

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

TIMOTHY C. PIGFORD, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.
)	97-1978 (PLF)
ANNE VENEMAN, SECRETARY,)	
THE UNITED STATES DEPARTMENT)	
OF AGRICULTURE,)	
)	
Defendant.)	
)	
CECIL BREWINGTON, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.
)	98-1693 (PLF)
ANNE VENEMAN,)	
)	
Defendant.)	
)	

ARBITRATOR'S THIRD REPORT ON THE LATE-CLAIM PETITION PROCESS

On May 10, 2002, following the Arbitrator's Second Report to the Court, the Court reaffirmed its prior orders of December 20, 1999 and July 14, 2000, holding that "all putative class members seeking permission to late file under Section 5(g) of the Consent Decree are directed to review the terms of that provision, as interpreted by the Court and the Arbitrator. If, having reviewed the requirements for eligibility under Section 5(g), petitioners believe that they are entitled to late file, petitioners must seek permission directly from the Arbitrator, Michael K. Lewis." *Pigford v. Veneman*, 201 F. Supp. 2d 139 (D.D.C. 2002). In keeping with established practice, the Arbitrator will continue to report

to the Court and to the parties on a semi-annual basis. The report below details progress on the review of late-claims in the past six months.

Background

As noted above, the Arbitrator has been delegated the responsibility to make the determination of whether a putative claimant who missed the October 12, 1999 deadline may file a late claim. A putative claimant may file late if he demonstrates that extraordinary circumstances beyond his control prevented the filing of a timely claim. In the Memorandum Opinion and Order of November 26, 2001, the Court found that the Arbitrator's "late-claim petition processes are more than sufficient to ensure that Section 5(g) of the Consent Decree is properly and justly applied and to assure that fair process is afforded." Pigford v. Veneman, 173 F. Supp. 2d 38, 40 (D.D.C. 2001).

Processes and Procedures

Forms & Filing

Since the issuance of the first report, there have been no changes to the procedures relating to the filing of a petition to file a late claim. Approximately 61,000 petitions were filed by the September 15, 2000 deadline, and an additional 8,000 putative claimants filed petitions after that deadline. Late claim petitions filed after September 15, 2000 have not been reviewed unless the putative claimant could demonstrate that the Facilitator or the Arbitrator misread their postmark. One or two claimants have been able to meet that hurdle.

Categorization & Research

Since the issuance of the first report, there have been no changes in the categorization and research methods described in that report. The Arbitrator continues to use the same criteria in the investigative process. Currently, a staff of thirty-seven interviewers investigate late claim petitions where further research is necessary to make an informed decision. At any given time, the interviewers are investigating over three thousand petitions.

As of the filing of the second report on May 3, 2002, approximately 48,400 petitions had been reviewed, leaving 12,300 petitions to be decided. As of the filing of this report, approximately 53,900 petitions have been reviewed and decided, leaving 7,300 to be decided. Of the petitions that have been decided, 52,300 were denied and 1,600 were approved. Petitions remain undecided for two primary reasons: (1) the Arbitrator is awaiting supplemental information from the petitioner, or (2) researchers have been unable to reach the petitioner claimant by telephone.

No Contacts

In August 2002, the Facilitator mailed approximately 3,000 letters to petitioners who have proven impossible to contact via telephone.¹ That letter required petitioners to respond with updated contact information within two weeks of the date of the letter. Approximately 1,700 petitioners responded in a timely manner, and those petitions, with updated contact information, are in the process of being reassigned to researchers. The

¹ A copy of the letter used is attached as Appendix A.

Arbitrator will again review the petitions of the 1,300 petitioners who did not respond in a timely manner to his August letter prior to making determinations on each of their claims.

Reconsideration

As described in the first and second reports, putative claimants whose late claim petitions are denied may make a written request for reconsideration. The reconsideration process remains as described in those reports.

Putative claimants have a 60-day window in which to submit a request for reconsideration. Approximately 20,600 requests for reconsideration have been filed, 18,400 of which were sent within the 60-day window. As the numbers indicate, slightly over one-third of all denied petitioners have made timely requests for reconsideration. The Facilitator began forwarding the requests for reconsideration to the Arbitrator in August. The Facilitator will continue to forward reconsideration requests as they are filed until all reconsideration requests have been decided.

The requests for reconsideration are distributed to the team of researchers for investigation. Approximately 3,000 requests for reconsideration have already been distributed to researchers. The researchers review the underlying petition, the information from any interviews with the petitioner, any previously submitted documentation, and the information submitted with the request for reconsideration. Researchers also may contact the putative claimant for further clarification. Upon completing his or her investigation, each researcher will be responsible for drafting an individually tailored response to the

request for reconsideration for the Arbitrator's approval. If a petition remains denied upon reconsideration, that decision will be final.

Decisions have been made in 379 reconsideration requests to date, with 65 petitions having been approved in the reconsideration process.

Results to Date

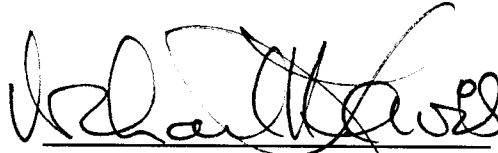
Presented in tabular form, the status of the late claim process follows below.

Approximate number of Petitions to File Late Claims:	69,000
Approximate number filed before Sept. 15, 2000:	61,000
Approximate number of petitions approved:	1,600
Approximate number of petitions denied:	52,300
Approximate number of Requests for Reconsideration:	20,600
Approximate number filed within 60 days:	18,400
Number of requests decided:	379
Number resulting in approval of petition:	65

Conclusion

Other than the inability to contact approximately 1,300 petitioners, the Arbitrator's review of late claim petitions is proceeding without difficulty. The Arbitrator remains cognizant of the fact that approved late claimants must file a completed claim form with the Facilitator and, if found to be eligible, be reviewed by the Adjudicator (for a Track A claim) or Arbitrator (if a Track B claim). The Arbitrator is unable presently to estimate a completion date for the late claim review process.

Respectfully submitted,



Michael K. Lewis
Arbitrator

Date: November 4, 2002

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Black Farmers' Settlement

Claims Facilitator

P.O. Box 4390

Portland, OR 97208-4390

1-800-646-2873

DATE

CLAIM # «CLAIM»
TRACKING # «TRACKING»
AFFIDAVIT # «AFFIDAVIT»

«NAME1»
«NAME2»
«ADDRESS1»
«ADDRESS2»
«CITYSTATEZIP»

RE: Pigford et al. v. Veneman - Civil Action No. 97-1978 (PLF)
Brewington et al. v. Veneman - Civil Action No. 98-1693 (PLF)

Dear Claimant:

The deadline for filing a claim in the Black Farmers Settlement against the U.S. Department of Agriculture was October 12, 1999. Paragraph 5(g) of the Consent Decree in this case provides that farmers who missed the October 12, 1999 deadline may petition the Court to permit the farmer to nonetheless participate in the claims resolution procedures set out in the decree.

The Consent Decree also establishes a high standard for the review of late claims in that the farmer must demonstrate that his or her failure to submit a timely claim was due to extraordinary circumstances beyond his or her control. On December 20, 1999, Judge Friedman delegated to me the review of all late-filed claims.

After reviewing your late claim affidavit, I find that I need additional information to determine whether you meet the standard necessary to participate in the settlement. Thus far, the attempts to contact you at the number(s) listed in our files, have been unsuccessful.

If you want me to continue to consider your request to participate in the settlement, you must contact me in writing at the above address. Within two weeks (fourteen days) of the date of this letter, you must send me either (1) a phone number at which you can be reached and the times that you are generally available at that number, or (2) a statement that you are not available by phone. If you do not send me this information within two weeks (fourteen days) of the date of this letter, I will deny your request to participate in the settlement based on the information you have provided to date.

Sincerely,



Michael K. Lewis
Arbitrator