

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

**Class Counsel Question and Answer Fact Sheet  
(October 2, 2015)**

**BASICS OF THE SETTLEMENT**

**How much is the settlement amount?**

The settlement is \$940,000,000. This money will become available only upon the Court's final approval of the settlement. Future interest on this amount will begin accruing once the federal court enters a final judgment approving the settlement.

**Who is eligible to share in the settlement?**

Class Members eligible to share in the settlement are all Indian Tribes and tribal organizations that have contracted or entered into self-governance funding agreements with the BIA or the Office of Self Governance under the Indian Self-Determination Act (Public Law 93-638) during any year from fiscal years 1994 through 2013.

**When is it projected that actual payments will begin?**

Under the most favorable scenario, the Settlement Administrator will begin sending out Claim Forms to Class Members in April or May 2016. Once that process is underway, payments should occur on a rolling basis and will likely consume the remainder of 2016. Sending in the properly-signed claim form is the only requirement for a Class Member to receive payment.

**Where can the Final Settlement Agreement be found?**

The Final Settlement Agreement is posted on the Ramah Class Action website <[www.rncsettlement.com](http://www.rncsettlement.com)>, along with a table showing the estimated amount that each Class Member will receive, Class Counsel's application for attorneys' fees, and many other relevant documents.

**BACKGROUND**

**What is the background to this 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.

## **KEY ELEMENTS OF THE SETTLEMENT**

### **What does the new settlement do?**

The new settlement filed on September 17, 2015, resolves claims against the BIA for unpaid contract support costs during the years 1994 through 2013.

### **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 pre-award costs.

### **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.

## **DISTRIBUTION OF THE \$940 MILLION SETTLEMENT AMOUNT**

### **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 obtaining a share of the settlement?**

Each Class Member will receive a Claim Form from the Settlement Administrator. The Claim Form will show the Class Member's percentage share of the settlement and the resulting amount computed for that Member from the net settlement amount. 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 \$940 million settlement amount before it is distributed?**

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

**How will attorneys' fees be handled?**

The attorneys in this class action have not been paid for their work in achieving this settlement. As in most class actions, they are paid only on success, that is, on a "contingent fee" basis. The Court will determine the amount of attorneys' fees and reimbursable expenses, which will be paid out of the overall settlement amount. 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. On September 29 the class attorneys filed an application for an award of fees and costs posted on the class website. The Court will consider this application at the January 20, 2016, Fairness Hearing.

**Is there any provision for additional compensation to be paid certain Class Members?**

Yes, the settlement agreement provides for reimbursing Class Members selected for and participating in the sampling process for their reasonable costs of participation. The agreement also provides for enhancing by 20% the shares that would otherwise be computed for the Ramah Navajo Chapter, Oglala Sioux Tribe and Pueblo of Zuni, in recognition of the considerable work these three Class Representatives did to achieve this settlement

**Who will supervise the settlement?**

The actual distribution of funds will be handled by a firm to be selected as the "Settlement Administrator." This firm has not yet been selected. The Settlement Administrator's work will be supervised by Class Counsel and checked by a Class Monitor. Both the Settlement Administrator and the Class Monitor will be required to report on all of their work to the Court. The Court must approve all payments.

## **How does the Treasury Offset Program figure into the settlement?**

The settlement agreement notes that if a tribal claimant owes money to the United States, the Treasury Department 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.

## **OPT OUT RIGHTS**

### **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 confers a right to opt out of this last settlement only on newly-contracting Class Members—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.) Class Members that choose to opt out will not receive any share of the settlement.

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

Yes, the government has the discretion to terminate the settlement 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 Class Member allowed to opt out of the settlement.

## **COURT PROCEDURE FOR APPROVING THE SETTLEMENT**

### **Has the settlement received preliminary approval?**

Yes. On September 23, Federal Judge Parker held a hearing in open court to consider whether to give preliminary approval to the proposed settlement. Both sides to the litigation explained the settlement and answered Judge Parker's questions. On September 30, Judge Parker issued a brief order granting preliminary approval. The Order said that, in the Judge's opinion, the settlement "was fairly and honestly negotiated in arm's length negotiations;" that there are "serious questions of law and fact . . . placing the ultimate outcome of the litigation in doubt;" and "the value of the immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation."

### **Now what happens?**

Judge Parker ordered that a Class Notice be mailed to all known class members by October 5. He also approved a summary of the Notice for publication in at least one national newspaper focused on providing news to Indian country, on the Class website at <[www.rncsettlement.com](http://www.rncsettlement.com)>, and on websites maintained by the BIA and the Interior

Department's Interior Business Center. The BIA will also mail and e-mail the Notice to Class Members participating in the settlement.

**What is the significance of the Class Notice?**

The Notice gives all Class Members 45 days to review the settlement and the pending application for attorneys' fees. The Notice explains the key terms of the settlement and explains how to contact Class Counsel with questions or concerns, and how to file objections (if any). If a Tribe or tribal organization has no objection to the settlement, it does not need to take any action at this time.

**What happens after the 45-day period specified in the Notice?**

Once the 45-day period expires, Judge Parker will receive additional filings from Class Counsel and from the Government. Then, on January 20, 2016, Judge Parker will hold a Fairness Hearing to consider the settlement, the fee application, and any objections. After the Fairness Hearing, Judge Parker will decide whether to give final approval to the settlement and, if the settlement is approved, to the attorneys' fees request.

**What happens if the settlement is finally approved?**

If Judge Parker approves the settlement, 60 days after his Order the Treasury Department must transfer the settlement funds to the Class. This could take anywhere from several days to several weeks. Once the 60-day period is over, the actual distribution process will also begin. The first step in that process will be for the Settlement Administrator to send claim forms to all class members. These claim forms **MUST** be signed and returned to receive payment.

**What could delay this timeline?**

The timeline could be delayed by a number of events, including (among other possibilities): (1) a decision by Judge Parker rejecting the settlement (in which case the parties will have to explore whether to seek to negotiate a new settlement or whether to resume the litigation instead); (2) a class member appeal to the Tenth Circuit challenging Judge Parker's approval of the settlement; or (3) delays in the transfer of funds from Treasury.

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