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mostly about their fees; advocates for tribal interests have their own agendas regarding the buy-backs—and those are the people who were supposed to be fighting for the Indian cause.

President Barack Obama has declared that the settlement is a win for Indians, that it was a major concession by the U.S. government. "After years of delay, this bill will provide a small measure of justice to Native Americans whose funds were held in trust by a government charged with looking out for them," the president said in December when he signed the settlement into law as part of the Claims Resolution Act of 2010. But there is an open secret most administration officials keep quiet about: This payout is a pittance compared to what Indians are probably due. Accountants, even federal ones, have said that the likely losses for Indians due to Interior's mismanagement are probably in the range of $8 billion to $40 billion.

Interior and U.S. Department of Justice officials argued for years that the situation was so complex that no one really knew how much was due. Interior's shoddy record keeping was the main reason for the uncertainty, but despite court-ordered attempts to recalculate the damage done, the agency has never provided a full and accurate accounting.

In court, the Interior Department never fully succeeded in establishing that it should bear little or no responsibility, but the government was handed a major negotiation tool in August 2008 when U.S. District Judge James Robertson ruled that plaintiffs were due just $455 million. That figure was far less than what the Cobell side was seeking; their calculations went as high as $47 billion.

Robertson's figure was vacated on appeal in July 2009—and an accounting was deemed possible. The lead plaintiff in the case, Blackfeet citizen and banker Elouise Cobell, regularly mentioned that $455 million figure when Indians and others lamented how puny $3.4 billion seemed compared to the previously proposed settlements. "I would have liked to have a lot more money for Indian account holders, but we didn't get it," she told Montana's Billings Gazette in December 2009. "We went from $455 million to $3.4 billion. We worked hard for it." She has also said it was "a good deal for all."

Cobell rarely mentioned that in October 2006 her team rejected a proposal shepherded by Sen. John McCain, R-Ariz., that offered an $8 billion settlement to willing trustees. That deal, deemed too small and coming with too many strings, was $5.4 billion more than the deal negotiated under Obama.

Cobell is not a good deal for Indians who truly wanted an accurate accounting of what they lost. It is perhaps even worse for those who will have to decide whether to accept it. Their options are meager: they can either sue the government on their own, or they can continue to suffer from the bad accounting that Cobell was supposed to abolish. "The federal government got away with a good deal," Wayne Stein, a professor of Native American studies and citizen of the Turtle Mountain Chippewa tribe, told Montana's Bozeman Daily Chronicle. He estimated that the government will pay just 25 cents on every dollar it owed.

Some Indians are disappointed by Cobell's eagerness to sell the deal, even those who have long admired her willingness to steadfastly fight Goliath in court. Under the current plan, most Indians in the case will likely receive less than $2,000. For comparison, Obama and Clinton administration settlements for other minorities, like those to African-American farmers, have led to much greater individual compensation that started at $50,000 in some cases.

The legal fees in this case haven't helped build any trust. Soon after the settlement was announced, Indians learned that lawyers for the plaintiffs could be eligible for up to $100 million. That amount would be many times bigger than the largest award to any individual in the case—even the lead plaintiffs. Indians knew the lawyers would be expensive, but something seemed increasingly unfair about their huge potential payday, especially given the unique circumstances of the case, the largest class-action case involving Indians against the U.S. government in history.

The lawyers fueled this fire last December when they suggested in court documents that $100 million was not enough—even though they had agreed to not to argue for more. The lawyers told the court that "fair compensation" for them would be closer to $223 million. To date, the court has not acted on this petition, but it is within its purview to increase—or decrease—the amount paid to the lawyers.

Beyond those legal fees, the plaintiffs' counsel, led by attorney Dennis Gingold and Kilpatrick Stockton partner Keith Harper, a citizen of the Cherokee Nation of Oklahoma, have sometimes made comments that have seemed to show a lack of concern for Indian country.

Gingold did himself no favors by getting into a public ruckus with a respected tribal leader. He suggested in an editorial for Indian Country Today in February that William Martin, president of the Central Council of Tlingit and Haida Indian Tribes of Alaska, was wrong to raise concerns about the settlement.

The hard sell—and low-ball settlement—of the Cobell case leave some Indians still waiting for justice

In an earlier editorial, Martin had said Congress should study the agreement before approving it. He wasn't an unreasonable detractor, he said, noting that he "breathed a sigh of relief" when he learned the case had been settled, but he wanted to be sure that the terms were solid.

Gingold came back hard: "For 14 years, Ms. Cobell did what no one else in this country has ever done," he wrote. "She, an individual Indian, took on the United States government for Indian people. Where was Mr. Martin?"

Several observers thought the attack was a low blow, especially considering that as a tribal leader, Martin had the duty to look out for tribal citizens' interests.

Michael Finley, chairman of the board of directors of the Intertribal Monitoring Association on Indian Trust Funds and chairman of the Confederated Tribes of the Colville Reservation, labeled Gingold's words, "a harsh, misleading attack on fellow tribal leader and respected tribal elder" in a follow-up editorial.

Those who hoped Cobell's zealousness would counterbalance her lawyers' self-interests have been disappointed. She says the lawyers deserve all the money they asked for, arguing that lawyers might be less likely to take on the next important Indian country issue if a large award was not granted in this case.

Cobell, of course, has a big financial stake pinned on her lawyers' arguments. In their December filing, they indicated that she should receive an incentive award of $2 million and three other named plaintiffs should receive between $150,000 and $200,000 as a bonus for their role. (Such payments are typical in cases like this.) Named plaintiffs will also seek reimbursement for expenses and costs of approximately $10.5 million in addition to the incentive award.

That Cobell will no doubt receive a substantial payday hasn't helped to bolster her status among those in the Less-Than-$2,000 club. This irritates her—she told the Native America Calling radio show in March that speculation on what she would receive was, "a very damaging rumor that's going around." She insisted that the money she'd get would be used to pay back debts to the grassroots Blackfeet Reservation Development Fund, the tribal business she directs.

"There is no difference between Elouise and her grassroots company," said Richard Monette, a law professor at the University of Wisconsin and former chairman of the Turtle Mountain Band of Chippewa Indians, after hearing her comments. A critic of several points of the settlement, he'd like Cobell to be more transparent on many matters involving the case.

Many Indians have been willing to give credit to the lawyers, noting that they have travelled far and wide with Cobell to reservations across the country, attempting to explain the settlement. And, of course, they have spent much money and time litigating the case through the years. But they couldn't all shake their suspicions. By the spring of 2010, Cobell had grown accustomed to the increasingly vocal complaints, and she got quite good at dismissing them, repeatedly saying that they were, "doing a disservice to Indians."

On top of the lawyers' maneuverings and the misgivings about Cobell, tribes have played a complicating role, even though the case initially involved the interests of individual Indians, not tribes. Somewhere along the line, however, buying back land for the tribes became a major component of the settlement. The tribal concerns are mostly regarding the $1.9 billion Interior program, and how it will attempt to give lands it receives under that program back to tribes. Few answers have come on that front. Plus, tribal leaders have argued that tribes may have a more difficult time receiving trust settlements for cases involving tribes now that Cobell has gone for relatively little.

Cobell grew tired of what she viewed as tribal interference as she waited for congressional approval of the settlement from December 2009 to late-November 2010. "Tribes are not parties in our case and would receive no funds from our settlement," she wrote on her website in June, arguing that they should be supportive cheerleaders since her case has led to many "factual findings" involving the government's trust dealings. "[It] is also my understanding from conversations with senior Interior and Justice officials and certain tribal attorneys that there will be no settlement with any tribe if Cobell is not settled." Again, she made her case, but offered little to back up her claims.

Despite the hard-sell tactics—or, perhaps, because of them—the settlement has spurred much heated debate among Indians. Several tribal groups, including the National Congress of American Indians, offered resolutions aimed, they said, at strengthening the deal. That scrutiny led to at least one major change—a shift of $100 million from the Interior program to the fund for individual beneficiaries. Before that change was made, after much prodding from Senate Committee on Indian Affairs Vice Chair John Barrasso, R-Wyo., the Interior program was slated to receive $2 billion.

The alteration was far too little for some, who hope U.S. District Court Judge Thomas Hogan, charged with granting final approval, will root out some of the unfair parts of the deal. But many believe he just wants to get it over with, especially since judges before him couldn't get the two sides to agree on much of anything. In late December he gave preliminary approval of the terms, and the 300,000 possible beneficiaries will be notified starting on Jan. 20. A fairness hearing, loaded with potential fireworks, is scheduled for June.

Most handicappers predict Hogan will move quickly to navigate around the sour justice aspects of the deal, and grant final approval. If he does, it will signal just the beginning of a new trust battle for many Indians, some of whom already plan to turn down any reward stemming from the settlement, either choosing to file their own lawsuit, continue on with the status quo, or hope against hope that another Cobell will arise to take up their cause.

The History of Cobell

June 1996

Elouise Cobell files suit against the Department of the Interior, seeking an accounting of how it managed proceeds from oil, gas, mining and timber royalties on Indian land since the late 1870s, and reform of that trust.

February 1999

U.S. District Judge Royce Lamberth holds then-Secretary of the Interior Bruce Babbitt, Assistant Secretary of the Interior Kevin Gover and Treasury Secretary Robert Rubin in contempt for delays in producing documents, destruction of relevant documents and misrepresentations to the court in sworn testimony.

February 2001

U.S. Court of Appeals finds for the plaintiffs.

September 2002

Lamberth rules Interior Secretary Gale Norton and Assistant Secretary for Indian Affairs Neal A. McCaleb failed to comply with his 1999 order to account for more than a century of proceeds from royalties.

April 2003

Appeals court finds Interior unfit to manage IIM trust accounts.

May 2003

"Trial Two" begins to try to determine amounts owed IIM trustees.

July 2005

Interior ordered to admit to trustees that its accounting may be inaccurate; Lamberth calls Interior a "dinosaur." Sens. John McCain and Byron Dorgan sponsor act to distribute IIM funds at a "fair and equitable rate."

July 2006

Lamberth removed from case for intemperate commentary; appellate court restores Interior's connection to the Internet. McCain proposes an $8 billion settlement.

October 2006

Plaintiffs reject McCain proposal.

August 2008

District of Columbia Court Judge James Robertson decides plaintiffs due $455 million; says Interior can't conduct full accounting.

July 2009

Cobell legal team squashes the $455 million on appeal.

December 2009

Obama administration announces settlement of $3.4 billion.

June 2010

Robertson retires; Judge Thomas Hogan appointed to case.

November 2010

House and Senate approve settlement.

December 2010