

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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TIMOTHY C. PIGFORD, et al., )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 ANNE VENEMAN, SECRETARY, )  
 THE UNITED STATES DEPARTMENT )  
 OF AGRICULTURE, )  
 )  
 Defendant. )

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Civil Action No.  
97-1978 (PLF)

**COPY**

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CECIL BREWINGTON, et al., )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 ANNE VENEMAN, )  
 )  
 Defendant. )

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Civil Action No.  
98-1693 (PLF)

ARBITRATOR'S FOURTH REPORT ON THE LATE-CLAIM PETITION PROCESS

The Court has held that "all putative class members seeking permission to late file under Section 5(g) of the Consent Decree are directed to review the terms of that provision, as interpreted by the Court and the Arbitrator. If, having reviewed the requirements for eligibility under Section 5(g), petitioners believe that they are entitled to late file, petitioners must seek permission directly from the Arbitrator, Michael K. Lewis." *Pigford v. Veneman*, 201 F. Supp. 2d 139 (D.D.C. May 10, 2002); see also, *Pigford v. Veneman*, No. 97-1978 (D.D.C. Dec. 20, 1999); *Pigford v. Veneman*, No. 97-1978 (D.D.C.

Jul. 14, 2000). This is the Arbitrator's fourth semi-annual report on the status of the review of late claims pursuant to Section 5(g).

### Background

As noted above, the Court delegated to the Arbitrator the responsibility to make the determination of whether a putative claimant who missed the October 12, 1999 deadline may file a late claim. A putative claimant may file late if he demonstrates that extraordinary circumstances beyond his control prevented the filing of a timely claim. In the Memorandum Opinion and Order of November 26, 2001, the Court found that the Arbitrator's "late-claim petition processes are more than sufficient to ensure that Section 5(g) of the Consent Decree is properly and justly applied and to assure that fair process is afforded." *Pigford v. Veneman*, 173 F. Supp. 2d 38, 40 (D.D.C. 2001).

### Processes and Procedures

#### *Forms & Filing*

Since the issuance of the first report, there have been no changes to the procedures relating to the filing of a petition to file a late claim. Approximately 61,400 petitions were filed by the September 15, 2000 deadline, and an additional 7,800 putative claimants filed petitions after that deadline. Late claim petitions filed after September 15, 2000 have not been reviewed unless the putative claimant could demonstrate that the Facilitator or the Arbitrator misread their postmark. One or two claimants have been able to meet that hurdle.

### *Categorization & Research*

Since the issuance of the first report, there have been no changes in the categorization and research methods described in that report. The Arbitrator continues to use the same criteria in the review process. Currently, a staff of thirty-seven researchers investigates late claim petitions where further research is necessary to make an informed decision. At any given time, the researchers are investigating over three thousand petitions.

As of the filing of the third report on November 4, 2002, approximately 53,900 petitions had been reviewed and decided, leaving 7,300 to be decided. As of the filing of this report, approximately 57,000 petitions have been reviewed and decided, leaving 4,300 to be decided. Of the petitions that have been decided, 55,000 were denied and 2,000 were approved. Petitions remain undecided for two primary reasons: (1) the Arbitrator is awaiting supplemental information from the petitioner, or (2) researchers have been unable to reach the petitioner by telephone.

Recently, the parties and the neutrals in this case learned that a small number of claims were deposited at a local Alabama post office, postmarked to reflect a timely filing, but not delivered to the Claims Facilitator until long after the filing deadline. The issue of deciding late claim petitions in which putative claimants allege that they had filed in a timely manner but whose claims were not received by the Claims Facilitator has been considered by the Arbitrator prior to the recent discovery. A number of putative claimants

have filed petitions pursuant to Paragraph 5(g) of the Consent Decree and have asserted delivery failure as "extraordinary circumstances beyond [their] control" which prevented the filing of a timely claim. Where such petitions were filed and such assertions made, researchers have been assigned to investigate those allegations, in order to uncover the circumstances of the alleged timely filing and to seek corroborating evidence. Researchers have asked those petitioners to provide documentation such as the pink (claimant's copy) or yellow copies (attorney's copy) of the claim form, U.S. Postal Service return receipts, affidavits of attorneys who allegedly completed the form in a timely manner, and/or statements of other witnesses to corroborate the allegation. Thus far, of claimants asserting this reason for lateness, 13 have been approved, 298 rejected, and 52 undecided. Petitioners asserting faulty mail service represent approximately 0.4% of the total number of late-claim petitioners.

#### *No Contacts*

In March 2003, the Facilitator mailed approximately 1,300 additional letters to petitioners who have proven impossible to contact via telephone. That letter required petitioners to respond with updated contact information within two weeks of the date of the letter. Approximately 700 petitioners responded in a timely manner, and those petitions, with updated contact information, are being reassigned to researchers; those petitioners who responded that they will not be reachable by telephone will be sent written questionnaires based on the categorization of their petitions. The Arbitrator will again

review the petitions of the 600 petitioners who did not respond in a timely manner to his March letter prior to making determinations on each of their petitions.

### *Reconsideration*

As described in the prior reports, putative claimants whose late claim petitions are denied may make a written request for reconsideration. The reconsideration process remains as described in those reports.

Putative claimants have a 60-day window in which to submit a request for reconsideration. Approximately 21,600 requests for reconsideration have been filed, 19,100 of which were sent within the 60-day window. As the numbers indicate, slightly above one-third of all denied petitioners have made timely requests for reconsideration. The Facilitator began forwarding the requests for reconsideration to the Arbitrator in August 2002. The Facilitator will continue to forward reconsideration requests as they are filed until all reconsideration requests have been decided.

The requests for reconsideration are distributed to the team of researchers for investigation. Approximately 10,500 requests for reconsideration have already been distributed to researchers. The researchers review the underlying petition, the information from any interviews with the petitioner, any previously submitted documentation, and the information submitted with the request for reconsideration. Researchers also may contact the putative claimant for further clarification. Upon completing his or her investigation, each researcher will be responsible for drafting an individually tailored response to the

request for reconsideration for the Arbitrator's review. If a petition remains denied upon reconsideration, that decision will be final.

Decisions have been made in 379 reconsideration requests to date, with 65 petitions having been approved in the reconsideration process. An additional 7,100 reconsideration requests have been returned by the researchers and are in various stages of review.

### Results to Date

Presented in tabular form, the status of the late claim process follows below. As of May 27, 2003, the Claims Facilitator is including Late Claim Petition information in its weekly status report. In order to reduce confusion due to differences in calculation methodology, the Arbitrator will use the Claims Facilitator's methodology in future reports.

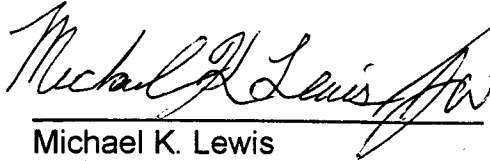
Approximate number of Petitions to File Late Claims:	69,200
Approximate number filed before Sept. 15, 2000:	61,400
Approximate number of petitions approved:	2,000
Approximate number of petitions denied:	55,000
Approximate number of Requests for Reconsideration:	21,600
Approximate number filed within 60 days:	19,100
Number of reconsideration requests decided:	377
Number of reconsideration requests resulting in approval of petition:	70

### Conclusion

The Arbitrator's review of late claim petitions is proceeding without difficulty. The Arbitrator remains cognizant of the fact that approved late claimants must file a completed

claim form with the Facilitator and, if found to be eligible, be reviewed by the Adjudicator (for a Track A claim) or Arbitrator (if a Track B claim). The Arbitrator is unable to estimate a completion date for the late claim review process.

Respectfully submitted,



Michael K. Lewis  
Arbitrator

Date: June 2, 2003  
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