

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

Class Counsel Question and Answer Fact Sheet

UPDATE: August 3, 2016

The Government has now completed payment to the Class of the full settlement amount, \$940 million plus \$7,965,659.39 in post-judgment interest. We are waiting for the Government to provide information about the impact of the Treasury Offset Program on the transferred funds.

Once Treasury provides that information, Class Counsel will ask for the Court's approval of the Claim Form dollar amounts for each Class Member.

We hope by mid- to late-August to have received that approval. Once that approval is obtained, the Settlement Administrator will send out individualized Claim Forms to each Class Member.

The Claim Forms will contain a specific dollar share for each Class Member, based on the percentage shares in the Final Settlement Agreement, as modified by Court order when additional Class Members were discovered.

The Claim Form **MUST** be signed and returned to the Settlement Administrator before payment is made.

Class Counsel will update the Class website <WWW.RNCSETTLEMENT.COM> as these developments occur. Further inquiries may be directed to any of the Class Counsel listed on the website.

BASICS OF THE SETTLEMENT

When is the settlement going to be paid out to Class Members?

The earliest individual Class Members will receive payments is in September 2016, although factors beyond our control could change this timeframe.

What needs to happen before an individual Class Member gets its share of the settlement?

Class Counsel needs to receive information from Treasury to finalize payment amounts. Once Treasury provides that information, Class Counsel will ask the Court to authorize the Settlement Administrator to send out Claim Forms. Once the Court provides that authorization, the Settlement Administrator will send each Class Member a Claim Form showing the dollar amount of its share of the net settlement amount, as calculated under the Court-approved settlement plan. This form must be signed and returned before that Class Member receives its share.

Has the federal court approved the settlement, including deductions for attorneys' fees and costs?

Yes. On February 23, 2016, the federal court issued a lengthy opinion and a final judgment approving all aspects of the proposed settlement. (On March 2 the court issued a corrected opinion, correcting minor errors in the original opinion.)

When did the settlement become final?

The settlement became final on April 25, 2016.

How much is the settlement amount?

The settlement is \$940,000,000, plus \$7,965,659.39 in accrued post-judgment interest from February 23, 2016. The final payment from the U.S. Treasury was received in the Class bank account on July 11.

When will the Settlement Administrator send out Claim Forms to Class Members?

The Settlement Administrator hopes to send Claim Forms to Class Members within 10 days after the Court's authorization to send them..

Who is eligible to share in the settlement?

Class Members eligible to share in the settlement are the 699 Indian Tribes and tribal organizations that are listed in the revised Distribution Appendix approved by the Court on December 17, 2015. These are all tribes and tribal organizations that 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 fiscal year from 1994 through 2013. These entities are listed on the Ramah Class Action website, at WWW.RNCSETTLEMENT.COM/_DEVELOPMENTS/151216%20JT%20RESPONSE%20USET%20OBJ%20EXH%20B%20NEW%20DISTRIB%20APPX.PDF.

Where can the Final Settlement Agreement be found?

The Final Settlement Agreement, the table of Class Members' percentage shares and estimated dollar shares, the application for attorneys' fees, and other important documents are posted on the Class Website at WWW.RNCSETTLEMENT.COM/FINALSETTLEMENT.HTML.

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 for unpaid contract support costs from 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 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 that capped “not to exceed” agency appropriations in and after 1994 did not relieve the government of its contract obligation to pay full contract support costs to Indian Self-Determination Act contractors.

Why is this case significant?

Congress wanted tribes to be able to control and operate their own programs and services under contract without diminishing the quantity or quality of the services. Contract support costs ensure that tribes and their organizations contracting under the Indian Self-Determination Act can operate their programs and services in parity with those operated by the Federal Government.

How much in contract support costs did the BIA pay to tribes and tribal organizations over the years 1994-2013?

The BIA paid a total of approximately \$2.4 billion for those years.

What has been the impact of the Supreme Court’s ruling in the *Ramah* case on subsequent congressional appropriations?

In direct response to the *Ramah* decision, Congress has increased appropriations necessary to pay full contract support costs. For fiscal years 2014, 2015 and 2016, the increased appropriations for Interior and HHS contract support cost payments to Tribes has totalled approximately \$740 million.

KEY ELEMENTS OF THE SETTLEMENT

What does the settlement do?

The settlement 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, 2015 and 2016?

No. The new settlement does not cover 2014, 2015 and 2016. In these years Congress appropriated sufficient funds for the BIA to pay tribal contract support cost requirements in full.

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 any portion of the 20 years covered by the settlement. These 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 during 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, and sets forth each Class member's share percentage. In general, the larger the contract support cost payments made to a tribal contractor over the years, the larger the share of the settlement allocated to that contractor. 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. (On December 17, 2015, the federal court made slight modifications to the pre-determined percentages to accommodate 55 new Class Members, in conformity with section VIII.D.1 of the Final Settlement Agreement.)

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 dollar 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 reimbursable legal expenses, the costs of implementing the settlement, and unexpected contingencies, and for the court-awarded attorneys' fees.

How are attorneys' fees handled?

As in most class actions, the attorneys for the Class are paid only on success, that is, on a "contingent fee" basis. The Class attorneys' application for an award of fees and costs is posted on the Class website, at <WWW.RNCSETTLEMENT.COM/CLASSCOUNSELAPP.HTML>. The Court considered this application at a January 20, 2016, Fairness Hearing, and approved the application by Order entered February 23, 2016. The Court approved a fee of 8.5% of the settlement amount. The government in the Settlement Agreement agreed "that an 8.5 percent fee is fair and reasonable and support[ed]" the proposed fee.

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 KCC/Gilardi & Co., the court-approved Settlement Administrator. The Settlement Administrator's work will be supervised by Class Counsel and checked by Moss Adams, LLP, the accounting firm that is the Court-approved Class Monitor. Both the Settlement Administrator and the Class Monitor are required to report on all of their work to the Court. The Court will approve all payments to Class Members before they are made.

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 collect that debt from the 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, after deduction of its share of the Reserve Account, costs, and attorneys' fees.

Are there any restrictions on how a tribe or tribal organization may spend its allocation from the settlement fund?

No. There are no special restrictions, and the settlement funds can be spent by a tribe or tribal organization in the same manner as any other unrestricted tribal funds.

OPT OUT RIGHTS

Did any Class Member opt out of the settlement?

No Class Member opted out of the settlement.

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

No. The settlement agreement allowed the government to terminate the settlement in one unusual circumstance: if the Court permitted at least 15 tribal contractors to opt out of the settlement, and if those 15 tribal contractors' collective share of the settlement exceeded 15% of the total settlement amount. But no Class Members opted out of the settlement.

COURT APPROVAL OF THE SETTLEMENT

Was Notice of the settlement provided to Class Members?

Yes. Class Counsel mailed a Class Notice to all known Class Members. A summary of the Notice was also published in Indian Country Today, on the Class website, at <WWW.RNCSETTLEMENT.COM/CLASSNOTICES.HTML>, and on websites maintained by the BIA and the Interior Department's Interior Business Center. The BIA also mailed and e-mailed the Notice to Class Members eligible to participate in the settlement.

Did anyone object to any aspect of the Settlement?

No.

Did anyone ask to be added as a Class member?

Yes, one entity objected to being excluded from the settlement. This entity received no contract support costs during any of the relevant years and so was not identified as a Class Member. Based upon this objection, the parties discovered 54 other contractors that had received no contract support costs, and asked the Court to include these additional contractors as Class Members. The Court, by Order entered December 17, 2015, approved this request. The revised Distribution Appendix showing these additional Class Members is posted on the Class website, at <WWW.RNCSETTLEMENT.COM/_DEVELOPMENTS/151216%20JT%20RESPONSE%20USET%20OBJ%20EXH%20B%20NEW%20DISTRIB%20APPX.PDF>.

Can interested entities still request to be added as Class Members?

No. The deadline to request to be added as a Class Member expired in October 2015.

PERMISSIBLE USE OF SETTLEMENT FUNDS

How may a Class Member use its proceeds from the Settlement?

Funds paid to Class Members under this settlement may be used for any purpose or expenditure that the Class Member would otherwise be permitted to make under its governing documents and under applicable Federal, Tribal, or (possibly) State law.

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