

February 15, 1999

CA 97-1978

The Honorable Paul Friedman  
District Judge; District of Columbia  
United States Courthouse  
Room 6321  
333 Constitution Avenue, N.W.  
Washington, D.C. 20001-2866

Let this be filed.

FILED

FEB 25 1999

Clark, U.S. District Court  
District of Columbia

PAUL L. FRIEDMAN  
United States District Judge

DATE: 2/25/99

Dear Judge Friedman:

The purpose of this letter is to register my objections to the proposed consent decree in Pigford v. Glickman. As a lead plaintiff in the case, I have reviewed the proposed consent decree and believe that it fails to meet the standard of fairness, reasonableness, and adequacy as required under Federal Rule of Civil Procedure 23. I have listed the reasons below:

**I. Failure to Address Specific Relief for the Lead Plaintiffs**

The agreement does not contain any specific mention of relief to be afforded the lead plaintiffs in the case. The failure of the agreement to address the lead plaintiffs has been raised previously. However, those concerns were ameliorated by the Government's representations that reasonable settlement offers would be made to the lead plaintiffs prior to the effective date of a final consent decree. As of this date, four of the six lead plaintiffs have not received reasonable settlement offers from the Government. The exclusion of the lead plaintiffs from the terms of the proposed settlement raises the likelihood that our claims will not be addressed in the future. Given fiscal, physical and psychological toll which this litigation has taken on the lead plaintiffs, our exclusion from the language of the agreement contributes an inadequacy of relief.

**II. Relief for Track A Claimants is Inadequate.**

An aggrieved farmer who files a successful claim under the Track A of the proposed consent decree will be awarded a maximum of \$50,000 and debt relief. At first glance this proposal seems fair. However, upon closer examination there appears to be no apparent relationship to the degree of harm suffered by the farmer and the proposed maximum monetary figure. Therefore, this portion of the Track A relief may well be inadequate for the vast number of aggrieved farmers who will choose to pursue this track.

Additionally, the debt relief provisions of Track A relief are inadequate for any farmer who intends to continue farming following receipt of an award. Under the 1996 Farm Bill, any farmer who is granted debt relief by the Department of Agriculture is prohibited from future receipt of guaranteed loans. Therefore, by accepting debt relief as a part of this discrimination settlement a farmer will place himself in an untenable situation. If he plans to continue farming, he will be unable to seek future assistance from the Department of Agriculture. If he fails to accept debt relief as a part of his award, he will be saddled with debt which was probably incurred as a result of discriminatory lending practices in which Black farmers received loans later in the planting season and on less favorable terms than white farmers. Given this kind of choice, many who hope to continue farming will forego debt relief.

Unfortunately, if Black farmers are unable to repay the debt, they will also be unable to obtain assistance from the Department of Agriculture. Because the Department serves as the lender of last resort for most farmers, the inability to gain access to the major source of agricultural credit could exacerbate the currently dire situation of most of the affected Black farmers. Because of the debt relief dilemma, a settlement which encompasses debt relief instead of a cash award sufficient to repay existing debt a major provision provides insufficient relief. Moreover, instead of encompassing adequate relief, its debt relief provisions offer only a temporary palliative to a farmer in a desperate situation which may ultimately serve as a means to future ruin.

### **III. Standards of Proof for Track B Claimants are Unreasonable.**

In order to succeed in a Track B claim, a Black farmer must provide evidence of three white farmers who were similarly situated and who obtained more favorable treatment from the Department of Agriculture. This is an extremely high evidentiary burden. As a practical matter it will be extremely difficult for a Black farmer to obtain personal financial information about three white farmers but he must also show that the facts and circumstances surrounding their land acreage, crop composition, experience and education are substantially the same. This level of proof is difficult, if not impossible to satisfy, especially given the age and duration of many of the claims.

Moreover, because the Secretary of Agriculture, the Office of Inspector General for the Department of Agriculture and the U.S. General Accounting Office have all found systemic and widespread discrimination in the Department's practices affecting loan programs, this level of proof seems an unnecessary burden.

#### **IV. Lack of Crossover between Track A and Track B is Unfair.**

According to the terms of the consent decree, when filing an initial claim application with the facilitator, a farmer must choose between relief under Track A provisions or relief under Track B provisions. If the facilitator finds that the farmer is ineligible for the track he has chosen, he is not considered for relief under the alternative track. Therefore, an aggrieved farmer may be denied relief simply because he has chosen to pursue the wrong track.

The practical effect of this provision is that many farmers, who may have a claim eligible for relief under Track B, will choose the safe course and opt for Track A. Therefore, those who may have endured long-standing and serious discrimination will be forced to choose a remedy which will not afford them relief consonant with the harm suffered. Conversely, those who choose Track A but are found by the facilitator to be eligible candidates for Track B will be ineligible for any relief. This anomaly could be corrected by allowing the farmer to make the initial choice of track placement, but allow a change in Track placement if such a recommendation is made by the facilitator.

Finally, under the current proposal, there is no relief for those who choose and unsuccessfully pursue Track B claims despite the likelihood that they may have colorable claims of discrimination and accompanying proof. Because Track A is envisioned as requiring a lesser burden of proof, a farmer who fails to meet the higher burden imposed by Track B should be permitted to obtain relief under Track A provisions if his Track B efforts are unsuccessful.

Because the agreement fails to provide an avenue of alternative consideration for aggrieved persons, may compel individuals with serious claims to opt for lesser remedies and may exclude those with eligible claims, the proposed consent decree does not meet the fairness standard.

#### **V. The Monitoring Provisions are Inadequate**

Under the agreement, the monitor is appointed by the Secretary of the Department of Agriculture, reports personally to him and may only be removed by him for "good cause." The nature of this kind of personal appointment and "good cause" removal would seem to hinder the true independence of any monitor. Because the Secretary is a defendant in this suit and is responsible for the administration of the entire Department, active and frequent reporting of problems would not serve his best interest and would have repercussions in other areas within the Department. Therefore, it would seem that an active monitor would be set on a collision course with the Secretary, while a

conservative one would fail to fully report and enforce the decree. Given the impending Presidential election in 2000, it is likely that the appointment of a new Secretary of Agriculture may seek to appoint a new monitor. As a personal appointment

It would seem that a truly independent monitor should either be chosen by a third party, such as the court, or should be an executive branch agency chosen for their impartiality and experience, such as the U.S. Civil Rights Commission.

Additionally, the agreement fails to provide for adequate enforcement of the decree. The agreement requires that prior to seeking enforcement by the Court, the parties must first inform the monitor who has thirty days to resolve the problem. If the monitor is unable to resolve the problem, the parties must then serve written notice on the opposing party. The parties are given sixty days to reach an agreement without the Court's involvement. If the parties are unable to do so, the movant may seek enforcement by the Court. Unfortunately, by the time the Court is involved in the dispute a total of 90 days has elapsed. While that may seem a reasonable amount of time in other situations, it is not a reasonable amount of time in farming. If the nature of the dispute surrounds the inability to obtain loans for the planting of a crop, the operation of a farm, or the leasing of land, a 90 day period will encompass the entire relevant growing season. Given the time-sensitive nature of farming, effective enforcement would seem to require direct and timely access to the Court. Without effective enforcement, it is likely that the discriminatory practices which led to this lawsuit will continue. Because the monitoring provisions will not present an effective means to prevent future discriminatory conduct, they are inadequate.

#### IV. Closing

I believe that the proposed consent decree in Pigford v. Glickman does not meet the standard of fairness, reasonableness and adequacy envisioned by F.R.C.P. 23. Therefore, I request that the Court refrain from approving the agreement in its current form.

Respectfully,

Respectfully,

Timothy C. Pigford

Tim Pigford

~~Lucius Brown~~

George Hall

Edie J. Ross

Lloyd Shaffer

Cecil Brewster