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MORISSET, JESSIE
AYER & JOZVICH
SEATTLE OFFICE

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

JESSIE SHORT, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 UNITED STATES OF AMERICA,)
)
 Defendant,)
)
 and)
)
 HOOPA VALLEY TRIBE,)
)
 Defendant-Intervenor)
)

No. 102-63

Judge Lawrence S. Margolis

FILED DEC 21 1995

ORDER RE: DISBURSEMENTS, DEPOSITS, AND PAYMENT OF JUDGMENTS

At the request of plaintiffs and defendant, the Court considered the circumstances and was apprised of the difficulties and delays the United States has and will encounter in disbursing the monies pursuant to the multiple judgments of July 29, 1993, as affirmed, mandate of May 5, 1995. To resolve matters related to the handling of disbursements, deposits, and payments of judgments, the Court orders certain steps to be taken to facilitate and expedite the receipt of judgment monies by the plaintiffs or their heirs or designated beneficiaries.

IN THE OVERALL INTERESTS OF JUSTICE AND GOOD CAUSE

APPEARING THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

1. On or before December 31, 1995, the United States shall disburse the following amounts (said amounts are to be paid as reimbursement to the named law firms on account of Court approved contractually allowed expenses heretofore incurred in connection with the prosecution of this litigation) to the law firms (hereinafter, said law firms are referred to jointly as plaintiffs' counsel) named below:

1A. Two Million Eight Hundred and Ninety-Seven Thousand Seven Hundred and Fifty-Six Dollars and 15/100 (\$2,897,756.15) to plaintiffs' counsel-- Heller, Ehrman, White and McAuliffe, at the following address:

Heller, Ehrman, White & McAuliffe
333 Bush Street
San Francisco, CA 94104

Attention: Michael S. Greenberg, Esq.
(415) 772-6690

by electronic funds transfer (EFT) (bank, bank number, account number, and account name (Heller, Ehrman, White & McAuliffe)-- said information to be provided promptly by Heller, Ehrman) to be received by counsel's bank by December 29, 1995;

1B. One Hundred and Fifty-Six Thousand Nine Hundred and Forty-Eight Dollars and 27/100 (\$156,948.27) to plaintiffs' counsel-- Faulkner, Sheehan and Wunsch:

Faulkner, Sheehan & Wunsch

351 California St., Suite #830
San Francisco, CA 94104

Attention: William Wunsch, Esq.

by check dated no later than December 31, 1995 or by electronic funds transfer (EFT) (bank, bank number, account number, and account name (Faulkner, Sheehan & Wunsch) to be provided promptly by Faulkner Firm) to be received by counsel's bank by December 29, 1995;

and

1C. Sixty-One Thousand Seven Hundred and Eighty-One Dollars and 53/100 (\$61,781.53) to plaintiffs' counsel-- Duke, Gerstel, Shearer and Bregante:

Duke, Gerstel, Shearer & Bregante
Wells Fargo Bank Bldg.
101 West Broadway, Sixth Floor
San Diego, CA 92101

Attention: William K. Shearer, Esq.

by check dated no later than December 31, 1995 or by electronic funds transfer (EFT) (bank, bank number, account number, and account name (Duke, Gerstel, Shearer & Bregante) to be provided promptly by Duke Firm) to be received by counsel's bank by December 29, 1995;

2. ~~On or before January 15, 1996, the United States shall~~ disburse the following amount:

2A. The sum of \$57,006,435.26, being the amount of all judgments awardable in this action (this is the

total amount remaining after payment of Court approved contract expenses, see supra at ¶1);

2B. To comply with federal requirements, this amount will be transferred to:

Heller, Ehrman, White & McAuliffe
333 Bush Street
San Francisco, CA 94104

Attention: Michael S. Greenberg, Esq.
(415) 772-6690

by electronic funds transfer (EFT) (bank, bank number, account number, and account name (Heller, Ehrman, White & McAuliffe, Special Trust Account for Short Judgments)-- said information to be provided promptly by Heller, Ehrman);

2C. The amount transferred by the United States will be held in an account or accounts at a commercial bank with offices in the United States with at least One Billion Dollars (\$1,000,000,000) in capital and surplus or invested in government securities or their equivalent subject to the defendant's approval;

2D. The bank shall be chosen by counsel for the plaintiffs;

2E. Plaintiffs shall notify defendant in writing of the bank chosen at least one week prior to the requested electronic funds transfer or no later than January 8, 1996;

2F. Defendant will advise plaintiffs prior to the electronic funds transfer if plaintiffs' choice of bank

is unacceptable and/or the proposed trust account arrangement is unacceptable;

2G. The account or accounts into which these monies are deposited shall be referred to herein as the "Short Judgment Account";

2H. The principal amount held in the "Short Judgment Account" shall retain its character as federal monies and will be subject to the jurisdiction of this Court;

2I. The "Short Judgment Account" shall be administered in accordance with this Order and such other and further orders as may be issued by this Court;

2J. Plaintiffs' counsel shall be entitled to recover from the "Short Judgment Account" for the administration of this fund;

2K. Plaintiffs' counsel shall be paid reasonable attorneys' fees and all reasonable expenses (including, without limitation, fees paid for accounting or other professional services) reasonably incurred in connection with compliance with this Order and the administration of the payment of judgments to the individual plaintiffs or their heirs or designated beneficiaries (hereinafter, referred to as "administrative fees and expenses");

2L. Administrative fees and expenses will be paid first out of any interest earned and paid on the "Short Judgment Account" and, if the amount of interest paid is insufficient to cover the amounts payable, administrative fees and expenses will be recoverable or reimbursable from the principal in the "Short Judgment Account" in an amount not to exceed \$493,007.95 (.85% of the aggregate amount of all monies awarded as judgments to plaintiffs);

2M. The interest earned and paid on the Short Judgment Account and the principal in the amount of \$493,007.95 shall be withheld from distribution to plaintiffs or their heirs or designated beneficiaries for the payment of administrative fees and expenses;

2N. After May 15, 1996, plaintiffs' counsel will serve defendant and submit to the court for approval a billing for administrative fees and expenses; and

2O. Thereafter, plaintiffs' counsel may periodically serve defendant and submit to the court for approval billings for administrative fees and expenses.

3. On or before January 15, 1996, the Court shall enter judgment pursuant to plaintiffs' Bills of Costs and the United States shall then disburse the following amount as costs pursuant to the judgment:

3A. Costs in the amount of Two Hundred Fifteen Thousand Seven Hundred Thirty-Nine Dollars and 42/100 (\$215,739.42)

3B. To comply with federal requirements, this amount will be transferred to:

Heller, Ehrman, White & McAuliffe
333 Bush Street
San Francisco, CA 94104

Attention: Michael S. Greenberg, Esq.
(415) 772-6690

by electronic funds transfer (EFT) (bank, bank number, account number, account name (Heller, Ehrman, White & McAuliffe, Special Trust Account for Short Judgments) said information to be provided promptly by Heller, Ehrman);

3C. All monies electronically transferred, supra at ¶3B. will be held in the "Short Judgment Account" until disbursed in accordance with this Order and any other Orders of this Court.

4. During the period between January 15, 1996 and May 15, 1996, the following steps shall take place:

4A. On or before February 15, 1996, plaintiffs' counsel shall:

(i). mail by first class postage prepaid to the last known address of plaintiff or plaintiff's heirs or designated beneficiaries a copy of this Order and a

request for any change of address to be sent to plaintiffs' counsel;

(ii). cause to be published in The Del Norte Triplicate, The Eureka Times Standard and The Kourier (Willow Creek) a notice of this Order together with a request for plaintiffs or plaintiffs' heirs or designated beneficiaries to provide counsel with their correct mailing addresses; and

(iii). furnish counsel for the United States with a list of plaintiffs' Social Security numbers, to the extent available from any files maintained by plaintiffs' counsel.

4B. On or before February 15, 1996, counsel for the United States shall:

(i). Furnish plaintiffs' counsel with its calculation of the exact amount to be paid in favor of each plaintiff;

(ii). Provide the last known address of each plaintiff or plaintiff's heir or designated beneficiary originally or otherwise recorded in the files of the Sacramento Area Office, Bureau of Indian Affairs (BIA) and Northern California Agency Office, BIA to counsel for plaintiffs; and

(iii). Provide copies of the probate orders prepared and entered by the Bureau of Indian Affairs on

behalf of any deceased Short plaintiffs for whom such orders have been entered; and

(iv). periodically, defendant will continue to provide copies of any additional probate orders prepared and entered by the Bureau of Indian Affairs on behalf of any deceased Short plaintiffs as such orders are entered.

4C. On or before April 15, 1996, counsel for the United States shall advise plaintiffs' counsel in writing of any and all set-offs to be claimed against the Short Judgment Account by this date to permit disbursements to commence on May 15, 1996 for all plaintiffs or their heirs or designated beneficiaries;

(i) Any set-off claimed will be withheld from that plaintiff's share of the Short Judgment Account;

(ii) Any set-off permitted by federal law may be claimed by defendant for any debt or debts, unpaid, but due and owing the United States or any agencies:

(iii). Defendant will include the name of the payee, the amount, and the general basis of the claimed set-off for each debt;

(iv). For each plaintiff (payor) as to which the United States has claimed a set-off, the amount of such claim shall be deducted from the distribution otherwise payable to said plaintiff, and the funds shall remain in the Short Judgment Account, pending final

determination as to the right of set-off, in accordance with all applicable laws and regulations;

(v). When and if the United States' right of set-off becomes final as to a plaintiff-payor, defendant will inform counsel for the plaintiffs in writing that its set-off rights have become final and the amounts set-off will be returned to the U.S. Treasury in payment for plaintiff's debt;

(vi). Plaintiffs' counsel will proceed to pay any remainder (full payment minus claimed set-off) for all plaintiffs or heirs or designated beneficiaries (see infra at ¶5) for whom a claimed set-off has been deducted pursuant to ¶4 for whom monies remain payable after the set-off has been deducted;

(vii). Plaintiffs' counsel shall incur no liability for compliance with this Order supra at ¶4C(v; vi);

(viii). If the United States' right of set-off is not finalized as to a plaintiff-payor, defendant will inform counsel for plaintiffs in writing that any monies previously withheld can now be disbursed to the plaintiff and plaintiffs' counsel will disburse these monies; and

(ix). Any plaintiff's judgment against which no set-off has been claimed in writing by April 15, 1996

will be paid without any set-off by plaintiffs' counsel.

4D. On or before May 1, 1996, plaintiffs' counsel will advise defendant of any exceptions to defendant's calculation of the exact amount to be paid in favor of each plaintiff (see supra at ¶4B(i)) with deduction for any set-off required (see supra at ¶4C); and

4E. Plaintiffs' counsel and defendant's counsel will seek to informally resolve any matters related to the calculation to be used to disburse monies from the "Short Judgment Fund" and will seek the assistance of the Court if matters cannot be resolved between the parties.

5. Commencing on May 15, 1996, monies shall be disbursed from the Short Judgment Account:

5A. Payments shall be made by checks drawn on the "Short Judgment Account" to each living plaintiff and to each deceased plaintiff's heirs or designated beneficiaries in a manner consistent with the BIA probate orders, see, supra at ¶4B;.

5B. Checks shall be sent to the last known ~~address of each living plaintiff or to an address~~ provided for a deceased plaintiff's heirs or designated beneficiaries by Registered or Certified Mail, Return Receipt Requested, by counsel for plaintiffs; and

5C. The U.S. Mail Return Receipt, executed by the recipient to whom the check was delivered, will be presumptive evidence of proper payment of the Short judgment entered by this Court.

6. At any time on or after May 15, 1996, plaintiffs' counsel shall be entitled to be paid the total amount of contingency attorneys fees from the Short Judgment Account consistent with the calculation agreed upon supra at ¶4.

7. On or before December 20, 1996, counsel for the plaintiffs shall submit to the Court a written report for its approval concerning the distributions of judgments hereunder, at which time the Court shall consider the entry of further orders directing further distribution of funds.

8. In carrying out the functions required by this Order or reasonably calculated to facilitate the accomplishment of its purpose, counsel for plaintiffs shall incur no legal duty to plaintiffs, their representatives, successors, or others, except as specifically stated in this Order or further Orders pertaining to these matters.

9. Moreover, in carrying out or reasonably facilitating the purposes of this Order, counsel for plaintiffs shall incur no liability to the United States or any other person, except as

specifically stated in this Order or further Orders pertaining to these matters.

10. This Court retains continuing jurisdiction over this matter and over all monies until disbursement (see supra at ¶5). No monies may be disbursed except pursuant to Order of this Court.

11. This Order may be amended or revised or modified, in any manner, at the request of either the plaintiffs or the defendant, for good cause shown.

IT IS SO ORDERED.

DATED:

December 21, 1995

Lawrence S. Margolis
Judge Lawrence S. Margolis