



TESTIMONY OF

JENNIFER M. KEOUGH

EXECUTIVE VICE PRESIDENT AND CHIEF OPERATING OFFICER
THE GARDEN CITY GROUP, INC.

Before the

SENATE COMMITTEE ON INDIAN AFFAIRS

Hearing on

“Improving the Trust System: Continuing Oversight of the
Department of the Interior’s Land Buy-Back Program”

July 16, 2014

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Chairman Tester, Vice Chairman Barrasso, and distinguished Members of the Committee, my name is Jennifer Keough and I am pleased to appear today representing The Garden City Group, Inc. (“Garden City”), the Court-approved Claims Administrator for the historic settlement authorized by Congress in *Elouise Pepion Cobell, et al. v. Jewell* (the Cobell Settlement). Garden City welcomes the opportunity to assist this Committee in its oversight of the implementation of the Cobell Settlement.

Garden City is one of the nation’s leading class action settlement administration firms. We employ more than 1,000 people in ten offices throughout the United States, including our Corporate Headquarters in Lake Success, New York, and our 50,000-square-foot West Coast Headquarters in Seattle, Washington, where much of our work on the Cobell Settlement is performed. Over the past three decades, Garden City has repeatedly served as court-approved administrator in class actions throughout the country. In more than 2,500 matters, we have distributed more than \$30 billion in settlement funds. We are regularly retained by defense counsel as well as plaintiffs’ counsel and have managed more billion-dollar-plus settlements than any other firm in our industry. Garden City has been ranked the number one or number two claims administrator by *The New York Law Journal* four years in a row.

I am Executive Vice President and Chief Operating Officer of Garden City and am proud to manage our important work on the Cobell Settlement. While we bring the same commitment and diligence to all of our jobs, Garden City is particularly honored to have been selected to serve as Claims Administrator for this enormously consequential project.

We understand and appreciate what is at stake in this case for the hundreds of thousands of Class Members who have waited decades for the resolution of claims concerning Individual Indian Money (“IIM”) trust accounts and other trust assets. To assist in the implementation of the Cobell Settlement, Garden City has devoted more than 730,000 hours thus far to fulfilling our assigned duties under the Settlement. At every step along the way, we have dedicated the attention and resources needed to complete all the tasks within our authority as quickly and efficiently as possible, and we expect to be ready to issue all remaining payments owed to the Class Members expeditiously once the payment amounts are finally resolved by the Parties and approved by Judge Hogan, as required by the terms of the Settlement.

The Cobell Settlement and Garden City’s Role as Claims Administrator

Thirteen years after Elouise Cobell and her fellow plaintiffs brought suit against officials of the Department of the Interior (“DOI”) and the Secretary of the Treasury seeking to correct deficiencies in the management of IIM trust accounts and related assets, the Parties finalized their landmark Settlement Agreement on December 7, 2009.

The Settlement Agreement was contingent on final court approval following the resolution of any appeals and on the enactment of legislation by Congress ratifying the Settlement and authorizing the necessary funding. Congress authorized the Settlement with the passage of the Claims Resolution Act on December 8, 2010. Thereafter, the District Court gave preliminary approval to the Settlement on December 21, 2010, and issued its final Order of approval on July 27, 2011. Four Class Members appealed the final judgment approving the Settlement, and those appeals were not resolved until November 24, 2012. Accordingly, the Cobell Settlement did not receive final approval until that date.

The Settlement Agreement established two distinct and partially overlapping settlement classes, the Historical Accounting Class and the Trust Administration Class, whose members were to receive payouts under the Settlement in two stages. At Stage 1, each identified member of the Historical Accounting Class was to receive a per capita payment of \$1,000. At Stage 2, each identified and eligible member of the Trust Administration Class was to be paid a baseline payment of \$500 plus a pro-rata amount based on an “Assigned Value” calculated in accordance with a formula set out in the Settlement Agreement. The Settlement Agreement states that “No Stage 2 payments shall be made until all Stage 2 Class Members have been identified in accordance with this Agreement and their respective pro rata interests have been calculated.”

As Claims Administrator for the Cobell Settlement, Garden City’s role is to provide administrative services to the Parties to facilitate the distribution of settlement funds to the Class Members in accordance with the requirements and conditions of the

Settlement. These services include assisting Class Counsel in administering and distributing the settlement funds with the approval of the Court and in reliance on information provided by DOI. They also include locating members of the Historical Accounting Class, starting from contact information provided by DOI. With respect to the Stage 2 payments to the Trust Administration Class, Garden City was tasked, subject to approval of the Court, with establishing standards and procedures to permit potential members of the Class to submit documentation supporting their claim of eligibility to receive a Stage 2 payment, and Garden City was given the job of making the initial determinations of eligibility, subject to a right of appeal to the Special Master and final resolution by the Court. Garden City has no role in administering the Land Buy-Back Program or the Trust Land Consolidation Fund established by Congress.

In performing all of its functions, Garden City operates at the direction of the Parties and subject to the supervision of the Court. Garden City is authorized to act only when and as specified under the terms of the Settlement. In particular, Garden City is prohibited from making any payment under the Settlement unless and until the amount of the payment is finally resolved pursuant to the requirements of the Settlement and is specifically approved by the Court.

Garden City's Work Identifying and Locating Class Members

Because many of DOI's records relating to IIM trust accounts and individual Indian beneficiaries were missing, incomplete, or inaccurate, Garden City was required to undertake very extensive efforts to assist the Parties in identifying and locating potential Class Members. Some of the issues we faced when we first received data from DOI in 2010 included the following:

- There was insufficient contact information for 315,349 Class Members and no address at all for 174,909 names in this population.
- We received incorrect address information for 73,594 Class Members.
- 66,846 Class Members were officially classified as "Whereabouts Unknown" by DOI.
- 21,974 individuals listed as alive were actually deceased, and 1,313 individuals listed as deceased were actually alive.
- In 14,649 cases, there were multiple different records for the same individual.
- Some individual Indians were incorrectly identified as non-Indian.

- Records were missing for thousands of Class Members in Oklahoma and Alaska.

To address these data issues and assist Class Counsel in facilitating distribution of payments in accordance with the Settlement, Garden City has participated in an ambitious program of outreach to Indian communities. These outreach efforts have included:

- Sending out more than 375,000 notices and claim forms and more than 245,000 additional outreach mailings;
- Maintaining a call center that receives an average of 15,000 calls per week and has handled over 2,800,000 total calls;
- Scanning and reviewing 3,219,477 pages of documentation relating to potential Class Members;
- Holding dozens of meetings in Indian communities to identify potential Class Members;
- Working with various Indian Tribes, Alaska Native Corporations, and other Native American community organizations to identify potential Class Members;
- Publishing announcements in dozens of newspapers and tribal publications listing Class Members for whom we have insufficient or incorrect information; and
- Maintaining and updating the Cobell Settlement website, www.indiantrust.com, which receives an average of 5,000 visits per day.

Specifically, over the last year, Garden City and Class Counsel have conducted town hall meetings in 14 different cities, and Garden City met individually with thousands of Indian beneficiaries at these meetings to go over their record information. Below is a list of cities where the meetings have been held over the last twelve months or are scheduled to occur in the immediate future.

Summer and Fall 2013

- Farmington, NM
- Gallup, NM
- Crown Point, NM

- Houck, AZ
- Oklahoma City, OK

Spring and Summer 2014

- Anadarko, OK
- Durant, OK
- Red Rock, OK
- Anchorage, AK
- Belcourt, ND
- New Town, ND
- Eagle Butte, SD
- Pine Ridge, SD
- Red Rock, OK
- Kamilche, WA

These locations were chosen because they are in areas of the country with higher numbers of “Whereabouts Unknown” Class Members, Class Members or beneficiaries lacking sufficient deliverable mailing address information, and estates of deceased Class Members lacking probate or other distribution documentation. The town hall meetings were set up to discuss the process and timeline for the Trust Administration Class distribution, assist Class Members with documentation, and reach out to Class Members needing updated contact information. To that end, Garden City has brought the contact data provided by DOI to each meeting on a secure database system created for the Settlement so that Class Members can validate and update their records onsite and provide documentation directly to Garden City to facilitate payment distribution. Typically, we have arranged to have a team of 5 to 10 people with computer terminals at each meeting to assist individuals with inputting and correcting data.

I have personally attended many of these meetings and will be at a meeting in Washington State this coming weekend. We are currently working with Class Counsel to schedule additional town hall meetings in Idaho, Montana, Washington, Wyoming, and potentially other States.

In addition, Garden City has contacted more than 300 Tribes and is working with approximately 200 tribal organizations to obtain current addresses and updated contact information so that awards can be distributed without delay once approved by the Court.

As a result of these efforts to date, we have thus far been able to locate approximately 178,000 Class Members for whom there was insufficient contact information, or 56 percent of the affected individuals. In addition, of the 66,846 individuals officially identified as Whereabouts Unknown, we have located approximately 80 percent, or all but 13,890. We were also able to assist DOI in identifying an additional 12,306 individuals who should have been accounted for as members of the Historical Accounting Class but were not identified in the records provided to us, and our identification of these 12,000-plus individuals allowed them to receive payment under the Settlement.

Furthermore, Garden City has undertaken efforts to identify the heirs of the 61,588 Class Members we determined were deceased. We assisted with 620,000 mailings and dozens of meetings and publications designed to find the heirs of these Class Members so that we can distribute payments to their estates. In fact, it was Garden City's review of claimant documentation plus our outreach to Class Members that enabled us to identify categories of documents that claimants could rely on to resolve estate issues more easily than had been the case early in the Settlement administration. Class Counsel petitioned the Court to allow the use of this additional documentation, to the benefit of a great many Class Members.

Garden City's Distribution of Historical Accounting Class Payments

Shortly after final approval of the Cobell Settlement, on December 11, 2012, the District Court issued an Order directing "commencement of payment [for the Historical Accounting Class] no later than December 24, 2012." Three days after the Court's Order, on December 14, 2012, Garden City commenced the mailing of Stage 1 payment checks to the Historical Accounting Class. We completed these Stage 1 mailings well within the deadline set by the Court.

DOI subsequently identified more than 12,000 additional members of the Historical Accounting Class who were not encompassed in the Court's December 11, 2012 Order. On January 23, 2014, the Court authorized the distribution of Stage 1 payments to these additional Class Members, and, once again, Garden City promptly completed this subsequent distribution.

I am pleased to report that to date, more than 90 percent of the 339,206 individuals identified as members of the Historical Accounting Class have received the Stage 1 payments to which they are entitled. The remaining identified Class Members include

estates pending in probate, Class Members whose checks were mailed but returned as undeliverable, Class Members with missing addresses, and Class Members whose checks had to be withheld due to liens. We will continue to process as quickly as possible all remaining Stage 1 payments, when and as additional required information is identified and the payments are permitted by law and approved by the Court.

The Processing and Status of Trust Administration Class Claims

Unlike the payments to the Historical Accounting Class, the Stage 2 payments to the Trust Administration Class have not yet been calculated by DOI as required by the Settlement, nor have they been authorized by the Court. Therefore, Garden City has no current authority to distribute any payments to the Trust Administration Class.

In its December 11, 2012 Order, the Court directed that notice be provided to potential members of the Trust Administration Class, and the Court initially set a deadline of March 1, 2013 for claimants to mail their claim forms to Garden City. The Order also set a schedule for Garden City's initial determinations of class eligibility, for the submission of additional information by claimants initially determined by Garden City to be ineligible, and for the appeal of eligibility determinations to the Special Master. On April 10, 2013, the Court modified the schedule to give claimants additional time to obtain documentation to support their claims, and under the modified schedule, the deadline for appeals of Garden City's eligibility determinations to the Special Master was extended to September 4, 2013.

Garden City completed all of the required eligibility determinations for the Trust Administration Class within the deadlines set by the Court. Meeting these deadlines required enormous administrative efforts. We received more than 480,000 claim forms in this process and reviewed every submission to determine eligibility. As a result of this process, we initially determined that 186,679 claimants were eligible to receive Stage 2 distributions. Of those initially determined to be ineligible, 85,979 requested reconsideration, and with the additional information submitted by these claimants, Garden City was able to determine that 53,169 of those requesting reconsideration were eligible Class Members. I am pleased to report that only 2,451—or less than one half of one percent—of our claim determinations were appealed to the Special Master.

I know this Committee has questions about the timing of payments to the Trust Administration Class and is keenly interested in the reasons why these payments have not been authorized by the Court and distributed. There are two primary reasons why these payments have not yet been authorized.

First, the original terms of the Settlement contemplated that the distribution of any payments to the Trust Administration Class would occur after all appeals of eligibility

determinations had been finally resolved by the Special Master and the Court. The reason was that the pro-rata amount owed to any one member of the Class depends upon the total number of eligible Class Members and the calculation of the final payment amount determined to be owed to each individual claimant. Because more than 2,000 eligibility determinations were appealed to the Special Master and because there is no deadline for the final resolution of eligibility appeals, Stage 2 payments were not authorized while appeals remained pending. Therefore, Garden City had (and still has) no authority to mail any checks to the eligible members of the Trust Administration Class.

Fortunately, the issue created by the appeal process has now been addressed by the Parties and the Court. Class Counsel recently moved the Court for an order permitting the phased distribution of Trust Administration Class payments prior to the final expiration of all the appeals, and on May 28, 2014, the Court approved this request.

The Court's May 28 Order, however, does not address the second issue that currently prevents Garden City from sending out any Stage 2 payment checks. Under the Settlement, Garden City may not make any payment to an eligible member of the Trust Administration Class until DOI has first calculated the amount owed, as provided for in the Settlement, and the Court has specifically approved the payment amount. Garden City has no access to the information necessary to make these calculations and is not involved in making the calculations required by the Settlement.

We have not yet received final award calculations from DOI, although we understand that DOI is continuing to work on finalizing those numbers. Once these amounts are determined, the payments must then be finally approved by the Court before Garden City is authorized to issue the payment checks.

Once the final numbers are provided to Garden City and approved by the Court, we stand ready to process and distribute payments to the Trust Administration Class as efficiently and quickly as possible. We are eager to complete the process.

* * *

Thank you, Mr. Chairman. That completes my testimony, and I would be happy to answer questions from the Committee.