

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

PUEBLO OF ZUNI, on behalf of itself
and all others similarly situated,

Plaintiff,

v.

Case No. CIV 01-1046 WJ/WPL

UNITED STATES OF AMERICA; et al.

Defendants.

NOTICE OF CLASS ACTION

If your Tribe or Tribal Organization had a contract or compact with the Indian Health Service at any time during 1993 to 2005, a class action lawsuit may effect the Tribe's or the Tribal Organization's rights.

A court authorized this Notice. This is not a solicitation from a lawyer.

- An Indian Tribe has sued the Federal Government alleging that the U.S. Indian Health Service failed to pay in full certain amounts that the Tribe claims were due under the Indian Self-Determination Act ("ISDA").
- The Court has allowed the lawsuit to be a class action on behalf of all Indian Tribes (or Tribal organizations) that had ISDA contracts with the Indian Health Service at any time during 1993 to the present.
- The Court has not decided whether the Indian Health Service did anything wrong. However, your legal rights are affected, and you have a choice to make now:

Your Legal Rights and Options in this Lawsuit

Do Nothing	Stay in this lawsuit. Await the outcome. Give up certain rights. By doing nothing, you keep the possibility of getting money or benefits that may come from a trial or settlement. But, you give up any right to sue the Indian Health Service separately about the same legal claims at issue in this lawsuit.
Ask to be excluded	Get out of this lawsuit. Get no benefits from it. Keep separate rights. If you ask to be excluded and money or benefits are later awarded in this lawsuit, you won't share in those. But, you keep your rights to sue the Indian Health Service separately about the same legal claims at issue in this lawsuit.

Please read this class action notice carefully for additional information.

THE CLAIMS IN THE LAWSUIT

1. Why did I get this Notice?

Records of the Indian Health Service (or "IHS") show that your Tribe or Tribal organization had one or more contracts with IHS during some or all of the years 1993 to 2005. This Notice explains that the Court has allowed, or "certified," a class action lawsuit that may affect you. You therefore have legal rights and options that you may exercise before the Court proceeds further with the suit, including holding a trial. The trial is to decide whether the claims being made against IHS, on your behalf, are correct. Judge William Johnson of the United States District Court for the District of New Mexico is overseeing this class action. The lawsuit is known as Pueblo of Zuni v. United States, CIV 01-1046.

2. What is this lawsuit about?

This lawsuit is about whether IHS failed to pay certain contractors their full "contract support costs" due under the Indian Self-Determination Act. The lawsuit alleges that IHS miscalculated the "contract support costs" that were due under the Act, and also failed to pay in full the miscalculated amounts.

3. What is a class action and who is involved?

In a class action lawsuit, one entity called a “Class Representative” (in this case, the Pueblo of Zuni, an Indian Tribe based in Zuni, New Mexico) sues on behalf of other entities that have similar claims (here, all other Indian Tribes or Tribal organizations). The entities together are called a “Class” or “Class Members.” The Indian Tribe that sued, and all the Class Members like it, are called the Plaintiffs. The government agencies and officials that they sued are called the Defendants. One court resolves the issues for everyone in the Class—except for those entities that choose to exclude themselves from the Class.

4. Why is this lawsuit a class action and who is involved?

The Court has decided that this lawsuit can go forward as a class action and move forward to trial because it meets the requirements of Federal Rule of Civil Procedure 23, which governs class actions in federal courts. Specifically, the Court found that

- ▶ There are more than 300 Tribes or Tribal organizations that contracted with IHS during the period 1993-2005;
- ▶ There are legal questions and facts that are common to each of them;
- ▶ The Pueblo of Zuni’s claims are typical of the claims of the rest of the class, and IHS’s defenses to those claims are also typical of IHS’s defenses to the claims of the rest of the class;
- ▶ The Pueblo of Zuni and the lawyers representing the Class will fairly and adequately represent the Class’s interests;
- ▶ The common legal questions and facts are more important than questions that affect only individual Tribes or Tribal organizations; and
- ▶ This Class action will be more efficient than having many individual lawsuits.

More information about why the Court is allowing this lawsuit to be a class action is in the Court’s Order Certifying the Class which is available at www.cscclass.net.

5. What does the lawsuit complain about?

The Class Representative says that the Indian Self-Determination Act requires that the Defendants must pay in full certain “contract support costs,” but that the Defendants during 1993 to 2005 generally failed to pay those costs in full. The Class Representative says that IHS

determined each contractor's "contract support cost requirements" during this period, but that IHS then failed to pay those requirements in full. The lawsuit also says that in determining each contractor's requirements, IHS incorrectly used "indirect cost rates" that miscalculated those requirements, causing a second way in which IHS failed to pay in full all of the "contract support costs" required under the Indian Self-Determination Act. You can read the Class Representative's First Amended Complaint at www.cscclass.net.

6. What is the Defendants' response?

The Defendants deny that they miscalculated the Plaintiffs' contract support cost requirements. The Defendants also deny that they unlawfully failed to fully pay all the contract support costs that they were required to pay.

7. Has the Court decided who is right?

The Court has not yet decided whether the Plaintiffs or the Defendants are right. However, in 2005 the United States Supreme Court ruled in a different case against IHS that the Defendants had unlawfully failed to pay in full the contract support cost requirements owed to two other Tribes. (The case is known as Cherokee Nation and Shoshone Paiute Tribes v. Leavitt, 543 U.S. 631 (2005), and you can read the case at www.cscclass.net.) By establishing the Class and issuing this Notice, the Court is not suggesting that the Plaintiffs will win or lose this case. The Plaintiffs must prove their claims at trial.

8. What are the Plaintiffs asking for?

The Plaintiffs are asking for a ruling that the Defendants acted unlawfully in failing to pay their contract support costs in full, and for an award of money damages to compensate for the amounts they claim the Defendants failed to pay.

9. Is there any money available now?

No, there is no money available now because the Court has not yet decided whether the Defendants did anything wrong, and the two sides have not settled the case. There is no guarantee that money will ever be obtained. If it is, every Tribe and Tribal organization will be notified about how to ask for a share.

WHO IS IN THE CLASS

10. Is my Tribe or Tribal organization a member of the Class?

Judge Johnson has decided that all Indian Tribes and Tribal organizations that contracted with IHS under the Indian Self-Determination Act at any time from federal fiscal year 1993 to the present (including fiscal year 2005) are Class Members.

11. What claims are covered by the Class?

Judge Johnson has decided that the following four claims are covered by the class:

1. Claims under the ISDA for statutory or contractual damages relating to contracts in effect at any time during fiscal year 1995 to the present and arising out of the Defendants' common course of conduct of denying full funding of contract support cost requirements associated with "new or expanded" contracts.
2. Claims under the ISDA for statutory or contractual damages relating to contracts in effect at any time during fiscal year 1995 to the present and arising out of the Defendants' common course of conduct of denying full funding of contract support cost requirements associated with "ongoing" contracts.
3. Claims under the ISDA for statutory or contractual damages relating to contracts in effect at any time during fiscal year 1995 to the present and arising out of Defendants' common course of conduct of denying full funding of contract support costs by use of a methodology for determining indirect administrative contract support costs that undercalculates those costs.
4. Claims falling substantively within either Claims 1, 2 and/or 3, but relating to contracts in effect for fiscal years 1993 or 1994.

In deciding to include these claims in this class action lawsuit the Court has not taken any position on whether these claims are valid.

12. What claims are not covered by the Class?

The Class does not include any claims other than the four claims described above. For instance, the Class does not include a Tribe's claim over a disallowed item of cost in that Tribe's particular annual audit.

13. What if I am still not sure if the Class Action covers the claims of my Tribe or Tribal organization?

If you are still not sure whether your Tribe's or Tribal organization's claims are included, you can get free help at www.cscclass.net or by calling or writing to the lawyers in this case listed in Question 24.

YOUR RIGHTS AND OPTIONS

14. Will my Tribe or Tribal organization be included in the Class if it does nothing at all?

Yes. Your Tribe or Tribal organization will automatically be included if it does nothing at all. If your Tribe or Tribal organization does nothing, it will remain in the Class and keep the possibility of getting a share of any money that is awarded in the lawsuit, as well as the benefit of any rulings issued in the case. If your Tribe or Tribal organization stays in the Class and the Plaintiffs recover money, your Tribe or Tribal organization will be notified about how to apply for a share.

If your Tribe or Tribal organization does nothing and automatically remains in the suit, it will not be able to sue the Defendants on its own for the same legal claims that are covered by the lawsuit, regardless of whether the Plaintiffs eventually win or lose. Your Tribe or Tribal organization will also be legally bound by all Court Orders, as well as by the final outcome in the case.

15. If my Tribe or Tribal organization remains in the Class but the lawsuit is unsuccessful, is there a risk my Tribe or Tribal organization will have to pay anyone?

No, in the event the lawsuit is not successful your Tribe or Tribal organization will not be responsible for the costs of bringing the lawsuit.

16. Why would my Tribe or Tribal organization choose to be excluded from the Class?

If your Tribe or Tribal organization already has its own lawsuit pending in the courts against IHS over unpaid contract support costs covering the same claims described above in Question 11, and if it wishes to continue with that other lawsuit, then your Tribe or Tribal organization needs to ask to be excluded from the Class. The same is true if your Tribe or Tribal organization wishes to start such a lawsuit.

If your Tribe or Tribal organization wishes to be excluded from the Class (which is sometimes called "opting out" of the Class) then your Tribe or Tribal organization will not have a right to receive any money or any other benefit that the Class Representatives win in this lawsuit

whether after a trial or by settlement between the Class Representatives and the Defendants. If your Tribe or Tribal organization excludes itself from this lawsuit, it will also not have the benefit of, or be bound by, any of the Court's rulings in the lawsuit.

If your Tribe or Tribal organization starts or continues a separate lawsuit after excluding itself from the Class, your Tribe or Tribal organization will have to hire and pay its own lawyer for that lawsuit and will have to prove its own claims. If your Tribe or Tribal organization decides to be excluded from this lawsuit and start its own lawsuit, your Tribe or Tribal organization should consult its own lawyer soon because such a lawsuit may be subject to a statute of limitations.

17. How do I exclude my Tribe or Tribal organization from this lawsuit?

To ask to be excluded, your Tribe or Tribal organization must send an Exclusion Request in the form of a letter sent by mail, executed by a duly authorized official of your Tribe or Tribal organization, stating that your Tribe or Tribal organization wishes to be excluded from Zuni v. United States. All Exclusion Requests must be postmarked by [INSERT DATE 60 DAYS FROM COURT'S ORDER APPROVING CLASS NOTICE] to Zuni v. United States Exclusions, P.O. Box _____, Albuquerque, New Mexico _____ - ____.

THE LAWYERS REPRESENTING YOU

18. Does my Tribe or Tribal organization have a lawyer in this case?

Yes, the Court has decided that Lloyd Miller and his law firm Sonosky Chambers Sachse Endreson & Mielke, LLP, of Albuquerque, New Mexico (with additional offices in Washington, D.C., in San Diego, California, and in Anchorage and Juneau, Alaska) is qualified to represent your Tribe or Tribal organization and all Class Members. This law firm is called "Class Counsel." It is experienced in handling similar cases against IHS and other government agencies. More information about this law firm, its practice, and its lawyers' experience is available at www.sonosky.com.

19. Should my Tribe or Tribal organization get its own lawyer?

Your Tribe or Tribal organization does not need to hire its own lawyer because Class Counsel is working on its behalf. But if your Tribe or Tribal organization wants its own lawyer too, your Tribe or Tribal organization will have to hire and pay that lawyer on its own. If your Tribe or Tribal organization hires its own lawyer, that lawyer can appear in Court if your Tribe or Tribal organization wants someone other than Class Counsel to speak on your Tribe's or Tribal organization's behalf. If your Tribe or Tribal organization chooses to hire its own attorney, its attorney must file an entry of appearance with the Clerk of the Court, United States District Court for the District of New Mexico, 333 Lomas N.W., Albuquerque, NM 87102, on or before [INSERT DATE 60 DAYS FROM COURT'S ORDER APPROVING CLASS NOTICE].

20. How will Class Counsel be paid?

If Class Counsel succeeds in getting money or other benefits for the Class, Class Counsel may ask the Court to award fees and expenses. You won't have to pay these fees or expenses. If the Court grants Class Counsel's request, the fees and expenses will either be deducted from any money obtained for the Class or be paid separately by the Defendants.

THE TRIAL

21. How and when will the Court decide who is right?

So long as the case is not resolved by a settlement or otherwise, Class Counsel will have to prove the Plaintiffs' claims at a trial. No trial has yet been set in the case, although it is likely a trial will be scheduled for sometime in 2007. During any trial that occurs, the Judge will hear all the evidence and, based upon that evidence and the law, determine whether the Plaintiffs or the Defendants are right about the claims covered by the lawsuit. There is no guarantee that the Class Representatives will win, or that they will get any money for the Class.

22. Does your Tribe or Tribal organization need to come to the trial?

No, your Tribe or Tribal organization does not need to attend the trial. Class Counsel and the Class Representative will present the case for the Plaintiffs, and the Defendants will present their defenses. However, your Tribe or Tribal organization is welcome to attend the trial, or to have its own lawyer attend the trial, at your Tribe's or Tribal organization's own expense.

23. Will my Tribe or Tribal organization receive money after the trial?

If the Class Representatives secure money for the class, whether after trial or by settlement, your Tribe or Tribal organization will be notified about how to participate. We do not know at this time how long this will take.

GETTING MORE INFORMATION

24. Are more details available?

Yes, interested Tribes or Tribal organizations may visit the website established by Class Counsel at www.cscclass.net, where they will find the Court's Order Certifying the Class, the Class Representative's First Amended Complaint, and the Defendants' Amended Answer to First Amended Complaint. You may also speak to one of the Class Counsel lawyers by calling 1-800-____-____ or you may contact them by mail by writing to Zuni Class Action, c/o Sonosky, Chambers,

Sachse, Endreson & Mielke, LLP, 500 Marquette Avenue, NW, Suite 1310, Albuquerque, New Mexico, 87102.

If you wish to know more about this case, you may also inspect the Court's file during normal business hours at the Office of the Clerk, United States District Court, 333 Lomas N.W., Albuquerque, NM.

DO NOT WRITE OR TELEPHONE THE COURT REGARDING THIS NOTICE.

Dated: [INSERT DATE]

THE HONORABLE WILLIAM JOHNSON
UNITED STATES DISTRICT JUDGE