

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GUADALUPE L. GARCIA, et al.,	:	Civil Action No. 00-2445
	:	
Plaintiffs	:	
	:	
v.	:	August 4, 2009
	:	
	:	
DAN GLICKMAN, et al.,	:	
	:	
Defendants	:	10:30 a.m.
.....	:

TRANSCRIPT OF STATUS CONFERENCE
BEFORE THE HONORABLE JAMES ROBERTSON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs:	ALAN M. WISEMAN STEPHEN S. HILL YOLANDA HAWKINS-BAUTISTA HOWREY, LLP 1299 Pennsylvania Avenue, NW Washington, D.C. 20004-2402 (202) 383-7427
---------------------	--

For the Defendants:	LISA ANN OLSON MICHAEL SITCOV INGA BUMBARY-LANGSTON U.S. DEPARTMENT OF JUSTICE 20 Massachusetts Avenue, NW Room 7300 Washington , DC 20530 (202) 514-5633
---------------------	--

Court Reporter:	REBECCA STONESTREET, RPR, CRR Official Court Reporter Room 6511, U.S. Courthouse Washington, D.C. 20001 (202) 354-3249
-----------------	--

Proceedings reported by machine shorthand, transcript produced by computer-aided transcription.

P R O C E E D I N G S

1
2 COURTROOM CLERK: This is civil action 00-2445,
3 Guadalupe L. Garcia, et al. versus Dan Glickman, et al. Can I
4 please have counsel who intend to address the Court come to the
5 podium and announce yourselves to the Court for the record.

6 MR. WISEMAN: Good morning, Your Honor. Alan Wiseman
7 for Howrey on behalf of the plaintiffs.

8 THE COURT: Mr. Wiseman.

9 MS. OLSON: Good morning, Your Honor. Lisa Olson with
10 the Department of Justice. And with me is Michael Sitcov and
11 Inga Bumbarly-Langston.

12 THE COURT: Good morning, counsel. We have a lot of
13 students here from the Georgetown Institute of Law and Policy
14 who are here observing this proceeding. I told them that they
15 were going to see the tail end of a long piece of litigation,
16 and at this point it's a little bit like seeing sausage being
17 made, because nothing I think too exciting is going to happen
18 here.

19 But the Court of Appeals mandate is down after the
20 second go-round at the Court of Appeals. I think it's the
21 second go-round. The government has moved to transfer the
22 81 remaining claims back to the districts in which they arose.
23 That struck me as a quintessentially bad idea, and I denied the
24 motion, but I denied it without prejudice.

25 I suppose it's possible that the plaintiffs have some

1 idea in mind about how we're going to get through the rest of
2 these claims, but I'll hear from Mr. Wiseman, if you're up
3 first, to tell me where you think this case is going, and how,
4 and how we get there from here.

5 MR. WISEMAN: Your Honor, there have been some
6 significant -- I think significant new developments. As
7 Your Honor knows, this has been a long haul on behalf of the
8 plaintiffs. Hopefully we are at the tail end, but a little bit
9 differently.

10 Howrey has consulted with and brought in to the
11 litigation Judge Free and Judge Sullivan, Eugene Sullivan, to
12 assist us in connection with trying to bring this litigation to
13 a resolution that brings justice to the Hispanic farmers.

14 Since then, we have opened up a dialogue with the
15 Department of Justice, and we had a meeting a week ago Friday
16 and we had a response last Friday. And in addition, Congress in
17 2008 had a resolution urging the resolution of this litigation,
18 amongst others.

19 In connection with this dialogue, the parties have
20 agreed, and the Department of Justice I think will confirm this,
21 that we should have a 120-day stay of the tolling of the statute
22 of limitations to protect the absent Hispanic farmers for that
23 period of time.

24 And what I would like to do, and urge this Court to do,
25 is during this period that the parties continue this dialogue to

1 see if we can bring this litigation to resolution, and report
2 back to the Court in 60 days as to whether we think we're going
3 to succeed, or in fact have succeeded, or whether there is no
4 chance. We have reason to believe that the Department of
5 Justice would like to bring a fair and efficient solution, and
6 that they are going to work with us to see if we can't achieve
7 that.

8 So this is what we would like to do, and continue the
9 dialogue and report back to Your Honor in 60 days, protect the
10 absent Hispanic farmers for a 120-day period so the statute of
11 limitations doesn't toll -- so it continues to toll on them.

12 THE COURT: It's been tolled and tolled and tolled and
13 tolled all the way along. It's still in a tolling status, is it
14 not?

15 MR. WISEMAN: Yes, it is. And will be continuing to
16 toll that.

17 THE COURT: I know Mr. Hill has been very careful about
18 that.

19 Okay. So it's still -- now, there are two statutes of
20 limitations. Right? There's the statute of limitations imposed
21 by Congress that was the initial trigger of this lawsuit, and
22 then there's the statute for filing suit that was tolled by
23 filing the class action.

24 MR. WISEMAN: Yes.

25 THE COURT: It's the latter one we're talking about.

1 MR. WISEMAN: Right. Well --

2 THE COURT: Or has Congress extended it again?

3 MR. WISEMAN: Yes. Right. And who knows, that could
4 happen, too. But we hope to avoid that result.

5 And the Court has protected these -- as I understand it
6 from Mr. Hill, if the stay is lifted, the absent Hispanic
7 farmers would have eight days to file their lawsuit or they
8 would be barred by the statute of limitations.

9 THE COURT: Oh, okay.

10 MR. WISEMAN: So we want to continue that so that
11 there's no irreparable harm to them while we see if we can't
12 bring this to an appropriate resolution. And that's why we
13 brought Judges Free and Sullivan in; as two retired federal
14 judges, we think they can assist in seeing if we can't have a
15 fair resolution.

16 THE COURT: All right. Ms. Olson, do you have anything
17 to add or subtract from that?

18 MS. OLSON: Yes. Thank you, Your Honor. May it please
19 the Court. I would like to correct any misimpression that the
20 plaintiffs' counsel might have, and that is that the Department
21 of Justice and the United States is not interested in settling.
22 We have met with them at their request on a couple of occasions
23 recently, and I think also in the past, simply at their request.
24 At this point we oppose any further stay of the case.

25 The accommodation we are willing to make, is, as

1 Mr. Wiseman said, to a maximum 120-day tolling of the statute of
2 limitations for these individual plaintiffs to file their claim,
3 but we are not -- we do oppose any further stay of this case.

4 As you said, it's been going on. At this juncture
5 there's no reason not to move forward with the litigation of
6 these individual claims on the merits, which, as we've explained
7 to the Court, we think would be best done in the districts where
8 they arose, where the evidence is, where the plaintiffs reside,
9 where the witnesses are. And each one should be examined on its
10 individual merits. If settlement is justified in these
11 individual instances, then the Assistant U.S. Attorney who is
12 defending the case can pursue it.

13 But we are not interesting in settling. It is not in
14 the interests of the United States to do so. We have listened
15 to them. I think they're thinking that dripping is going to
16 hollow out rock, and it's not here, because there aren't
17 circumstances which warrant settlement on a class-wide basis.
18 The Court has rejected --

19 THE COURT: All right. Well, the class issue is
20 history, I think, isn't it?

21 MS. OLSON: It is indeed. And to settle at this point
22 would be picking a number out of thin air. It would be
23 irresponsible, from my perspective, to start speculating about
24 what unknown plaintiffs might deserve in as yet unmade claims,
25 or what even these individual plaintiffs might deserve. We have

1 to examine each individual case on its merits to determine
2 whether settlement might be justified or whether we should file
3 a motion for summary judgment and get the case dismissed.

4 I mean, you yourself have looked at a number of the
5 files in this case back when we were discussing privileges,
6 evidentiary privileges, and privacy concerns with respect to
7 discovery, and I think you may recollect that in many instances,
8 some of these folks have never made a loan payment in their
9 entire history with USDA. I mean, there may even be folks who
10 are under possible criminal investigation. We don't know.

11 But that's why we can't sit down at a table and just
12 guess that maybe this number will be fair to bring justice to
13 these individuals. Some of them simply may not deserve it.
14 Some of them may, and in that case we would be willing to talk.

15 THE COURT: Let me see if I understand what your
16 position is. You say you don't mind tolling the statute of
17 limitations another 120 days to let people who have not filed
18 claims file their claims, but you want to get on with the
19 process of resolving the cases that have been filed?

20 MS. OLSON: Yes. And some of these are 20 years old.
21 I mean, for justice to be done, we need to move forward before
22 all the witnesses are gone.

23 THE COURT: Well, I certainly understand that. But how
24 do you propose to do it? I mean, it might be a lovely idea for
25 you to send these cases out to U.S. Attorneys in six different

1 states, but that also means spreading Howrey out to six
2 different states, and having the lawyers go out to six different
3 states. And I don't think I'm going to do that.

4 MS. OLSON: Well, there isn't any reason why they can't
5 ask law firms in those individual states to handle them on a
6 pro bono basis, as they have here. That would seem to make more
7 sense from every standpoint. Otherwise we're shipping
8 witnesses -- it's going to be enormously expensive for the
9 taxpayer, and I assume extremely burdensome for this Court, to
10 handle -- well, we have 81 named plaintiffs, and an untold
11 number of individual claimants who might come forward.

12 I mean, I know -- for example, I think certain public
13 interest organizations ask law firms in particular states to
14 handle cases, and I don't see any reason why that couldn't be
15 done here.

16 THE COURT: Do you have any files or any information
17 that would describe for you what those 81 cases are like?

18 MS. OLSON: Yes. Most of them are in the districts
19 where the claims arose. I think we shipped 35 or 36 of them
20 here so that -- earlier in the proceedings to get a feel for
21 whether class certification was warranted, so that the Court
22 could -- I can't remember exactly the context, but I think it
23 was so that we could look at them and see what the nature of
24 these claims are.

25 But they're spread out around the country. I think

1 it's six states on the other side of the continent, and in some
2 40 towns, I believe. It's far away.

3 THE COURT: Where drip does hollow out rock?

4 MS. OLSON: Well, Arizona, Texas, Washington state,
5 California. So I think it could be very efficiently managed by
6 the courts in those districts and by the lawyers in those towns,
7 the AUSAs or whatever law firms might step forward to handle
8 them. And then all the labor would be distributed. I don't
9 know if Howrey opposes that idea.

10 THE COURT: Your word is "distributed," their word is
11 "disbursed."

12 MS. OLSON: Well, what's the advantage of having this
13 Court handle what is in essence -- well, it could be several
14 thousand individual claims of discrimination.

15 THE COURT: Oh, you think it will be several thousand?

16 MS. OLSON: It could. It's 81 named plaintiffs, and it
17 was up to a class of 20,000, I thought they said. So we don't
18 know how many -- we don't know. It could be thousands. I think
19 81 is bad enough. I mean, the District of Columbia is a very
20 busy district.

21 THE COURT: Well, let me tell you what happened in
22 another case that I handled some years ago. It was a class
23 action that I inherited from Judge Ritchie. It had to do with
24 discrimination against women in the foreign-language-speaking
25 portions of Voice of America, something like that, and there

1 were hundreds of claims by women all over the world.

2 And the resolution of that case was the appointment of
3 a special master who would hear and decide test cases - you
4 know, eight or 10 test cases - and then the parties would sit
5 down and talk about settlement. They didn't have to try a
6 thousand cases; they tried eight or 10 or 15, maybe 50. I don't
7 remember. But it was all done by a special master, and it was
8 all done in one place, and it was all done by one group of
9 lawyers, and they all got a sense of what was going on. That's
10 one model.

11 MS. OLSON: Well, but the notable difference in that
12 case is that there was a class certified. And here I think the
13 rejection by this Court of their request for class
14 certification, and by the Court of Appeals, is a rejection -- a
15 recognition of the fact that these are individualized claims
16 that are going to involve witnesses around the country. It's
17 not a nationwide policy or practice that has affected these
18 people uniformly. When you have a class action, that's the
19 situation.

20 So it can be efficiently managed from a centralized
21 location, but here I think the problem is you're just going to
22 have witnesses, evidence, the plaintiffs themselves are all
23 going to have to be shipped to Washington. Because I think we
24 pointed out in our motion to transfer, for example, one claimant
25 might say that an individual supervisor or a panel in one state

1 discriminated against them by making loans -- you know, setting
2 a higher standard for them; someone in California -- that might
3 be in Texas.

4 Someone in California may say that an individual or a
5 group of people there made their loan requests -- you know, the
6 processes for getting a loan more difficult because of their
7 race. And how could a court in a centralized way make a
8 judgment that the folks in Texas and the folks in California
9 both discriminated? You can't do that without --

10 THE COURT: Well, no, we crossed that bridge a long
11 time ago. That's the reason I denied the class action
12 certification in the first place.

13 MS. OLSON: Exactly. Exactly.

14 THE COURT: But you're telling me -- you couldn't make
15 yourself much plainer. You told me that the department has no
16 interest in settlement.

17 MS. OLSON: That's correct.

18 THE COURT: Well, that's a surprise, because that's not
19 quite what I heard from Mr. Wiseman.

20 MS. OLSON: Well, and I've tried to correct them
21 several times, because I spoke with one of their counsel
22 yesterday. If an individual case warrants settlement and the
23 Assistant U.S. Attorney or the government attorney handling the
24 case examines it and decides that settlement is in the interest
25 of justice and in the interest of the United States, certainly,

1 then, settlement would be possible. We're not closed to
2 settling the case.

3 What we are opposed to is sitting down at a table and
4 speculating, manufacturing some number, some dollar figure that
5 would provide relief to all the collection of individual
6 plaintiffs in this case. Because that would be impossible to
7 do --

8 THE COURT: Well, all right. I got that. I didn't
9 hear Mr. Wiseman say that that's what he's trying to do. I
10 didn't hear him say he wanted a global lump sum
11 pay-it-and-spread-it-around type of settlement.

12 But I hear you, Ms. Olson. Let me hear from
13 Mr. Wiseman again.

14 MR. WISEMAN: Your Honor, I'm disappointed in what I've
15 heard. It's not consistent with what I understand the position
16 of the Department of Justice is. A number of us met with the
17 Department of Justice a week ago Friday, and the response we
18 received last Friday reads in part: "We share your desire for a
19 fair and efficient solution consistent with the law. We look
20 forward to continuing to work with you and your team to achieve
21 that result."

22 It 's my understanding, and I see no harm to the
23 Department of Justice, for us to have 60 days to see if our
24 dialogue can result in a fair and efficient solution, consistent
25 with the law. And the Department of Justice did not say, "And

1 we want to work with a whole bunch of pro bono lawyers around
2 the country in connection with various individual cases."

3 And what is the irreparable harm to the Department of
4 Justice, and what is it we have here? We have an executive
5 branch, the Department of Agriculture, who has repeatedly
6 admitted broad scale discrimination against Hispanic farmers,
7 and we have the Department of Justice who says to Your Honor:
8 Send these cases back to six different states and have Howrey
9 litigate them one by one before a whole slew of different
10 judges. That sounds neither efficient nor fair.

11 And I respectfully request, Your Honor, that to allow
12 us 60 days to try to see if we can bring this to resolution is a
13 fair and efficient way to see if we can conclude this, rather
14 than what the department is suggesting.

15 THE COURT: Well, it sounds like you've got 60 days to
16 see if you can hollow out rock.

17 MR. WISEMAN: Well, it's been done before, Your Honor,
18 and we're determined to have it done again.

19 THE COURT: All right. Well, I don't think there's any
20 down side in waiting 60 days. I will, if you'll present me --
21 Mr. Sitcov, you want to be heard?

22 MR. SITCOV: I would like to, Your Honor, if you don't
23 mind, very briefly.

24 THE COURT: Come on. As they say, everything has been
25 said, but not everybody has said it yet.

1 MR. SITCOV: I guess that's right, Your Honor. I know
2 you've heard me say I guess what I have to say a number of
3 times.

4 But I do take some offense at Mr. Wiseman's
5 representation that we are not being somehow candid with the
6 Court. We did in fact meet with the plaintiffs about 10 days
7 ago, and we informed them, I think yesterday, in no uncertain
8 terms, with the approval of the senior people in the
9 Department of Justice, that we were not interested in
10 undertaking a 60-day settlement discussion, that we don't
11 believe the cases are the type that would be amenable to
12 settlement in any way other than individually. That's been our
13 position throughout, and it remains our position.

14 I don't know what Mr. Wiseman is reading from, but I
15 would be surprised if that whatever he's reading from is dated
16 after we talked. And perhaps he'll let me see it so that I can
17 determine when it was dated.

18 THE COURT: Well, I listened pretty carefully to what
19 Mr. Wiseman read, and it didn't sound to me like it was an offer
20 to settle this case globally or an offer to do anything except
21 resolve the case within the law. Which, people hear what they
22 want to hear. I didn't hear in what he read anything that is
23 necessarily at odds with anything you and Ms. Olson are saying.

24 But I am going to give the plaintiffs another 60 days
25 to see if they can hollow out the rock a little bit. But it

1 sounds to me like it's pretty tough rock, and a slow drip, and
2 it may be that they won't be able to move the ball.

3 And I have no -- I'm not jawboning on this one at all.
4 I'm going to set down a hearing, another hearing, in 60 days.
5 Which would be when, Catina?

6 COURTROOM CLERK: We have Tuesday, October 13th, at
7 10:00 o'clock.

8 THE COURT: October 13th at 10:00 o'clock.

9 If between now and then anybody wants to file a
10 motion -- I do reject the idea of sending this back to six
11 districts. That we're not going to do. If we have to try them,
12 we'll try them here. We'll appoint a special master, we'll get
13 pro bono lawyers to do them, we'll bring witnesses in to town,
14 we'll do it by telephone depositions, we'll do whatever we have
15 to do to try them.

16 But I'm not going to require -- I mean, Howrey has
17 spent years and years and years on this pro bono. And I assign
18 nothing but good faith to everybody in this case, but to split
19 it now up into all the districts and send it around the country
20 doesn't make any sense to me at all.

21 So if somebody has -- if no progress is made on
22 settlement in 60 days, which it sounds like none will be made,
23 then the next time we get together it's going to be to decide
24 how and on what schedule and how mechanically we're going to get
25 these cases resolved. But that's where we are.

1 MR. SITCOV: Thank you.

2 THE COURT: Thank you, everybody. We'll see you on
3 October 13th, at what time, Catina?

4 COURTROOM CLERK: 10:00 o'clock.

5 THE COURT: 10:00 o'clock.

6 MR. WISEMAN: Thank you, Your Honor.

7 THE COURT: Thank you.

8 (Proceedings adjourned at 11:10 a.m.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF OFFICIAL COURT REPORTER

I, Rebecca Stonestreet, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

SIGNATURE OF COURT REPORTER

DATE