



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the
General Counsel

Region VI
1301 Young Street, Suite 1138
Dallas, Texas, 75202

January 2, 2007

Candida S. Steel
Administrative Judge
Civilian Board of Contract Appeals
1800 M Street, N.W.
6th Floor
Washington, DC 20036

Re: Choctaw Nation of Oklahoma v. Leavitt, et al.;
IBCA 4847-2006 thru IBCA 4855-2006

Dear Judge Steel:

Enclosed please find (1) an original and one copy of the Government's Answer and (2) a diskette containing an electronic version of the documents submitted for filing.

If you have any questions, please do not hesitate to call at (214) 767-9227.

Sincerely,

A handwritten signature in black ink that reads "Shara Michalka".

Shara Michalka

Enclosures

cc: Lloyd Benton Miller
Donald J. Simon

UNITED STATES DEPARTMENT OF THE INTERIOR
INTERIOR BOARD OF CONTRACT APPEALS

CHOCTAW NATION,)	
Appellant,)	
)	Docket Nos. IBCA 4847-4855/2006
vs.)	
)	
MICHAEL O. LEAVITT, SECRETARY,)	ISDA Compact No. 60G950037
U.S. DEPARTMENT OF HEALTH AND)	(eff. Oct. 1, 1996 to the present)
HUMAN SERVICES; CHARLES GRIM,)	
DIRECTOR, INDIAN HEALTH SERVICE;)	
UNITED STATES OF AMERICA,)	
Appellees.)	

ANSWER

Pursuant to the Special Rules of Practice Before the Interior Board of Contract Appeals, Section 4.107(b), Appellees, Michael O. Leavitt, Secretary, U.S. Department of Health and Human Services; Charles Grim, Director, Indian Health Service; and the United States of America (hereinafter collectively referred to as the Government), hereby answers the Complaint and assert affirmative defenses as follows:

First Defense

The Government has no further obligation to pay CSC for FY97-FY05 to Appellant under Compact No.60G950037, which is referenced in the Complaint. The Government and Appellant entered into AFAs which established the amount of CSC provided to Appellant under this contract. The Government awarded to Appellant \$3,856,281 in CSC for in FY97, \$4,416,916 in CSC for in FY98, \$3,990,743 in CSC for FY99, \$7,333,381 in CSC for FY00, \$7,714,331 in CSC for in FY01, \$7,713,264 in CSC for FY02, \$7,728,691 in CSC for FY03, \$7,713,264 in CSC for in FY04, and \$7,576,353 in CSC for FY05.

Second Defense

Appellant's claims are barred by the defense of account stated or defense of satisfaction.

Third Defense

Appellant's purported claims for FY97 and FY98 under Compact No. 60G950037 are barred by the Contract Disputes Act's statute of limitation, 41 U.S.C. § 605(a).

Forth Defense

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

Fifth Defense

The Board lacks subject matter jurisdiction over Appellant'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.

Sixth 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.

The Government answers the numbered paragraphs of the Complaint as follows:

1. Paragraph 1 contains Appellant's characterization of this action to which no response is required, but insofar as one is deemed required, denied, except that the Government respectfully refers the Board to the full text of the Indian Self-Determination and Education Assistance Act (ISDA) and Cherokee v. Leavitt, 543 U.S. 631 (2005) for a full and complete statement of their contents.

2. The first sentence contains Appellant'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 the Government refers the Board to the full text of 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 the first and second sentences. The Government admits that the third sentence describes how Appellant uses the terms “Secretary,” “Director,” and “IHS.” The Government denies that the Secretary of the Department of Health and Human Services, the Director of the Indian Health Service, and the Indian Health Service are the same or otherwise “interchangeable.”

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 Appellant’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 full text of the ISDA for an accurate and complete statement of its contents.

8. Paragraph 8 contains Appellant’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 full text of the ISDA for an accurate and complete statement of its contents.

9. The Government is without knowledge or information sufficient to form a belief as to truth of the allegation “materially identical.” However, paragraph 9 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 full text of the ISDA for an accurate and complete statement of its contents.

10. The first sentence of paragraph 10 contains Appellant’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 full text of 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 Appellant, in Cherokee Nation v. Leavitt, 543 U.S. 631 (2005). The Government respectfully refers the Board to the full text of Cherokee v. Leavitt, 543 U.S. 631 (2005) for a full and complete statement of its contents.

11. Paragraph 11 contains Appellant’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 11, they are denied, except that the Board is respectfully referred to the full text of the ISDA for an accurate and complete statement of its contents.

12. Paragraph 12 consists of conclusions of law to which no response is required, but insofar as one is deemed required, denied, except that the Government refers the Board to the full text of Cherokee Nation v. Leavitt, 543 U.S. 631 (2005), for a full and accurate statement of its contents.

13. Paragraph 13 consists of Appellant's conclusions which no response is required, but insofar as one is deemed required, denied.

14. Paragraph 14 consists of conclusions of law to which no response is required, but insofar as one is deemed required, denied, except that the Government refers the Board to the full text of the ISDA and Cherokee Nation v. Leavitt, 543 U.S. 631 (2005), for a full and accurate statement of their contents.

15. Paragraph 15 contains Appellant's characterization of actions to which no answer is required, but insofar as one is deemed required, denied.

16. Paragraph 16 consists of Appellant's characterization of its claims to which no answer is required, but insofar as one is deemed required, denied, except to admit that Appellant submitted letters purporting to be contract claims in 2005. The Government refers the Board to the full text of Ramah Navajo Chapter v. Lujan, 112 F.3d 1455 (10th Cir. 1997), for a full and accurate statement of its contents.

17. Admits.

18. Admits.

19. Admits.

20. Admits.

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

22. The Government's answers to paragraphs 1 through 21 are restated and incorporated herein.

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 Appellant's characterization of its claims to which no answer is required, but insofar as one is deemed required, denied.

25. Paragraph 25 consists of conclusions of law and Appellant's characterization of its claims to which no response is required, but insofar as one is deemed required, denied, except to admit that Appellant submitted letters purporting to be contract claims in 2005.

26. Paragraph 26 consists of conclusions of law to which no response is required, but insofar as one is deemed required, denied.

27. Paragraph 27 consists of conclusions of law to which no response is required, but insofar as one is deemed required, denied. The Government respectfully refers the Board to the complete text of Cherokee Nation v. Leavitt, 543 U.S. 631 (2005) and Ferris v. United States, 27 Ct.Cl. 542 (1892), for a full and accurate statement of its contents.

28. Paragraph 28 consists of conclusions of law to which no response is required, but insofar as one is deemed required, denied.

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

30. The Government's answers to paragraphs 1 through 29 are restated and incorporated herein.

31. 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 the complete text of OMB Circular

A-87 for a full and complete statement of its contents. The Government 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, except that the Board to the full text of Ramah Navajo Chapter v. Lujan, 112 F.3d 1455 (10th Cir. 1997), for a full and accurate statement of its contents.

32. Paragraph 32 contains Appellant's characterization of its claims and action to which no response is required, but insofar as one is deemed required, denied.

33. Paragraph 33 consists of conclusions of law to which no response is required, but insofar as one is deemed required, denied.

34. Paragraph 34 consists of conclusions of law to which no response is required, but insofar as one is deemed required, denied. The Government respectfully refers the Board to the complete text of Cherokee Nation v. Leavitt, 543 U.S. 631 (2005) and Ferris v. United States, 27 Ct.Cl. 542 (1892), for a full and accurate statement of its contents.

35. Paragraph 35 consists of conclusions of law to which no response is required, but insofar as one is deemed required, denied.

36. Paragraph 36 contains Appellant's characterization of its claims and action to which no response is required, but insofar as one is deemed required, denied.

37. The Government's answers to paragraphs 1 through 36 are restated and incorporated herein.

38. Admits as the Secretary has the same duty of good faith and fair dealing as any contracting party.

39. Paragraph 39 consists of Appellant's conclusions of law and characterization of its claims to which no response is required, but insofar as one is deemed required, denied.

40. Paragraph 40 consists of Appellant's conclusions of law and characterization of its claims to which no response is required, but insofar as one is deemed required, denied.

41. Paragraph 41 consists of Appellant's conclusions of law and characterization of its claims to which no response is required, but insofar as one is deemed required, denied.

42. Paragraph 42 consists of Appellant's conclusions of law and characterization of its claims to which no response is required, but insofar as one is deemed required, denied.

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

Respectfully submitted,

DANIEL MERON
General Counsel

By: 

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Dated: January 2, 2007

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Answer was sent via FedEx on January 2, 2007 to:

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