IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:96CV01285
	)	(Judge Lamberth)
GALE A. NORTON, Secretary of the Interior, et al.,	)	
	)	
Defendants.	)	
	)	

DEFENDANTS' (1) REPLY IN SUPPORT OF MOTION TO WITHDRAW THREE MOTIONS FOR PARTIAL SUMMARY JUDGMENT; AND (2) OPPOSITION TO PLAINTIFFS' CROSS-MOTIONS FOR SUMMARY JUDGMENT

Defendants state the following as their reply to Plaintiffs' Opposition to Defendants' Motion to Withdraw Three Motions for Partial Summary Judgment, and as their opposition to Plaintiffs' Cross-Motions for Summary Judgment as to (A) There Being No Temporal Limit to Defendants' Obligation to Account, and (B) the Non-Settlement of Accounts, which were filed by Plaintiffs on February 15, 2002.[1]

REPLY IN SUPPORT OF MOTION TO WITHDRAW THREE MOTIONS FOR PARTIAL SUMMARY JUDGMENT

Introduction

Defendants' memorandum in support of their Motion to Withdraw Three Motions for Partial Summary Judgment ("Motion to Withdraw") stated good reasons for allowing the

[1] Defendants are filing a separate opposition to the Plaintiffs' Motion for Sanctions and a Contempt Finding Pursuant to F.R.C.P. 56(g), which also was contained in Plaintiffs' filing of February 15, 2002.

withdrawal of Defendants' three pending motions for partial summary judgment. In essence, events subsequent to the filing of those motions in 2000 – particularly the D.C. Circuit's decision in this case on February 23, 2001 (Cobell v. Norton, 240 F.3d 1081 (D.C. Cir. 2001) and the establishment of the Office of Historical Trust Accounting in the Department of the Interior ("Interior")) – render the issues raised by the motions either moot, premature for decision by the Court, or otherwise inappropriate for a decision at this time. Plaintiffs' Opposition ("Pl. Opp.") to the Motion to Withdraw fails to overcome that showing. Rather than responding on the merits, Plaintiffs make irresponsible and baseless allegations of improper motive in filing the motions originally.[2]

Plaintiffs have not shown a valid legal basis for denying the Motion to Withdraw. First, while they argue that withdrawal should not be allowed when a cross-motion has been filed, Plaintiffs only filed cross-motions with regard to two of the three motions for partial summary judgment. Thus, even under Plaintiffs' theory, Defendants should be allowed to withdraw the remaining motion for partial summary judgment.

Second, ample case law supports allowing the withdrawal of all three partial summary judgment motions. Even the more restrictive decisions cited by Plaintiffs would, at most, suggest deferring a ruling on whether to allow withdrawal of the first and third motions until the Court rules on Plaintiffs' corresponding cross-motions for summary judgment, in order to see whether the issues raised in Defendants' motions are decided and thus rendered moot.

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[2] Defendants' separate filing described in note 1 addresses Plaintiffs' baseless allegations of bad faith.

Argument

I. Because Plaintiffs Filed No Cross-Motion Regarding the Matters in Defendants' Second Motion for Partial Summary Judgment, Plaintiffs Offer No Basis For Refusing To Allow Withdrawal of That Motion

Plaintiffs argue (Pl. Opp. at 17) that courts "often" deny motions to withdraw motions for summary judgment when a cross-motion for summary judgment has been filed. Even if that is so, Plaintiffs have only filed two cross-motions for summary judgment, which purport to be directed at Defendants' first and third motions for summary judgment. But Plaintiffs filed no cross-motion directed at Defendants' second motion for summary judgment.[3] Therefore, even under Plaintiffs' theory, Defendants should be granted leave to withdraw their second motion for summary judgment.

II. Withdrawal of Summary Judgment Motions Is Appropriate

Courts often allow withdrawal of motions for summary judgment. See, e.g., Redmond v. Birkel, 933 F. Supp. 1, 2 (D.D.C. 1996) (granted a plaintiff's request to withdraw motion for partial summary judgment); Delta Marine, Inc. v. Whaley, 813 F. Supp. 414, 416 (E.D.N.C. 1993); Simons v. United States, 25 Cl. Ct. 685, 687 n.4 (1992), aff'd, 17 F.3d 1444 (Fed. Cir. 1994); Chambers v. Valley Nat'l Bank of Ariz., 721 F. Supp. 1128, 1130 (D. Ariz. 1988); Banks v. St. Mary's Hosp. and Med. Ctr., 558 F. Supp. 1334, 1336 (D. Colo. 1983); Stewart v. Wappingers Central School Dist., 437 F. Supp. 250, 251 (S.D.N.Y. 1977).

Indeed, in Simons, 25 Cl. Ct. at 687 n.4, and Stewart, 437 F. Supp. at 251-52, the courts allowed withdrawal of the summary judgment motions even though the opposing party filed a

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[3] Defendants' second motion for partial summary judgment asserted that neither the 1994 Reform Act nor other authority required Defendants to account for funds never received by the United States (such as lease payments made directly to the allotment owners).

cross-motion for summary judgment (Simons, id.) or a motion to dismiss (Stewart, id.). Thus, ample authority supports allowing Defendants to withdraw their motions for summary judgment, notwithstanding Plaintiffs' cross-motions for partial summary judgment.

Even the case upon which Plaintiffs chiefly rely, In re White Farm Equipment Co., 23 B.R. 85, 93 (Bankr. N.D. Ohio 1982), rev'd on other grounds, 42 B.R. 1005 (N.D. Ohio 1984), rev'd, 788 F.2d 1186 (6th Cir. 1986), is inapposite because it involved the court's criticism of a party's attempt to withdraw a motion for summary judgment without first seeking or obtaining leave of court. That situation is not present here, and even the White Farm court acknowledged that a motion may be withdrawn by "consent of all parties or leave of court." 23 B.R. at 93 (emphasis added).

Moreover, most of Plaintiffs' cited cases (Pl. Opp. at 17) denied leave to withdraw a summary judgment motion because the court simultaneously granted an opposing party's cross-motion for summary judgment, thus resolving the issues in dispute and rendering the first motion moot. See Plaintiffs' cited cases of Bozzuto v. Sarra, 2001 WL 266028 (W.D.N.Y. March 12, 2001) at *3 (because defendants' motion for summary judgment was granted, plaintiff's motion to withdraw his motion for summary judgment was "render[ed] moot"); Condit v. United Air Lines, Inc., 631 F.2d 1136, 1138 (4th Cir. 1980); Smith v. Travelers Indem. Co., 763 F. Supp. 554, 562 (M.D. Fla. 1989) (motion to withdraw motion for summary judgment "is denied as moot"); In re White Farm, 23 B.R. at 104. Thus, the mere pendency of cross-motions does not warrant a denial of leave to withdraw motions for summary judgment.

Rather, at most, Plaintiffs' cited authorities merely suggest deferring a decision on whether to allow withdrawal of the Defendants' first and third motions for partial summary

judgment until the Court rules on Plaintiffs' cross-motions. Even then, Defendants should be allowed leave to withdraw their summary judgment motions unless the Court grants Plaintiffs' cross- motions and enters a partial judgment that fully disposes of the matters covered by Defendants' first and third motions, and thus renders the Motion to Withdraw moot.

Conclusion

For the foregoing reasons, Defendants should be granted leave to withdraw their three pending motions for partial summary judgment. At a minimum, the second motion for partial summary judgment should be withdrawn, as no cross-motion directed at it is pending. Alternatively, if the Court does not allow withdrawal of the Defendants' motions, Defendants should be given an opportunity to file supplemental briefs to address the effect of subsequent events (as outlined in Defendants' Motion to Withdraw) on the arguments made in the motions.

OPPOSITION TO PLAINTIFFS' CROSS-MOTIONS FOR SUMMARY JUDGMENT AS TO (A) THERE BEING NO TEMPORAL LIMT TO DEFENDANTS' OBLIGATION TO ACCOUNT, AND (B) THE NON-SETTLEMENT OF ACCOUNTS [4]

Introduction

Plaintiffs seek partial summary judgment on two points: " (1) That the scope of the accounting owed is without temporal limitation, i.e., it extends both pre- and post-1994; and (2) That there has been no 'settlement' of the accounts of plaintiffs or their predecessors-in-interest by reason of the supposed settlement of accounts process referenced in the GAO letter." Plaintiffs' Cross-Motions for Summary Judgment ("Pl. Mo.") at 19.

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[4] Defendants also have filed a Statement of Genuine Issues of Material Fact, pursuant to LCvR 7.1(h) and 56.1.

Plaintiffs' cross-motions should be denied.[5] First, the motions involve issues that are not ripe and are otherwise inappropriate for summary judgment at this juncture of the case. Second, if and to the extent that Plaintiffs' first cross-motion for summary judgment goes beyond merely seeking a generalized determination that the accounting owed "extends both pre- and post-1994," it could improperly and prematurely affect Defendants' ability to assert defenses such as the statute of limitations or other defenses that could affect the time period for particular class members' accountings. Third, if and to the extent that Plaintiffs' second cross-motion for summary judgment goes beyond merely seeking a determination that the General Accounting Office ("GAO") settlement process did not, by itself, fulfill Defendants' accounting obligations in light of the Court of Appeals decision in this case, the motion should be denied because Plaintiffs fail to establish that the GAO process was not performed, and that "settlements" did not result. Further, Plaintiffs offer no basis to preclude using the results as part of the accounting that will be performed.

Argument

I. The Issues Raised in Plaintiffs' Cross-Motions for Summary Judgment Are Not Ripe or Otherwise Are Not Appropriate for Summary Judgment

A. The Generalized Issues Framed by Plaintiffs' Cross-Motions Are Not In Dispute

1. Overview

If Plaintiffs' first cross-motion for summary judgment merely seeks a determination that,

[5] Plaintiffs' cross-motions do not include a statement of material facts as to which Plaintiffs contend there is no genuine issue, as required by LCvR 7.1(h) and 56.1. The motions should be denied on that basis alone.

as a general proposition, the required accounting must extend to the pre- and post-1994 time period, Defendants do not dispute that. If Plaintiffs' second cross-motion for summary judgment merely seeks a determination that the GAO's settlement process did not, by itself, meet Interior's accounting obligations, Defendants no longer contend otherwise. Those particular points are not in dispute, so summary judgment on those matters is not appropriate.

However, because of the vague nature of Plaintiffs' cross-motions for summary judgment, it is not clear what Plaintiffs ask this Court to hold. Those motions appear merely to seek judgments that simply restate principles set forth by the Court of Appeals in its February, 2001 decision, Cobell v. Norton, 240 F.3d 1081 (D.C. Cir. 2001). Those points are not in dispute and thus are not appropriate for summary judgment. See Dexler v. Carlin, No. H-83-333, 1986 WL 6476, at *2 (D. Conn. March 20, 1986) (summary judgment denied "[i]n the absence of any facts establishing that these issues [regarding movant's legal duties under Rehabilitation Act and collective bargaining agreements] are in dispute and in the face of [non-movant's] assertion that the relevance of the issues is disputed").

2. Defendants' First and Third Motions for Partial Summary Judgment

Plaintiffs assert that their cross-motions seek the "converse" of Defendants' first and third motions for partial summary judgment, apparently hoping to show that Plaintiffs' motions present real issues that should be decided one way or the other. But a review of what Defendants' first and third motions really asserted – and how those arguments were affected by the February, 2001 Court of Appeals decision, Cobell v. Norton, 240 F.3d 1081 (D.C. Cir. 2001) – demonstrates that Plaintiffs' motions (at least on their face) actually seek a "judgment" on generalized propositions

that are not really in dispute.

Defendants' first motion for partial summary judgment – filed in March, 2000 – asserted that, consistent with this Court's opinion, because Defendants' trust obligations were governed by applicable statutes (particularly the American Indian Trust Fund Management Reform Act of 1994 (the "1994 Act")), and because no such statutes required the sort of common-law-style historical accounting that reconciles all pre-1994 transactions, Plaintiffs had no right to such an historical accounting or reconciliation. Rather, Defendants argued, the 1994 Act imposed generally prospective obligations, and "required at most that historical analysis or reconstruction that Interior determined was appropriate and feasible to support the prospective obligations" of the 1994 Act. See Defendants' memorandum in support of first motion for partial summary judgment at 30-31. The Court of Appeals stated that the 1994 Act did not create Defendants' fiduciary duties, but "reaffirmed and clarified preexisting duties." Cobell, 240 F.3d at 1100. The court also stated that the Department of the Interior must provide an accounting for "all funds, irrespective of when they were deposited (or at least so long as they were deposited after the Act of June 24, 1938)." Id. at 1102. The court further held, however, that the decisions about "how the accounting would be conducted" would be "left in the hands" of the agency. Id. at 1104. Thus, even if Defendants' first motion for partial summary judgment were read to argue that no pre-1994 accounting was required (which misstates Defendants' actual argument), Defendants do not assert that now, and have asked for leave to withdraw their first motion for partial summary judgment.

Defendants' third motion for partial summary judgment – filed in September, 2000 –

asserted that, because applicable statutes defined whatever obligation to account existed between 1817 and 1951, and established specific procedures for "settlement" of the accounts, these statutes defined Defendants' obligation to account for transactions occurring through that period of time. Thus, Defendants argued, if they satisfied the statutory procedures, Plaintiffs would have no entitlement to a second or different accounting or reconciliation of transactions through 1951. However, as described above, the Court of Appeals later ruled that Defendants' obligations are not defined solely by statute. Thus, Defendants no longer assert that performance of the pre-1951 statutory procedures (whether called "GAO settlement" procedures or otherwise), by itself, is sufficient to meet Interior's accounting obligations, and Defendants have moved for leave to withdraw their third motion for partial summary judgment.

B. Broader Determinations Would Be Premature

To the extent Plaintiffs seek broader determinations that would interfere with Interior's administrative decisions about how to conduct the accounting, Plaintiffs' motions are premature. The Court of Appeals expressly held that decisions regarding "how the accounting would be conducted" are to be left to the agency to decide in the first instance. Cobell, 240 F.3d at 1104.[6]

Thus, for example, Interior has the authority to decide what role, if any, the results of the pre-1951 GAO or Treasury settlement procedures should have in Interior's performance of an accounting. Asking for a decision from the Court at this juncture on that issue would contravene the Court of Appeals' direction that such decisions are to be left initially to the agency.

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[6] See Department of the Interior's Response to the Fifth Report of the Court Monitor, filed on this date, for a further discussion of the Administrative Procedure Act, 5 U.S.C. § 701 et seq., in this context.

Therefore, a summary judgment specifying the effect or use (or precluding use) of the GAO or other settlement procedures would be improper. See Shivwits Bank of Paiute Indians v. Utah, No. 2:95CV1025C, 2002 WL 191916, at *6 (D. Utah Feb. 6, 2002) (denying summary judgment regarding impact of land use restrictions, because that would depend upon how the agency classified the land; thus, court had to await final agency determination on that question); see also Wyoming Outdoor Council v. Dombeck, 148 F. Supp.2d 1, 8 (D.D.C. 2001) (claim involving administrative agency action is ripe only when the agency action is final).

II. Accountings Pertaining to Particular IIM Account Holders or Groups of Account Holders May Be Limited in Time By the Statute of Limitations or Other Legal Doctrines

Plaintiffs characterize their first cross-motion for summary judgment as pertaining to "the unlimited temporal scope of Defendants' duty to account." Pl. Mo. at 19. But the text of Plaintiffs' motion specifically limits the scope of the partial judgment they seek, stating that they seek a determination that "the scope of the accounting owed is without temporal limitation, i.e., it extends both pre- and post-1994." Id. (emphasis added). Plaintiffs' first cross-motion should be deemed limited by that argument. Thus, if Plaintiffs seek only a generalized determination that the accounting "extends both pre- and post-1994," Defendants have no objection to the substance of that position, although, as set forth above, a summary judgment on such an undisputed legal proposition is inappropriate.

However, if and to the extent that Plaintiffs' motion is deemed to seek a broader determination– i.e., that the accounting has no time limits as to any Plaintiff or group of Plaintiffs under any circumstances– Defendants strongly oppose that position on the merits. Various legal

principles could impose time limitations upon any given class member's right to an accounting. For example, this Court previously reserved ruling on whether the statute of limitations might bar Plaintiffs' claims.[7] See Cobell v. Babbitt, 30 F. Supp.2d 24, 44 (D.D.C. 1998); see also Cobell v. Babbitt, 91 F. Supp.2d 1, 32 (D.D.C. 1999). The Court held that Defendants "remain free to raise their statute of limitations defense at the summary judgment stage, once the parties have completed their discovery of facts that go to the plaintiffs' knowledge and have had the opportunity to adequately brief the issues presented." 30 F. Supp.2d at 45.

In an October 1, 2001, Opinion and Order (at 12), the Special Master also recognized that discovery pertaining to statutes of limitations is one of the permissible areas of Phase II discovery. Thus, the record adequately establishes that further discovery is needed before such issues can be decided.[8] Until discovery is completed, and remaining legal issues pertaining to such matters are fully briefed, no summary judgment should be entered which might preclude all

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[7] Other matters that could affect the time period of any required accounting for particular Plaintiffs could include, for example, other litigation or legal proceedings which might have established a particular beneficiary's trust account balance as of a given date, and the effect of probate proceedings for the estate of a predecessor-in-interest.

[8] Although Fed. R. Civ. P. 56(f) provides a mechanism of submitting an affidavit to establish what further discovery is needed, the Court of Appeals has recognized that an affidavit is not always required, if other filings in the record "sufficed to alert the district court of the need for further discovery and thus served as the functional equivalent of an affidavit." First Chicago Int'l v. United Exchange Co., Ltd., 836 F.2d 1375, 1380 (D.C. Cir. 1988). In this case, the Court's prior recognition of the need for discovery on statute of limitations issues (30 F. Supp.2d at 45), the Special Master's October 1, 2001 Opinion and Order (at 12), and this Opposition to Plaintiffs' cross motions collectively serve that function.

Understandably, the magnitude of the proceedings surrounding Phase I of this case, the recent contempt proceedings, and attention to information technology security issues, have preoccupied the parties. Defendants anticipate that they soon will proceed with discovery regarding possible affirmative defenses.

limits on time periods for which accountings must be performed. See Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986) (summary judgment should not be entered until "after adequate time for discovery").

Moreover, Plaintiffs fail to meet their burden as the movants to show that no genuine issue of material fact exists regarding the effect of statutes of limitations or other legal doctrines that might, with regard to a particular Plaintiff or group of Plaintiffs, effectively limit the time period for which an accounting must be performed. Plaintiffs' cross-motions contain no discussion of such issues. Indeed, Plaintiffs' cross-motions do not even argue for a ruling on the effect of the statute of limitations or other legal doctrines that might impact the time period of accountings for particular class members, so a summary judgment that might, in effect, decide such issues would not be proper.

III. Plaintiffs Show No Basis To Preclude Use of GAO and Other "Settlement" Procedures

Plaintiffs' second cross-motion also is vague. Plaintiffs argue (Pl. Mo. at 19) "that there has been no 'settlement' of the accounts of plaintiffs or their predecessors-in-interest by reason of the supposed settling of accounts process referenced in the GAO letter." Plaintiffs further argue that "the GAO practices and procedures, to the extent conducted, cannot serve as a substitute for the fiduciary accounting that is owed to IIM beneficiaries . . . ." Id. at 20. Plaintiffs elsewhere ask the Court to enter a much broader summary judgment that "there has been no 'settlement' of the accounts of plaintiffs or their predecessors-in-interest." Pl. Mo. at 21.

If Plaintiffs' second cross-motion for summary judgment merely seeks a determination that the procedures followed by GAO or the Department of the Treasury until 1951 do not, by

themselves, constitute a full and complete accounting with regard to each individual Indian trust account, Defendants do not substantively disagree with that point (nor is it the converse of the argument made in the Defendants' third motion for partial summary judgment). For the reasons stated above, however, that proposition is not appropriate for summary judgment.

But if Plaintiffs seek a broader determination, such as a ruling as to whether the "GAO practices and procedures" were followed, whether "settlements" occurred,[9] or what use they might have in accountings to be conducted by Interior, Defendants strongly oppose such a request on the merits. First, the record contains sufficient evidence at least to establish a genuine issue of material fact that the statutory settlement procedures were followed. See the Declaration of Frank Sapienza, submitted with Defendants' third motion for partial summary judgment.

Plaintiffs fail to show otherwise. Plaintiffs point to the so-called "Useless Papers Report," but that document does not disprove that the statutory procedures were followed and does not show that the documents needed for GAO review at any given time were unavailable then.[10] For example, Plaintiffs (Pl. Mo. at 13) make much of the statement in the Useless Papers Report that "document-specific accountings were rare." Plaintiffs suggest that this means that agencies did not perform accountings of specific documents when they performed their reviews

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[9] "Settlement" is a term of art. As described in the Declaration of Frank Sapienza (attached to Defendants' third motion for partial summary judgment), the end result of the review process by GAO or Treasury was the "settlement" of the disbursing agents' accounts.

[10] Nor do Plaintiffs prove their point by citing other materials, such as the GAO letter dated August 27, 1999, or the testimony of Thomas Thompson (Pl. Mo. at 2). As shown more fully in Defendants' separate brief responding to Plaintiffs' motion for sanctions and a finding of contempt, the GAO letter and other items cited by Plaintiffs do not disprove compliance with pre-1951 GAO settlement procedures.

under the GAO or Treasury account settlement procedures. Plaintiffs' reading distorts the clear meaning of the statement. As shown in the declaration of the report's author, William Morgan (attached to Defendants' contemporaneously filed Opposition to Plaintiffs' motion for sanctions and a finding of contempt), that statement meant that agency records did not clearly indicate the specific documents that had been destroyed; it did not pertain to the quality, methodology or conduct of agencies' reviews of disbursing agents' records. Even without Morgan's declaration, the text of the report itself–read fairly and in context–does not support Plaintiffs' tortured interpretation, and does not supply a basis for summary judgment. As stated by the D.C. Circuit in Keefe Co. v. Americable Int'l Inc., 169 F.3d 34, 38 (D.C. Cir. 1999), "[w]here more than one plausible inference can be drawn from the undisputed facts, summary judgment is not appropriate."

Second, even though the transaction or document review procedures followed by the agencies do not, by themselves, fully satisfy the obligation to provide an accounting, Plaintiffs offer no basis to preclude Interior from using the results of those procedures as part of the accounting process to be performed. Indeed, Plaintiffs acknowledged as much in their Opposition (at 20) to the third motion for partial summary judgment: "Documents supporting settlement of the accounts of individual accountable officers may lead to the discovery of additional evidence and, ultimately, they may be of assistance in providing plaintiffs with a full and complete accounting of the Individual Indian Trust." Interior has not yet decided what use, if any, those results might have in the accounting, but Plaintiffs fail to show a basis to preclude their use in any way.

Conclusion

For the foregoing reasons, Plaintiffs' cross-motions for partial summary judgment should be denied.

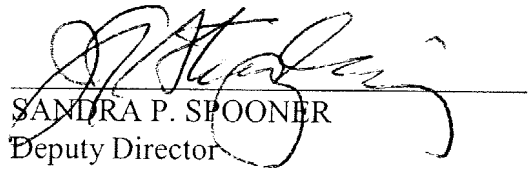
Respectfully submitted,

Dated: March 1, 2002

ROBERT D. McCALLUM, JR.
Assistant Attorney General

STUART E. SCHIFFER
Deputy Assistant Attorney General

J. CHRISTOPHER KOHN
Director



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Plaintiffs,	)	
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v.	)	Case No. 1:96CV01285
	)	(Judge Lamberth)
GALE A. NORTON, Secretary of the Interior, et al.,	)	
	)	
Defendants.	)	
	)	

DEFENDANTS' STATEMENT OF GENUINE ISSUES OF MATERIAL FACT CONCERNING PLAINTIFFS' CROSS-MOTIONS FOR SUMMARY JUDGMENT

Pursuant to LCvR 7.1(h) and 56.1, Defendants state the genuine issues of material fact that preclude entry of partial summary judgment in favor of Plaintiffs, as sought by Plaintiffs in their Cross-Motions for Summary Judgment as to (A) There Being No Temporal Limit to Defendants' Obligation to Account, and (B) the Non-Settlement of Accounts, filed by Plaintiffs on February 15, 2002, include the following:

1. Whether particular Plaintiffs or groups of Plaintiffs knew or should have known of their claims at a certain point in time, which caused the statute of limitations to run and thus limits the time period for which an accounting must be performed?

2. Whether, based upon the supporting materials submitted by Defendants in connection with their third motion for partial summary judgment, there is at least a genuine issue of material fact as to whether the administrative examination procedures of the General Accounting Office ("GAO") or Department of the Treasury took place during the period prior to 1951? See

Declaration of Frank Sapienza (submitted with Defendants' third motion for partial summary judgment, filed September, 2000), and other supporting materials filed therewith.

3. Whether, based upon the supporting materials submitted by Defendants in connection with their third motion for partial summary judgment, there is at least a genuine issue of material fact as to whether "settlements" occurred within the meaning of the administrative examination procedures of GAO or Treasury with regard to pre-1951 disbursing agents' accounts? See Sapienza Declaration, and other supporting materials filed therewith.

Respectfully submitted,

Dated: March 1, 2002

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	)	(Judge Lamberth)
GALE NORTON, Secretary of the Interior, et al.,	)	
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Defendants.	)	
	)	

ORDER

Upon consideration of Plaintiffs' Cross-Motions for Summary Judgment as to (A) There Being No Temporal Limit to Defendants' Obligation to Account, and (B) the Non-Settlement of Accounts, which were filed by Plaintiffs on February 15, 2002, Defendants' Opposition thereto, and any replies, it is by this Court hereby,

ORDERED that the aforementioned Motion is DENIED.

Date: _____

_____
Honorable Royce C. Lamberth
United States District Judge

cc:

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CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on March 1, 2002, I served the foregoing Defendants' (1) Reply in Support of Motion to Withdraw Three Motions For Partial Summary Judgment; and (2) Opposition to Plaintiffs' Cross-Motions for Summary Judgment; and Defendants' Statement of Genuine Issues of Material Fact Concerning Plaintiffs' Cross-Motions For Summary Judgment, by facsimile only, in accordance with their written request of October 31, 2001, upon:

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