

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
BEFORE THE SPECIAL MASTER**

ELOUISE PEPION COBELL, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.
)	1:96CV01285 (TFH)
)	
SALLY JEWELL, Secretary of the Interior, <i>et al.</i> ,)	
)	
Defendants.)	
)	

**PLAINTIFFS’ MOTION REQUESTING THE SPECIAL MASTER TO AUTHORIZE
THE DEPOSIT OF HISTORICAL ACCOUNTING AND TRUST ADMINISTRATION
CLASS PAYMENTS OWED TO THE HEIRS OF A DECEASED CLASS MEMBER
INTO AN IIM ACCOUNT FOR THAT MEMBER WHERE THERE IS A FEDERAL
ESTATE OPEN AND PENDING FOR THAT CLASS MEMBER OR WHERE A
FEDERAL ESTATE WILL IN THE FUTURE BE OPEN FOR THAT CLASS MEMBER
AND NO PROBATE ORDER OR OTHER DISTRIBUTION DOCUMENTATION HAS
BEEN RECEIVED**

Plaintiffs, in accordance with the *Order Granting Unopposed Motion to Modify Distribution of Settlement Proceeds to Estates and Heirs of Deceased Class Members* dated June 19, 2013 [Dkt. No. 3958] (“*Estate Distribution Order*”), hereby move the Special Master for an Order authorizing the deposit of Historical Accounting and Trust Administration Class payments owed to the heirs of a deceased Class Member into an IIM account for that member where there is a federal probate estate open and pending for that class member, or where there will in the future be a federal probate open for that Class Member, and the Claims Administrator, the Garden City Group (“GCG”), has received no state, federal or tribal probate order or other documentation approved by this Court upon

which a distribution may be made. In support thereof, Plaintiffs respectfully show the Court as follows:

1. On December 11, 2012, the District 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 Order [Dkt. No. 3923] ¶ 2.)

2. The District Court, in its *Estate Distribution Order*, determined that with respect to the estates of those deceased members of the Historical Accounting and Trust Administration Classes for which there was no personal representative, executor or administrator, and where there existed no state or tribal probate order, "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." (See *Estate Distribution Order* [Dkt. No. 3958] ¶ 2.)

3. In order to facilitate the distribution of settlement funds to the heirs of deceased class members in an efficient and cost-effective manner, the Special Master has authorized the use of a variety of procedures including the following:

a. Procedures under state law for small estates. [Dkt. No. 3963].

- b. Federal probate orders. [Dkt. No. 3964].
- c. Determinations by Tribal governments. [Dkt. No. 4022].
- d. Determinations pursuant to 25 CFR 11.700 [Dkt No. 3969].
- e. Distributions based on Form OHA 7. [Dkt. No. 4021].

4. Tremendous efforts have been undertaken to identify the heirs of deceased Class Members. The Claim Form, which asked that individuals identify if they were the heir of a deceased class member, was mailed to over 375,000 potential claimants and included in over 245,000 additional outreach mailings to tribal communities. Approximately \$11 million has been spent on the original and supplementary notice programs designed by Kinsella Media, Inc., once again which encouraged the identification of the heirs of deceased Class members. Dozens of meetings have been held by Class Counsel and GCG in Indian Country in which information has been sought on Class Members and their heirs. In addition, Class Counsel and GCG have worked with tribal governments, allottee associations and other groups and individuals to identify the families of class members who have passed away.

5. Subsequent to Final Approval of the Settlement, GCG received information from the Department of Interior which identified over 67,000 deceased members of the Historical Accounting and Trust Administration Classes. Despite the extensive efforts described above, as of March 2014 there remain over 49,000 estates for which there is no documentation upon which GCG can make a distribution.

6. In the case of some deceased Class Members there are federal probates pending in the Department of Interior and or open IIM accounts in the decedent's name. This Court has already approved the distribution of estate funds by means of a federal probate order. [Dkt. No. 3964]. Where there is a pending or future federal probate proceeding for a

deceased Class Member, those funds owed to the heirs of those Class Members may more effectively and cost-efficiently be transferred if they can be placed in to those Class Members' IIM accounts for disbursement with other estate proceeds.

7. Plaintiffs have discussed this Motion with counsel for Defendants who oppose it.

WHEREFORE, Plaintiffs respectfully pray the Special Master that their motion for an Order authorizing the deposit of Historical Accounting and Trust Administration Class payments owed to the heirs of a deceased class member into an IIM account for that member where there is a federal probate estate open and pending for that class member or where one in the future will be opened for that Class Member, and GCG has received no state, federal or tribal probate order or other documentation approved by this Court upon which a distribution may be made, be allowed.

Respectfully submitted this the 16th day of May, 2014.

/s/ David C. Smith

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing PLAINTIFFS' MOTION REQUESTING THE SPECIAL MASTER TO AUTHORIZE THE DEPOSIT OF HISTORICAL ACCOUNTING AND TRUST ADMINISTRATION CLASS PAYMENTS OWED TO THE HEIRS OF A DECEASED CLASS MEMBER INTO AN IIM ACCOUNT FOR THAT MEMBER WHERE THERE IS A FEDERAL ESTATE OPEN AND PENDING FOR THAT CLASS MEMBER OR WHERE A FEDERAL ESTATE WILL IN THE FUTURE BE OPEN FOR THAT CLASS MEMBER , AND NO PROBATE ORDER OR OTHER DISTRIBUTION DOCUMENTATION HAS BEEN RECEIVED, was served on the following via facsimile, pursuant to agreement, on this day, May 16, 2014.

Earl Old Person (*Pro se*)
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/s/ David C. Smith