant to the November 8, 2000 Order, Class Counsel (the Conlon, Frantz firm and the Chestnut, Sanders firm together) have an obligation to file supporting materials or withdrawals regarding at least 400 claimants per month.<sup>1</sup> These law firms have the obligation to finish filing supporting materials or

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<sup>1</sup> The November 8 Order provides that:

[I]f a Register of Petitions lists more than 400 claimants, counsel shall file supporting materials or withdrawals, as described above, with respect to a total of at least 400 claimants by December 15, 2000. Counsel shall file similar supporting materials or withdrawals with respect to at least 400 more claimants on the 15<sup>th</sup> of every month thereafter. Under no circumstances shall the Monitor accept supporting materials or withdrawals after May 15, 2001.

withdrawals for all of the claimants on their Registers by May 15, 2001.

### III. VALID AND INVALID REGISTER LISTINGS

The criteria delineated in the November 8, 2000, Order for listing claimants on Registers were: (1) the claimant received an Adjudicator or Arbitrator decision on or before July 14, 2000; (2) the claimant asked the attorney or law firm for assistance with the filing of his or her Petition for Monitor Review; and (3) the claimant presented counsel with a facially meritorious claim for a Petition for Monitor Review. Register listings that meet these criteria are valid Register listings. The Order provided that the Register shall not include any claimant who had already had an attorney file a Petition on his or her behalf.

There continue to be claimants listed on Class Counsel's Register who do not meet the Court-ordered criteria for Register listing.<sup>2</sup> On February 27, 2001, the Facilitator reported to the Monitor that the Facilitator had nearly completed its work in sorting out valid and invalid Register listings. The last piece of Facilitator work regarding the Register involved confirming

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<sup>2</sup> Invalid Register listings are generally cases in which the claimant received his or her Adjudicator decision after July 14, 2000 (which means that the claimant's deadline to petition is after November 13, 2000).

the status of approximately ninety listings. The Facilitator needs certain information from Class Counsel to make final determinations regarding these listings. In a Memorandum to the Monitor dated March 28, 2001, Class Counsel notified the Monitor that Class Counsel believes that a large reason for the discrepancy has been discovered. However, that discrepancy is not yet resolved.

IV. MONITOR'S REPORT ON COMPLIANCE WITH ORDER FOR THE PERIOD OF FEBRUARY 16, 2001, THROUGH MARCH 15, 2001

The Facilitator reported the following figures to the Monitor for the period of February 16, 2001, through March 15, 2001.

<b>Facilitator's Report For Period of February 16, 2001, to March 15, 2001</b>						
Law Firm	Total Petitions Filed From Entire Register	Total Withdrawals Filed From Entire Register	Total From Entire Register	Total Petitions Filed From Valid Portion of Register	Total Withdrawals Filed From Valid Portion of Register	Total From Valid Portion of Register
Conlon, Frantz	110	28	138	110	24	134
Chestnut, Sanders	45	2	47	44	2	46
TOTAL	155	30	185	154	26	180

V. OVERALL FILINGS BY CLASS COUNSEL

In addition to filing supporting materials and/or withdrawals regarding claimants who are listed on the Register, Class Counsel has made filings for claimants who do not appear on the Register. The Facilitator reports that Class Counsel filed supporting materials and/or withdrawals regarding a total of 193 claimants<sup>3</sup> during the period of February 16, 2001, to March 15, 2001. The Facilitator received from Class Counsel supporting materials on behalf of an additional forty-three claimants, and withdrawals on behalf of an additional eight claimants (for a total of fifty-one filings), but this package was postmarked March 16, 2001 (just outside of this reporting period).

The Monitor received two writings that addressed the circumstances regarding Class Counsel's inability to meet the filing requirements of the November 8, 2000, Order. In a March 16, 2001, letter written to the Facilitator and copied to the Monitor, Class Counsel wrote "Please note that one of the reasons why we were unable to meet our goal/requirement of 200<sup>4</sup>

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<sup>3</sup> Of the 193 claimants, supporting materials were filed on behalf of 155 claimants and withdrawals were filed on behalf of 38 claimants.

<sup>4</sup> The Monitor presumes that the Pires firm is referring to an internal goal of meeting one-half of the filing requirement. The Monitor presumes that according to the firms' internal

Petitions for Monitor Review this month is that we ran out of travel funds and, during the past two weeks, were unable to send lawyers and law clerks to meet with farmers in various states." Additionally, on March 5, 2001, the Monitor received a letter from Jacob Stein addressing the situation.<sup>5</sup>

## VI. CONCLUSION

Pursuant to the November 8, 2000, Order, Class Counsel is obligated to file supporting materials or withdrawals on behalf of at least 400 claimants each month from the valid portion of Class Counsel's Register. For the March 15, 2001, reporting deadline, Class Counsel fell far short of meeting this requirement. According to the Facilitator's report, Class Counsel filed supporting materials or withdrawals on behalf of

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rules, the remaining 200 would be filed by the Chestnut firm or by Of Counsel firms.

<sup>5</sup> In relevant part, the letter states:

3. J.L. Chestnut, Alexander Pires, and their partners and associates carry most of the burden of the work of implementing the decree. They both are personally obligated on pressing bank loans. Both are now concerned that they will have exhausted their resources within the week.

4. In the next two weeks Mr. Pires and Mr. Chestnut must prosecute a number of B cases before the arbitrators and file 400 completed appeals with the monitor. This effort requires the resources of both firms and additional personnel of both firms.

5. Therefore, this is to put you on notice that counsel must give serious consideration to the suspending of the preparation and implementation of these matters until there is a clarification of the attorneys' fees issue.

180 claimants from the valid portion of Class Counsel's Register during the period of February 16, 2001, through March 15, 2001.

Dated: March 30, 2001

Respectfully submitted,

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