

Keepseagle and Cobell – Two Historic but Different Class Action Settlements for Native Americans

In 2011, settlement agreements were reached in two historic class action lawsuits filed on behalf of Native Americans against the United States government, *Keepseagle v. Vilsack* and *Cobell v. Salazar*. Both settlements require the United States to pay compensation to Native Americans and take other action for violations of rights occurring over many decades. But, that's where the similarity between the two cases ends. The two cases involve rights violations by different Departments of the U. S. government against different classes of Native Americans, different compensation and different remedial measures to protect against future violations. *Keepseagle* benefits Native American farmers and ranchers. *Cobell* benefits Indian trust beneficiaries – Individual Indian Money Account holders and those with an interest in trust land or restricted land – and also provides future educational opportunities for Native Americans.

Keepseagle is a lawsuit filed in 1999 on behalf of Native American farmers and ranchers for discrimination by the U.S. Department of Agriculture in the administration of farm loan programs. Key provisions of the settlement are:

- \$760 million in settlement funds:
 - \$680 million for compensation of Native Americans who were denied farm program loans or loan servicing, or were given loans with unfair terms from 1981 through late 1999. Class members may make claims in one of two ways. They may seek either
 - up to \$50,000 in compensation through a simplified claim process requiring no documentation, plus cancellation of USDA farm loans and tax benefits, or
 - up to \$250,000 in compensation for class members with documentation of discrimination and proof of damages, plus cancellation of USDA farm loans and tax benefits
 - \$80 million for cancellation of USDA farm loans
- Moratorium on loan accelerations, foreclosures and offsets against Native Americans during the claims process
- Broad-based reform of USDA farm loan programs to assure fair treatment of Native Americans in the future:
 - 15 new USDA offices to provide enhanced technical assistance for Native Americans and new offices on Indian reservations.
 - Creation of a Native American Farmer and Ranchers Council comprised of 11 Native American representatives and 4 senior USDA representatives

that will meet regularly to recommend improvements to the farm loan programs and will work to remove barriers to Native American participation in the programs.

- Creation of an Ombudsperson within USDA to address issues relating to Native American and other socially disadvantaged farmers and ranchers.
 - Collection and evaluation of farm loan program data from 15 key states to identify disparities between loans to Native Americans and white applicants.
- Payment of attorneys' fees and expenses from the settlement fund of up to \$60.8 million (8%)
 - Payment of \$950,000 service award for 9 Native American class representatives

Cobell is a lawsuit filed in 1996 on behalf of Native American trust beneficiaries against the United States Department of Interior for violation of trust duties to individual beneficiaries. Key provisions of the settlement are:

- \$1.412 billion Accounting/Trust Administration Fund plus \$100 million Trust Adjustment Fund, plus interest
- \$1.9 billion Trust Land Consolidation Fund to purchase "fractionated" individual Indian trust lands. Uses of this Fund:
 - Purchase of fractionated land interests
 - Carry out the Trust land Consolidation Program
 - Up to \$60 million for an Indian Education Scholarship Fund to help Native Americans attend college or vocational school.
- Class members – Native Americans alive on 9/30/2009 and certain estates of deceased individuals who had:
 - an open Individual Indian Money ("IIM") account between October 25, 1994 and September 30, 2009 with at least one cash transaction (the "Historical Accounting Class")
 - an IIM account recorded with the federal government from approximately 1985 to September 30, 2009, or can demonstrate ownership interest in trust land or land in restricted status ("Trust Administration Class")
- Compensation to class members:
 - Each person of the Historical Accounting Class will receive \$1,000

- Each person of the Trust Administration Class will receive a minimum of \$500 plus a payment based upon the sum of the highest 10 years of income on an IIM accounts
- Reform of Indian trust management and accounting system
- Payment of attorneys' fees and expenses from the settlement fund of up to \$99.9 million. (Counsel have requested payment of up to \$223 million – 14.75%)
- Payment of \$2.5 million service award for 4 Native American class representatives

For more information about the *Keepseagle* settlement, refer to the website www.indianfarmclass.com or call 1-888-233-5506. For more information about the *Cobell* settlement, refer to www.indiantrustfund.com or call 1-800-961-6109.

A summary schedule is attached.

Keepseagle and Cobell Comparison

	Keepseagle	Cobell
Native American class members	Farmers and ranchers	Indian trust beneficiaries
Time period	1/1/81 – 11/22/99	Varies, but may include IIM account holders: 1985 – 9/30/2009 Land in trust or restricted as of 9/30/2009
U.S. Department	Department of Agriculture	Department of Interior
U.S. violations	Discrimination – Farm Loan Programs	Mismanagement of trust land/assets; improper accounting of funds
Cash settlement	\$680 million – compensation \$80 million – cancellation of farm loans	\$1.412 billion Accounting/Trust Administration Fund plus \$100 million Trust Adjustment Fund, plus interest \$1.9 billion Trust Land Consolidation Fund to purchase “fractionated” individual Indian trust lands.
Compensation	Track A (simplified) – up to \$50,000 plus loan cancellation and tax relief Track B (documentary proof) – up to \$250,000 plus loan cancellation; tax relief for loan cancellation	Historical Account members - \$1,000 Trust Administration members – at least \$500 (more based upon income on IIM accounts) Government purchase of fractionated shares
Other settlement terms	Moratorium on accelerations, foreclosures and offsets Reform of USDA Farm Loan Programs: <ul style="list-style-type: none"> • 15 USDA offices to provide enhanced technical assistance • Sub-offices on reservations • Native American Farmers and Ranchers Council • Ombudsperson at USDA • Review of farm loan data 	Reform of Indian trust management and accounting system \$60 million for an Indian Education Scholarship Fund
Class representative service awards	\$950,000 requested for 9 representatives	\$2.5 million requested for 4 representatives
Attorneys’ fees and expenses	\$60.8 million (8%) requested	\$223 million (14.75%) requested
More information	www.indianfarmclass.com 1-888-233-5506	www.IndianTrust.com 1-800-961-6109