

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

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

**PLAINTIFFS' UNOPPOSED MOTION FOR AN ORDER DIRECTING THAT
DISTRIBUTIONS TO HEIRS OF CLASS MEMBERS RETURNED AS
UNDELIVERABLE BE DEPOSITED IN THE REMAINDER ACCOUNT**

Plaintiffs, without opposition from Defendants, hereby move the Court for an Order directing that any distributions to an heir of a Class Member returned to the Claims Administrator as undeliverable be deposited in the Remainder Account.

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

1. Pursuant to this Court's Minute Order entered on August 15, 2016, a Remainder Account has been established at the Qualifying Bank, and certain funds due Class Members returned to the Claims Administrator from the distribution as undeliverable have been deposited in it. However, the Settlement Agreement is ambiguous on the treatment of funds due heirs of Class Members that are returned as undeliverable.

2. The Settlement Agreement provides that funds returned from distributions are to be deposited in the IIM account of the "individual Indian beneficiary" or into the Remainder Account if no such IIM account exists. Settlement Agreement at ¶¶ E.3.c and E.4.d.

3. Though it is clear from the Settlement Agreement that funds returned from an attempted distribution to a Class Member are to be deposited into that Class Member's IIM Account, if open, the Settlement Agreement does not specifically address whether a returned distribution to an heir of a Class Member is to be deposited in that heir's IIM Account, if open.

4. The operative language for funds returned from the Stage 1 distribution provides as follows:

For distributions returned from the **Stage 1 distribution**, the Qualified Bank, working with the Claims Administrator, shall use its best efforts to ensure that all such funds are deposited into the appropriate **individual Indian beneficiary's** trust account at Interior, if open, or into a separate interest bearing account at the Qualifying Bank ("Remainder Account") if no such IIM Account exists.

Id. at ¶ E.3.c (emphasis added). The language regarding the Stage 2 distributions is substantively the same. *Id.* at E.4.d.

5. A "Stage 1" distribution, as used in the language quoted above, means distributions to the Historical Accounting Class. *Id.* at A.33. In turn, the definition of the "Historical Accounting Class" includes Class Members and certain estates of Class Members, but not the heirs of the Class Members:

"Historical Accounting Class" means those **individual Indian beneficiaries** . . . alive on the Record Date and who had an IIM Account open during any period between October 25, 1994 and the Record Date, which IIM Account had at least one cash transaction credited to it at any time as long as such credits were not later reversed. Beneficiaries deceased as of the Record Date are included in the Historical Accounting Class only if they had an IIM Account that was open as of the Record Date. The estate of any Historical Accounting Class Member who dies after the Record Date but before distribution is in the Historical Accounting Class.

Id. at A.16 (emphasis added). The Settlement Agreement contains substantively identical provisions regarding the Stage 2 distributions and the Trust Administration Class. *Id.* at A.34 and A.35.

6. Since the definitions of the Historical Accounting and Trust Administration Classes do not include heirs of class members, the parties believe that the most reasonable construction of the Settlement Agreement is that only returned funds of Class Members are to be deposited in their IIM accounts, if open. This construction has two added benefits.

7. First, to date, the heirs of Class Members whose funds have been returned as undeliverable have not been located either by Interior or through the extensive outreach conducted by the Claims Administrator and Class Counsel. Any funds deposited in the IIM accounts may never be distributed and may remain forever unclaimed. On the other hand, funds deposited into the Remainder Account will, if not subsequently disbursed to the correct person or used for other purposes provided for in the Settlement Agreement, be paid to the Indian Education Scholarship Fund, the *cy pres* designated in the Settlement Agreement. *Id.* at E.4.e(8). Thus, not only is the proffered interpretation consistent with the Settlement Agreement's terms, it provides assurance that the funds will go for a beneficial purpose expressly provided for in the Settlement Agreement..

8. Second, the information regarding the identity of the heirs is incomplete and, at times, inaccurate. In most cases, the Claims Administrator is not able to match an heir to an IIM account. The Claims Administrator and Interior would have to engage in a case-by-case analysis of each heir to determine if there is a beneficiary with an IIM account having the same or similar name. They would then have to make a subjective determination as to whether it was the correct person. Based on past experience, the mishandling of funds of beneficiaries with confusingly

similar names has been a significant impediment to the functioning of the individual Indian trust. By requiring the Claims Administrator and Interior to make such subjective judgments, we would be increasing the likelihood of errors we have been trying to eliminate.

9. For these reasons, plaintiffs move, without opposition from defendants, for an Order directing that returned distributions for heirs of Class Members be deposited in the Remainder Account.

Respectfully submitted this 1st day of November, 2016.

/s/ David C. Smith
DAVID COVENTRY SMITH
D.C. Bar No. 998932
KILPATRICK TOWNSEND & STOCKTON LLP
607 14th Street, N.W., Suite 900
Washington, D.C. 20005
Telephone: 202-508-5865

WILLIAM E. DORRIS
GA. Bar No. 225987
Admitted *Pro Hac Vice*
KILPATRICK TOWNSEND & STOCKTON LLP
1100 Peachtree Street, Suite 2800
Atlanta, GA 30309
Telephone: 404-815-6500

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a copy of the PLAINTIFFS' UNOPPOSED MOTION FOR AN ORDER DIRECTING THAT DISTRIBUTIONS TO HEIRS OF CLASS MEMBERS RETURNED AS UNDELIVERABLE BE DEPOSITED IN THE REMAINDER ACCOUNT was served on the following via facsimile, pursuant to agreement, on this 1st day of November, 2016.

Earl Old Person (Pro se)
Blackfeet Tribe
P.O. Box 850
Browning, MT 59417
406.338.7530 (fax)

/s/ David C. Smith
David C. Smith

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**ORDER GRANTING PLAINTIFFS' UNOPPOSED MOTION
ON DISTRIBUTIONS TO HEIRS RETURNED AS UNDELIVERABLE**

Upon consideration of *Plaintiffs' Unopposed Motion for an Order Directing That Distributions to Heirs of Class Members Returned As Undeliverable Be Deposited in the Remainder Account*, it is hereby ordered, adjudged and decreed that the Claims Administrator shall deposit any distributions to heirs returned as undeliverable in the Remainder Account.

SO ORDERED on this ____ day of _____, 2016.

Thomas F. Hogan
United States District Judge