

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

DONALD H. CARLSON, WARREN)
HART, GERARD HASKINS,)
STEPHEN R. LIBBY, EARLY WEESE,)
and LYL A C. WEESE, Individually and)
as Class Representatives on Behalf of)
All Persons Similarly Situated,)
))
Plaintiffs,)
))
v.)
))
STATE OF ALASKA, COMMERCIAL)
FISHERIES ENTRY COMMISSION,)
))
Defendant.)
_____)

Case No. 3AN-84-05790 CI

ORDER FOR DISTRIBUTION OF UNCLAIMED REFUNDS

The court held oral argument on July 11, 2014, regarding the distribution of approximately \$1,934,054 in unclaimed refunds¹ that remain from a class action against Alaska’s Commercial Fisheries Entry Commission (CFEC). Having heard and considered the parties’ arguments, the court rules as follows:

- 1) Plaintiffs’ May 8, 2014 motion seeking to distribute the unclaimed refunds in the form of a price reduction to Alaska’s nonresident commercial fishing license and permit surcharges is GRANTED, *in part*. The motion is DENIED as it would apply to undeliverable and voided refund checks.

The class’s Amended Refund Plan asserts that the common fund established from the lawsuit settlement is owned by the class in aggregate

¹ “Unclaimed refunds” refers to both the Reserve Account and Refund Trust Account.

until individual members are issued a refund check.² Some members never sought a refund, but this fact did not cause their interest in the common fund to become property, such that it would be subject to the Alaska Uniform Unclaimed Property Act.³ Until a class member applied for a refund, they had no more than an expectation to a refund.⁴ These expectancy interests are not property. Because the deadline for refund applications was December 31, 2013, no new claims can be taken, no further checks will be issued, and the unclaimed refunds cannot become property subject to the abandoned property statute. Consequently, the class retains ownership of the unclaimed refunds, and it can distribute them to benefit its members.⁵ The class has chosen to do so by providing a price reduction in nonresident surcharges until the unclaimed refunds are spent.

The court is not persuaded that the distribution will provide the class an “underserved windfall.”⁶ Reducing the nonresident surcharges is directly related to the nature of the class action and to the class’s interests, and is reasonably certain to benefit class members—even those who did not submit a refund claim.⁷ The state argues that the abandoned property statute would secure the unclaimed refunds in escrow and allow as-yet-to-file members to submit claims in perpetuity.⁸ As an initial matter, the agreed upon claims deadline already expired. Closure of this timeworn lawsuit is desirable. Further, plaintiffs’ convincingly note that silent members neither

² Pls.’ Opp. State’s Mot. Disposition Unclaimed Refunds 2.

³ AS §§ 34.45.110-.780 (transferring certain abandoned property to state custodianship).

⁴ See *Pfeifer v. State*, 260 P.3d 1072, 1080-81 (Alaska 2011) (explaining that no more than an inchoate expectancy existed prior to the application for and granting of Medicaid benefits).

⁵ *Klier v. Elf Atochem N. Am., Inc.*, 658 F.3d 468, 474-75 (5th Cir. 2011) (“[A] *cy pres* distribution is designed to be a way for a court to put any unclaimed settlement funds to their ‘next best compensation use, e.g., for the aggregate, indirect, prospective benefit of the class.’”) (quoting *Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423, 436 (2d Cir. 2007)).

⁶ State’s Opp. Pls.’ Mot. Order Distributing Unclaimed Refund 1.

⁷ See *Nachshin v. AOL, LLC*, 663 F.3d 1034, 1039-40 (9th Cir. 2011).

⁸ State’s Opp. Mot. Distributing Unclaimed Refunds 4.

expected to be able to file claims after the deadline nor are they likely to do so.⁹ Applying the abandoned property statute to the unclaimed refunds would effectively deliver the common fund to the state with few to no conditions on its use.¹⁰ Where a satisfactory cy pres solution is available, it is favored over escheatment.¹¹ The class's distribution of the unclaimed refunds is satisfactory, and so preferable to the state's proposal.

- 2) For the reasons set forth above, defendant's May 2, 2014 motion to dispose of the unclaimed refunds pursuant to the Alaska Uniform Unclaimed Property Act is DENIED, *in part*. The motion is GRANTED only as it applies to undeliverable and voided checks. It follows from the discussion above that the handful of undeliverable or void checks which were issued to class members are property subject to the Alaska Uniform Unclaimed Property Act.¹² These checks should be disposed of in accordance with the statute.¹³
- 3) Plaintiffs' May 8, 2014 motion for routine administrative orders seeking to close the class administration is DENIED, *in part*. Pursuant to the partial grant of plaintiffs' motion for distribution, the class administrator must coordinate with the relevant state authority to obtain a list of persons who

⁹ In the first seven months of the refund process, an "unprecedented" 86.9 percent of the common fund had been paid out. Pls.' Mot. & Mem. Order Extending Refund Application Deadline Ex. 1, at 2. Further, both "[t]he State and the Trust Administrator have made every reasonable effort to notify class members who have not claimed their refunds." State's Mot. Disposition Unclaimed Refunds 2.

¹⁰ See AS § 34.45.370 (directing monies to the state's general fund while retaining a minimum \$100,000 trust fund with which to pay any future claims).

¹¹ *Nachshin*, 663 F.3d at 1039-40.

¹² AS § 34.45.760(11)(A)(i) (including "checks" within "intangible property"). See also *All Plaintiffs v. All Defendants*, 645 F.3d 329 (5th Cir. 2011) (holding that undeliverable checks from a class action settlement were property subject to unclaimed property laws); *State v. Highland Homes, Ltd.*, 417 S.W.3d 478 (Tex. Ct. App. 2012) (applying abandoned property statute to expired refund checks), *review granted* (Aug. 23, 2013).

¹³ AS §§ 34.45.280, .320 (concerning the submission of unclaimed property).

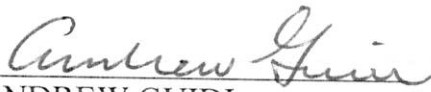
pay the nonresident commercial fishing license and permit surcharges. The class administrator will then provide these individuals with a refund for the difference between the fees for commercial fishing licenses and permits as applied to nonresidents over the same fees as applied to residents. The class administrator will advise the class and the court when the amount of the unclaimed refunds is near exhaustion. Apart from the instructions above, the motion is GRANTED as follows:

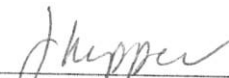
- a. The court adopts the class administrator's recommendations regarding claims acceptances and rejections, including the bar on claims received after April 15, 2014.
- b. The court authorizes the class administrator to maintain a hold-back balance for payments of the four claims submitted after December 31, 2013, and before April 15, 2014, because these claims caused no delay in the refund process.
- c. The court authorizes the class administrator to destroy paper records after three years and electronic copies after five years, starting from the date that the unclaimed refunds are exhausted.

ORDERED this 18th day of July, 2014, at Anchorage, Alaska.

The October 6, 2014 status hearing is VACATED as there does not seem to be any need for a status hearing at that time. Either party may request a future status hearing to review progress in distributing the unclaimed refunds.

I certify that on 7/21/14
a copy of the above was mailed to
each of the following at their
addresses of record:
L. Nelson / L. Domke / P. Hoffman


ANDREW GUIDI
Superior Court Judge


Jackie Kapper, Judicial Assistant