

Native American Rights Fund

Indigenous Peoples' Rights

<https://www.narf.org/cases/cobell/>

Campaign and Advocacy

This 1996 class action case sought to force an accounting to approximately 300,000 individual Indian money account holders whose funds are held in trust by the federal government.

Status: Archived

The Native American Rights Fund (NARF) and private co-counsel filed this class action case in federal district court in Washington, D.C. in 1996 to force the federal government to provide an accounting to approximately 300,000 individual Indian money account holders who have their funds held in trust by the federal government. Through years of litigation, decisions of the federal district court and the federal court of appeals held that the government was in breach of trust and must provide an accounting. NARF was active in the case until 2006 when the case was fully staffed and NARF's resources were shifted over to help 41 unrepresented Tribes who faced a deadline to file suit against the federal government for accountings of their tribal funds held in trust by the federal government under the same system. That tribal trust fund litigation is proceeding. See *Infra*.

On December 8, 2010, President Obama signed into law a settlement of \$1.5 billion to be paid to the 300,000 individual Indian money account holders with another \$1.9 billion made available to pay individual Indians who want to sell their small fractionated interests in their trust lands to the federal government to be turned over to their Tribes.

The federal district court approved the settlement on June 20, 2011, and the decision was appealed. The Court of Appeals affirmed the federal district court's approval of the settlement on May 22, 2012. The U.S. Supreme Court has denied review of the case.

For purposes of trial, the case has been bifurcated into two phases which roughly correspond to these objectives.

Q. Why is this suit being brought now? Why not earlier or later?

For years, the federal government has acknowledged the need for comprehensive reform of its Indian trust fund management system. Administration after administration has promised to fix the system, but failed to keep those promises. Congress recommended Indian trust fund management reform as early as the 1960s, and beginning in the mid-1980s, issued a series of explicit directives to that effect. Fed up with the Interior Department's continued disregard for these repeated recommendations and directives, Congress passed the American Indian Trust Fund Management Reform Act in 1994. The Act reaffirmed the government's duty to account for Indian trust funds, and appointed a Special Trustee to oversee comprehensive reform of the trust management system. Even after the Act was passed, however, the government made little or no effort to commence systematic reform and to account for its management of individual Indian trust funds. This lawsuit was brought because it was abundantly clear by June 1996 that the system would remain broken unless the government was forced to fix it, and that individual Indians would never be provided with an accounting unless a Federal Judge ordered it.

Q. If the federal government has mismanaged my trust funds, why have I never heard about such mismanagement before this suit?

The fact that many individuals were unaware of the mismanagement of their trust funds is not surprising given the government's complete lack of accountability. Despite decades of mismanagement, the government has never informed its individual Indian trust beneficiaries that their IIM account balances are unreliable. During a six week trial beginning in June 1999, Interior Secretary Babbitt admitted that this information has been intentionally withheld in order to reduce the risk of lawsuits.

Q. What do I, as an individual Indian trust beneficiary, have to do to be part of this law suit?

The lawsuit was certified as a class action by the court on February 4, 1997. Accordingly, if you are an individual trust beneficiary and did not file a separate lawsuit regarding mismanagement of trust assets prior to June 10, 1996, you are automatically included as one of the class plaintiffs in this lawsuit, and are represented by counsel.

Q. If I have already filed a lawsuit regarding IIM accounts that is currently pending or being litigated, will this class action lawsuit impact my claim?

Not necessarily. The court's February 4, 1997 order certifying the class action excludes individual trust beneficiaries who filed lawsuits prior to June 10, 1996 on their own behalf for mismanagement of trust funds. However, the court order certifying the class action allows these excluded beneficiaries to join the class action by filing notice of their decision to join the class with the federal District Court for the District of Columbia, and by notifying the attorneys representing the class.

Q. If I once had an IIM account that is now inactive or non-existent, does this suit affect me?

It could. The mismanagement of individual trust funds has gone on for over one hundred years. Thus, many former IIM account holders may well have been victims of past mismanagement. The court order certifying the class action specifically includes all present and past

individual Indian trust beneficiaries.

Q. Where does the money managed by the United States come from?

The IIM trust contains funds from numerous sources, including funds distributed per capita to individual tribal members for successful land claims and other judgment awards. The most common source of IIM trust funds, however, is income derived from individual Indian allotments. In many instances, such allotments produce income from farming and grazing leases, timber sales, or oil and gas production.

Q. Who is currently holding these trust funds?

The funds are held in trust by the federal government, specifically by the U.S. Department of Treasury. The funds are pooled into a single account and invested until such time as they are disbursed to the rightful Indian beneficiary.

Q. How much money are we talking about?

The federal government currently holds over \$500 million in approximately 500,000 separate IIM accounts. Additionally, more than \$400 million flows through these accounts each year. Because the government has failed for over one hundred years to account for Indian trust funds, it remains at this point impossible to estimate with any accuracy the amount by which any particular IIM account has been misstated. However, to give some perspective, we can look to similar mismanagement of tribal trust accounts. A report prepared by the Arthur Andersen accounting firm following a limited effort to reconcile the tribal accounts revealed that \$2.4 billion could not be accounted for just for the twenty-year period from 1973 through 1992.

Q. Does this lawsuit seek to eliminate the governments role in trust management?

No. This lawsuit seeks to compel the government to carry out its fiduciary duties to individual Indian trust beneficiaries in accordance with the law, including the most fundamental duty of every trustee the duty to account.

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