

Ramah Navajo Chapter, Oglala Sioux Tribe & Pueblo of Zuni v. Jewell

Class Counsel Question and Answer Fact Sheet (Sept. 17, 2015)

What is the background to the new settlement?

The *Ramah* litigation is a class action lawsuit against the BIA over unpaid contract support costs. Two earlier settlements in the case generally dealt with unpaid contract support costs between the years 1989 and 1993. A third settlement in 2008 made adjustments to the system for negotiating indirect cost rates. Earlier settlements left unresolved claims over unpaid contract support costs suffered during the period 1994 to the present.

Why was 1994 a significant year?

Since 1994, Congress has capped the maximum appropriation the BIA could spend on contract support cost payments. As a result, the BIA has long asserted that it could not be held liable for any resulting underpayments.

What happened in the 2012 United States Supreme Court decision?

In 2012, the United States Supreme Court held the government liable for underpayments that occurred in and after 1994. The Court explained that limited agency appropriations did not excuse the BIA's duty to pay each tribal contractor in full.

What does the new settlement do?

The new settlement filed on September 17, 2015 resolves all claims over unpaid contract support costs suffered during the years 1994 through 2013.

Does the new settlement cover 2014 and 2015?

No, the new settlement does not cover 2014 and 2015 because in those years Congress has appropriated sufficient funds for the BIA to fully pay tribal contract support cost requirements.

How much is the settlement amount?

The settlement is \$940,000,000. Future interest on this amount will begin accruing once the federal court enters a final judgment approving the settlement.

What is included and what is excluded from the settlement?

The settlement generally resolves all past claims involving contract support cost underpayments where the underpayment was caused by an agency-wide regulation, policy or practice. But, it does not settle certain claims that are unique to a particular tribal contractor.

The settlement also specifically excludes one category of contract support cost claims: claims for unpaid startup costs or preaward costs.

How will the settlement amount be distributed?

The settlement agreement includes a detailed table showing the share of the settlement to be paid to each Tribe or tribal organization that contracted for some or all of the 20 years covered by the settlement. These pre-assigned shares were calculated by examining the government's records of contract support cost payments, combined with the information the government and the tribal plaintiffs secured in the course of doing a major statistical sampling project. A special Distribution Appendix that is part of the Final Settlement Agreement describes in detail how the percentage shares were computed. Without repeating that discussion here, it would generally be fair to say that the larger the CSC payments that were made to tribal contractors over the years, the larger the share of the settlement that is allocated to those contractors. In addition, the Distribution Appendix provides a minimum payment of \$8,000 for each year that a tribal contractor had a contract with the BIA.

What is the process for securing a share of the settlement?

Each tribal contractor covered by the settlement will receive a Claim Form. The Claim Form will show the Tribe's percentage share of the settlement and the resulting amount computed for that Tribe from the funds on hand. The Form will be prepared to comply with the Contract Disputes Act, and it will have to be executed by tribal leadership and returned to the Settlement Administrator.

What deductions will be made from the settlement before the settlement amount is distributed?

Deductions will include funds for a "Reserve Account" to deal with unexpected contingencies, the costs of implementing the settlement, and funds covering the attorneys' fees and reimbursable legal expenses to be awarded by the court.

How are attorneys' fees being handled?

As is typical in class action settlements, the case was handled without the payment of any attorneys' fees—that is, it was handled on a "contingent fee" basis. As is also typical in such cases, the attorneys' fees that will now be awarded will be paid out of the overall settlement amount, together with litigation costs. All such amounts are subject to court approval. The settlement agreement states that the tribal attorneys will seek a fee of 8.5% of the settlement amount, and it also states that the government "agree[s] that an 8.5 percent fee is fair and reasonable and support[s]" this fee award. The federal court will need to review and approve the award of fees and the reimbursement of costs. The attorneys in the case are filing a separate application for an award of fees and costs which will be posted on the class website along with all other settlement papers.

Is there any provision for additional compensation to be paid certain Tribes?

Yes, the settlement agreement provides for reimbursing costs incurred by those Tribes that were selected and participated in the sampling process for the time they spent participating in that process. The agreement also provides for enhancing by 20% the shares that would otherwise be computed for the Ramah, Oglala and Zuni Tribes, in recognition of the considerable work these three Tribes did over the years as the representatives of the Class.

Who will supervise the settlement?

The actual distribution of funds will be handled by a company to be selected as the “Settlement Administrator.” This company has not yet been selected. The Settlement Administrator’s work will be supervised by a Class Monitor. Both the Settlement Administrator and the Class Monitor will be required to report all of their work to the Court.

How does the Treasury Offset Program (TOP) figure into the settlement?

The settlement agreement notes that if a tribal claimant owes money to the United States, the Treasury will apply that debt to reduce that contractor’s settlement amount. Any amount left after the offset of the debt will then be released by Treasury for payment to the tribal contractor.

Is there any circumstance under which the settlement could be terminated?

Yes, the settlement could be terminated in one unusual circumstance: if the Court permits at least 15 tribal contractors to opt out of the settlement, and if those 15 tribal contractors’ collective share of the settlement exceeds 15% of the total settlement amount. Even if this threshold is not reached, the government will retain any funds that would have been paid to a Tribe that is allowed to opt out of the settlement.

Who can opt out of the settlement?

Most members of the Class previously had two opportunities to opt out of the *Ramah* class action lawsuit. For this reason, the proposed settlement only confers a right to opt-out of this last settlement on newly-contracting Tribes—that is, tribal contractors that first started contracting with the BIA after March 27, 2002. (Those contractors never before had a chance to consider whether to stay in or opt out of the case.)

What happens now that the settlement agreement has been filed in court?

The federal court will first consider whether to preliminarily approve the proposed settlement. This could take a few days or a few weeks, and is entirely in the hands of New Mexico Federal Judge Parker. Judge Parker has scheduled a September 23 hearing on the preliminary approval issue. The hearing is open to the public.

Next, if the settlement is preliminarily approved, a class notice will be sent to all known class members. The notice will also be published in at least one national newspaper focused on

providing news to Indian country, on the Class website at <rncsettlement.com>, and on the BIA's website. The notice will give class members 45 days to review the settlement (as well as the request for attorney fees) and to offer objections or comments.

Once the notice period expires, Judge Parker will hold a hearing to consider whether to give final approval to the settlement and to consider the fee application. Then, Judge Parker will write an opinion and order explaining his decision on both issues and addressing any objections which may have been filed during the class notice period.

If Judge Parker gives final approval to the settlement, the process for transferring the settlement funds from the Treasury to the Class bank account will begin sixty days after the order giving final approval. At that point, the actual distribution process will begin, as one of the first steps, the Settlement Administrator to send claim forms to all class members.

If any class member who objects to the settlement chooses to appeal Judge Parker's approval of the settlement, the whole process could be delayed until resolution of the appeal. Any such appeal could take a year or more.

When is it projected that actual payments will begin?

Even under the most favorable scenario, the process of sending out claims forms and the ensuing distribution of funds will not occur until well into 2016. Once that process is underway, it will likely consume all of 2016 until the very last sums are paid out.

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