

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

TIMOTHY C. PIGFORD, <u>et al.</u> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No.
	)	97-1978 (PLF)
ANNE VENEMAN, SECRETARY,	)	
THE UNITED STATES DEPARTMENT	)	
OF AGRICULTURE,	)	
	)	
Defendant.	)	
	)	

CECIL BREWINGTON, <u>et al.</u> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No.
	)	98-1693 (PLF)
ANNE VENEMAN,	)	
	)	
Defendant.	)	
	)	

**ARBITRATOR'S SIXTH 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 sixth semi-annual report on the status of the review of late claims pursuant to Paragraph 5(g) of the Consent Decree.

### Background

Since December 20, 1999, the Arbitrator has had the responsibility to determine 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 his failure to submit a timely claim was due to extraordinary circumstances beyond his control." Consent Decree, ¶5(g) 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). As a result, the Court has declared that "it has retained no authority to review the Arbitrator's rulings on petitions to late file... Nor has it retained authority to control or review the procedures that the Arbitrator employs to reach his decisions." *Pigford v. Veneman*, 2003 U.S. Dist. LEXIS 9210, \*4 (D.D.C. Jun. 4, 2003).

### 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 65,900 petitions were filed by the September 15, 2000 deadline, and an additional 7,800 putative claimants filed petitions after that deadline. Fewer than five putative late claimants have

been able to convince the Arbitrator that the Facilitator or the Arbitrator misread the postmark on their late claim petition. All other late claims postmarked after September 15, 2000 have been rejected.

### *Categorization & Research*

As of the filing of the Fifth Report on December 9, 2003, approximately 1,700 petitions remained to be decided. By March 31, 2004, the Arbitrator had completed all initial decisions on the petitions and notified the petitioners. Of the 65,947 petitions, 63,816 were denied and 2,131 were approved. Any additional timely petitions discovered after this point will be reviewed on a priority basis.

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 three researchers investigates late claim petitions where further research is necessary to make an informed decision.

### *No Contacts*

Over the course of the research process, approximately 6,400 petitioners had proven impossible to contact via telephone and were sent a letter requesting further information. That letter required petitioners to respond with updated contact information within two weeks of the date of the letter. Approximately 3,650 timely responses were received in response to those letters. Those petitions, with updated contact information were reassigned to researchers; those petitioners who responded that they were not

reachable by telephone were sent written questionnaires based on the categorization of their petitions. The Arbitrator again reviewed the petitions of those petitioners who did not respond in a timely manner to the letter prior to making determinations on each of their petitions.

### *Reconsideration*

As described in 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 23,800 requests for reconsideration have been filed, 20,900 of which were sent within the 60-day window. As the numbers indicate, slightly under 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. As of the date of this report, the period for filing timely requests for reconsideration has expired. The Arbitrator anticipates the Facilitator will route the final grouping of timely reconsideration requests in a few weeks.

Requests for reconsideration are distributed to researchers for investigation. Approximately 18,900 requests for reconsideration have 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 is 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 is final.

Decisions have been made in 731 reconsideration requests to date, with 99 requests resulting in approved petitions. Approximately 18,000 requests for reconsideration have been investigated by researchers and have been returned to the Arbitrator's office for further review.

## Results to Date

Presented in tabular form, the status of the late claim process follows below. As noted in the Fourth Report, as of May 27, 2003, the Claims Facilitator began including Late Claim Petition information in its weekly status report. The Facilitator reports the number of affidavits and requests for reconsideration filed. The Arbitrator is using the Claims Facilitator's methodology, which slightly inflates all petition numbers due to the fact that individual petitioners have filed multiple petitions to file claims and requests for reconsideration.

Approximate number of Petitions to File Late Claims:	73,700
Approximate number filed before Sept. 15, 2000:	65,900
Approximate number of petitions approved:	2,100
Approximate number of petitions denied:	63,800
Approximate number of Requests for Reconsideration:	23,800
Approximate number filed within 60 days:	20,900
Number of reconsideration requests decided:	731
Number of reconsideration requests resulting in approval of petition:	99

## Conclusion

The Arbitrator's review of late claim petitions is proceeding without difficulty, as he has completed initial review of all petitions. He expects to notify all those who will have prevailed on their request for reconsideration by the end of August 2004. All those who do not prevail on their request for reconsideration will receive detailed letters explaining the Arbitrator's decision by the end of the first quarter of 2005.

Date: June 4, 2004

Respectfully submitted,

/s/ Michael K. Lewis \_\_\_\_\_

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