

DOC HASTINGS, WA
CHAIRMAN
DON YOUNG, AK
JOHN J. DUNCAN, JR., TN
LOUIE GOHMERT, TX
ROB BISHOP, UT
DOUG LAMBORN, CO
ROBERT J. WITTMAN, VA
PAUL C. BROUN, GA
JOHN FLEMING, LA
MIKE COFFMAN, CO
TOM McCLINTOCK, CA
GLENN THOMPSON, PA
JEFF DENHAM, CA
DAN BENISHEK, MI
DAVID RIVERA, FL
JEFF DUNCAN, SC
SCOTT R. TIPTON, CO
PAUL A. GOSAR, AZ
RAÚL R. LABRADOR, ID
KRISTI L. NOEM, SD
STEVE SOUTHERLAND II, FL
BILL FLORES, TX
ANDY HARRIS, MD
JEFFREY M. LANDRY, LA
CHARLES J. "CHUCK" FLEISCHMANN, TN
JON RUNYAN, NJ
BILL JOHNSON, OH

TODD YOUNG
CHIEF OF STAFF

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

Opening Statement by
Chairman Don Young
Subcommittee on Indian and Alaska Native Affairs
Legislative Hearing on H.R. 887
April 5, 2011

EDWARD J. MARKEY, MA
RANKING DEMOCRATIC MEMBER
DALE E. KILDEE, MI
PETER A. DeFAZIO, OR
ENI F.H. FALEOMAVAEGA, AS
FRANK PALLONE, JR., NJ
GRACE F. NAPOLITANO, CA
RUSH D. HOLT, NJ
RAÚL M. GRIJALVA, AZ
MADELEINE Z. BORDALLO, HI
JIM COSTA, CA
DAN BOREN, OK
GREGORIO KILILI CAMACHO SABLÁN, CNMI
MARTIN HEINRICH, NM
BEN RAY LUJÁN, NM
DONNA M. CHRISTENSEN, VI
JOHN P. SARBANES, MD
BETTY SUTTON, OH
NIKI TSONGAS, MA
PEDRO R. PIERLUISI, PR
JOHN GARAMENDI, CA
COLLEEN W. HANABUSA, HI

JEFFREY DUNCAN
DEMOCRATIC STAFF DIRECTOR

The purpose of today's hearing is to hear testimony on H.R. 887, a bill I introduced with the Chairman of the full Committee, Doc Hastings, and the Gentleman from Arizona, Mr. Gosar.

H.R. 887 establishes a cap of \$50 million on fees and expenses that may be awarded to plaintiffs' attorneys pursuant to the Cobell Settlement Agreement. It also requires the Department of the Interior to submit to Congress a report regarding its plans to consolidate highly fractionated Indian lands using the \$1.9 billion in direct spending provided in the Cobell Settlement for this purpose.

Under the Claims Resolution Act of 2010, Congress authorized the U.S. District Court to approve the Cobell Settlement Agreement. Congress did so with assurances from the Government and the plaintiffs that attorneys' fees would be limited to an amount between \$50 million and \$100 million pursuant to a side agreement they signed in December 2009.

Before this Committee, the Named Plaintiff testified that her attorneys [quote] "have agreed to limit their petition for fees to under \$100 million."

Even this amount is excessive. As the Administration points out "...only \$360 million of the settlement funds are based on claims that counsel actually litigated. The remaining funds are the result, not of tens of millions of dollars' worth of work performed by class counsel, but rather the government's desire to resolve the claims of the IIM account holders themselves."

Paying lawyers between \$50 million and \$100 million for claims valued at \$360 million sparked a controversy that delayed passage of the Settlement for an entire year. Not only did the attorneys fail to justify these fees to this Committee, but the Government and plaintiff lawyers structured the Settlement so that all legal fees must be paid by the individual Indians, not the Government.

Little did anyone know that when the Named Plaintiff made her statement before the Committee, the plaintiffs were apparently concealing the existence of a contingency fee agreement providing the attorneys with a recovery of \$223 million. It was publicly revealed for the first time two days after the President signed the Claims Resolution Act into law.

Is this a bait-and-switch, a game of Three Card Monte, or a ploy to convince the Court that \$100 million should be a kind of consolation prize?

I don't know the answer to this, but I do know this Committee had a right to know about this contingency fee agreement when the Named Plaintiff and her attorney testified about the legal fees of this case in this Committee.

Today, the Plaintiffs are stonewalling the efforts of this Committee to get to the bottom of the fee controversy in their refusal to testify or to respond to numerous written inquiries over the last year seeking information about their fees.

I voted for the Claims Resolution Act, but I now worry that the integrity of the Act has been compromised by the Plaintiffs' lawyers. Their actions are frustrating the efforts of Members to protect the interest of the 500,000 Indians whose payments are now threatened by grossly excessive legal fees.

I don't want to let the Government off the hook. The Departments of Interior and Justice have refused to testify on the grounds that "the matter on which the Subcommittee seeks testimony is in active litigation."

This is not an excuse the Committee has historically recognized. It is also unprecedented. During the previous Administration, officials with the Department of the Interior voluntarily testified on numerous occasions in House and Senate committees while Cobell was in active litigation. They also engaged in confidential mediation with the Plaintiffs under the direct, personal supervision of staff of the House and Senate committees of jurisdiction. And the current Administration testified on the Settlement last year.

In any case, the Departments of Interior and Justice have advised the Committee that the position of the Government "is entirely reflected in the briefs that it submitted to the court ..."

The views of the Government on the attorney fees are important for Members to review but I do not wish to take up the Committee's time quoting them now. As part of my written statement submitted for the record, I am providing key excerpts of the Government's position on attorney fees.