

THE DEPARTMENT OF INTERIOR
BOARD OF CONTRACT APPEALS

ARCTIC SLOPE NATIVE ASSOCIATION,
LTD.

Appellant,

MICHAEL O. LEAVITT, SECRETARY,
U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES; CHARLES GRIM,
DIRECTOR, INDIAN HEALTH SERVICE;
UNITED STATES OF AMERICA

Appellees.

IBCA Nos. 4794-4803/06

ISDA Contract No. 243-96-6025

ISDA Compact No. 58G980054

Answer

The Indian Health Service (IHS) answers the Complaint as follows:

First Defense

IHS has no further obligation to pay contract support costs (CSC) to Arctic Slope Native Association, LTD (ASNA) under Contract No. 243-96-6025, which is referenced in the Complaint. IHS and ASNA entered into annual funding agreements (AFA) which established the amount of contract support costs (CSC) provided to ASNA under this contract. IHS awarded to ASNA \$504,255 in CSC for fiscal year 1996 (FY96) and \$665,560 in CSC for FY97.

Second Defense

IHS has no further obligation to pay CSC for FY98-FY00 to ASNA under Compact No. 58G980054, which is referenced in the Complaint. IHS and ASNA entered into AFAs which established the amount of CSC provided to ASNA under this contract. IHS awarded to ASNA \$2,136,833 in CSC for in FY98, \$1,293,681 in CSC for FY99, and \$3,058,591 in CSC for FY00.

Third Defense

ASNA's claims are barred by the defense of account stated.

Fourth Defense

ASNA's purported claims for FY96 and FY97 under Contract No. 243-96-6025 are barred by the Contract Disputes Act's statute of limitation, 41 U.S.C. § 605(a).

Fifth Defense

ASNA's purported claims for FY98 under Compact No. 58G980054 are barred by the Contract Disputes Act's statute of limitation, 41 U.S.C. § 605(a).

Sixth Defense

The Complaint fails to state a claim upon which relief may be granted.

Seventh Defense

The Board lacks subject matter jurisdiction over ASNA's claims challenging the amount of CSC it received in the years at issue in this case because its claims are based on a statute and not on any specific contractual obligation.

Eighth Defense

The Board lacks subject matter jurisdiction over ASNA's claims challenging the amount of CSC it received in the years at issue in this case because its claims are still before the IHS Contracting Officer for decision.

Ninth Defense

The Board lacks subject matter jurisdiction over Defendants Michael O. Leavitt and Charles W. Grim because there is no applicable waiver of sovereign immunity.

IHS answers the numbered paragraphs of the Complaint as follows:

1. Paragraph 1 contains ASNA's characterization of this action to which no response is required, but insofar as one is deemed required, denied.

2. The first sentence contains ASNA's characterization of this action to which no response is required, but insofar as one is deemed required, denied. Subparagraph (a) contains conclusions of law and not statements of fact to which an answer is required. Subparagraph (b) contains conclusions of law and not statements of fact to which an answer is required. To the extent an answer may be deemed to be required for allegations contained in subparagraphs (a) and (b), they are denied, except that IHS refers the Board to Ramah Navajo Chapter v. Lujan, 112 F.3d 1455 (10th Cir. 1997), for a full and accurate statement of its contents.

3. Paragraph 3 contains allegations regarding the jurisdiction of the Board to which no response is required, but insofar as one is deemed required, denied.

4. Admits.

5. Admits.

6. Admits the allegations in paragraph 6 to the extent supported by the cited agreements, which are the best evidence of their contents, otherwise denies the allegations in paragraph 6.

7. Paragraph 7 contains ASNA's characterization and description of the Indian Self-Determination Act (ISDA) and its requirements to which no response is required, but insofar as one is deemed required, denied, except that the Board is respectfully referred to the ISDA for an accurate and complete statement of its contents.

8. Paragraph 8 contains ASNA's characterization and description of the ISDA and its requirements to which no response is required, but insofar as one is deemed required, denied,

except that the Board is respectfully referred to the ISDA for an accurate and complete statement of its contents.

9. Paragraph 9 contains ASNA's characterization and description of the ISDA and its requirements to which no response is required, but insofar as one is deemed required, denied, except that the Board is respectfully referred to the ISDA for an accurate and complete statement of its contents.

10. IHS is without knowledge or information sufficient to form a belief as to truth of the allegation "materially identical." However, paragraph 10 consists of conclusions of law to which no response is required, but insofar as one is deemed required, denied, except that the Board is respectfully referred to the ISDA for an accurate and complete statement of its contents.

11. The first sentence of paragraph 11 contains ASNA's characterization and description of the ISDA and its requirements to which no response is required, but insofar as one is deemed required, denied, except that the Board is respectfully referred to the ISDA for an accurate and complete statement of its contents. The second sentence is denied except to admit that the Supreme Court construed a specific contract that is not the subject of this appeal under several provisions of Title I of the ISDA, including statutory provisions referenced by ASNA, in Cherokee Nation v. Leavitt, 543 U.S. 631 (2005).

12. Paragraph 12 contains ASNA's characterization and description of the ISDA and its requirements to which no response is required. To the extent an answer may be deemed to be required for the allegations contained in paragraph 13, they are denied, except that the Board is respectfully referred to the ISDA for an accurate and complete statement of its contents.

13. Paragraph 13 consists of conclusions of law to which no response is required, but

insofar as one is deemed required, denied, except that IHS refers the Board to Cherokee Nation v. Leavitt, 543 U.S. 631 (2005), for a full and accurate statement of its contents.

14. Paragraph 14 consists of conclusions of law to which no response is required, but insofar as one is deemed required, denied.

15. Paragraph 15 consists of ASNA's characterization of its claims to which no answer is required, but insofar as one is deemed required, denied, except to admit that ASNA submitted letters purporting to be contract claims in 2005.

16. Admits.

17. Admits.

18. Admits.

19. Paragraph 19 consists of conclusions of law to which no response is required, but insofar as one is deemed required, denied

20. IHS's answers to paragraphs 1 through 20 are restated and incorporated herein.

21. Paragraph 21 consists of conclusions of law to which no response is required, but insofar as one is deemed required, denied.

22. Paragraph 22 consists of conclusions of law and ASNA's characterization of its claims to which no response is required, but insofar as one is deemed required, denied, except to admit that ASNA submitted letters purporting to be contract claims in 2005.

23. Paragraph 23 consists of conclusions of law to which no response is required, but insofar as one is deemed required, denied.

24. Paragraph 24 consists of conclusions of law to which no response is required, but insofar as one is deemed required, denied.

25. Paragraph 25 consists of conclusions of law to which no response is required, but insofar as one is deemed required, denied.

26. Paragraph 26 contains ASNA's characterization of its claims and action to which no response is required, but insofar as one is deemed required, denied.

27. IHS's answers to paragraphs 1 through 26 are restated and incorporated herein.

28. The first sentence contains conclusions of law to which no response is required, but insofar as one is deemed required, denied. The second sentence contains conclusions of law to which no response is required, but insofar as one is deemed required, denied. The third sentence contains conclusions of law to which no response is required, but insofar as one is deemed required, denied, except that the Board is referred to OMB Circular A-122 for a full and complete statement of its contents. IHS notes that ASNA had no final indirect cost rate assigned by its cognizant agency in the years FY96, FY97, FY98, and FY99 for which it has submitted claims. IHS also denies the allegations in the fourth sentence. The fifth sentence consists of conclusions of law to which no response is required, but insofar as one is deemed required, denied.

29. Paragraph 29 contains ASNA's characterization of its claims and action to which no response is required, but insofar as one is deemed required, denied.

30. Paragraph 30 consists of conclusions of law to which no response is required, but insofar as one is deemed required, denied.

31. Paragraph 31 consists of conclusions of law to which no response is required, but insofar as one is deemed required, denied.

32. Paragraph 32 consists of conclusions of law to which no response is required, but

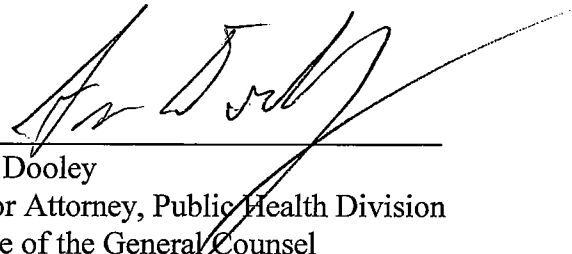
insofar as one is deemed required, denied.

33. Paragraph 33 contains ASNA's characterization of its claims and action to which no response is required, but insofar as one is deemed required, denied.

The remainder of the Complaint consists of ASNA's Prayer for Relief to which no answer is required, to the extent an answer may be deemed to be required, ASNA's Prayer for Relief is denied. Further, IHS specifically denies all allegations in the Complaint not otherwise answered herein.

Respectfully submitted,

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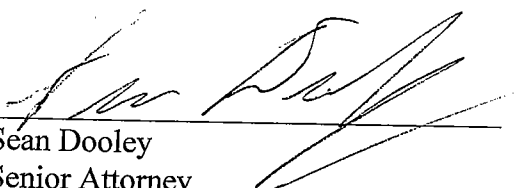
Dated: September 22, 2006

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Answer was sent via FedEx this 22 day of September 2006 to:

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