

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

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

**PLAINTIFFS’ AMENDED UNOPPOSED MOTION REQUESTING ADDITIONAL
GUIDANCE AND APPROVAL OF DOCUMENTATION FOR DISTRIBUTION OF
SETTLEMENT FUNDS TO HEIRS OF CLASS MEMBERS**

Plaintiffs, without opposition from Defendants, hereby move the Special Master to permit the Claims Administrator, the Garden City Group, LLC (“Garden City”), to make estate distributions in the following category of cases based on the procedures and documentation set forth herein:

I. Where Probate Order Bases Distribution on Heirs’ Relationship to Decedent’s Matrilineal or Patrilineal Side.

Garden City has encountered probate orders in which the distribution to heirs varies due to the relationship of an individual heir to the matrilineal or patrilineal line of the decedent. By way of example, if a child adopted by a paternal grandfather died with trust property or headright interests in two different states, distributions to his or her heirs could be to his natural born children, his natural born children and adoptive siblings, or just to his adoptive siblings and their heirs based on the nature and location of the property. It is impossible for Garden City to distribute Cobell funds based on the terms of such a probate order.

Accordingly, it is requested that where, at the time of distribution:

a. Garden City has not been provided documentation, as set forth in ¶¶ 1(a)-(c) of the district court's *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], of one of the following:

(1) A state or tribal probate order identifying the heirs of the deceased Class Member which does not change the manner of distribution based on whether an heir is descended from the decedent's matrilineal or patrilineal line

(2) The existing legally appointed executor or administrator of an estate of the deceased Class Member; or

(3) A will of the 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 Interior ("Interior"); and

b. Garden City has not been provided documentation permitting distribution of the funds in accordance with state procedures for small estates, as permitted by Special Master Order No. 1 dated July 16, 2013 [Dkt. No. 3963], and Special Master Order No. 8 dated April 17, 2015 [Dkt. No. 4118], pursuant to orders entered in accordance with 25 C.F.R. § 11.700 *et seq.*, as permitted by the district court's Order dated July 29, 2013 [Dkt. No. 3969], a determination by a Tribal government as permitted by Special Master Order No. 4 dated December 10, 2013

[Dkt. No. 4022], or a family settlement agreement as provided in Special Master Order No. 10 dated September 8, 2015 [Dkt. No. 4138];

Garden City be permitted to make a distribution of Historical Accounting and Trust Administration Funds based on the following:

(a) the general intestacy scheme, if any, for the Tribe of which the decedent is a member at the time of his or her death if that can be reasonably determined from the information provided to Garden City; or

(b) In the absence of a tribal intestacy code, or if Garden City is unable to determine the tribal membership at the time of death, the general intestacy scheme for the state of domicile of the decedent, if known; or

(c) In the absence of the state of domicile being readily known to Garden City, the intestacy scheme for the state of the court which issued an applicable probate order; or

(d) In the absence of a state probate order, in accordance with the intestacy scheme applicable to the state within which the exterior boundaries of the Tribe of which decedent was a member is principally located.

II. Garden City has Received Multiple Small Estate Affidavits for the Same Decedent.

Present procedures approved by the Special Master permit the distribution of estate funds based on a small estate affidavit consistent with applicable state law. However, in some cases Garden City has received multiple small estate affidavits from different heirs of the same decedent claiming entitlement to receive the identical estate funds. Garden City needs guidance on how to handle this situation.

Plaintiffs request that where Garden City has not received documentation in accordance with the district court's June 19, 2013 Order, but has received multiple proper small estate affidavits for the same decedent as well as a federal probate order for that decedent or other documentation for distribution approved by the Court or Special Master, that it be permitted to distribute the Historical Accounting and Trust Administration funds based on that federal probate order or other approved distribution documentation instead of to one or more of the holders of the small estate affidavits. In the absence of such a probate order or other means of distribution approved by the Court or Special Master, Plaintiffs request that Garden City be permitted to divide the estate distribution evenly between those individuals who have provided a proper small estate affidavit for that decedent in accordance with this Court's orders. However, no such distribution shall be made to an individual who has provided a small estate affidavit if Garden City has previously received written notice or information that such person has previously received a Cobell distribution pursuant to a small estate affidavit and may not have properly distributed it to the estate's lawful heirs, as provided in Special Master Order No. 7 dated May 29, 2014 [Dkt. No. 4047].

III. Use of Trust Agreements for Distribution.

In some cases, typically where the principal estate asset is an Osage headright interest, the only documentation Garden City has received for distribution is a Trust Agreement signed by the Secretary of Interior or other official of Interior identifying the heirs of the decedent.

Accordingly, it is requested that where, at the time of distribution, Garden City has not been provided documentation in accordance with the district court's June 19, 2013 and July 29, 2013 Orders, or in accordance with Special Master Orders 1, 4, 8 or 10, that Garden

City be permitted to distribute the Cobell Historical Accounting and Trust Administration Funds to the heirs identified in, and in accordance with the percentages specified in, a Trust Agreement signed by the Secretary of Interior or other official of Interior providing for the distribution of headright interests or other individual Indian trust property of the decedent.

IV. Distribution Based on Memorandum From the Department of Interior to the Office of Special Trustee.

In some cases, Garden City has not been able to locate, and neither Interior nor an heir of a deceased Class Member has been able to provide, a probate order or other documentation currently permitted for an estate distribution. However, Garden City has located memoranda prepared by Interior directed to the Office of Special Trustee (“OST”) which reference an underlying probate order or trust document and instructs OST to distribute the estate in a particular manner. Plaintiffs believe that, in the absence of the actual probate order or trust document and given that no heir has come forward in the past four years to provide documentation of an alternate means of distribution, these memoranda are adequate and reasonable documentation upon which to make a distribution.

Accordingly, it is requested that where, at the time of distribution, Garden City has not been provided documentation in accordance with the district court’s June 19, 2013 and July 29, 2013 Orders, or in accordance with Special Master Orders 1, 4, 8 or 10, that Garden City be permitted to distribute the Cobell Historical Accounting and Trust Administration Funds to the heirs identified in the memoranda as they would any other federal probate or trust document.

V. Use of OHA-7 Forms.

On December 10, 2013, the Special Master entered Special Master Order No. 3 [Dkt. No. 4021] permitting Garden City to use OHA-7 Forms as guidance in the distribution of Historical Accounting and Trust Administration Funds where it had received a federal probate order in which there was no distribution of personal trust property but there existed trust land constituting less than 5% of the entire undivided ownership of the parcel of land of which such interest is a part and the distribution was in accordance with the provisions of 22 U.S.C. § 2206(2)(D). Often, the estate file includes a form, designated as Form OHA-7, which is used by the Bureau of Indian Affairs to collect information identifying the potential heirs of a decedent. The form is neither an order nor a formal declaration of heirship, and in some cases it may be inaccurate or incomplete. Nevertheless, for many estates, the completed Form OHA-7 is the best indication of the potential heirs of a deceased Class Member, and in some instances may be the only document indicating possible heirs.

Garden City has encountered situations where there exists no probate order or any other approved means of distribution. Under such circumstances, Plaintiffs request that Garden City be permitted to rely on the information set forth in a completed Form OHA-7 to distribute settlement funds in accordance with the rules of descent set forth in 25 U.S.C. §§ 2206(a)(1), (2)(A)(i)-(iv), and (B)(i)-(iv) for the distribution of trust personalty to individual heirs.

VI. Use of Documentation of Probate Orders.

In some cases, Garden City has been unable to locate a written state, tribal or federal probate order for distribution to the heirs of a Class Member but has found written documentation of that probate order prepared by Interior. By way of example, at the

Muscogee Agency in Oklahoma, Garden City was unable to locate the applicable state, tribal or federal probate orders for certain Class Members but the Agency had maintained meticulous handwritten notecards setting forth the contents of those orders. Plaintiffs believe these documents are sufficiently trustworthy upon which to make a distribution.

Accordingly, it is requested that where, at the time of distribution, Garden City has not been provided documentation in accordance with the district court's June 19, 2013 and July 29, 2013 Orders, or in accordance with Special Master Orders 1, 4, 8 or 10, that Garden City be permitted to distribute the Cobell Historical Accounting and Trust Administration Funds to the heirs identified in the documentation of state, tribal or federal probate orders prepared by Interior to the same extent as they would an actual state, tribal or federal probate order approved for distribution.

Respectfully submitted this 22nd day of December, 2016.

/s/ David C. Smith
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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing PLAINTIFFS' AMENDED UNOPPOSED MOTION REQUESTING ADDITIONAL GUIDANCE AND APPROVAL OF DOCUMENTATION FOR DISTRIBUTION OF SETTLEMENT FUNDS TO HEIRS OF CLASS MEMBERS was served on the following via facsimile, pursuant to agreement, on this 22nd day of December, 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

based on whether an heir is descended from the decedent's matrilineal or patrilineal line;

(2) The existing legally appointed executor or administrator of an estate of the deceased Class Member; or

(3) A will of the 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 Interior ("Interior"); and

b. has not been provided documentation permitting distribution of the funds in accordance with state procedures for small estates, as permitted by Special Master Order No. 1 dated July 16, 2013 [Dkt. No. 3963], and Special Master Order No. 8 dated April 17, 2015 [Dkt. No. 4118], pursuant to orders entered in accordance with 25 C.F.R. § 11.700 *et seq.*, as permitted by the district court's Order dated July 29, 2013 [Dkt. No. 3969], a determination by a Tribal government as permitted by Special Master Order No. 4 dated December 10, 2013 [Dkt. No. 4022], or a family settlement agreement as provided in Special Master Order No. 10 dated September 8, 2015 [Dkt. No. 4138];

Garden City shall be permitted to make a distribution of Historical Accounting and Trust Administration Funds based on the following:

(1) the general intestacy scheme, if any, for the Tribe of which the decedent is a member at the time of his or her death if that can be reasonably determined from the information provided to Garden City; or

(2) in the absence of a tribal intestacy code or if Garden City is unable to determine the tribal membership at the time of death, the general intestacy scheme for the state of domicile of the decedent, if known; or

(3) absent the state of domicile being readily known to Garden City, the intestacy scheme for the state of the court which issued an applicable probate order; or

(4) in the absence of a state probate order, in accordance with the intestacy scheme applicable to the state within which the exterior boundaries of the Tribe of which decedent was a member is principally located.

II. Garden City has Received Multiple Small Estate Affidavits for the Same Decedent.

Where Garden City has not received documentation in accordance with the district court's June 19, 2013 Order, but has received multiple proper small estate affidavits for the same decedent as well as a federal probate order for that decedent or other documentation for distribution approved by the Court or Special Master, it shall be permitted to distribute the Historical Accounting and Trust Administration funds based on that federal probate order or other approved distribution documentation instead of to one or more of the holders of the small estate affidavits. In the absence of such a probate order or other means of distribution approved by the Court or Special Master, Garden City may divide the estate distribution evenly between those individuals who have provided a proper small estate affidavit for that decedent in accordance with this Court's orders. However, no such distribution shall be made to an individual who has provided a small estate affidavit if Garden City has previously received written notice or information that such person has received a *Cobell* distribution

pursuant to a small estate affidavit and has not properly distributed it to the estate's lawful heirs unless authorized by the Special Master, as provided in Special Master Order No. 7 dated May 29, 2014 [Dkt. No. 4047].

III. Use of Trust Agreements for Distribution.

Where at the time of distribution, Garden City has not been provided documentation in accordance with the district court's June 19, 2013 and July 29, 2013 Orders, or in accordance with Special Master Orders 1, 4, 8 or 10, Garden City shall be permitted to distribute the *Cobell* Historical Accounting and Trust Administration Funds to the heirs identified in, and in accordance with the percentages specified in, a Trust Agreement signed by the Secretary of Interior or other official of Interior providing for the distribution of headright interests or other individual Indian trust property of the decedent.

IV. Distribution Based on Memorandum from the Department of Interior to the Office of Special Trustee.

Where at the time of distribution, Garden City has not been provided documentation in accordance with the district court's June 19, 2013 and July 29, 2013 Orders, or in accordance with Special Master Orders 1, 4, 8 or 10, Garden City shall be permitted to distribute the *Cobell* Historical Accounting and Trust Administration Funds to the heirs identified in a memorandum prepared by Interior directed to the Office of Special Trustee ("OST") which reference an underlying probate order or trust document and instructs OST to distribute the estate in a particular manner, just as they would any federal probate or trust document.

V. Use of OHA-7 Forms.

Where there exists no probate order or any other approved means of distribution, Garden City shall be permitted to rely on the information set forth in a completed Form OHA-7 to distribute settlement funds in accordance with the rules of descent set forth in 25 U.S.C. §§ 2206(a)(1), (2)(A)(i)-(iv), and (B)(i)-(iv) for the distribution of trust personalty to individual heirs.

VI. Use of Documentation of Probate Orders.

Where at the time of distribution, Garden City has not been provided documentation in accordance with the district court's June 19, 2013 and July 29, 2013 Orders, or in accordance with Special Master Orders 1, 4, 8 or 10, Garden City shall be permitted to distribute the *Cobell* Historical Accounting and Trust Administration Funds to the heirs identified in any documentation of state, tribal or federal probate orders prepared by Interior to the same extent as they would an actual state, tribal or federal probate order approved for distribution.

This the ____ day of _____, 201_.

Hon. Richard A. Levie (Ret.)
Special Master