

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

CHEROKEE NATION OF OKLAHOMA, and)
SHOSHONE-PAIUTE TRIBES OF THE)
DUCK VALLEY RESERVATION,)

Plaintiffs,)

v.)

Case No. 99-092-S CIV)

UNITED STATES OF AMERICA;)
MICHAEL O. LEAVITT, Secretary of the)
United States Department of Health)
and Human Services; and CHARLES W.)
GRIM, Director of the Indian)
Health Service, United States Department of)
Health and Human Services,)

Defendants.)

FILED

JUL 24 2006

William B. Guinnie
Clerk, U.S. District Court

by _____
Deputy Clerk

CONSENT JUDGMENT

WHEREAS plaintiff Cherokee Nation of Oklahoma ("Plaintiff") and Defendants United States of America, Michael O. Leavitt in his official capacity as Secretary of the United States Department of Health and Human Services, and Charles W. Grim, Director of the Indian Health Service, United States Department of Health and Human Services ("Defendants") (collectively "parties") have agreed to settlement of that portion of this action involving Plaintiff, upon the following terms and conditions,

THEREFORE, on the joint motion of the Plaintiff and the Defendants, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. As used herein, the term "Suit" means the above-captioned action, which is an appeal of the Defendants' denial of certain Contract Dispute Act claims presented by the Plaintiff

involving alleged shortfalls in the payment of certain contract support cost requirements, and related statutory claims involving such alleged shortfalls, and which does not include claims for damages arising out of alleged miscalculation of indirect contract support costs, as more fully described in Ramah v. Lujan, 122 F.3d 1455 (10th Cir. 1997), or defenses to those claims.

2. In full and final settlement of all the claims for damages by Plaintiff in the Suit, the parties agree to the following:

(a) As soon as practicable after the entry of this Consent Judgment, and in full and final settlement of the claims for damages in the Suit, Defendants shall pay to Plaintiff in compensation for damages the amount of \$2,300,000.00 plus interest from September 26, 1997, up to the date of payment, to be calculated by the Treasury.

(b) Notwithstanding any provision contained herein, compliance with all applicable federal, state, and local tax requirements shall be the sole responsibility of Plaintiff. Plaintiff shall indemnify and hold harmless Defendants from any claim, liability, penalty, expenditure, or expense of any kind imposed by law or regulation, except as specifically provided herein.

(c) Defendants' payment as described in subparagraph (a) of this paragraph represents the full extent of the consideration flowing from Defendants for any of the matters released in paragraph 3, including any obligation of any party under applicable federal, state, and local tax requirements. No further payment or contribution of damages will be required of or made by Defendants to Plaintiff with respect to this Suit. Plaintiff does not hereby waive its right to seek attorney's fees and costs, and Defendants do not hereby waive their right to oppose any such request, except that the parties agree that the Plaintiff is prevailing.

3. Release: In consideration for the payment described in paragraph 2, the Plaintiff and its heirs, administrators, successors and assigns, hereby release and forever discharge Defendants and any department, agency, or establishment thereof and any current or former officers, employees, agents, or successors of any such department, agency, or establishment, whether in their official or individual capacities, from any and all claims for damages that have been asserted by Plaintiff in the Suit. This agreement does not itself waive any claims Plaintiff may wish to pursue regarding the alleged miscalculation of indirect contract support costs, nor does it waive any of Defendants' defenses to any such claims.

4. Merger Clause: The terms of the numbered paragraphs of this Consent Judgment constitute the entire settlement agreement of the parties with respect to damages, and no statement, remark, agreement, or understanding, oral or written, that is not contained herein shall be recognized or enforced, nor does this Consent Judgment reflect any admission by either party, or any agreed-upon purpose other than the desire of the parties to reach a full and final conclusion of any dispute over damages and to resolve that matter without the time and expense of further litigation.

5. Binding Successors: This Consent Judgment shall be binding upon and inure to the benefit of the Plaintiff and the Defendants and their respective heirs, executors, successors, assigns, and personal representatives, including any person, entity, department, or agency succeeding to the interests or obligations of the parties, or having an interest herein.

6. Consultation with Counsel: Plaintiff acknowledges that it has discussed this Consent Judgment with its counsel, who has explained these documents to it, and that it understands all of the terms and conditions of this Consent Judgment. Plaintiff further

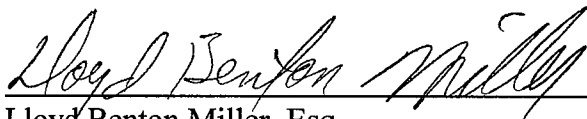
acknowledges that it has read this Consent Judgment, understands the contents thereof, and executes this Consent Judgment of its own free act and deed.

7. Dismissal of Claims: In consideration of the promises set forth herein, Plaintiff's claims for damages and all remaining claims by Plaintiff against Defendants brought in this Suit shall be dismissed with prejudice (except that Plaintiff does not hereby waive its right to seek attorney's fees and costs, and Defendants do not hereby waive their right to oppose any such request).

8. Taxation of Costs: The Parties agree that the clerk may tax appropriate costs, upon proper application or upon stipulation of the parties.

The parties, by their counsel, hereby consent to the terms and conditions of this Consent Judgment as set forth above and consent to the entry thereof.

BY COUNSEL FOR Plaintiff:



Lloyd Benton Miller, Esq.
Melanie Osborne, Esq.
Sonosky, Chambers, Sachse, Miller & Munson, LLP
900 West 5th Avenue, Suite 700
Anchorage, Alaska 99501
(907) 258-6377
lloyd@sonosky.net

Date: 7-13-06

Weldon Stout, Esq., OBA#8673
Wright, Stout, Fite & Wilburn

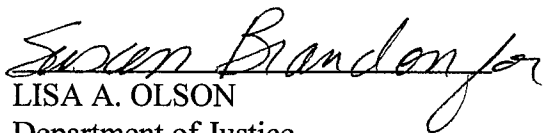
300 West Broadway, Suite A
P.O. Box 707
Muskogee, Oklahoma 74402-0707
(918) 682-0091
weldon@wsfw-ok.com

Counsel for Plaintiffs

BY COUNSEL FOR Defendants:

PETER D. KEISLER
Assistant Attorney General

SHEILA M. LIEBER
Assistant Director


LISA A. OLSON

Date: 7/13/06

Department of Justice
Civil Division, Room 7300
20 Massachusetts Ave., NW
Washington, DC 20530
(202) 514-5633
lisa.olson@usdoj.gov

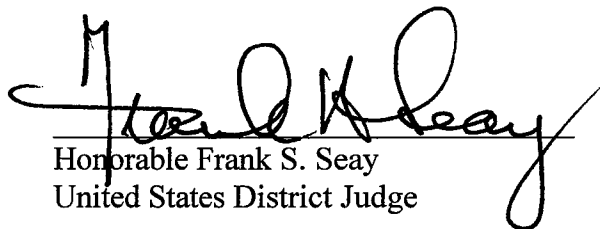
Counsel for Defendants

ORDER

The foregoing Consent Judgment shall be entered forthwith.

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: 7/24/06, 2006


Honorable Frank S. Seay
United States District Judge