

Monitor Work in *Pigford v. Johanns*: Lessons Learned About Claims Processing Judicial Adjunct Work

© Copyright 2005, Randi Ilyse Roth and Complex Settlements, P.C.
Do not reprint without written permission.

	<u>Page</u> [*]
Introduction.....	1
I. Background About the <i>Pigford</i> Case.....	2
A. Mechanics of the Consent Decree Process	2
B. Relief to Date	4
C. Neutrals	4
1. Facilitator	4
2. Adjudicator	4
3. Arbitrator.....	5
4. Monitor	5
II. The Monitor’s Roles and Team	5
A. The Monitor’s Roles	5
B. The Monitor’s Team.....	6
III. Key Substantive Factors	7
A. Neutral Engagement.....	7
1. Letter of Introduction.....	8
2. Attend and Speak at Claimant Meetings.....	8
3. Call System	8
4. Web Site.....	8
5. Monitor Updates	9
6. Neutral Payment Mechanism.....	9
B. Consistency	9
1. Complexity of Analytic Framework.....	9
2. Developing and Maintaining Consistency	10
C. Accuracy.....	11
1. Staff Selection.....	11
2. Ongoing Training and Consultation.....	11
3. Quality Control	11

* Internal pagination.

IV. Key Administrative Factors.....	11
A. Prepare With Expectation of Oversight	11
B. Accounting	12
1. Accounting for Money	12
2. Accounting for Time	12
C. Data Management	12
1. Databases	12
2. Metrics	12
3. Data Security.....	13
4. Backup Systems.....	13
B. Records Management.....	13
1. Don't Lose Anything	13
2. Smooth System to Track Possession of Records	13
3. Accurate Implementation of Document Destruction Plan	13
E. Correspondence Management	13
F. Disaster Recovery Plan.....	14
G. Relationship With Class Action Administration Firm.....	14

Introduction

Approximately 22,000 African-American farmers are part of the class in the *Pigford v. Johanns* case. That class sued the United States Department of Agriculture (USDA), alleging that (1) USDA discriminated against them on the basis of race in credit and other farm programs; and (2) they had filed complaints regarding the discrimination. *Pigford* settled in 1999. The court approved a Consent Decree that provides each individual member of the class with the right to enter a claims process to try to establish that he or she was a victim of discrimination.¹ The Consent Decree also provides for the appointment of a Monitor to carry out certain defined functions.² The Monitor is an agent and officer of the court—a judicial adjunct—with responsibilities and powers much like those of a Special Master.³

The judicial adjunct work in *Pigford* is demanding for many reasons, including:

- *Intense Social Justice Issue.* Race discrimination is an issue that has very deep meaning to both sides: claimants who believe that they experienced discrimination express a strong need for justice, and government personnel who believe that they did not discriminate are upset by claims outcomes that seem to label them as persons who engaged in racially motivated actions.
- *Low-Income Class.* A significant portion of the class lives at or below the poverty line. This intensifies the win-or-loss stakes for class members and makes it all the more urgent to have timely, accurate, understandable decisions in the claims process.
- *High Profile in News and Political Arenas.* The press and the United States Congress have followed the case closely through much of its life, making requests at various junctures for information and explanations.
- *No Easy Answers on Claims Outcomes.* Winning or losing in this case is not a function of a simple mathematical formula or a “check the box” matrix. The Consent Decree and governing orders in *Pigford* construct a fact-specific, somewhat complicated legal framework for evaluating whether a claimant should prevail.
- *Complex Relief.* This settlement provides for cash relief, tax relief, debt relief, and three types of injunctive relief. The specifics that govern prevailing claimants’ entitlement to relief are quite complex.
- *Many Layers of Process.* The Consent Decree and orders set up a system in which several different neutrals evaluate claims at different junctures in the process. Moreover, there are opportunities for some kind of reconsideration or appeal of many of the decisions made by the neutrals.

¹ Consent Decree, *Pigford v. Glickman*, No. 97-1978 (D.D.C. Apr. 14, 1999) (“Consent Decree”).

² Consent Decree, ¶ 12.

³ See the *Pigford* Monitor’s Order of Reference. *Pigford v. Glickman*, No. 97-1978 (D.D.C. Apr. 4, 2000) (“Order of Reference”). Compare with Fed. R. Civ. P. 53. The order of reference is available on the Monitor’s web site at <http://www.pigfordmonitor.org/orders/20000404oor.pdf>.

These factors create a set of natural tensions. On one hand, both parties need the claims process to be completed as quickly as possible. On the other hand, both parties need the disposition of each claim to be based on a thorough, accurate analysis of complicated facts and a consistent application of the legal standards set forth in court orders. And while all of this is going on, stakeholders both inside and outside of the case speak out in the public domain as they evaluate, praise, and criticize how *Pigford's* accomplishments do or do not fit into their overall conception of justice.

This article explains what the team serving the Monitor role in *Pigford* has learned about the key factors for success in this kind of judicial adjunct claims processing work. This piece is divided into three sections: (1) background about the *Pigford* case, (2) key substantive factors, and (3) key administrative factors.

I. Background About the *Pigford* Case

Pigford is a class action case. The class is defined as:

All African American farmers who (1) farmed, or attempted to farm, between January 1, 1981 and December 31, 1996; (2) applied to the United States Department of Agriculture (USDA) during that time period for participation in a federal farm credit or benefit program and who believed that they were discriminated against on the basis of race in USDA's response to that application; and (3) filed a discrimination complaint on or before July 1, 1997, regarding USDA's treatment of such farm credit or benefit application.⁴

The case settled and, on April 14, 1999, the Honorable Paul L. Friedman of the United States District Court for the District of Columbia approved the Consent Decree.⁵

A. Mechanics of the Consent Decree Process

The Consent Decree set up a process through which each of the approximately 22,400 class members is given a chance to prove to a neutral third party that he or she experienced discrimination. Both sides—the claimant and the government—are allowed to submit information about the claim. Claimants are given the choice of proving discrimination through Track A or Track B.

Track A allows claimants to prove discrimination at a much lower standard of proof than would be required in a court proceeding; cash relief for prevailing Track A claimants with credit claims is fixed at \$50,000. Track B allows claimants to prove discrimination at the preponderance of the evidence standard of proof that would apply at a civil trial; a prevailing claimant in Track B is awarded actual (not liquidated) damages.

⁴ Consent Decree, ¶ 2(a). It is important to note that it was possible for the Consent Decree to allow for claims to span the period of 1981 through 1996 only because Congress had legislated a special waiver of the governing statute of limitations.

⁵ The Consent Decree can be found at the Monitor's web site at <http://www.pigfordmonitor.org/orders/19990414consent.pdf>. Prior to settlement, the parties had engaged in mediation. Michael K. Lewis of JAMS (formerly of ADR Associates) served as the mediator.

The vast majority of class members elected to proceed under Track A. Table 1, below, shows the number of claimants who have proceeded through each track.

Table 1. Statistics Regarding <i>Pigford v. Johanns</i> Choice of Track A or Track B⁶		
Class	National	%
Eligible Class Members	22,414	100%
Track A	22,242	99%
Track B	172	1%

Some characteristics of Track A and Track B are summarized in Table 2 below.

Table 2. Characteristics of Track A (credit) and Track B		
	Track A (credit)	Track B
Claims Process	Adjudicator decides claim based on papers submitted with and in response to claim form	Arbitrator decides claim after submission of written direct testimony, documents, and one-day in-person hearing
Discovery	None	Limited
Standard of Proof	Substantial evidence ⁷	Preponderance of the evidence ⁸
Amount of Damages for Prevailing Claimants	\$50,000 plus tax relief, debt relief, and injunctive relief	Actual damages (no cap) plus debt relief and injunctive relief
Elements of Proof of Discrimination	Specifically identified, similarly situated white farmer who was treated more favorably, and USDA's treatment of the loan application led to economic damage	Claimant was a victim of discrimination and suffered actual damages

⁶ These statistics are valid as of October 3, 2005.

⁷ In this case, "substantial evidence" means "such relevant evidence as appears in the record before the adjudicator that a reasonable person might accept as adequate to support a conclusion after taking into account other evidence in the record that fairly detracts from that conclusion." Consent Decree, ¶ 1(l). In this context, the substantial evidence standard is a lower standard of proof than the preponderance of the evidence standard.

⁸ In this case, "preponderance of the evidence" means "such relevant evidence as is necessary to prove that something is more likely true than not true." Consent Decree, ¶ 1(j).

B. Relief to Date

As of this writing, the total value of relief awarded in *Pigford* exceeds \$880 million; many think that before the case is over, the total value of relief awarded will be nearly \$1 billion.

Table 3, below, summarizes Track A relief to date:

Table 3. <i>Pigford v. Johanns</i> Track A Payment Status⁹	
Status of Payments	National
Dollars Paid Directly to Track A Class Members Cash Award (\$50,000)	\$679,550,000
Dollars Paid Directly to Track A Class Members Non-Credit Awards (\$3,000)	1,323,000
Dollars to Which Track A Class Members Are Entitled as IRS Payments	169,887,500
Debt Relief for Track A Class Members	
A. Principal Amount of Debt Relief	\$16,076,023
B. Interest Amount of Debt Relief	4,637,125
Total Track A Relief	\$871,473,648

In addition, approximately \$17 million has been paid out in Track B.¹⁰

C. Neutrals

Several different neutrals assist in the administration of this case. USDA pays the fees and expenses of all of the neutrals.

1. *Facilitator*

The Facilitator in *Pigford* is Poorman-Douglas Corporation.¹¹ Nicole Hamann, the corporation's Director of Client Services, directs the Facilitator's work, which is carried out by a team of analysts, claims processors, and phone specialists. The Facilitator has several roles in this case, including (a) publishing class notice in a specified manner; (b) mailing, processing, and routing claim packages; (c) determining which claimants satisfy the class definition; and (d) operating a toll-free telephone number to provide information about the procedure for filing claims.¹²

2. *Adjudicator*

The Consent Decree names JAMS-Endispute, Inc., as the Adjudicator in *Pigford*.¹³ Lester Levy of JAMS, who is referred to as the Chief Adjudicator, directs the adjudication work, which is

⁹ These statistics are valid as of October 3, 2005.

¹⁰ This includes approximately \$15 million in damage awards and settlements, and approximately \$2 million in debt relief. These statistics are valid as of December 31, 2004.

¹¹ Consent Decree, ¶ 1(i).

¹² The Facilitator's basic duties are set forth in the Consent Decree at ¶ 3.

¹³ Paragraph 1(a) of the Consent Decree names JAMS-Endispute, Inc. The firm is now called JAMS.

carried out by a team of JAMS panelists. The Adjudicator is responsible for making final decisions in all Track A claims and for resolving all tolling issues.¹⁴

3. Arbitrator

The Arbitrator in *Pigford* is Michael K. Lewis.¹⁵ Mr. Lewis has several areas of responsibility, including deciding Track B claims and making the decisions in the “late claims” process.¹⁶ Mr. Lewis directs this work, which is carried out by a team of arbitrators (in the Track B process) and by a team of researchers (in the late claims process).

4. Monitor

The author of this paper was appointed to be Monitor. The team that carries out the work of the Monitor’s office is described in more detail in Section II below.

II. The Monitor’s Roles and Team

A. The Monitor’s Roles

Paragraph 12 of the Consent Decree gives the Monitor several jobs in the *Pigford* implementation process.¹⁷

1. *Reporting.* The Monitor is required to report to the court about the good faith implementation of the Consent Decree.¹⁸ The reports give detailed statistical information, summarize significant events that took place during the reporting period, and summarize claimant concerns that have come to the Monitor’s attention. Each report has concluded that the parties and the neutrals are working in good faith to implement the Decree.
2. *Resolve Problems.* The Monitor is charged with attempting “to resolve any problems that any class member may have with respect to any aspect of [the] . . . Consent Decree.” If the Monitor is unable within 30 days to resolve a problem, she may file a report with the parties’ counsel who may, in turn, seek enforcement of the Consent Decree.

¹⁴ Consent Decree, ¶¶ 1(a) and 9. Tolling involves the test for class membership for those who did not file discrimination complaints in the time set forth in the Consent Decree. *See* Consent Decree, ¶ 6.

¹⁵ Consent Decree, ¶ 1(b).

¹⁶ The “late claims” process is the process through which a person who did not file a timely claim can request permission to nonetheless participate in the claims process. *See* Consent Decree, ¶ 5(g). The Court delegated this role to Mr. Lewis. *Pigford v. Glickman*, No. 97-1978 (D.D.C. Dec. 20, 1999); *Pigford v. Glickman*, No. 97-1978 (D.D.C. July 14, 2000). This “late claims” role has been substantial. About 66,000 people timely applied for permission to file late; and of those who were denied, more than 21,000 timely requested reconsideration of the denial. For more details about this aspect of the case, *see* the Arbitrator’s reports, available at <http://www.pigfordmonitor.org/arbrrpts>.

¹⁷ *See* the Consent Decree, ¶ 12.

¹⁸ The Monitor’s reports are available on the Monitor’s web site at <http://www.pigfordmonitor.org/reports>.

3. *Issue Petition Decisions.* The Consent Decree provides that the Monitor shall:

Direct the facilitator, adjudicator, or arbitrator to reexamine a claim where the Monitor determines that a clear and manifest error has occurred in the screening, adjudication, or arbitration of the claim and has resulted or is likely to result in a fundamental miscarriage of justice. . . .

As explained below, the rules for this reexamination process were defined in the court's Order of Reference.

4. *Toll-Free Line.* The Monitor is required to staff a toll-free telephone line that class members and the public can use to lodge Consent Decree complaints.¹⁹

The Monitor's responsibilities were further defined in the Order of Reference. That order also set forth detailed rules for the process through which the Monitor can direct reexamination of individual claims (the "petitions" process). The Monitor's appointment is due to expire on March 1, 2007.²⁰

B. The Monitor's Team

A team of attorneys, paralegals, and support staff handles the Monitor work in the *Pigford* case. Each person on the team makes important contributions. The leadership team includes:

- Kenneth Saffold, General Counsel, who is responsible for all operations aspects of the project;
- Stephen Carpenter, Senior Counsel, who is responsible for the substantive law related to agricultural credit and non-credit programs;
- Eric Cooperstein, Assistant Senior Counsel, who is in charge of the issuance of Monitor decisions in Track A; and
- Cheryl Heilman, Assistant Senior Counsel, who is in charge of the issuance of Monitor decisions in Track B.

Other individuals support this leadership team. Their work includes drafting, editing, and issuing Monitor decisions; claimant services; finance; administration; records management; and information technology. Additionally, we subcontract with Poorman-Douglas Corporation for some administrative services.

¹⁹ The toll-free number is: 1-877-924-7483. The toll-free line receives an average of about 1,400 calls per month.

²⁰ See *Pigford v. Veneman*, No. 97-1978 (D.D.C. Apr. 20, 2004).

III. Key Substantive Factors

The factors discussed here are not about the law of this case. Rather, they are about the decisions we made about how to shape our substantive work and the methods we use to implement those decisions.

In the book *What is Life Worth*, Kenneth Feinberg, the special master who administered the 9/11 Victim Compensation Fund, wrote about the principles he used to shape that work. He wrote:

First, I was determined to promote *consistency* in awards. . . . This emphasis on consistency—that the rules would be applied in an equal and fair manner—would help to ensure the success of the fund.

Second, I promoted *transparency* in administering the program. Proactive outreach to the families was an important part of this. The emphasis on transparency governed all key decisions made by the fund. Once we decided on a course of action we notified the families in person at community town hall meetings, and we posted our decisions on our website to ensure the widest possible dissemination. . . .²¹

The Monitor team in the *Pigford* case shares Mr. Feinberg’s views about the importance of consistency and transparency. Perhaps these principles are not so important in cases in which social and economic justice issues are not key and emotions do not run deep—for example, in cases involving refunds of bank card fees or free movie rental coupons. But in cases like the 9/11 Fund and *Pigford*—cases in which the awards address significant injuries with unique and historical social implications—the principles are key.

This section discusses the three commitments the *Pigford* Monitor team strives to meet regarding the substance of the *Pigford* claims processing work: neutral engagement, consistency, and accuracy.

A. Neutral Engagement

The first commitment the Monitor team strives to meet is that of neutral engagement. The *Pigford* Consent Decree gives the Monitor responsibility for attempting “to resolve any problems that any class member may have with respect to any aspect of the Consent Decree.” To be effective in this role, class members must know that a Monitor exists, must know how to reach the Monitor’s office, and must understand the functioning of the Monitor’s office well enough to trust that raising a problem with the Monitor will help resolve the problem. We think of this as “neutral engagement.” In many ways, this is akin to Mr. Feinberg’s principle of transparency.

²¹ Kenneth R. Feinberg, *What Is Life Worth*, 46-47 (2005) (emphasis in original).

There are three main components of this aspect of our work: (1) we strive to have class members know of our presence so they can come to us with any Consent Decree problems; (2) we are compassionate, but we remain neutral and communicate our neutrality; (3) we remain engaged in every class member communication and every problem to the extent that is reasonably necessary to solve the problem.

We accomplish neutral engagement through a variety of tools.

1. Letter of Introduction

At the beginning of the Monitor's appointment, the Monitor sent a letter to all class members and putative class members. The letter introduced the Monitor and included a plain-language booklet that set forth the rules for the Monitor petition process.²²

2. Attend and Speak at Claimant Meetings

Since the beginning of the Monitor's appointment, we have worked on the road, meeting with groups of claimants throughout the South. Listings of all of our claimant meetings can be found in our court reports.²³ At these meetings we typically work one-on-one with individuals who have specific problems, and we also speak to a large group about the problems claimants are encountering at that stage in the process and the steps one should take to resolve the problems.

3. Call System

The Monitor's office maintains a toll-free telephone number that class members and the public can call to lodge Consent Decree complaints and to expedite the resolution of those complaints.²⁴ The office has received an average of approximately 1,400 calls per month. Trained phone operators who have access to basic data about claimants receive calls in the first instance. They work with a script written by the Claimant Services attorneys in the Monitor's office. If a claimant is calling with a simple question, the phone operators can often answer the question. If a claimant has a question that cannot be answered by the script, the operator makes an appointment for the caller to have a phone consultation with a lawyer in the Monitor's office. The lawyers in the Monitor's Claimant Services division take whatever time is necessary to talk with the claimant, review his or her papers, and attempt to solve the problem.

4. Web Site

The office of the Monitor established a web site, www.pigfordmonitor.org, that provides easy access to the *Pigford's* key court orders, reports, statistics, and educational resources. The site receives an average of approximately 3,200 "hits" per month.

²² The letter and booklet are available on the Monitor's web site at <http://www.pigfordmonitor.org/class/200006ltr.pdf> and <http://www.pigfordmonitor.org/class/200310qa.pdf>.

²³ The Monitor's court reports can be found on the Monitor's web site at <http://www.pigfordmonitor.org/reports>.

²⁴ The Monitor's availability through a toll-free telephone number is required by the Consent Decree at ¶ 12(b)(iv).

5. Monitor Updates

Our office issues “Monitor Updates,” which are short, plain-language community legal education pieces that explain various aspects of claimants’ rights within the case.²⁵ These updates are especially useful when new court orders are issued that modify or further define claimants’ rights. When the court issues an order or USDA issues a policy statement that changes claimants’ rights within the case, the Monitor’s office generally mails the relevant Monitor Update to the segment of the class that is affected by the change.

6. Neutral Payment Mechanism

USDA, the defendant in *Pigford*, pays the reasonable fees and expenses of the Monitor. This arrangement, in which the Monitor depends on the defendant for payment, could give rise to an appearance of non-neutrality. However, this is remedied to some extent by the budget approval and payment mechanisms in the Monitor’s Order of Reference. The order requires that the Monitor submit proposed budgets to the court for approval after a period in which both parties may object. Once a budget is approved, USDA must deposit specified budget amounts into the court registry, which allows the Monitor to invoice the court—not USDA—for payment.²⁶

B. Consistency

The second commitment the Monitor team strives to meet is that of consistency in its written decisions. The Monitor is charged with issuing written decisions in response to petitions for Monitor review.²⁷ As of this writing, a total of approximately 5,700 petitions have been filed. Decisions have already been issued in response to approximately 4,000 of those petitions. The Monitor does not have the authority to order a change to the outcome of a claim; the Monitor only has the authority to direct reexamination of the claim (like a remand of the claim) to the Adjudicator, Arbitrator, or Facilitator.

1. Complexity of Analytic Framework

One challenge to consistency is the complexity of the analysis required at this level of review. The Consent Decree and governing orders, taken together, set up a framework that requires a fact-intensive analysis of each claim raised by the claimant, and much of the factual material is submitted for the first time at the Monitor review level. Each Monitor decision in the Track A credit context, for example, must analyze the following.

²⁵ The Monitor Updates can be found on the Monitor’s web site at <http://www.pigfordmonitor.org/updates>.

²⁶ Order of Reference, ¶¶ 13-18.

²⁷ Order of Reference, ¶ 8(f).

Table 4: Steps in Analysis for Monitor Decisions Regarding Track A Credit Claims	
Step in Analysis	Explanation
(1) Analyze admissibility of each piece of supplementary evidence.	The Order of Reference states that in Track A, either party may submit additional evidence. The Monitor has discretion to accept the evidence into the record when “such materials address a potential flaw or mistake in the claims process that in the Monitor’s opinion would result in a fundamental miscarriage of justice if left unaddressed.” ²⁸
(2) Separate the claims.	The narrative submitted by the claimant must be categorized into “claims.” For example, a case might have three claims such as: (1) denial of an operating loan in 1982; (2) under-funding of a farm ownership loan in 1984; and (3) restrictive conditions on an emergency loan in 1986. Many cases have three or more claims. To prevail on a claim, the claimant must specifically identify a similarly situated white farmer who was treated more favorably.
(3) Find the law that governed each claim.	The regulations that governed these credit programs changed frequently within the 16-year class period. It is usually necessary to know what the contemporaneous regulations provided regarding how the agency should have handled the claimant’s situation regarding each claim.
(4) Apply substantive tests for each claim.	Each claim prevails at the Monitor review level only if the Monitor finds “a clear and manifest error . . . [that] resulted or is likely to result in a fundamental miscarriage of justice.” ²⁹

2. Developing and Maintaining Consistency

We began our work by developing the details for the analytic framework for our decisions. The Consent Decree and governing orders spelled out the basic framework but did not give details. For example, the Consent Decree provides that a Track A credit claimant can prevail only if the treatment about which he or she complains was “less favorable than that accorded specifically identified, similarly situated white farmers.” However, the Consent Decree did not define “similarly situated”—a key term.

At the beginning of the Monitor’s appointment, we did legal research to define all of the key terms and developed templates for the written decisions. Then our leadership team wrote about 400 decisions to develop some key language. Once that was done, we were ready to develop the tool that would allow our staff to replicate this work.

²⁸ Order of Reference, ¶ 8(e)(i).

²⁹ Consent Decree, ¶ 12(b)(iii).

Once this preparatory work was complete, we were able to prepare training materials and conduct training sessions with our attorney and paralegal staff to develop a consistent, shared approach to analyzing, drafting, and editing decisions.

This work is painstaking for many reasons. First, the farm loan programs are complex and their rules change frequently. Second, the farm operations described in claim sheets are diverse, ranging from cotton to cattle to catfish. And third, the language used to describe the farm operations in the record documents can be arcane, with the specialized meaning being attributed to terms such as “feeder cattle” or “cull cows.”

C. Accuracy

Although we are very sensitive to the need to complete our work as quickly as possible, our primary commitment is to accuracy. We are striving to make sure that no party will ever lose on a claim in our office because we failed to properly consider all of the evidence in a file. We are achieving accuracy through a combination of the following tools.

1. Staff Selection

Our staff members are the most important factor in our ability to perform accurately. Our staff consists of individuals who care deeply about the integrity of our work. They are motivated to be a part of this important civil rights issue, and they understand that neutrality and painstaking attention to detail are key to doing our job right.

2. Ongoing Training and Consultation

Our staff does its best work when we maintain a system of ongoing training and consultations. We have a division of labor in the office. The internal law of our case evolves in the small group that works with the final approval of decisions. A system of biweekly meetings allows us to train the rest of the staff frequently regarding internal case law developments.

3. Quality Control

Even a highly motivated staff makes mistakes. It is easy to miss a piece of evidence in a thick file or to misinterpret a code in government records. We find that accuracy is best achieved through quality control, which requires multiple levels of review. At least two attorneys review each file in detail before a final decision is released.

IV. Key Administrative Factors

Many of us know the basic administrative factors that go into running a solid law practice. When dealing with processing thousands of claims, though—especially in a highly charged political environment—some additional administrative considerations become important.

If administration is being handled properly, it is a silent backdrop to the work. The public does not notice it and most of the staff is unaware of it. However, if these administrative functions were not performed well, the silence can be unhappily broken.

A. Prepare With Expectation of Oversight

As we set up the administrative systems within the Monitor’s office, we did so with the expectation that we could be subject to oversight from entities other than the court and the parties. As the case developed, we found that aspects of our work were probed and questioned by

many entities, including claimant organizations, the press, Congress, and the Government Accountability Office (GAO). We were fortunate that we had designed our systems to enable us to generate the data we needed to answer these entities' questions (to the extent that the answers were not privileged).

B. Accounting

In *Pigford*, the defendant, an agency of the United States government, is paying all fees and expenses. For a variety of reasons, we think it is critical that we maintain careful records of how government funds are being spent and of how every staff person is spending his or her time.

1. Accounting for Money

The Monitor's office maintains a detailed financial accounting system. Additionally, the office has an audit conducted every year by an outside accounting firm. The auditors test every transaction, not just a percentage of transactions.

2. Accounting for Time

All of our staff keep time sheets. The attorneys keep time in five-minute increments. (The attorney time keeping is more detailed than the support staff time keeping.) The time is entered into a database, and the data can be used to generate various kinds of reports.

C. Data Management

Although our work focuses on intellectual products—issuing written decisions, explaining claimants' rights—data management is very important to the success of our project. Four aspects of data management are key: databases, metrics, data security, and backup systems.

1. Databases

At the beginning of our work, we tried to think of every type of data we would need to collect. For example, what data would we need about phone calls? Would we code telephone calls by the callers' concerns? By the number of minutes the conversation lasted? What about correspondence? What data should we keep about each decision that we issue? This planning involved thinking of the ways in which we might be called upon to account for our work, and it also involved thinking of the ways in which having data might help us to understand and improve our work and respond to trends in claimant concerns.

We constructed databases to track the indicators that we were able to think of in the beginning of the project. Then from time to time we amended the databases to reflect current needs.

2. Metrics

Metrics are regular reporting tools generated from the databases. To construct our metrics reports, we came up with a list of the statistics we needed to review on a regular basis in order to assess our progress, plan for our remaining work, and see trends in claimant concerns. We constructed a set of metrics that our leadership team reviews once each month. It helps us see our progress at every stage of the decision drafting process, the volume of phone calls and correspondence, the frequency with which issues are being raised by claimants, and more. Our metrics analysis is a key diagnostic tool for strategic management.

3. Data Security

Data security is critical in the *Pigford* Monitor project because we house information from claimants and information transmitted to us by the government that is protected by the terms of this case's Second Amended Supplemental Privacy Act Protective Order.³⁰ We frequently update our security standards to make sure that our firewalls and other protective measures are up to the correct standards for protecting data of this level of sensitivity.

4. Backup Systems

It is important that the paper records submitted in the claims process and the electronic records created in the process of issuing decisions all have proper backup systems. We work with Poorman-Douglas to ensure that duplicates of all paper records are properly housed in a separate location, and our information technology manager works with appropriate computer consultants to make sure that our electronic backup systems are at the appropriate level of sophistication.

B. Records Management

It is critical to ensure that paper records management within the office goes smoothly. There are at least three aspects of on-site paper records management.

1. Don't Lose Anything

A system needs to be in place so that records are not lost. When a box of files arrives at our office, we immediately check it into our electronic data system and file it in the appropriate location. Staff needs to understand the importance and the privacy concerns associated with each file.

2. Smooth System to Track Possession of Records

There has to be some form of tracking every time a record is relocated from one staff member's hands to another. This tracking system should make it possible to find the holder of any file at any time.

3. Accurate Implementation of Document Destruction Plan

The Privacy Act Protective Order in *Pigford* provides that all protected records must ultimately be destroyed or returned to the government. A plan has to be in place for document destruction, and all personnel have to understand that they will need to certify that they are in full compliance with the plan.

E. Correspondence Management

In a process with thousands of claims, the Monitor gets a lot of mail. We implemented a system in which our claimant correspondence is sent to a post office box that is swept to our class action administration firm. There the letters are sorted. Some can be responded to with form letters that we developed. Others are routed to the Monitor's office so that our Claimant Services attorneys can write personalized responses. We have found that this system can be difficult to administer. Our staff pays close attention to how the system is working. We change the form letters from

³⁰ *Pigford v. Veneman*, No. 97-1978 (D.D.C. July 14, 2000) ("Privacy Act Protective Order").

time to time to reflect the changes in the stages of the case. We also found quality control sampling to be a useful tool.

F. Disaster Recovery Plan

It is important to have a disaster recovery plan. This plan is not just for major, life-threatening disasters, such as terrorist attacks and hurricanes. It is also for more minor disasters that can interrupt work, such as floods in the office building (which actually happened in the Monitor's office) or server crashes. Our disaster recovery plan serves as a guide for staff members to use during all levels of emergency situations.

G. Relationship With Class Action Administration Firm

Finally, an important element of administrative vigor is a strong relationship with a solid class action administration firm. The key is to have a smart account manager who is dedicated to the case. It seems that whatever administrative problems we are confronting regarding data management, paper records management, or any other aspect of high-volume claims processing, the firm has likely already encountered a similar problem and can offer sound advice.