

Counsel of Record Report #18

We are at a very special point in the *Felter v. Kempthorne* case where we must keep up our Solidarity, Spirits and Prayers that our very significant Federal Indian Law case will survive the latest efforts by the United States to get rid of it.

On November 2, 2007, the defendant United States filed its Reply to our Opposition to the Renewed Motion to Dismiss. After a review of the defendant's Reply, I remain very positive that District Court Judge Roberts will agree that *Felter v. Kempthorne* must remain before him and go forward on the merits. The question at this point in the case is whether P.L. 108-108 applies to the claims in the Amended Complaint. In order to keep the case in the best position to survive the latest motion to dismiss, we have argued that the claim for an accounting must remain before Judge Roberts for further proceedings.

Overall, the defendant United States has done its very best at using every trick in the trade to evade the fact that there has never been accounting given to the *Felter* plaintiffs on the status of trust funds that were allocated by an Indian Claims Commission judgment *before* 1954. The defendants repeatedly emphasized the passage of time from 1954 to 2007 without explaining where a sufficient accounting of those trust funds occurred. Another trick used by the defendant was to argue that *all* of the *Felter* plaintiffs' claims are intended to attack the termination of the Mixed Blood Uintas as implemented under the Ute Partition and Termination Act (UPA). Further, defendants drew an erroneous parallel between Ute judgment money and Cherokee tribal lands. I firmly believe that Judge Roberts will agree that the *Felter* case is exactly the kind of case that P.L. 108-108 was intended to cover.

One important point that must be understood by all *Felter* plaintiffs is that if we totally rely on arguments that the UPA was illegally executed and implemented then we are exposing a series of federal cases attacking the legality of the UPA that are not favorable to us in keeping at least the claim for an accounting alive. That is why our Opposition primarily focuses on the accounting cause of action.

It would be difficult for me to detail the weaknesses of each and every factual and legal issue argued by the defendants in this Report. The fact that *Felter v. Kempthorne* was sent back by the U.S. District Court of Appeals for further action to clarify the application of P.L. 108-108 to the case has given us a great opportunity to keep our efforts at focusing attention on the repeal of the UPA in public view and out in the open. We are ultimately attacking the faulty implementation of the UPA toward the Original 490 terminated Mixed Blood Uintas. However, our efforts at keeping the attack on the UPA involves a separate approach with the U.S. Congress and other prominent people to convince them that the repeal of the UPA will serve the ends of justice.

In support of this effort, I will be “walking the halls of Congress” from December 10 - 13 on your behalf to advocate with members of Congress and their staff that they must help us get a bill before Congress to wipe the UPA out of existence. I will be updating these members of Congress on the status of the *Felter v. Kempthorne* case and urging them to support legislation to repeal the UPA. All of you must continue your own efforts at writing your own personal letters to your U.S. Senators and Congressional Representatives to urge that they take an interest in your situation and support the repeal of the UPA.

At this point, I cannot predict when Judge Roberts will render his decision to grant or reject the defendants’ latest motion to dismiss the case. I did ask for an opportunity to deliver oral argument to him to clarify many of the issues argued by us in our opposition brief in light of the arguments thrown at us by the defendants’ in their legal briefs. Judge Roberts may feel that he can make his decision on the record and without oral argument.

We are approaching the end of 2007 and I am looking at the situation with a very positive attitude. We have done our very best and let’s all take time out to pray to the Great Spirit that Justice will Prevail and we can proceed to litigate the *Felter* case on its merits.

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