

## **CLASS COUNSEL'S PRESS RELEASE**

September 17, 2015

FOR IMMEDIATE RELEASE

### **TRIBES AND UNITED STATES SETTLE CLASS ACTION SUIT FOR \$940 MILLION**

A class of over 640 Indian Tribes and tribal organizations together with the United States today filed a joint motion in Federal District Court in Albuquerque, New Mexico for preliminary approval of a \$940 million settlement of a class action suit against the Government. The class action lawsuit, *Ramah Navajo Chapter v. Jewell*, No. 90-CV-0957 JAP/KBM, seeks damages for underpayments of contract support costs made by the Bureau of Indian Affairs (“BIA”) under the Indian Self-Determination and Education Assistance Act of 1975 (“ISDA”). The Ramah Navajo Chapter brought the suit in 1990, and was later joined by the Oglala Sioux Tribe and the Pueblo of Zuni as Class Representatives. The Class is represented by Class Counsel Michael P. Gross and Co-Class Counsel C. Bryant Rogers and Lloyd Miller.

Under the ISDA, Indian Tribes can choose to take over federal programs such as law enforcement, courts, land management, and job training that the BIA would otherwise provide itself for a tribal community. Doing so allows Tribes to provide services that are more responsive to tribal needs, policies and objectives. About one-half of the BIA’s programs are now administered by Tribes and tribal organizations under the ISDA.

To ensure that Tribes have the necessary resources to operate these federal programs, the ISDA requires that the BIA pay the Tribes’ contract support costs (“CSC”), which are essentially administrative overhead costs. However, the BIA has historically underpaid CSC requirements. This has typically forced Tribes to divert program money to cover the overhead and thereby reduced program funding to the disadvantage of tribal members.

In 1994, Congress began capping total annual appropriations for CSC payments at levels that did not provide enough funding for the BIA to pay all tribal contractors’ CSC needs. The government argued that these appropriation caps limited the Tribes’ rights to pursue damages for the underpayments. In 2012, the Supreme Court rejected this argument, and held the government liable for the underpayments. The current settlement was negotiated in the wake of that decision, and covers the 20 years when the caps were in effect, 1994 through 2013.

The proposed settlement, if approved, will be the fourth and final settlement in the lawsuit. The first and second settlements were monetary settlements that covered years prior to 1994 and totaled \$113 million. The third settlement in 2008 reformed the system for computing CSC requirements. The current settlement for an additional \$940 million will immediately provide much needed funding to Indian nations. In addition, the Supreme Court victory in this case has already resulted in Congress removing all caps on CSC appropriations starting last year.

As a result, since 2014 annual CSC payments to Tribes and tribal organizations have been boosted by over \$200 million dollars. In addition, the Supreme Court victory has led to hundreds of individual settlements of CSC claims against the U.S. Indian Health Service totaling several hundred million dollars. The hearing on the Joint Motion for Preliminary Approval is expected to be held at the United States Courthouse, 421 Gold Avenue, SW, Albuquerque, New Mexico 87103, on September 23, 2015, at 11:00 a.m., Honorable James A. Parker presiding.

The Indian Self-Determination policy was first proposed by President Richard M. Nixon in a Message to Congress on Indian Affairs in July 1970. He was concerned that the then existing policy of forced termination of Federal recognition of tribes deemed “ready to become full Americans” had caused tremendous hardship, violated Indian treaties, and breached moral obligations of long standing to America’s first inhabitants. A bipartisan group of Senators spear-headed by Senator Henry “Scoop” Jackson of Washington accepted the President’s call, introducing the legislation that was eventually enacted as Public Law 93-638.

Self-determination has generally been regarded as the most successful Indian policy in United States history. It reversed the disastrous policy of forced termination and recognized that Tribes were much more qualified to design and operate programs for the benefit of their members than a federal bureaucracy. But before today, the Act had not reached its full potential because, without full funding of contract support costs, contracted programs could not be operated at the same level as those run by the agencies. The Class’s Supreme Court victory paved the way for full CSC funding for the future and this settlement ensures that past damages for the underfunding are compensated. Together, they represent important landmarks leading the way to fulfillment of the full promise of the ISDA.

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