

No. _____

In the Supreme Court of the United States

Barry LeBeau, individually and on behalf of
all other persons similarly situated,

Petitioner,

v.

United States

Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Federal Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the General Savings Statute, 1 U.S.C.A. § 109, permits a Circuit Court to affirm liability under a federal statute but deny damages based upon a subsequent amendment of the liability statute.
2. Whether a Circuit Court may refuse to apply the General Savings Statute, 1 U.S.C.A. § 109, and prior opinions of the Court where the refusal denies breach of trust damages to a class of Native Americans.

**RULE 29.6 STATEMENT AND
PARTIES TO THE PROCEEDING**

Pursuant to this Court's Rule 29.6, petitioner states that Barry LeBeau is a Native American person and resident of South Dakota. The class members all are lineal descendants of the original Sisseton-Wahpeton Tribe of the Mississippi.

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Court of Appeals Opinion, LeBeau v. United States, 474 F.3d 1334 (US Court of Appeals for the Federal Circuit, January 24, 2006)

District Court Opinion, LeBeau v. United States, 334 F.Supp.2d 1200 (August 18, 2004)

District Court Opinion, Casimir LeBeau v. United States, 215 F.Supp.2d 1046 (D.S.D. 2002)(September 25, 2001)

Act of June 19, 1968 (Judgment Fund), Ch. 2, Pub.L. No. 90-352, 82 Stat. 239.

Act of October 25, 1972 (1972 Distribution Act), Pub.L. No. 92-555, 86 Stat. 1168 (codified at 25 U.S.C.A. § 1300d, et seq. (1983)).

Act of November 13, 1998 (1998 Distribution Act), Pub.L. No. 105-387, 112 Stat. 3471 (codified at 25 U.S.C.A. § 1300d, 21 et seq.).

General Savings Statute, 1 U.S.C.A. § 109.

TABLE OF AUTHORITIES

Federal Cases

Allen v. Grand Central Aircraft Co., 347 U.S. 535, 74 S.Ct. 745 (1954)

DeLaRama S.S. Co. v. United States, 344 U.S. 386, 73 S.Ct. 381 (1953)

Fleming v. Mohawk Wrecking & Lumber Co., 331 U.S. 111, 67 S.Ct. 1129, 91 L.Ed. 1375

John Morrell & Co. v. Local Union 304A, 913 F.2d 544 (8th Cir. 1990)

Keener v. Washington Metropolitan Area Transit Authority, 800 F.2d 1173 (C.A.D.C. 1986), *cert. denied* 480 U.S. 918, 107 S.Ct. 1375

Sisseton and Wapeton Bands v. United States, 18 Ind. Cl. Comm. 477 (1967)

United States v. Allied Oil Corp., 341 U.S. 1, 71 S.Ct. 544, 95 L.Ed. 697

United States v. Jim, 409 U.S. 80, 82-3

United States v. Mitchell, 445 U.S. 535, 100 S.Ct. 1349, 63 L.Ed.2 607 (1980) (Mitchell II)

United States v. Mitchell, 463 U.S. 206, 103 S.Ct. 2961, 77 L.Ed. 580 (1983)

United States v. White Mountain Apache Tribe, 537 U.S. 465, 123 S.Ct. 1126, 155 L.Ed.2 40 (2003)

Federal Statutes

1 U.S.C.A. § 109

28 U.S.C.A. § 1254(1)

28 U.S.C.A. § 1364(a)(2)

82 Stat. 239

86 Stat. 1168

112 Stat. 3471

38 Fed.Reg. 13, 737 (May 25, 1973)(Codified at 25 C.F.R. § 41.1 (1973)
and recodified at § 61.4 (1995)

Other Authorities

SUTHERLAND STATUTES AND STATUTORY CONSTRUCTION § 23:38

BOGERT'S THE LAW OF TRUST AND TRUSTEES § 871 (Revised 2d ed. 2005)

Rules of the Supreme Court of the United States

Rule 29.6

PETITION FOR A WRIT OF CERTIORARI

Petitioner Barry LeBeau respectfully petitions the Court to grant a writ of certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit.

OPINIONS BELOW

The opinion of the court of appeals (App. _____) is reported at 474 F.3d 1334. The opinion of the district court (App. _____) is reported at 334 F.Supp.2d 1200. The opinion of the district court in Casimir LeBeau v. United States is reported at 215 F.Supp.2d 1046 (D.S.D. 2002) (App. _____). The record and findings of Casimir LeBeau v. United States were stipulated by the parties and accepted by the Court to be incorporated into the record of Barry LeBeau v. United States, 334 F.Supp.2d 1200.

JURISDICTION

The court of appeals' judgment was entered on January 24, 2007. The jurisdiction of this Court is invoked under 28 U.S.C.A. § 1254(1).

STATUTORY PROVISIONS INVOLVED

1. Act of June 19, 1968 (Judgment Fund), Ch. 2, Pub.L. No. 90-352, 82 Stat. 239.
2. Act of October 25, 1972 (1972 Distribution Act), Pub.L. No. 92-555, 86 Stat. 1168 (codified at 25 U.S.C.A. § 1300d, et seq. (1983)).
3. Act of November 13, 1998 (1998 Distribution Act), Pub.L. No. 105-387, 112 Stat. 3471 (codified at 25 U.S.C.A. § 1300d, 21 et seq.).
4. General Savings Statute, 1 U.S.C.A. § 109.

STATEMENT

The petitioners are a class of Native Americans who are descendants of the original Sisseton-Wahpeton Tribe of Mississippi who were not enrolled as tribal members (hereinafter petitioners will be referred to as “lineal descendants”).

Barry LeBeau, a lineal descendant, filed this action pursuant to the “Little” Tucker Act, 28 U.S.C.A. § 1364(a)(2). The action demanded damages for breach of fiduciary duty by the Secretary of Interior. The claim alleged the Secretary of Interior unreasonably delayed distribution of judgment funds as required by the 1972 Distribution Act. 86 Stat.1168. The District Court certified as a class the lineal descendants on the roll prepared as required by the 1972 Distribution Act. The United States “conceded that the 1972 Distribution Act created a trust responsibility that was breached by the Secretary.” LeBeau v. U.S., 474 F.3d 1334, 1341 (D.C. 2007).

The history of this action begins prior to 1967. The United States settled a lawsuit for the breach of the United States treaty obligations under the Treaty of Prairie Du Chien, 1830 and the Treaty of Traverse Des Sioux (1851). The Indian Claims Commission approved the settlement in 1967 and entered a judgment of \$5,874,039.50. Sisseton and Wahpeton Bands v. United States, 18 Ind. Cl. Comm. 477 (1967).

Congress appropriated money in 1968 to pay the judgment and deposited the money into an interest bearing account, the Judgment Fund, in the United States Treasury. 82 Stat. 239.

The Judgment Fund was to be shared by the Devils Lake Sioux Tribe of North Dakota, the Sisseton-Wahpeton Sioux Tribe of South Dakota, and the Assiniboine and Sioux Tribe of the Fort Peck Reservation in Montana (“the Tribes”) and the lineal descendants. The lineal descendants were members of the original Sisseton-Wahpeton Tribe of Mississippi but were not enrolled in any of the Tribes. LeBeau v. United States, 474 F.3d at 1337.

Congress enacted the 1972 Distribution Act establishing a formula for the distribution of the Judgment Fund. The lineal descendants of the Sisseton-Wahpeton Sioux Tribe were beneficiaries of the Judgment Fund

established by the 1972 Distribution Act and were allotted 25.0225% of the Judgment Fund.

The Tribes' share of the Judgment Fund was promptly paid.

The Secretary of the Interior under the 1972 Distribution Act, was directed to prepare membership rolls and was required to distribute funds on a per capita basis to individuals who were found to be lineal descendants.

“[T]he Secretary issued regulations that established an application procedure for enrollment as a lineal descendant and set a deadline of November 1, 1973 for enrollment applications. 38 Fed. Reg. 13, 737 (May 25, 1973)(Codified at 25 C.F.R. § 41.1 (1973) and recodified at § 61.4 (1995).” LeBeau v. United States, 474 F.3d at 1337.

“By 1979, the BIA had processed plaintiffs’ applications and officially notified them they were eligible to share in the Judgment Fund. The record demonstrates that at least by March 1982, the Aberdeen Area Office had processed all timely filed applications and made initial determinations of eligibility on those applications.” LeBeau v. United States, 215 F.Supp.2d at 1060.

“On March 8, 1982, the Aberdeen Area Office sent a request to the Deputy Assistant Secretary—Indian Affairs for permission to make a partial payment of approximately \$1,700 to approximately 1,900 lineal descendants that had been determined to be eligible as of 1982.” LeBeau v. United States, 215 F.Supp.2d 1046, 1051 (D.S.D. 2002).¹

Again on October 8, 1982, the Aberdeen Area Office made a request to the Secretary of Interior to pay \$1,700 to the lineal descendants-lineal descendants. The trial court and Circuit Court found: “The failure to approve a partial distribution (of \$1,700) was a breach of defendant’s fiduciary duties.” LeBeau v. United States, 215 F.Supp.2d 1046, p. 1060; LeBeau v. United States, 334 F.Supp.2d 1200, p. 1204; LeBeau v. United States, 474 F.3d 1334, p. 1341.

¹ “The parties have stipulated, and the Court accepts the stipulation, that the record in LeBeau, Civ. 99-4106, case can be incorporated into the record in this case, which includes a transcript of the court trial held in that case.” LeBeau v. United States, 334 F.Supp.2d 1200, 1203 (D.S.D.2004).

The Secretary of Interior refused to grant permission to the Aberdeen Area Office to make the \$1,700 payment in 1982 to each eligible lineal descendant. The Secretary of Interior has offered no reason throughout the litigation for his refusal to implement the 1972 Distribution Act. The Secretary ignored Congress's clear requirements to pay the Judgment Fund to the lineal descendants.

After 1982, the Tribes attempted to obtain the lineal descendants' 1972 distribution share or a part through litigation and legislative means.

The Tribes were successful and in 1998 Congress passed the 1998 Distribution Act which established a new distribution allocation affecting the trust money held by the Secretary of Interior.

When Congress passed the 1998 Distribution Act, the judgment funds from the 1972 Distribution Act which Congress had appropriated for the lineal descendants remained unpaid. Congress altered the 1972 distribution formula. Congress reduced the lineal descendants' share by 28.3995%. LeBeau v. United States, 334 F.Supp.2d at 1201.

The summary of the District Court's holding in LeBeau v. United States, 334 F.Supp.2d 1200 is:

(1) That the 1972 Distribution Act created a trust by the deposit of the Judgment Fund in an interest-bearing account under the supervision of the Secretary of Interior;

(2) That the Secretary of Interior had a fiduciary duty under the 1972 Distribution Act to promptly pay the proceeds of the Judgment Fund to the lineal descendants;

(3) That the Secretary of Interior had a fiduciary duty under the Distribution Act to determine the identity of the lineal descendants, and upon identification promptly distribute the Judgment Fund;

(4) That the Secretary of Interior breached his fiduciary duty by not paying the trust funds as directed by Congress in a reasonable time to the lineal descendants;

(5) That the Secretary of Interior further breached his fiduciary duty on two occasions by refusing to approve a partial distribution of \$1,700 to the lineal descendants in 1982; and

(6) That the 1972 Distribution Act falls within the ambient of United States v. Mitchell, 463 U.S. 206, 103 S.Ct. 2961, 77 L.Ed. 580 (1983)(Mitchell II) and United States v. White Mountain Apache Tribe, 537 U.S. 465, 123 S.Ct. 1126, 155 L.Ed.2 40 (2003).

The District Court determined that the lineal descendants would have received approximately \$1,700 in 1982 but for the breach of fiduciary duty by the Secretary of Interior and awarded damages for breach of trust under the 1972 Distribution Act. The District Court then deducted amounts paid after the reallocation under the 1998 Distribution Act resulting in damages of \$219.70 plus interest per class member.

The Circuit Court of Appeals' opinion, 474 F.3d 1334 (D.C. Cir. 2007) affirmed the District Court on all liability issues but reversed on damages. The Circuit Court held:

(1) That the 1972 Distribution Act must be read in light of the 1998 Amendment;

(2) That Congress has power to alter judgment funds until such funds are actually vested; and

(3) That Congress's passage of the 1998 amendments reallocated the lineal descendants' share of the Judgment Fund and thereby extinguished the government's liability for a breach of fiduciary duty by the Secretary because the lineal descendants never acquired vested rights in their share of the Judgment Fund as set forth in the 1972 Distribution Act.

The Petitioner submits that the Circuit Court erred when it determined the 1998 Distribution Act eliminated damages for a violation of fiduciary duties by the Secretary of Interior under the 1972 Distribution Act.

ARGUMENT

A. This Action Seeks to Hold the Secretary of Interior to Account for His Violation of Fiduciary Duties from 1972 until 1986.

This action was submitted to the District Court solely upon the law of trusts under the Little Tucker Act. The Circuit Court affirmed the District Court on all liability issues. The Circuit Court reversed the award of damages by reference to the reallocation of the 1968 Judgment Fund in the 1998 Distribution Act.

The Circuit Court ignored the statutory direction of the General Savings Statute, 1 U.S.C.A. 109, and eliminated damages under the guise of the 1998 Distribution Act for a violation of trust under the 1972 Distribution Act. The District Court properly recognized that the lineal descendants' claim was based on the Secretary of Interior's refusal to administer the trust funds appropriated by Congress as required by the 1972 Distribution Act for the benefit of the lineal descendants.

The lineal descendants recognize that Congress has "the wide ranging congressional power to alter allotment plans (and distribution shares) until those plans are executed." United States v. Jim, 409 U.S. 80, 82-3. The petitioner's case is not an issue of Congressional power but a damages action to remedy a serious breach of trust by the Secretary of Interior. This case seeks to hold the Secretary of Interior accountable for a knowing and extended refusal to execute his duty under the 1972 Distribution Act.

B. The Circuit Court Affirmed the Liability Judgment that the Secretary of Interior Breached his Fiduciary Duty under the 1972 Distribution Act.

The Circuit Court stated:

The government, both in briefing and at oral argument, has conceded that the 1972 Distribution Act created a trust responsibility that was breached by the Secretary's unreasonable delay in distributing the Judgment Fund. LeBeau v. United States, 474 F.3d 1341.

We agree with the LeBeau plaintiffs that the 1972 Distribution Act created a trust responsibility between the United States and the lineal descendants and that the 1972 Distribution Act governed the government's obligations until Congress amended the Act in 1998. We also agree that as conceded by the

government, the Secretary breached this trust responsibility by unreasonably delaying in the partial distribution in 1982 and in the full distribution in 1987 to the lineal descendants of their share of the Judgment Fund. LeBeau v. United States, 474 F.3d 1334, 1341-42.

The Circuit Court found that the 1972 Distribution Act imposed trust responsibilities and that United States v. White Mountain Apache Tribe, 537 U.S. 465, 123 S.Ct. 1126, 155 L.Ed.2d 40(2002) and United States v. Mitchell, 445 U.S. 535, 100 S.Ct. 1349, 63 L.Ed.2 607(1980) permitted compensation for money damage sustained as a result of the breach of the Secretary of Interior's trust responsibility to the Barry LeBeau class. The liability of the Secretary is clear.

C. The Circuit Court's Decision Violates 1 U.S.C.A. § 109, The General Savings Statute and Prior Decisions of this Court.

The District Court followed the rules of construction enacted by Congress in 1 U.S.C.A. § 109. The statute states:

The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability. The expiration of a temporary statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the temporary statute shall so expressly provide, and such statute shall be treated as still remaining in force for the purposes of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability.

This Court construed the General Savings Statute in DeLaRama S.S. Co. v. United States, 344 U.S. 386, 73 S.Ct. 381 (1953). Justice Frankfurter delivered the opinion, a part of which states:

By the General Savings Statute, Congress did not merely save from extinction a liability incurred under the repealed statute; it

saved the statute itself: and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action *** for the enforcement of such *** liability. p. 383.

The District Court's opinion followed the requirements of the General Savings Statute and the case of DeLaRama S.S.Co. v. United States. The Circuit Court decision is in violation of the General Savings Statute because it applies the 1998 Distribution Act statute for damages rather than the 1972 Distribution Act.

This case demonstrates the concrete, dollars and cents importance of saving the statute and not merely the liability. Indeed, in this case, the liability under the statute is not wholly saved unless that portion of the statute which gives the district court jurisdiction also survives. DeLaRama S.S.Co., *supra*, at 389.

The General Savings Statute saves the entire 1972 Distribution Act. The conceded breach of fiduciary duty under the 1972 Distribution Act creates liability under the Act. The damages must also be determined under the 1972 Distribution Act.

The precise object of the General Savings Statute is to prevent the expiration of a temporary statute from cutting off appropriate measures to enforce the expired statute in relation to violations of it, or of regulations issued under it, occurring before its expiration. United States v. Allied Oil Corp., 341 U.S. 1, 5, 71 S.Ct. 544, 546, 95 L.Ed. 697, Fleming v. Mohawk Wrecking & Lumber Co., 331 U.S. 111, 67 S.Ct. 1129, 91 L.Ed. 1375.

Allen v. Grand Central Aircraft Co., 347 U.S. 535, 554, 74 S.Ct. 745(1954).

A case explaining the General Savings Statute construed the District of Columbia Workers' Compensation Act of 1928 which was repealed in 1982. The Circuit Court held that under the General Savings Statute, 1 U.S.C.A. § 109, the repeal of the District of Columbia Workers' Compensation Act of 1928 did not result in the forfeiture of remedies available at the time of repeal for injuries incurred prior to the repeal. Keener v. Washington Metropolitan Area Transit Authority, 800 F.2d 1173

(C.A.D.C. 1986), *cert. denied* 480 U.S. 918, 107 S.Ct. 1375. The Keener court held:

Thus, the repeal of the 1928 Act did not result in a forfeiture of remedies available at the time of the repeal for injuries incurred prior to the repeal, and no more. D.C. Workmens' Compensation claimants seeking damages for pre-July 26, 1982 injuries are entitled to the rights and benefits afforded by the 1928 Act as they then existed, and not as they might be modified by subsequent amendment. *See DeLaRama Steamship Co. v. United States*, 344 U.S. 386, 389-91, 73 S.Ct. 381(1953).

The Circuit Court ignores the requirements of the General Savings Statute when it applies the 1998 Distribution Act to the damage award. The damages are for "retrospective" actions. The District Court remedied past violations. The District Court explained:

The (United States) argument, however, is focused on the Class members' *current* proportionate share of the Judgment Fund, rather than the Class members' share of the Judgment Fund at the time the Court found the Federal Government had breached its trust duties. Considering the trust duties that were breached and time frame in which they were breached, essentially from 1972 to 1987, as more fully explained in the Court's previous opinion, the Court finds the measure of damages is to be based upon the amount of the partial distribution the Class members would have received if the requested partial distribution had been made. *See LeBeau*, 215 F.Supp.2d at 1062-64 (citing John Morrell & Co. v. Local Union 304A, 913 F.2d 544, 557 (8th Cir. 1990)(explaining that a plaintiff must prove his damages with "reasonable certainty")). As was explained in LeBeau, 215 F.Supp.2d at 1063, the Class members would have received \$1,700 if the partial distribution had been approved. The damages awarded in that case were calculated by decreasing the amount of the above partial distribution by 28.3995 per cent, which was the amount the lineal descendants' share was decreased pursuant to the 1998 Act. This total is \$482.79 for each lineal descendant. (emphasis added.)

LeBeau v. U.S., 334 F.Supp.2d 1200, 1204-5.

Upon affirming the District Court's finding of liability under Mitchell II, 463 U.S., 103 S.Ct. 2961, the Circuit Court misconstrued the Mitchell II Court's direction for awarding damages.

This case remedies unlawful actions that occurred decades ago. The breach of trust occurred many years ago, prior to 1998. The damages awarded by the District Court for failed actions under the 1972 Distribution Act occurred prior to the 1998 Distribution Act, which changed distribution formulas.

“Absent a restrospective damages remedy, there would be little to deter federal officials from violating their trust duties, . . .’ United States v. Mitchell, 445 U.S. at 550, 100 S.Ct. at 1357 (White, J. Dissenting)” U.S. v. Mitchell, 463 U.S. 206, 227, 103 S.Ct. 2961 (1983).

“A trusteeship would mean little if the beneficiaries were required to supervise the day-to-day management of their estate by their trustee or else be precluded from recovery for mismanagement.” Mitchell II, 463 U.S. 206, 227, 103 S.Ct. 2961 (1983).

The General Savings Statute supports the reasoning of the District Court on damages. Sutherland's view is that:

Although these general savings statutes sometimes have been designated as mere rules of construction to be applied only to resolve a question of the legislative intent, the prevalent and more favored view is to construe the savings provisions as positive legislation which should be given effect as though they were incorporated into every future enactment involving a substantive right.

SUTHERLAND STATUTES AND STATUTORY CONSTRUCTION § 23:38, p. 582-583.

A proper application of the General Savings Statute, 1 U.S.C.A. 109, requires affirmance of the District Court and reversal of the Circuit Court's judgments and damages.

D. The Circuit Court Error Was Wrong to Declare that Petitioners' Rights to Payment were not Vested.

The United States Government, the District Court and the Circuit Court all agree: "The Aberdeen Area Office of the BIA requested authority in both March and October of 1982 to make a partial distribution of \$1,700 to each eligible lineal descendant but the Secretary denied these requests." LeBeau v. United States, 474 F.3d 1337. The unexplained refusal to authorize the mailing of a check for \$1,700 to each lineal descendant was found by the District and Circuit Courts to be a breach of trust. The Circuit Court later holds that the reason for not permitting damages was because there would be no "vested" right to the money until it was actually mailed. The District Court found under the 1972 Distribution Act that but for the breach of trust, each beneficiary would have received \$1,700. It matters not why or how they received less, the essence of the issue is whether or not the damage in 1982 was \$219.70 plus interest.

The Circuit Court held that:

Each lineal descendant had the right to a timely distribution of his or her per capita share of the lineal descendants' portion of the Judgment Fund. Until the distribution to the lineal descendants occurred, however, Congress had the authority to alter the lineal descendants' portion of the Judgment Fund, thereby reducing the sum of money that each lineal descendant would receive. LeBeau v United States, 474 F.3d 1342.

The District Court found if the Secretary of Interior had not breached his trust, each lineal descendant would have received \$1,700 from 1972 to 1987.

The District Court, however, recognized that the lineal descendants would receive money under the 1998 Distribution Act. The District Court reduced the damage calculation of \$1,700 under the 1972 Distribution Act's "retrospective" damage award by the sum to be received.

The District Court relied on the common law of trusts. The District Court quoted BOGERT'S, THE LAW OF TRUSTS AND TRUSTEES § 871 (Revised 2d ed. 2005) which states:

(a) Any beneficiary who can prove that the threatened or actual wrongdoing may or has affected him adversely financially may bring an action for relief. It is not necessary that his interest be vested.

Here the trustee could have paid the lineal descendants in full at any time between 1972 and 1987. For reasons never explained, the Secretary refused to authorize payment of \$1,700 to Mr. LeBeau. Although the claim was not barred by statute of limitations, other legal actions by the Congress reduced the beneficiaries' recovery under the 1972 Act.

The Circuit Court discusses Congressional power to alter allotments and distribution of tribal lands. LeBeau has never challenged that right, nor Congressional authority to do so. This action is not about allocation but wrongful inaction of the Secretary of Interior.

Damages are demanded for the Secretaries of Interiors' breach of fiduciary duty and unexplained refusal to carry out his trust duties to the beneficiaries under the 1972 Distribution Act. The ultimate "red herring" is that there were no vested rights. The reason there were no payments and the reason for the litigation is because of the Secretary of Interior's unexplained refusal to follow the laws of Congress from 1972 until 1987.

The misinterpretation of the General Savings Statute results in erroneous reasoning. Congressional reallocation of the Judgment Fund in 1998, whether to increase or decrease the share of Mr. LeBeau does not absolve the breach of trust which occurred. The District Court fashioned a remedy based on the damage at the time it occurred. The Circuit Court by ignoring 1 U.S.C.A. § 109 and this Court's precedent whitewashes the breach of fiduciary duty and is error.

**THE COURT SHOULD GRANT CERTIORARI TO
CORRECT THE ERROR OF LAW OF THE CIRCUIT COURT**

This Court should grant Certiorari to remedy a mistake of statutory construction by the Circuit Court of two Acts of Congress, the 1972 and 1998 Distribution Acts.

Additionally, Certiorari should be granted to explain the proper application of the General Savings Statute, 1 U.S.C.A. 109 by the Courts of the United States to enactments of Congress.

Finally, Certiorari should be granted to decide whether damages should be awarded for retrospective breaches of trust responsibility by Government officials and the proper measure of damages to apply to those breaches of trust.

CONCLUSION

The Petitioner respectfully requests that the Court take jurisdiction of this matter, reverse the decision of the Circuit Court of Appeals and order that the decision of the United States District Court for the Southern Division of South Dakota be reinstated.

DATED this _____ day of April, 2007.

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