

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

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

ORDER

On April 14, 1999, the Court gave final approval to the Consent Decree that settled this case, finding that it represented a fair, reasonable and adequate resolution of the class members' claims. See Pigford v. Glickman, 185 F.R.D. 82 (D.D.C. 1999), *aff'd*, 206 F.3d 1212 (D.C. Cir. 2000). As part of the settlement, the parties agreed that the Monitor appointed pursuant to the Consent Decree would be able to "[d]irect the facilitator, adjudicator, or arbitrator to reexamine a claim where the Monitor determines that a clear and manifest error has occurred in the screening,

adjudication, or arbitration of the claim and has resulted or is likely to result in a fundamental miscarriage of justice.” Consent Decree ¶ 12(b)(iii) (April 14, 1999). In the Court’s Order of Reference appointing the Monitor, the Court established the procedure by which claimants could file Petitions for Monitor Review in accordance with Paragraph 12(b)(iii) of the Consent Decree. See Order of Reference ¶ 8 (April 4, 2000). In a joint Stipulation and Order that the parties subsequently proposed to the Court and which the Court approved, the parties agreed to clarify the Petition for Monitor Review process by establishing a framework for deadlines by which all Petitions would have to be submitted to the Monitor. See Stipulation and Order ¶ 5 (July 14, 2000).

The deadline for the vast majority of claimants, November 13, 2000, is now fast approaching.¹ In an expedited motion for hearing filed on October 31, 2000, and at an emergency hearing held today, November 8, 2000, Class Counsel informed the Court that despite receiving requests from approximately 4,000 claimants to file Petitions for Monitor Review on their behalf, Class Counsel and Of Counsel have been able to file only 300 Petitions in the past four months. These numbers do not include the hundreds or thousands of additional Petitions for Monitor Review that are being handled by unaffiliated counsel representing other class members or by claimants filing *pro se* without the assistance of a lawyer. In their motion and at today’s hearing, Class Counsel asked that the

¹ The November 13 deadline applies to all claimants who received wholly or partially adverse decisions under Track A or Track B on or before July 14, 2000 — the date the Stipulation and Order was entered. Because most Track A and Track B claims had been decided by July 14, the November 13 deadline applies to the majority of claimants who might petition for Monitor review. For the much smaller number of claimants who have received or will receive decisions after July 14, 2000, those claimants have 120 days from the date of such decision to file a Petition for Monitor Review. See Stipulation and Order ¶ 5 (July 14, 2000). Those 120-day deadlines shall remain in effect and are not effected by this Order.

Petition for Monitor Review process be modified to ensure that claimants would not bear the burden of counsel's inability to process Petitions at a rate sufficient to meet the November 13 deadline. The government vigorously opposed any modification of the July 14 Stipulation and Order, citing the agreement of the parties in Paragraph 5 of the Stipulation and Order that "[n]o extensions of these deadlines will be granted for any reason."

The Court agrees with the government that the deadlines should not be modified without further agreement of the parties; counsel should be held to the commitments to which they agreed. On the other hand, counsel's failings should not be visited on their clients. The issue therefore is whether the Petition for Monitor Review process can be modified on a one-time basis without altering the deadlines by which Petitions must be filed and without undermining the negotiated stipulation of the parties.

At the hearing, the Court raised the possibility of allowing counsel to file a simple notice Petition to the Monitor by the November 13 deadline, specifying all claimants whom counsel represents who received a decision on or before July 14 and who are seeking Monitor review of that decision, but then delay the submission of materials in support of those Petitions until a later date that is fair to both the parties. Allowing this kind of notice Petition would reveal the total, finite number of claimants (and the names of all such claimants) who received a decision on or before July 14 and who are petitioning for Monitor review, and would allow the parties and the Monitor to manage the filing and resolution of these Petitions at a fair and reasonable pace. Furthermore, under such a process, any Petitioner who received a decision on or before July 14 but fails to file a Petition until *after* the November 13 deadline would still be summarily rejected in accordance with Paragraph 5 of the Stipulation and Order.

It is obvious that if Class Counsel, Of Counsel and all unaffiliated counsel were forced to file thousands of fully supported Petitions by November 13, the government would be unable to respond to them in a meaningful way within the 60 days that it has to file a response. See Order of September 12, 2000. Furthermore, the Monitor informed the Court at the hearing that even if the government had the resources to complete such a task, the Monitor initially will be unable to decide the Petitions at a pace greater than 200 to 300 each month. In view of these realities, it would seem unfair to disenfranchise thousands of claimants merely because their lawyers have not met their obligations to the process — so long as the letter and spirit of the July 14 Stipulation and Order are not violated.

Upon consideration of the foregoing, and having considered the manifest injustice to claimants that would result if they are excluded from the Petition for Monitor Review process solely because of the failings of their attorneys, it is hereby

ORDERED that the deadline for Petitions for Monitor Review involving claimants who received a decision on or before July 14, 2000, remains November 13, 2000. Instead of filing fully supported Petitions for Monitor Review, however, the government or any claimant's counsel (including but not limited to Class Counsel and Of Counsel), may submit a Register of Petitions by that date. For each Register of Petitions filed on behalf of claimants, the Register shall list every claimant (and his or her claim number) who received a decision on or before July 14, 2000, and has asked the attorney or law firm for assistance with the filing of his or her Petition for Monitor Review; it is

FURTHER ORDERED that a Register of Petitions shall not include any claimant who already has had an attorney file a Petition on his or her behalf, and shall include only those claimants who have presented counsel with a facially meritorious claim for a Petition for Monitor Review. No

individual attorney or law firm may file more than one Register of Petitions, and all Registers of Petitions must be filed by November 13, 2000; it is

FURTHER ORDERED that if a Register of Petitions lists 400 or fewer claimants, counsel shall file materials in support of each Petition for Monitor Review by December 15, 2000. By that same date, counsel shall file notices of withdrawal with respect to those Petitions that upon further review counsel determines have no reasonable chance of satisfying the clear and manifest error standard set forth in Paragraph 12(b)(iii) of the Consent Decree; it is

FURTHER ORDERED that if 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 15th of every month thereafter. Under no circumstances shall the Monitor accept supporting materials or withdrawals after May 15, 2001; it is

FURTHER ORDERED that the deadlines mentioned herein will be satisfied so long as the filing is postmarked by the stated date. All Petitions for Monitor Review, Registers of Petitions, supporting materials and withdrawals shall be sent to the Facilitator in accordance with previously established practice with respect to the Petitions for Monitor Review; and it is

FURTHER ORDERED that the Monitor shall submit monthly reports to the Court pursuant to Paragraph 12(b)(i) of the Consent Decree that summarize the progress of any lawyer or

law firm that files a Register of Petitions listing more than 400 claimants. Such reports shall be filed on the last day of every month, beginning on December 31, 2000.

SO ORDERED.

PAUL L. FRIEDMAN
United States District Judge

DATE:

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