

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

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

**UNOPPOSED MOTION TO MODIFY DISTRIBUTION OF
SETTLEMENT PROCEEDS TO ESTATES AND
HEIRS OF DECEASED CLASS MEMBERS**

Plaintiffs, in accordance with the parties’ *Class Action Settlement Agreement* dated December 7, 2009, as amended (“Settlement Agreement”), and this Court’s *Order Granting Final Approval to Settlement* dated July 27, 2011 [Dkt. No. 3850] (“Final Approval Order”), hereby move the Court, without opposition from defendants, for an order establishing additional procedures for the distribution of Historical Accounting and Trust Administration payments to the estates and heirs of deceased class members. In support thereof, plaintiffs respectfully show the Court as follows:

1. Pursuant to the request of Plaintiffs, on December 11, 2012, this Court ordered that distributions to the estates and heirs of deceased class members be made as follows:

For deceased members of the Historical Accounting Class, payment shall be made payable to the estate of the deceased beneficiary and delivered to the personal representative, administrator or executor of the estate of that beneficiary, where known, or payable to the heirs of the deceased beneficiary pursuant to an available final probate order of a state or tribal court. Where

there is no known personal representative, administrator or executor of the estate of a deceased beneficiary and no available final probate order of a state or tribal court, the deceased beneficiary's payment shall remain in the Settlement Account at the Qualified Bank until further order of the Court or Special Master.

See Dkt. No. 3923 at ¶ 2.

2. This Court further provided in its *Order Appointing Special Master* dated December 19, 2012 [Dkt. No. 3928] with respect to distributions for deceased class members that the Special Master shall:

consider and approve the distribution of Stage 1 payments for deceased members of the Historical Accounting Class where there is no known personal representative, administrator or executor of the decedent's estate and there is no available final probate order of a state or tribal court determining the individual(s) to whom funds should be distributed. For any such funds that remain unpaid after November 24, 2014, the Special Master shall, after considering any recommendation from the Claims Administrator and class counsel, enter orders regarding the disposition of any such funds.

3. To date, there have been approximately 1,004 payments to the estates of deceased Historical Accounting Class members (or to the heirs of those class members) pursuant to this Court's orders. There remain approximately 38,220 deceased Historical Accounting Class members for whom no distribution has been made. This is due principally to the absence of state or tribal probates for many deceased class members, as non-trust assets for these class members may be minimal and the only probate is the federal probate for distribution of trust assets. The cost and procedural requirements for opening a state or tribal probate in order to receive the settlement payment is a deterrent for many heirs of class members.

4. In order to expedite the distribution of settlement funds for deceased class members, the Plaintiffs request that the Claims Administrator, Garden City Group, Inc.

(“GCG”), be authorized and directed to distribute settlement proceeds to the estates or heirs of deceased members of the Historical Accounting and Trust Administration classes in the following manner based on the documentation available at the time of distribution:

- a. To the heirs of a deceased class member pursuant to a state or tribal probate order.
 - b. To the existing legally appointed executor or administrator of an estate of a deceased class member.
 - c. Pursuant to the terms of a will of a deceased class member that addresses, including through a residuary clause, the distribution of the settlement funds, where that will has been accepted for probate by a state or tribal court or the Department of the Interior.
5. With respect to all remaining settlement payments for deceased members of the Historical Accounting and Trust Administration Classes where documentation has been provided to GCG but not within categories 4(a)-(c) above, or where the documentation provided prior to distribution is ambiguous or conflicting, payments shall be made by GCG in accordance with orders of the Special Master as he may determine in his discretion, including using procedures under applicable state or tribal law for small estates and federal probate orders for the disposition of trust property.
6. For any such funds that remain unpaid after November 24, 2014, the Special Master shall, after considering any recommendation from the Claims Administrator and class counsel, enter orders regarding the disposition of any such funds.
7. Plaintiffs have discussed this motion with counsel for defendants who do not oppose it.

Respectfully submitted,

/s/ David C. Smith
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May 28, 2013

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Unopposed Motion to Modify Distribution of Settlement Proceeds to Estates and Heirs of Deceased Class Members was served on the following via facsimile, pursuant to agreement, on this day, May 28, 2013.

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/s/ David C. Smith
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