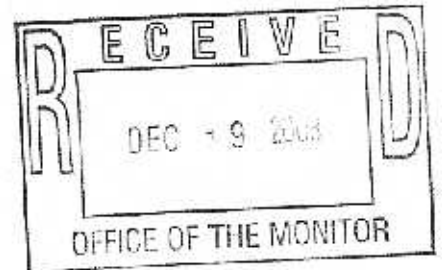


IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA



TIMOTHY C. PIGFORD, et al.,
Plaintiffs,
v.
ANNE VENEMAN, SECRETARY,
THE UNITED STATES DEPARTMENT
OF AGRICULTURE,
Defendant.

Civil Action No.
97-1978 (PLF)

CECIL BREWINGTON, et al.,
Plaintiffs,
v.
ANNE VENEMAN,
Defendant.

Civil Action No.
98-1693 (PLF)

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

The Court has held 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. May 10, 2002); see also, *Pigford v. Veneman*, No. 97-1978 (D.D.C. Dec. 20, 1999); *Pigford v. Veneman*, No. 97-1978 (D.D.C.

Jul. 14, 2000). This is the Arbitrator's fifth semi-annual report on the status of the review of late claims pursuant to Paragraph 5(g) of the Consent Decree.

Background

Since December 20, 1999, the Arbitrator has had the responsibility to determine 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 his failure to submit a timely claim was due to extraordinary circumstances beyond his control." Consent Decree, ¶5(g). 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). As a result, the Court has declared that "it has retained no authority to review the Arbitrator's rulings on petitions to late file... Nor has it retained authority to control or review the procedures that the Arbitrator employs to reach his decisions." *Pigford v. Veneman*, 2003 U.S. Dist. LEXIS 9210, *4 (D.D.C. Jun. 4, 2003).

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 65,900 petitions were filed by the September 15, 2000 deadline, and an additional 7,800 putative

claimants filed petitions after that deadline. Fewer than five putative late claimants have been able to convince the Arbitrator that the Facilitator or the Arbitrator misread the postmark on their late claim petition. All other late claims postmarked after September 15, 2000 have been rejected.

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 review process. Currently, a staff of nineteen researchers investigates late claim petitions where further research is necessary to make an informed decision.

As of the filing of the Fourth Report on June 2, 2003, approximately 4,300 petitions remained to be decided. As of the filing of this report, 1,700 petitions remain to be decided. Of the 64,200 petitions that have been decided, 62,100 were denied and 2,100 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 by telephone. The Arbitrator expects to complete all initial decisions by the end of the first quarter of 2004.

In the Fourth Report, the Arbitrator discussed the situation where the parties and he learned that a small number of claims were deposited at a local Alabama post office, postmarked to reflect a timely filing, but not delivered to the Claims Facilitator until long after the filing deadline. At that time there was a pending motion by Class Counsel to

reopen all late claims because of the mail delays discovered in that one post office in Alabama. Based in part upon the Arbitrator's procedures for dealing with such a possibility, the Court declined to order such a reopening. Specifically, the Court held, "In light of these procedures, the Court sees no reason to direct Mr. Lewis to reopen all late claims alleging mail delivery failures or to provide standards for the decision of such claims." *Pigford v. Veneman*, 2003 U.S. Dist. LEXIS 9210, *5 (D.D.C. Jun. 4, 2003).

No Contacts

In November 2003, the Arbitrator's office notified the Facilitator that a final grouping of approximately 1,000 petitioners had proven impossible to contact via telephone and would need to be sent a letter. That letter requires petitioners to respond with updated contact information within two weeks of the date of the letter. Based upon prior experience with such letters, the Arbitrator anticipates a 57% timely rate of reply. Those petitions, with updated contact information will be reassigned to researchers; those petitioners who respond that they will not be reachable by telephone will be sent written questionnaires based on the categorization of their petitions. The Arbitrator will again review the petitions of those petitioners who do not respond in a timely manner to the letter prior to making determinations on each of their petitions. At this point, every petitioner who has required an interview has had his petition assigned to a researcher at least once. Thus, the Arbitrator does not anticipate a need to send any further letters requesting updated contact information.

Reconsideration

As described in the prior 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 22,500 requests for reconsideration have been filed, 20,400 of which were sent within the 60-day window. As the numbers indicate, slightly above 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 2002. The Facilitator will continue to forward timely reconsideration requests as they are filed.

Requests for reconsideration are distributed to researchers for investigation. Approximately 17,500 requests for reconsideration have 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 review. If a petition remains denied upon reconsideration, that decision will be final.

Decisions have been made in 715 reconsideration requests to date, with 86 requests resulting in approved petitions. An additional 13,500 reconsideration requests have been returned by the researchers and are in various stages of review.

Results to Date

Presented in tabular form, the status of the late claim process follows below. As noted in the Fourth Report, as of May 27, 2003, the Claims Facilitator is including Late Claim Petition information in its weekly status report. In the past, the Arbitrator has attempted to count and report upon individual petitioners, whereas the Facilitator reports upon the number of affidavits and requests for reconsideration filed. In order to reduce confusion due to differences in calculation methodology, the Arbitrator will use the Claims Facilitator's methodology, although it should be noted that all numbers are skewed upwards due to individual petitioners filing multiple affidavits and requests for reconsideration.

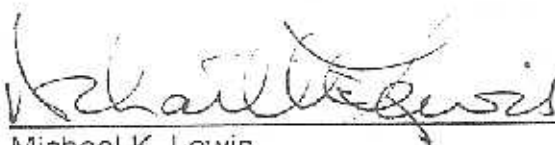
Approximate number of Petitions to File Late Claims:	69,200
Approximate number filed before Sept. 15, 2000:	65,900
Approximate number of petitions approved:	2,100
Approximate number of petitions denied:	62,100
Approximate number of Requests for Reconsideration:	22,500
Approximate number filed within 60 days:	20,400
Number of reconsideration requests decided:	715
Number of reconsideration requests resulting in approval of petition:	86

Conclusion

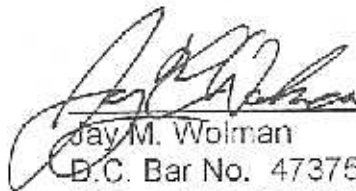
The Arbitrator's review of late claim petitions is proceeding without difficulty. The Arbitrator remains cognizant of the fact that approved late claimants must file a completed claim form with the Facilitator and, if found to be eligible, be reviewed by the Adjudicator (for a Track A claim) or Arbitrator (if a Track B claim). The Arbitrator anticipates completing initial review of all petitions within three months. Additionally, the Arbitrator expects to notify all those who will have prevailed on their request for reconsideration by mid-2004. Detailed letters to be sent to those who do not prevail on their request for reconsideration should be largely completed by the end of 2004.

Date: December 9, 2003

Respectfully submitted,



Michael K. Lewis
Arbitrator, Pigford v. Veneman
ADR Associates, LLC
1666 Connecticut Avenue, N.W., Suite 500
Washington, DC 20009



Jay M. Wolman
D.C. Bar No. 473756
Office of the Arbitrator, Pigford v. Veneman
ADR Associates, LLC
1666 Connecticut Avenue, N.W., Suite 500
Washington, DC 20009

Copies to:

Alexander J. Pires, Jr., Esq.
Conlon, Frantz, Phelan & Pires, LLP
1818 N Street, NW, Suite 700
Washington, DC 20036
Fax: 202-331-9306

J.L. Chestnut, Jr., Esq.
Rose M. Sanders, Esq.
Chestnut, Sanders, Sanders, Pettaway,
Campbell & Albright, P.C.
1 Union Street
Selma, Alabama 36701
Fax: 334-875-9853

Philip L. Fraas, Esq.
3050 K Street, NW
Suite 400
Washington, DC 20007
Fax: 202-342-8451

Randi Ilyse Roth, Esq.
46 East Fourth Street, Suite 1301
Saint Paul, Minnesota 55101
Fax: 651-223-5335

Michael Sitcov, Esq.
U.S. Department of Justice, Civil
Division
P.O. Box 883, Room 1022
Washington, DC 20044
Fax: 202-616-8470

Nicole Hamann
Poorman-Douglas Corporation
10300 SW Allen Blvd.
Beaverton, Oregon 97005
Fax: 503-350-5891

Lester J. Levy, Esq.
JAMS
2 Embarcadero Center
Suite 1100
San Francisco, CA 94111
Fax: 415-982-5287