

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 DIRK KEMPTHORNE,)
 Secretary of the Interior, et al.,)
)
)
 Defendants.)
 _____)

Case No. 1:96cv01285
(Judge Robertson)

**DEFENDANTS' NOTICE OF FILING OF EXPERT REPORT OF DAVID B. LASATER,
PURSUANT TO RULE 26(a)(2) OF THE FEDERAL RULES OF CIVIL PROCEDURE**

Defendants hereby give notice of filing and attach hereto the Expert Report of David B.

Lasater.

Dated: August 17, 2007.

Respectfully submitted,
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J. CHRISTOPHER KOHN
Director

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CERTIFICATE OF SERVICE

I hereby certify that, on August 17, 2007 the foregoing *Defendants' Notice of Filing of Expert Report of David B. Lasater, Pursuant to Rule 26(a)(2) of the Federal Rules of Civil Procedure* was served by Electronic Case Filing, and on the following who is not registered for Electronic Case Filing, by facsimile:

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/s/ Kevin P. Kingston
Kevin P. Kingston

Expert Report of David B. Lasater

Qualifications

My name is David B. Lasater. I am a Senior Managing Director in the Forensic and Litigation Consulting practice of FTI Consulting, Inc. My business address is 3 Times Square, 11th Floor, New York, NY 10036.

I have a Ph.D. from the University of Texas at Austin, August 1982, in accounting research methodologies, capital markets, and quantitative methods. I have a Masters degree in Professional Accounting from the University of Texas at Austin, May 1979, and a Bachelors degree in Business Administration, accounting, from the University of Houston, December 1973.

I am a licensed Certified Public Accountant in Texas and New York. I am a member of the American Statistical Association, the American Economic Association, and the American Institute of Certified Public Accountants. My resume is attached as Exhibit 1.

I have given expert statistical testimony in Federal and state courts, including deposition and courtroom testimony in the *Cobell* matter in 1998 and 2003. The matters in which I have given testimony in at least the most recent four years are reflected in a list attached as Exhibit 2.

I have been asked to evaluate the statistical sampling dimensions of the Department of the Interior's May 31, 2007 "Plan for Completing the Historical Accounting of Individual Indian Money Accounts" ("May 31, 2007 Plan") plan to provide a historical accounting for Individual Indian Money accounts.

FTI Consulting, Inc., is compensated at a rate of \$500 per hour for my time on this project. I estimate that the amount of time I will have spent prior to the submission of this report has totaled over 100 hours. My personal compensation is not dependent on the outcome of the case.

Background

1. My understanding of Interior's May 31, 2007 plan is that it builds on "The Historical Accounting Plan for Individual Indian Money Accounts," ("the January 6, 2003 plan"). I previously submitted two expert reports and testified about the statistical feasibility of the January 6, 2003 plan. I incorporate by reference my previous reports.

2. At the time of the January 6, 2003 Plan, two substantial studies had been reported about the financial reliability of the historical system of account maintenance and the related receipts and disbursements in the trust accounting systems:
 - (a) The Tribal Reconciliation Project completed in or about 1995, and
 - (b) Revised Interim Final Report of Joseph R. Rosenbaum, November 19, 2001.

Since 2003, the Litigation Support projects undertaken by the Department of Interior have added substantial information about IIM trust transaction reliability.

Opinions

1. Interior's conclusion is reasonable that little additional overall insight about the quality of IIM transaction bookkeeping in the electronic era would be obtained through further testing beyond the Litigation Support projects.
2. Results from the May 31, 2007 sampling plan, reflecting the Litigation Support projects, will provide reasonable assurance as to the reliability of individual account transactions listings in the electronic era at the rates of incidence and dollar size of error discovered.
3. The methodology proposed for testing transactions in the paper ledger era is reasonable.
4. The proposed difference testing to evaluate statistically whether the paper ledger and electronic era transactions were processed by the same quality of bookkeeping is sound.

Bases for my opinions

The bases for my opinions are:

1. My understanding of the objectives of a historical accounting in this case,
 2. My general knowledge of the IIM accounting systems and categories of supporting documentation,
 3. My training and professional accounting experience,
 4. My training, familiarity with the literature, and experience in the design and implementation of statistical sampling plans for testing the reliability of accounts and transactional data and databases, and
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5. My training and experience with interpreting the results to the larger accounting population from which the samples were drawn.

I have considered the following in forming my opinions:

1. Interior's January 6, 2003 and May 31, 2007 plans for conducting and producing a historical accounting to IIM account holders,
2. My observation during several weeks in Spring 2004 of the computer-based Account Reconciliation Tool ("ART") applied in the pilot reconciliation of Alaska Region transactions, and a preliminary interim analysis of the progress of that study,
3. My previous reports and transcripts of my testimony in this case,
4. The American Institute of Certified Public Accountants' ("AICPA") literature on the audits of service organizations that process transactions for user organizations,
5. The Tribal Reconciliation Project,
6. Revised Interim Final Report of Joseph R. Rosenbaum, November 19, 2001, and
7. Numerous reports produced by the statistical and other contractors reflected in the Administrative Record. (The listing of reports I have considered is attached as Exhibit 3.)

In addition, since the filing of the May 31, 2007 Plan, I have conferred with Office of Historical Trust Accounting ("OHTA") Deputy Director Jeffrey Zippin and Department of Interior Assistant Deputy Secretary Abraham Haspel, and members of National Opinion Research Corporation ("NORC"), including Susan Hinkins, Robin Lee, Patrick Baier, and Ali Mushtaq. I have also conferred with FTI Managing Director Michelle Herman and with lawyers from the Department of Justice and Interior's Office of the Solicitor.

Discussion of my opinions

The Interior/NORC Litigation Support projects for testing the reliability of IIM transactions, as defined in the January 6, 2003 and May 31, 2007 Plans, have included:

1. Reconciling Judgment and Per Capita accounts¹,
2. Reconciling all land-based account transactions of amounts \$100,000 or greater, and

¹ As of the date of the 2007 Plan, 86% of the 96,823 accounts had been reconciled (2007 Plan, Part 2, p. 12).

3. Reconciling samples of land-based account transactions of amounts less than \$100,000.

Sampling transactions and then testing for agreement the sampled transactions to source documentation is a generally accepted procedure for evaluating the reliability of the transaction characteristic(s) for which the sample has been drawn. In general, the larger the random sample of the transaction population, the greater the confidence that the characteristics identified from the sample are descriptive of the whole population. However, the economics of sampling and testing the sampled units often create a rational basis for concluding that no more work is justified in many statistical sampling settings.

The Interior/NORC sampling in the Litigation Support project and the May 31, 2007 Plan are designed to test the correctness of the IIM transaction recording by dividing the historical population into bookkeeping eras (i.e., electronic era and paper ledger era), dollar strata, and geographic region, and then sampling from the strata. Stratification is a generally accepted method of reducing the size of a sampling effort while holding constant the desired levels of confidence about the sample results.

Interior's conclusions about IIM transaction bookkeeping during 1985-2000

The January 6, 2003 Plan was not able to be implemented due to Congressional and Judicial limitations. Interior then continued its Litigation Support work on IIM transaction data. The Litigation Support work was not designed to supplant or replace the January 6, 2003 Plan. Rather, it was designed to systematically gather information about the quality of the IIM transaction bookkeeping in the electronic era.

From the Litigation Support work, substantial, systematic knowledge has been obtained about the quality of IIM land-based transaction bookkeeping during 1985-2000. Summarily, transaction testing followed the same overall approach as the January 6, 2003 Plan of stratifying the transaction population between a certainty stratum and sampled strata. The Litigation Support work was performed within a certainty stratum of transactions \$100,000 or greater and sampled transactions less than \$100,000.²

The transaction testing of the certainty stratum--all 2,099 large-dollar (i.e., \$100,000 or greater) electronic era transactions--amounted to tests of approximately \$483 million throughput in IIM accounts.

The sample-based transaction testing of approximately 4,500 transactions of less than \$100,000 each amounted to sample-based tests of approximately \$5.1 million of the total \$1,713 million of IIM throughput from this dollar-category of transactions.

² The January 5, 2003 Plan used \$5,000 as the dollar-size partition for the certainty stratum.

Based on the reconciliation results of the stratified sample, NORC estimates, with 99% confidence, that credits to the IIM trust accounts are understated by no more than \$86 million.³

In each testing stratum described above, differences were discovered. However, systematic bias favoring or disfavoring the account holders was not discovered.

Moreover, as a result of three elements--

- (a) the low error incidence rates,
- (b) the relative small dollar differences of the discovered errors, and
- (c) the testing cost per transaction,

--Interior has concluded that no further testing is justified. I concur.

I note that the population tested includes accounts and transactions identified to date through OHTA's Data Completeness Validation ("DCV") project. That project includes the discovery and restoration of transactions not previously identified in the NORC-sampled electronic era transaction population. I understand that the population of restored transactions will be tested for its statistical similarity to the already-sampled account and transaction population. This approach will reasonably allow adjustments, if necessary, to any prior assurance reporting to the trust beneficiaries.

Interior's approach to the reliability of IIM transaction bookkeeping in the paper ledger era

Interior plans to sample accounts and transactions from the approximately 65,000 accounts identified (to date) in the electronic era that were open at October 25, 1994, and were opened prior to the start of the electronic era in or about 1985.⁴ The plan to digitize account-specific paper ledgers related to those sampled accounts and then to reconcile a sample of the transactions from those ledgers is a statistically valid and cost-conscious first step to developing a sample population for reliability transaction testing.

The proposed second step of testing for differences (at the 95% level of confidence) between the electronic era and the paper ledger era is a statistically valid and cost-conscious⁵ step for extending the assurance statements about the IIM bookkeeping system's reliability in the electronic era to the paper era for the 65,000 accounts. The

³ NORC memorandum to Bert T. Edwards, January 26, 2007, p. 2, fn. 2.

⁴ 2007 Plan, Part 2, p. 22.

⁵ In the current setting, the cost of sampling additional units in the paper ledger era has been compared by Interior to the cost of improved information at, e.g., 99% confidence, about the paper ledger-era transactions.

proposed 95% threshold for the differences test is a generally accepted threshold for such tests.

Further, I understand that if the differences between the electronic era and paper ledger era results are statistically significant (at the 95% confidence level), the assurance statements delivered to the recipients of the historical account statements may need to be bifurcated between electronic ledger era reliability assurances and paper ledger era reliability assurances.

* * *

The opinions I have expressed in this report are based on the information received by me to date. I may receive additional information that may be relevant to the Interior/NORC plan. In the event that new information becomes available, I will evaluate it to determine whether to amend or supplement my opinions and this report.

Respectfully submitted,



David B. Lasater

August 16, 2007



David Lasater, Ph.D., CPA

Exhibit 1

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Certifications

Certified Public
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Professional Affiliations

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The American Accounting
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The American Institute of
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Education

Ph.D. in Accounting
Research, Capital
Markets, and Quantitative
Methods, Masters in
Professional Accounting,
The University of Texas at
Austin

B.B.A. in Accounting,
University of Houston

David Lasater is a senior managing director in the FTI Forensic and Litigation Consulting practice and is based in Houston and New York. Mr. Lasater has 26 years of experience providing financial, statistical and economic advisory services. He has provided expert testimony in federal, state and administrative matters.

His case experience includes securities class action, employment class action, accountants' malpractice, intellectual property, breach of contract, breach of trust, lender liability, product liability, predatory pricing, fraudulent conveyance, franchise termination and U.S. Tax Court cases.

Mr. Lasater's expertise includes the application of statistical, econometric, financial economic and accounting analyses in litigation and nonlitigation assignments. He has advised, reported and testified in litigation assignments ranging from class certification to sampling designs to economic liability and damages determinations. He has advised and reported extensively in merger and acquisition business and business segment valuations.

In the tax disputes area, he has provided assistance to counsel in the IRC Section 482 matters, Revenue Procedure 81-70, and options-based transactions. He has also advised counsel and industry in sampling procedures for evaluating sales tax and other event-based tax questions.

Mr. Lasater's industry experience includes financial services, manufacturing, assembly, distribution, telecommunications, energy, engineering R&D, entertainment, pharmaceutical and chemical, environmental, software development, federal and state government agency operations and healthcare.

Prior to joining FTI, Mr. Lasater was a partner in KPMG's Forensic Dispute Advisory Services practice and national coordinator for the practice's securities litigation and employment class action services.

Mr. Lasater holds a B.B.A. from the University of Houston (1973), a masters in professional accounting (1979) and a Ph.D. in accounting research, capital markets, and quantitative methods (1982) from the University of Texas in Austin.



David B. Lasater
Fed. R. Civ. P. 26(a) Disclosures

Trial testimony:

Honeywell, Inc. v. American Flywheel Systems, Inc. (1996) (Arizona State Court)
Johnny Reynolds v. Alabama Department of Transportation (1996, 1997) (Federal District Court - Middle District Alabama)
Cynthia Stix-Bennett v. James D. Bennett. (1998) (Connecticut State Court)
FDIC v. Arthur Andersen (1998) (AAA - Arbitration)
Taylor Publishing Co., Inc. v. Jostens (1998) (Federal District Court - Eastern District of Texas)
Eloise Pepion Cobell, et al., v. Bruce Babbitt (1998) (Federal District Court - District of Columbia)
Eloise Pepion Cobell, et al., v. Gale Norton (2003) (Federal District Court - District of Columbia)
Martin v. City of Birmingham (2001) (Federal District Court - Northern District of Alabama)
Syndicated Communication Venture Partners IV, LP v. Baystar Capital, LP, et al., (2006) (Supreme Court, New York, New York County)

Deposition testimony:

Johnny Reynolds v. Alabama Department of Transportation (1996, 2002) (Federal District Court - Middle District Alabama)
Honeywell, Inc. v. American Flywheel Systems, Inc. (1996) (Arizona State Court)
In re: JWP, Inc. (1996) (Federal District Court - Southern District of New York)
Frontline Systems, Inc. v. Fasfax, Inc. (1996) (Federal District Court - Arizona)
Eloise Pepion Cobell, et al., v. Bruce Babbitt (1998) (Federal District Court - District of Columbia)
Eloise Pepion Cobell, et al., v. Gale A. Norton (2003) (Federal District Court - District of Columbia)
Shaun Neal, et al., v. City of Detroit Law Department (1999) (Michigan State Court)
Couldock & Bohan, Inc. v. Societe Generale Corp. (1999) (Federal District Court - Connecticut)
Senior Industries, Inc. v. Thomas & Betts, Inc. (2000) (Federal District Court - Northern Illinois)
Bridenstine, et al. v. Kaiser-Francis Oil Co. (2000) (Oklahoma State Court - Beaver County)

Johnston Industries, Inc., et al. v. Milliken & Co., Inc., et al. (2000) (Alabama State Circuit Court)

Rowland W. Day, II v. Meyer, Duffy & Assoc., Inc. (2001) (Federal District Court – Southern District of New York)

Air & Gas Technologies, Inc. v. Atlas Copco Compressors, Inc. (2001) (Federal District Court – New Jersey)

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Paradigm Packaging, Inc. v. Communisis, PLC, et al. (2003) (Federal District Court – Southern District of New York)

Syndicated Communication Venture Partners IV, LP v. Baystar Capital, LP, et al., (2006) (Supreme Court, New York, New York County)

Celebrity Cruises, Inc., et al. v. Essef Corporation, et al. (2006) (Federal District Court – Southern District of New York)

Avondale Mills, Inc. v. Norfolk Southern Corp., et al. (2007) (Federal District Court – South Carolina, Aiken Division)

David B. Lasater
Fed. R. Civ. P. 26(a) Disclosures

Publications:

“Causation and Damages in Federal Securities Cases,” published in the proceedings of *Shareholder Litigation Against Directors & Officers*, ALI-ABA (Washington, D.C., May 1992).

“Option Pricing and Business Valuation,” published in the proceedings of *Business Litigation*, Defense Research Institute, (New York, May 1999).

Materials considered

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The Historical Accounting Plan For Individual Indian Money Accounts, Department of Interior (January 6, 2003)

Administrative Record Documents (document number, author, title)

38	Office of Historical Trust Account Coding and Imaging Manual, Rev. 3 (3/30/2007)
39	Electronic Coding and Imaging Examples (3/30/2007)
382 FTI	Data Completeness Validation Interim Status Report (6/12/2007)
386 Reznick	Review by Reznick Group of Settlement Packages (6/08/2006)
427 Thompson	Report on the Use of Adaptive Sampling in the Historical Trust Accounting of Individual Indian Money Transactions (8/14/2003)
457 NORC	Drawing the Account Sample for the Litigation Support (2/23/2004)
458 NORC	Analysis of the Alaska Sample (6/2004)
459 NORC	Alaska Region Sample Design Report (2/2004)
460 NORC	A Statistical Evaluation of Preliminary Eastern Region Sample Results (3/2004)

461 NORC Eastern Region Sample Design and Selection (9/29/2003)

462 NORC Eastern Oklahoma Region Sample Design Report (2/2004)

463 NORC The Great Plains Region Sample Design Report (2/2004)

464 NORC Litigation support Accounting Project Interim Report on Debit Transactions (5/2004)

465 NORC Reconciliation of the High Dollar and National Sample Transactions From Land-Based Accounts (12/28/2004)

466 NORC Midwest Region Sample Design Report (2/2004)

467 NORC Navajo Region Sample Design Report (3/2004)

468 NORC Northwest Region Sample Design Report (3/2004)

469 NORC Pacific Region Sample Design Report (2/2004)

470 NORC The Rocky Mountain Region Sample Design Report (2/2004)

471 NORC Southern Plains Region Sample Design Report (2/2004)

472 NORC Southwest Region Sample Design Report (2/2004)

473 NORC Western Region Sample Design Report (2/2004)

475 NORC The Role Statistics and Statistical Sampling in the Individual Indian Monies (IIM) Historical Accounting (5/29/2007); memo to Bert T. Edwards [OHTA] from Fritz Scheuren [NORC]

476 NORC Initial Hypothesis Testing approach for the Paper Ledger Era (5/25/2007); memo to Bert T. Edwards [OHTA] from Fritz Scheuren [NORC]

477 NORC Sample Design Planning Report 2007 (3/15/2007), memo to Bert T. Edwards [OHTA] from Fritz Scheuren [NORC]

478 NORC Procedures for Imaging and Coding Documents (1/1/2003)

479 NORC Median Balancing (10/1/2003)

480 NORC A Statistical Estimate of Receipts Credited to IIM Trust Funds (7/30/2002)

- 482 NORC Calculating Confidence Intervals When the Non-Sampling Error is Measured by Statistical Quality Assurance (9/1/2004)
- 483 NORC Mersenne Twister Technical Documentation (7/1/2004)
- 484 NORC Quality Control Support for Grant Thornton (7/1/2004)
- 487 NORC "Land to Dollar" completeness test at Horton Agency (Potatatom Tribe), memo to Jeffrey P. Zippin [OHTA] from Susan Hinkins [NORC] (3/31/2007)
- 489 NORC Government Monitoring of the Indian Service Special Disbursing Agents' Accounts: A Quality Assessment Based on the Settlement Packages, 1890-1950 (3/31/2007)
- 491 NORC Reconciliation Results of the Remaining High Dollar Transactions for the Litigation Support Accounting Project (1/31/2006)
- 492 NORC Reconciliation of the High Dollar and National Sample Transactions from Land-Based IIM Accounts (All Regions): Litigation Support Accounting Project for the Electronic Records Era (1985-2000) (9/30/2005)
- 494 NORC Qualitative Meta-Analysis of Audit Reconciliation Studies on Indian Trust Accounts: Volume II Bibliography and Index (6/23/2006)
- 495 NORC Qualitative Meta-Analysis of Audit Reconciliation Studies on Indian Trust Accounts: Volume I Summary (6/23/2006)
- 497 NORC Assurance Level Options (99%, 95%, 90%) (1/29/2007) Memo to Jeffrey P. Zippin [OHTA] from Fritz Scheuren [NORC]
- 499 NORC The Litigation Support Accounting (LSA) Project Results and the Sampling Plan Submitted to the U.S. District Court (1/26/2007) Memo to Jeffrey P. Zippin [OHTA] from Fritz Scheuren [NORC]
- 501 NORC Sampling IIM Transactions in the Paper Records Era (11/6/2006) Memo to Jeffrey P. Zippin [OHTA] from Fritz Scheuren [NORC]
- 507 Angel Missing Treasury Certificates of Settlement (9/1/2006), memo to Bert T. Edwards [OHTA] from Frank Sapienza [Reznick] and Edward Angel [Morgan Angel]
- 543 Edwards OHTA Summary of Review of GAO and Treasury "Settlement Packages" (11/8/2006)