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

NO. 11-5205

ELOUISE PEPION COBELL, *et al.*,
Appellees,

Kimberly Craven,
Appellant,

v.

KENNETH LEE SALAZAR, Secretary of the Interior, *et al.*,
Appellees.

On Appeal from the United States District Court
For the District of Columbia, No. 1:96-cv-01285 TFH

Ms. Craven's Motion for Judicial Notice

CENTER FOR CLASS ACTION FAIRNESS LLC
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Attorney for Appellant Kimberly Craven

On August 24, 2011, while this appeal was pending, Ramona Two Shields and Mary Louise Defender Wilson filed a putative class action in the United States Court of Federal Claims alleging that between 2005 and 2009 the government repeatedly breached its fiduciary duty by approving the sale of leases of 42,500 mineral interest acres located on the Fort Berthold Reservation in North Dakota, for as little as \$35 to \$80/acre—a fraction of the market value of comparable non-Indian federal land—to a third-party entity that then “flipped” the interests for \$10,000/acre in 2010. *Two Shields v. United States*, No. 11-531-L Dkt. No. 1 (attached as Exhibit 1). On October 20, 2011—after Ms. Craven’s opening brief was filed—the government filed a motion to dismiss the \$400+ million lawsuit on the grounds that these claims were waived by the Trust Administration class in the *Cobell* settlement in exchange for \$500/person. *Id.* Dkt. No. 7-1 (attached as Exhibit 2).

Appellant Ms. Craven asks this Court to take judicial notice of these pleadings, which demonstrate that the government contends that the *Cobell* settlement eliminates the claims of the putative class member Indians in *Two Shields* who received \$80/acre or less for land leases worth \$10,000/acre. Fed. R. Evid. 201. “Courts may take judicial notice of official court records...” *Veg-Mix, Inc. v. U.S. Dep’t of Agriculture*, 832 F.2d 601, 607 (D.C. Cir. 1987); *see also Rothman v. Gregor*, 220 F.3d 81, 91-92 (2d Cir. 2000) (taking judicial notice of a complaint filed in parallel litigation in district

court). It is not subject to reasonable dispute that the government has made this filing making this argument in the *Two Shields* litigation; taking judicial notice would cause the government no prejudice. *See Veg-Mix*, 832 F.2d at 607. The fact that the government has moved to dismiss a lawsuit of this type as claim-barred is of obvious relevance to Ms. Craven's arguments regarding the intra-class equities of the settlement distribution (Opening Brief Section I.B) and the appropriateness of the class certification of a single Trust Administration class given the disparate claims of class members (Opening Brief Section III). *See Liberty Mut. Ins. Co. v. Rotches Pork Packers, Inc.*, 969 F.2d 1384, 1388 (2d Cir. 1992) ("A court may take judicial notice of a document filed in another court not for the truth of the matters asserted in the other litigation, but rather to establish the fact of such litigation and related filings").

Ms. Craven acknowledges that this motion is made after the September 12 deadline for non-dispositive motions in this appeal, but asks for leave from that deadline for the obvious reason that she could not have asked the court to take judicial notice of an October 20 filing five weeks before it was made.

Dated: December 1, 2011

Respectfully submitted,

/s/ Theodore H. Frank

Theodore H. Frank

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CERTIFICATE OF SERVICE

I hereby certify that, on this 1st day of December, 2011, I electronically filed the foregoing Motion on the electronic docketing system for the Court of Appeals for the District of Columbia Circuit, thereby effecting service on counsel of record for all parties under Cir. R. 25(c).

/s/ Theodore H. Frank _____

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