

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

TUNICA-BILOXI TRIBE OF LOUISIANA;	)	
RAMAH NAVAJO SCHOOL BOARD, INC.,	)	
	)	
Plaintiffs,	)	Case No. 1:02CV02413
	)	Judge Reggie B. Walton
v.	)	Magistrate Judge Deborah A. Robinson
	)	
UNITED STATES of AMERICA;	)	
MICHAEL O. LEAVITT, Secretary of the	)	
United States Department of Health and Human	)	
Services; DIRK KEMPTHORNE, Secretary	)	
of the United States Department of the Interior,	)	
	)	
Defendants.	)	

**DEFENDANTS’ RESPONSE TO PLAINTIFFS’ NOTICES  
OF SUPPLEMENTAL AUTHORITY**

Defendants, by and through undersigned counsel, hereby respond to Plaintiffs’ Notice of Recent Authority (filed January 15, 2008, and docketed as #128) and to Plaintiff’s Notice of Recent Authority (filed January 24, 2008, and docketed as #129). The first case cited by Plaintiffs, Susanville Indian Rancheria v. Leavitt, No. 02-259 (E.D. Cal.), is not applicable to this case because it did not involve contract support costs (“CSC”) at all, but instead only whether the Indian Health Service (“IHS”) could “decline” an ISDA contract proposal because the contractor proposed to charge Indians for prescription drugs under certain circumstances. See Susanville, slip op. at 3-4 (attached to Pls.’ Not.) IHS’s position was that permitting contractors to charge Indians for prescription drugs would jeopardize the health and safety of Indians who are otherwise eligible for health care services and would violate the ISDA. See id. at 7-11. Notably,

the passages in the case that Plaintiffs cite involve the court's application of general canons of construction to parts of the ISDA not at issue in this case. See Not. at 2.

The second case cited by Plaintiffs, GHS Health Maintenance Organization, Inc. v. United States, 76 Fed. Cl. 339 (2007) (on appeal No. 07-5143), is contrary to binding Federal Circuit precedent, see Whittaker Elec. Sys. v. Dalton, 124 F.3d 1443, 1446 (Fed. Cir. 1997); Seaboard Lumber Co. v. United States, 903 F.2d 1560, 1563 (Fed. Cir. 1990); Do-Well Mach. Shop, Inc. v. United States, 870 F.2d 637, 641 (Fed. Cir. 1989); E. Walters & Co. v. United States, 576 F.2d 362, 368 (Cl. Ct. 1978), and conflicts with other decisions of the Court of Federal Claims, see ConocoPhillips v. United States, 73 Fed. Cl. 46, 56-58 (2006), aff'd in pertinent part by 501 F.3d 1374, 1378-80 (Fed. Cir. 2007); Mexican Intermodal Equip., S.A. de C.V. v. United States, 61 Fed. Cl. 55, 70 (2004); Flink/Vulcan v. United States, 63 Fed. Cl. 292, 307-08 (2004), aff'd on other grounds, No. 05-5048, 2006 WL 222995 (Fed. Cir. Jan. 12, 2006); Hermes Consol., Inc. v. United States, 58 Fed. Cl. 409, 417 (2003), rev'd on other grounds sub nom., Tesoro Haw. Corp. v. United States, 405 F.3d 1339 (Fed. Cir. 2005); PCL Const. Servs., Inc. v. United States, 41 Fed. Cl. 242, 252 (1998), aff'd on other grounds, No. 03-5060, 2004 WL 842984 (Fed. Cir. Apr. 7, 2004); Reservation Ranch v. United States, 39 Fed. Cl. 696, 712 (1997), aff'd on other grounds, 217 F.3d 850 (Fed. Cir. Sept. 9, 1999) (unpublished mem.); Aleutian Constructors v. United States, 24 Cl. Ct. 372, 384 (1991); Appeal of USD Techs., Inc., ASBCA No. 31305, 1987 WL 40766 (Mar. 12, 1987), aff'd without opinion, (Fed. Cir. Feb. 3, 1988). For these reasons, this Court should disregard GHS Health.

Respectfully submitted,

JEFFREY BUCHOLTZ  
Acting Assistant Attorney General

JEFFREY A. TAYLOR  
United States Attorney

SHEILA M. LIEBER  
Deputy Director

/s/Rachel J. Hines

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RACHEL J. HINES (D.C. Bar #424774)

HANNAH Y.S. CHANOINE

Federal Programs Branch, Room 7314

Civil Division

Mailing Address

P.O. Box 883

Washington, DC 20044

Delivery Address

20 Massachusetts Avenue, NW

Washington, DC 20001

Telephone: (202) 514-5532

Facsimile: (202) 318-7604

E-mail: rachel.hines@usdoj.gov

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Counsel for Defendants