

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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ELOUISE PEPION COBELL, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	Civil Action No. 96-1285 (RCL)
	)	
v.	)	
	)	
GALE A. NORTON, <i>et al.</i> ,	)	
	)	
Defendants.	)	

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**DEFENDANTS' REPLY TO PLAINTIFFS' RESPONSE TO  
AMICUS CURIAE BRIEF OF THE QUAPAW TRIBE OF OKLAHOMA**

**INTRODUCTION**

On August 24, 2004, this Court granted leave to the Quapaw Tribe of Oklahoma (“Tribe”) to file its Amicus Curiae Brief (“Amicus Brief”), to which Plaintiffs responded on August 31, 2004 (“Plaintiffs' Response”).<sup>1</sup> In their Response, Plaintiffs inaccurately characterize Defendants’ Motion for Expedited Clarification or, in the Alternative, Modification of the December 23, 2002 Order (“Defendants' Motion”) as a request that “would inexorably lead to continuing abuse of individual Indian trust beneficiaries.” Plaintiffs' Response at 2. Plaintiffs’ concerns are unsupported. As the settlement documents attached to Defendants' Motion make clear, the settlement (“Settlement Agreement”) between the Department of the Interior (“Interior”) and the Tribe in Quapaw Tribe of Oklahoma v. Department of the Interior, No. 02-CV-129-H(M) (N.D. Okla.), does not compromise any claims of any member of the plaintiff class in this case.

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<sup>1</sup> The Court's August 24, 2004 Order provides that “any reply in support of the brief amicus curiae by either the Quapaw Tribe of Oklahoma or defendants shall be filed within three days [after filing of Plaintiffs' response].” August 24, 2004 Order at 1.

Plaintiffs also argue that Defendants' Motion should be denied because Plaintiffs' three affiants, who are members of the Quapaw Tribe, do not trust Quapaw Business Committee Chairman John Berrey with "their confidential trust information, and oppose any effort by Berrey and the government to compromise their claims in this litigation." Plaintiffs' Response at 3 (footnote omitted). This argument reflects Plaintiffs' misunderstanding of the scope of the Quapaw Analysis, which is the main feature of the settlement's contract ("Contract") between Interior's Office of Historical Trust Accounting and the Tribe's not-for-profit enterprise, Quapaw Information Systems, Inc. ("QIS"). In addition to an analysis of Interior's management of the Tribe's trust fund assets, the Quapaw Analysis involves a *limited* history of the *non-fund* trust assets of only *eight* individual Quapaw tribal members who will voluntarily participate in the Quapaw Analysis, none of whom are the Plaintiffs' affiants. As noted above, the Settlement Agreement does not compromise any claims of the three affiants, the eight individuals who will voluntarily participate in the Quapaw Analysis, or any other member of the plaintiff class in this litigation. In sum, the picture Plaintiffs paint depicts their erroneous interpretation of the Settlement Agreement and offers no basis for preventing the Tribe and the United States from moving forward with implementation of their settlement. Their misguided attempt to thwart the result of a successful dispute resolution effort should be rejected.

## **ARGUMENT**

### **I. The Settlement Agreement Does Not Compromise Any Claims In This Litigation.**

In their Response, Plaintiffs continue to argue that the settlement will compromise their claims in this litigation. See, e.g., Plaintiffs' Response at 4. Plaintiffs challenge Defendants to state affirmatively that the Quapaw Analysis will not result in a waiver of Plaintiffs' claims here. See id. Defendants have already met this challenge by stating unequivocally in the briefs filed in

support of their Motion that the settlement documents contain no such waiver; the only claims compromised in the Settlement Agreement are those of the Tribe. See Defendants' Motion at 3; Defendants' Reply In Support Of Motion For Expedited Clarification Or, In The Alternative, Modification Of The December 23, 2002 Order at 2; Settlement Agreement (attached as Exhibit 1 to Defendants' Motion, including Exhibit B attached thereto (Joint Motion for Modification of Protective Orders and Agreed Stipulation of Dismissal and accompanying proposed order)). The Quapaw Analysis is expected to reveal limited information about Interior's management of certain non-monetary trust assets of the eight individual members of the Tribe identified in the Contract. It is conceivable that some of the documents collected and some of the information analyzed may prove useful in performing Interior's accounting obligations. However, as the settlement documents attached to Defendants' Motion make clear, the Settlement Agreement does not resolve any claims that the eight individuals (or any other member of the plaintiff class) have asserted or may assert against the United States. This is further confirmed by the relevant portion of the parties' proposed order to approve the Agreed Stipulation of Dismissal in the Quapaw case:

IT IS FURTHER ORDERED, for purposes of Fed. R. Civ. P. 58, as follows:

1. All claims that have been or could have been brought by the Tribe against the United States for: a) an accounting of any of the *Tribe's* tribal trust fund accounts; b) an accounting of any other trust asset of the *Tribe*; and c) the preparation of a trust asset management history for the *Tribe*, are hereby DISMISSED WITH PREJUDICE;

2. All remaining claims in the above-captioned matter are hereby DISMISSED WITHOUT PREJUDICE.

Proposed Order at 2 (accompanying the Joint Motion for Modification of Protective Orders and Agreed Stipulation of Dismissal, attached as Exhibit B to the Settlement Agreement) (emphasis added). In light of the clear language in the settlement documents and the proposed order, it is disingenuous for Plaintiffs to argue that the Settlement Agreement compromises any of their claims in this litigation.

Defendants' Motion does not ask this Court to discharge Defendants of their obligation to perform an accounting for the eight individual Quapaw members or any other member of the plaintiff class; rather, Defendants simply request that the Court clarify that its December 23, 2002 Order does not prohibit the Tribe's enterprise, QIS, from having limited contacts with the eight individual Quapaw members so that QIS can collect and analyze information the Tribe believes will be beneficial to it. The limited contacts contemplated with eight individuals who are voluntarily participating in the Quapaw Analysis cannot possibly "lead to continuing abuse of individual Indian trust beneficiaries," Plaintiffs' Response at 2, as Plaintiffs irresponsibly allege.

## **II. Plaintiffs Grossly Mischaracterize The Scope Of The Contract.**

As noted above, the Quapaw Analysis will include a limited analysis of Interior's management of the non-fund trust assets of eight individual Quapaw members. These eight individual members, who are identified in the Contract, see Contract § C.1.d.(6) (attached as Exhibit A to the Settlement Agreement, attached as Exhibit 1 to Defendants' Motion), "expressed an interest" in participating in the settlement "so that they could obtain information about Interior's management of their nonfund trust assets." Amicus Brief at 3-4. These are the *only* individual Indian members for whom QIS is performing a limited non-fund trust asset management history. This group of eight individuals does *not* include any of Plaintiffs' affiants. Plaintiffs' implication that the Contract encompasses the collection, review, and analysis of

documents and information concerning the trust assets of the entire plaintiff class is grossly misleading.

Plaintiffs further mischaracterize the scope of the Contract by alleging that QIS will be given “unfettered and unmonitored authority to discuss with class members information related to the management and administration of Individual Indian Trust (‘IIM Trust’) assets.” Plaintiffs’ Response at 2. QIS, pursuant to the express Contract terms, may only collect, review and analyze documents concerning Interior’s management of the Tribe’s trust fund accounts and certain non-monetary trust assets of the eight individual Quapaw members. The Settlement Agreement expressly provides that “[t]he component of the Quapaw Analysis addressing Interior’s management of certain non-monetary trust assets of the Eight Individuals shall not include an analysis of Interior’s management of the Individual Indian Money (“IIM”) accounts of either the Eight Individuals or of any other individual member of an Indian tribe.” Settlement Agreement, Art. 1, ¶ 1 (attached as Exhibit 1 to Defendants' Motion); see also Contract at 8, § C.1 c (attached as Exhibit A to the Settlement Agreement). Plaintiffs’ characterization of the scope and effect of the Contract is unsupportable.

### **III. The Settlement Agreement Provides for Significant Safeguards to Protect the Security of Documents Handled by QIS During Its Performance of the Contract.**

Plaintiffs continue, without support, to voice concerns about QIS’s professional capability to handle trust data. See Plaintiffs' Response at 5. The Contract, however, expressly sets forth specific safeguards to protect the security of documents. See, e.g., Contract §§ C.1.g.(3)(a), (d); id. § H.2 (attached as Exhibit A to the Settlement Agreement, attached as Exhibit 1 to Defendants' Motion). QIS, as a party to the Contract, is obligated to abide by these provisions. Failure to do so would result in a breach of those provisions of the contract. Furthermore, as

noted in Defendants’ Motion and Reply Brief, the Contract expressly prohibits QIS from having “access to documents or any other information involving or relating to IIM accounts.” Id. § C.1.c. In no sense does the Contract permit the unlimited and wide-sweeping access to trust data alleged by Plaintiffs.

Moreover, the Settlement Agreement provides a significant safeguard, wholly ignored by Plaintiffs, to protect the confidentiality of the documents and information collected, reviewed, and analyzed during performance of the Contract. The United States and the Tribe agreed to request that the United States District Court for the Northern District of Oklahoma modify the protective orders previously entered in the Quapaw case to provide for the confidential treatment of the documents and information exchanged during the implementation of the Settlement Agreement, including the Quapaw Analysis itself. See Settlement Agreement, Art. 1, ¶ 3; proposed Joint Motion for Modification of Protective Orders and Agreed Stipulation for Dismissal, ¶ 6, and accompanying Order (attached as Exhibit B to the Settlement Agreement). The relevant provisions of the settlement documents make clear that there are sufficient safeguards in place to properly protect the documents containing confidential information that will be accessed during implementation of the Settlement Agreement.

**CONCLUSION**

For the foregoing reasons, as well as those stated in the briefs filed in support of Defendants' Motion, Defendants' Motion should be granted.

Dated: September 3, 2004

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on September 3, 2004 the foregoing *Defendants' Reply to Plaintiffs' Response to Amicus Curiae Brief of the Quapaw Tribe of Oklahoma* was served by Electronic Case Filing, and on the following who is not registered for Electronic Case Filing, by facsimile:

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