

**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’ NOTICE OF NEW EVIDENCE

Defendants, by and through undersigned counsel, hereby notify the Court of new evidence relevant to the remaining claims and defenses in this case. In May 2008, a plaintiff class of tribal contractors that contract with the Bureau of Indian Affairs (“BIA”) entered into a partial settlement agreement (“PSA”) with Secretary Kempthorne as part of a case called Ramah Navajo Chapter (“RNC”) v. Kempthorne, No. 90-957 (D.N.M.). The Motion to Approve the PSA and the PSA itself (without exhibits) are attached as Exhibit A to this Notice. On August 27, 2008, Judge Leroy Hanson approved the class settlement (Order attached as Ex. B), and, pursuant to its terms, the agreement went into effect on October 27, 2008. See PSA § II.E (Ex. A). As part of the agreement, Secretary Kempthorne agreed to make certain modifications to the methodology that the Department of the Interior’s National Business Center (“NBC”) uses to

develop indirect cost rates for tribal contractors.¹ In exchange, the class plaintiffs, including Tunica-Biloxi Tribe of Louisiana and the Ramah Navajo School Board, released Secretary Kempthorne from all claims for equitable or injunctive relief related to the indirect cost rate methodology. See Release (attached as Ex. C); see also PSA § VI.

In this case, the plaintiffs have sought equitable and injunctive relief against Secretary Kempthorne related to the indirect cost rate methodology used by NBC (Defendants dispute that this type of relief is available as a matter of law). (2d Am. Compl. at 15.) On September 22, 2008, the Court granted Defendants' Motion to Dismiss claims against Secretary Kempthorne for monetary relief, but denied the Motion as to claims for prospective injunctive relief. See Tunica-Biloxi Tribe v. United States, 577 F. Supp. 2d 382, 402-03 (D.D.C. 2008). These remaining claims are now subject to dismissal pursuant to the Release signed by the plaintiffs in RNC. Defendants are prepared to brief this issue in more detail if necessary as directed to do so by the Court.

Respectfully submitted,

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¹ The PSA specifies that the Secretary does not admit liability as to any of the claims, and that the PSA “may not be offered, taken, construed, or introduced as evidence of liability, as an admission of fact or legal proposition or statement of wrongdoing by either party . . . in any other action in which an agency or department of the United States Government is a party” PSA §§ XIX.A; XIX.C. The PSA also specifies that it does not have “collateral estoppel or res judicata effect in any case in which [the Indian Health Service] or [the U.S. Department of Health and Human Services] is a party.” PSA § XIX.B. Notwithstanding these prohibitions, the PSA specifies that the release of claims may be used as “a defense by any government agency to any claim that the agency believes was released” as part of the settlement. See PSA § XIX.C.iv.

Deputy Director

/s/Rachel J. Hines

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