

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

BRISTOL BAY AREA HEALTH CORPORATION)	
)	
PLAINTIFF,)	No. 07-725C
)	Hon. Margaret M. Sweeney
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
DEFENDANT.)	
)	

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff, the Bristol Bay Area Health Corporation ("BBAHC"), respectfully moves this Court, pursuant to Rule 56 of the Rules of the Court of Federal Claims ("RCFC"), for summary judgment as to the liability of the Government in failing to carry out its duty to fully fund contract support costs as required by statute and contract. As detailed in the accompanying memorandum, and in the accompanying Proposed Findings of Uncontroverted Fact, BBAHC is entitled to judgment as a matter of law. RCFC 56(c). Defendant's own records provide indisputable evidence that Defendant paid less than the full contract support costs agreed to in its contracts with BBAHC and required by the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 450 *et seq.* ("ISDEAA"). Thus, there is no genuine issue as to any material fact.

The ISDEAA and the contract provisions incorporating it required Defendants to pay the full indirect cost funding as calculated under the indirect cost rate agreements which were fully incorporated into the contracts. The Indian Health Service ("IHS") received lump-sum appropriations for FYs 1993-1997, and failed to pay BBAHC the entire amount of contract support costs it agreed BBAHC was entitled to be paid under the contracts. Rather it paid some of the funds owed and placed the remaining amounts owed on the shortfall list. When it failed to

pay the total amount of funding due, the Government breached the express terms of the contracts and violated the express requirements of the ISDEAA. *Cherokee Nation v. Leavitt*, 543 U.S. 631 (2005).

BBAHC further claims that those breaches, in turn, caused underpayments in FYs 1998 and 1999, in violation of the stable-funding provisions of the Alaska Tribal Health Compact and the ISDEAA. 25 U.S.C. § 450j-1(b)(2). Under the law, the contracts, and IHS policy, BBAHC would have been entitled to recurring funding of the FY 1997 contract support cost amount in the succeeding contract years.

Therefore, BBAHC requests that this Court grant this motion for summary judgment as to liability and order a further briefing on damages.

Pursuant to RCFC 20(c), BBAHC requests an oral hearing on this motion.

Respectfully Submitted,

s/Geoffrey D. Strommer by s/Lisa F. Ryan
Geoffrey D. Strommer, Attorney of Record
Stephen D. Osborne, Of Counsel
Hobbs, Straus, Dean & Walker, LLP
806 SW Broadway, Suite 900
Portland, OR 97205
503-242-1745 (Tel.)
503-242-1072 (Fax)

s/Lisa F. Ryan

Lisa F. Ryan, Of Counsel
Marsha Kostura Schmidt, Of Counsel
Hobbs, Straus, Dean & Walker, LLP
2120 L Street, NW, Suite 700
Washington, DC 20037
202-822-8282 (Tel.)
202-296-8834 (Fax)

Attorneys for the Bristol Bay Area Health Corporation
DATED: April 15, 2008.