

**IN 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.	)	
	)	
	)	
	)	

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**PLAINTIFFS’ UNOPPOSED MOTION AUTHORIZING THE USE OF WILLS IN  
THE DISTRIBUTION OF FUNDS TO HEIRS OF CLASS MEMBERS WHERE  
THERE IS NO DOCUMENTATION THEY HAVE BEEN PROBATED**

Plaintiffs, without opposition from defendants, hereby move the Court for permission to use wills in the distribution of settlement funds to the heirs of deceased Class Members even where there is no documentation those wills have been probated by a state or tribal court or the Department of Interior. In support thereof, they respectfully show the Court as follows:

1. On June 19, 2013, this Court permitted the Claims Administrator, the Garden City Group (“GCG”), to distribute settlement funds of Class Members who were deceased “[p]ursuant to the terms of the 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 Interior.” Dkt. No. 3958 at ¶ 1(c). In accordance with the terms of that order, GCG has distributed funds in accordance with the terms of wills that have been accepted for probate.

2. At the inception of the administration of the settlement the parties were reluctant to accept as a means of distribution unprobated wills because of the lack of verification of the will’s accuracy that would otherwise be inherent in the probate process. However, GCG has

now received from heirs approximately 350 wills of deceased Class Members for whom there are undistributed settlement funds and for which there is no documented evidence of a probate. GCG currently has no other means approved by this Court or the Special Master to distribute these funds.

3. There could be multiple reasons why there is no documented evidence of a probate, including that documentation of the probate has been lost or, due to the size of the estate, no probate was necessary. Four years have elapsed since the settlement distribution began and concerns that may have existed initially from use of unprobated wills have been alleviated. If other persons are entitled to these undistributed funds due to a probate proceeding or otherwise, they have had sufficient time to claim them.

4. Accordingly, plaintiffs respectfully request that this Court's June 19, 2013 Order be modified so that where, at the time of distribution, GCG has not received any other documentation approved by this Court or the Special Master upon which to distribute funds to the heirs of a deceased Class Member, that it be permitted to distribute those funds in accordance with the terms of an unprobated will where GCG reasonably believes such will to have been executed by the Class Member. Where the will provides for the distribution of the Cobell settlement funds expressly or through a residuary clause, GCG is to direct payment in the manner provided for in the will. Where the will does not address the Cobell settlement payment expressly or otherwise, as, for example, where it devises only real property or trust property, but identifies the heirs of the Class Member, Plaintiffs request that GCG be permitted to use the will as guidance in distributing funds to heirs under applicable intestacy law. Finally, should any heir not be located, it is requested that GCG be permitted to make payment to the heir in the care of the administrator or executor designated in the will.

5. Plaintiffs have consulted with counsel for defendants who have indicated that defendants do not oppose this motion.

Respectfully submitted this 27<sup>th</sup> day of December, 2016.

/s/ David C. Smith

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing PLAINTIFFS' UNOPPOSED MOTION AUTHORIZING THE USE OF WILLS IN THE DISTRIBUTION OF FUNDS TO HEIRS OF CLASS MEMBERS WHERE THERE IS NO DOCUMENTATION THEY HAVE BEEN PROBATED was served via facsimile, pursuant to agreement, on this 27th day of December, 2016.

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/s/ David C. Smith  
DAVID C. SMITH

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**ORDER GRANTING PLAINTIFFS’ UNOPPOSED MOTION AUTHORIZING  
THE USE OF UNPROBATED WILLS IN THE DISTRIBUTION OF FUNDS TO  
HEIRS OF CLASS MEMBERS**

Upon consideration of the unopposed motion of Plaintiffs to authorize the use of unprobated wills in the distribution of settlement funds to the heirs of Class Members [Dkt. No. ], this Court’s June 19, 2013 order is modified to provide as follows:

1. Where, at the time of distribution, the Claims Administrator, the Garden City Group, LLC (“GCG”), has not received any other documentation approved by this Court or the Special Master upon which to distribute funds to the heirs of a deceased Class Member, it shall be permitted to distribute those funds in accordance with the terms of an unprobated will where GCG reasonably believes such will to have been executed by the Class Member.

2. Where the will provides for the distribution of the Cobell settlement funds expressly or through a residuary clause, GCG is to direct payment in the manner provided for in the will. Where the will does not address the Cobell settlement payment expressly or otherwise, but identifies the heirs of the Class Member, GCG may use the will as guidance in distributing funds to heirs under applicable intestacy law.

3. Where an heir cannot be located by GCG in transmitting settlement funds as provided in paragraph 2, above, GCG may make payment to the heir in the care of the administrator or executor designated in the will.

SO ORDERED,

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Honorable Thomas F. Hogan  
Senior District Court Judge