

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

ELOUISE PEPION COBELL, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.
)	1:96CV01285 (TFH)
RYAN ZINKE, Secretary of the Interior, et al.,)	
)	
Defendants.)	
)	
)	

**PLAINTIFFS' UNOPPOSED MOTION TO AUTHORIZE A SECOND INTERIM
PAYMENT TO THE INDIAN EDUCATION SCHOLARSHIP FUND**

Plaintiffs, without opposition from defendants, move this Court to authorize a second interim payment in the amount of \$15,000,000.00 to the Indian Education Scholarship Fund (Scholarship Fund).

In support of this motion, Plaintiffs show the Court as follows:

1. As plaintiffs have previously reported, the Scholarship Fund is being well managed by Indigenous Education, Inc. (“IEI”) and its operations are overseen by the Cobell Board of Trustees appointed in accordance with the terms of the Settlement Agreement approved by this Court. Dkt 4246, ¶ 3. In addition, the Scholarship Fund is guided in its work by well-respected counsel. *Id.*

2. The Scholarship Fund continues to make important and significant contributions to the education of Native American students. As Plaintiffs recently reported, the Scholarship Fund has, to date, awarded \$7,450,000 in scholarships to 1590 Native American students from 167 different federally-recognized tribes who attended 439 different colleges and universities. Dkt 4313, ¶ 13. There is an established, unmet need for scholarships in the Native American

community, as evidenced by the fact that during the current term 700 well-qualified applicants were unable to receive scholarships due to resource constraints. *Id.*, ¶ 14.

3. Under the terms of the Settlement Agreement and this Court's precedent, upon completion of the distribution, the remaining funds, after payment of administrative and other expenses, must go to the Scholarship Fund. Settlement Agreement, Dkt 3660-3, ¶ G.2.A; *Keepseagle v. Vilsack*, 118 F. Supp. 3d 98, 122 (D.D.C. 2015) (where the settlement agreement specifically designated a *cy pres* as the recipient of excess funds, that settlement had been approved by the Court and there had been no appeal from that decision, it could not be modified). While the Settlement Agreement anticipates that the *cy pres* will be paid upon completion of the distribution, given the delay in probates it may be many years before the final distribution is made. As it has previously done, this Court has in its discretion the ability to allow an interim distribution of funds now to achieve the goals of the settlement. *Barnes v. District of Columbia*, 924 F. Supp. 2d 103, 106 (D.D.C. 2013) (court has broad discretion to manage class actions in an orderly and efficient manner).

4. Earlier this year, an interim distribution in the amount of \$21,773,438.50 was made to the Scholarship Fund by way of this Court's Order dated January 24, 2017. Dkt 4247, ¶ 4. That distribution was made subject to the agreement between Plaintiffs and the Scholarship Fund that those funds will be transferred back to the Plaintiffs' Settlement Account if Plaintiffs determine those funds are needed in accordance with the Settlement Agreement. *Id.*

5. A second payment now to the Scholarship Fund, subject to the same conditions as before, will permit the Scholarship Fund to better invest the funds and plan its award of future scholarships. There is little risk, if any, in doing so since there is little chance those funds will be needed in the distribution and, in any event, the Scholarship Fund has agreed to return

to the Claims Administrator any interim distributions that Plaintiffs determine are needed in the settlement distributions. Dkt 4246-4. ¶ 2.2.

6. Though further work will be necessary to determine the final amounts to be paid to the Scholarship Fund, Plaintiffs believe it is important to provide a second interim distribution to the Scholarship Fund as soon as reasonably possible. After consulting with the Claims Administrator, Plaintiffs have determined that a second interim payment of \$15,000,000.00 is appropriate.

7. This motion is made to satisfy the Court's direction that plaintiffs file for a second interim distribution to the Scholarship Fund prior to January 19, 2018. Dkt 4314, ¶ 7.

8. Defendants' counsel informed Class Counsel that defendants take no position on plaintiffs' motion insofar as plaintiffs seek to make a conditional, interim transfer of settlement funds into the Scholarship Fund, and base their abstention on Settlement Agreement ¶ E.1.g., which expressly provides that "Defendants shall have no role in, nor be held responsible or liable in any way for, the Accounting/Trust Administration Fund, the holding or investment of the monies . . ."

Wherefore, Plaintiffs respectfully pray that the Court authorize a second interim payment from Plaintiffs' Settlement Account in the amount of \$15,000,000.00 to the Scholarship Fund, subject to repayment as provided for in the Agreement between Plaintiffs and the Scholarship Fund.

Respectfully submitted this 22nd day of December, 2017.

/s/ David C. Smith
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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *PLAINTIFFS' UNOPPOSED MOTION TO AUTHORIZE A SECOND INTERIM PAYMENT TO THE INDIAN EDUCATION SCHOLARSHIP FUND* was served via facsimile, pursuant to agreement, on this 22nd day of December, 2017.

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/s/ David C. Smith
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**ORDER ON PLAINTIFFS’ UNOPPOSED MOTION TO
AUTHORIZE A SECOND INTERIM PAYMENT TO THE
INDIAN EDUCATION SCHOLARSHIP FUND**

Upon consideration of Plaintiffs’ unopposed motion to authorize a second interim distribution to the Indian Education Scholarship Fund, it is hereby ordered that the sum of \$15,000,000.00 shall be paid from Plaintiffs’ Settlement Account to the Scholarship Fund subject to the Agreement between Plaintiffs and the Scholarship Fund that those funds will be transferred back to the Plaintiffs’ Settlement Account if Plaintiffs determine those funds are needed in accordance with the Settlement Agreement.

SO ORDERED,

This the ___ day of _____ 201_.

Honorable Thomas F. Hogan
Senior District Court Judge