

**For Immediate Release  
August 13, 2018**

**Brian Levin / 646-200-5331**  
[cohenmilstein@berlinrosen.com](mailto:cohenmilstein@berlinrosen.com)

**KEEPSEAGLE SETTLEMENT MAKES FINAL PAYMENTS, CLOSING OUT  
LANDMARK RACIAL DISCRIMINATION CASE AGAINST FEDERAL  
GOVERNMENT**

*\$38 million to benefit non-profit organizations serving Native American farmers and ranchers, and \$266 million to fund The Native American Agriculture Fund – Largest Native American Philanthropic Institution*

WASHINGTON, D.C. – In light of the Supreme Court’s March 26, 2018 decision declining to hear an appeal over the disposition of \$380 million in unclaimed “*cy pres*” funds from the historic 2011 settlement of *Keepseagle v. Vilsack*, a decades long battle to resolve claims that the U.S. Department of Agriculture systematically discriminated against Native American farmers and ranchers, has come to a close. Following distribution of approximately \$238 million on successful claims in 2012, supplemental payments to prevailing claimants totaling about \$76 million have now been issued. In addition, \$38 million in immediate *cy pres* awards is being paid out to non-profit organizations serving Native American farmers and ranchers, which were approved following a rigorous grant-making process, and \$266 million will go to the Native American Agriculture Fund, a Trust created as part of the modified settlement empowered to fund programs through non-profit organizations over the next 20 years.

“The modification to the settlement agreement struck a sound balance between distributing some of the funds to those who had been successful claimants before and other funds to serve the broader Indian farming and ranching community,” stated **Joseph M. Sellers, Lead Counsel for the plaintiffs and Chair of the Civil Rights and Employment practice group at Cohen Milstein Sellers & Toll**. “In many ways, the creation of the Native American Agriculture Fund trust could turn out to be one of the most lasting legacies of this case because it will create the largest non-profit institution to serve Native Americans in the history of this country. We look forward to seeing the Native American Agriculture Fund move forward to bring benefits to Indian farmers and ranchers beyond what litigation alone has provided.”

Plaintiffs filed *Keepseagle* in 1999, alleging that since 1981, the USDA systematically denied Native American farmers and ranchers nationwide the same opportunities as white farmers to obtain low-interest rate loans and loan servicing, causing them hundreds of millions of dollars in economic losses. The U.S. District Court for the District of Columbia approved a \$760 million settlement in April 2011, but payments issued on the initial round of claims in 2012 left roughly \$380 million of the settlement undisbursed. Since then, the distribution of the remaining funds has been the subject of extensive negotiations and protracted litigation. Most recently, the U.S. Supreme Court in March declined to hear an appeal to the distribution plans, paving the way for the final payments announced today.

“The conclusion of *Keepseagle* is a very exciting time for Native American agriculture. Class members and other Native American producers will reap significant benefits from these *cy pres* funds.” noted **Christine E. Webber, Plaintiffs’ class counsel, who chaired the grantmaking process and a partner in Cohen Milstein’s Civil Rights and Employments practice**, “There is great need in Indian Country for funding worthwhile projects, and even \$38 million could not cover every request. The proposals we received, however, demonstrated an engaged and invested interest across Indian Country to ensure that agriculture will sustain Native communities now and in the future.”

“Native American agriculture is at an important moment for investing in meeting the needs of our agriculture producers,” stated **Janie Hipp, Executive Director of the Native American Agriculture Fund**. “Combining such investments with the continued focus on feeding ourselves will create important new opportunities to solidify our economies, strengthen our communities and improve our access to healthy foods. Important next steps for the Trustees and the Director include developing strategies for grant-making and building a solid administrative office for carrying out the responsibilities of the Fund.”

## **Case Background**

The nationwide class action lawsuit *Keepseagle v. Vilsack*, No. 99-cv-3119 (DDC) (EGS) was filed in November 1999, and on April 28, 2011 the U.S. District Court for the District of Columbia approved a historic settlement between Native American farmers and ranchers and the USDA which required USDA to: 1) pay \$680 million in damages to thousands of Native Americans, to 2) forgive up to \$80 million in outstanding farm loan debt, and to 3) improve the farm loan services USDA provides to Native Americans. The settlement provided that any unclaimed funds would be distributed to non-profit organizations serving Native American farmers and ranchers, referred to as a “*cy pres*” distribution.

An extensive outreach campaign and claims process was conducted in 2011, which resulted in over 4300 completed claims, of which over 3600 were approved for payment in 2012. Successful Track A claimants, the vast majority of the claimants, received \$50,000 directly, plus \$12,500 paid to the IRS on their behalf to offset taxes. Track B claimants received up to \$250,000, based upon their actual economic loss. This claims process left \$380 million undisbursed.

Years of negotiations followed, and on April 20, 2016 the District Court approved an addendum to the original settlement agreement, reflecting a compromise between two competing goals: paying out more funds to claimants who successfully recovered through the claims process, and maintaining the *cy pres* distributions for the benefit of the class as a whole. That ruling was appealed to the D.C. Circuit, which affirmed the District Court on May 16, 2017. The Supreme Court then declined to hear the case on March 26, 2018, permitting the modification to the agreement to be implemented.

Under the modified settlement, a supplemental award of \$18,500 was paid to each prevailing claimant, along with payment of \$2,775 to the IRS on their behalf, to offset taxes owed. Those checks were mailed in late May 2018, and accounted for over \$76 million of the remaining funds.

## **Funded Projects**

The modified settlement also allocated \$38 million for quick distribution to non-profit organizations serving Native American farmers and ranchers. The grant opportunity was announced in spring 2016, with applications received in summer 2016, and recommendations from class counsel, developed with the assistance of an Advisory Committee, were submitted to the District Court in October 2016. Those recommendations were on hold until the appeals process was completed this spring, and on July 19, 2018 the District Court approved the recommendations.

Pursuant to the modified agreement, qualifying organizations had to have provided business assistance, agricultural education, technical support, or advocacy services to Native American farmers or ranchers prior to November 1, 2010, to support and promote their continued engagement in agriculture, and had to be a recognized non-profit organization, or an instrumentality of a state or federally recognized tribe.

The largest number of projects funded support infrastructure or large equipment purchases, ranging from irrigation projects, to purchasing large farm equipment to be shared by small producers, to building facilities needed to link producers to markets, while other projects focus on providing technical assistance or training. Other approved proposals include regranting to smaller organizations, Community Development Financial Institutions (CDFIs) or similar institutions planning to make loans to farmers or ranchers, as well as addressing legal needs, public policy, or other advocacy on behalf of Native farmers and ranchers and providing scholarships or education to Native American students in agricultural fields. A complete list of the projects approved for funding is available [here](#).

Given the great need for resources to support the significant interest in agriculture, the remainder of the settlement funds, currently amounting to approximately \$266 million, will go to fund the Native American Agriculture Fund. This Trust will be the largest philanthropic institution ever that is dedicated exclusively to serving the Native American community. The Trust, under the leadership of a stellar group of Native American leaders in agriculture, economic development, and philanthropy, who were appointed as Trustees by the Court, and with its initial Executive Director Janie Hipp, will have up to 20 years to distribute funds to non-profit organizations providing business assistance, agricultural education, technical support and advocacy services to Native American farmers and ranchers, to support and promote their continued engagement in agriculture.

### **About Cohen Milstein Sellers & Toll PLLC**

Cohen Milstein Sellers & Toll PLLC is a national leader in plaintiff class action litigation. As one of the premier law firms in the country handling major, complex litigation disputes, Cohen Milstein, with 90 attorneys, has offices in Washington, D.C., Chicago, IL, New York, NY, Philadelphia, PA, Palm Beach Gardens, FL, Denver, CO, and Raleigh, NC. For more information, visit [www.cohenmilstein.com](http://www.cohenmilstein.com) or call 202.408.4600.

### **About the Native American Agriculture Fund**

The NAAF is can be reached through Janie Hipp, Executive Director at [nativeamericanagriculturefund@gmail.com](mailto:nativeamericanagriculturefund@gmail.com) or 479-313-3339.