

**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.

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

No. CIV 01-1046 WJ/WPL

APPLICATION UNDER RULE 23(g) FOR CREATION OF SUB-CLASSES
AND FOR APPOINTMENT AS CLASS COUNSEL FOR THE
RATE-MAKING CLAIMS

Michael P. Gross, a member of the Bar of New Mexico, and his co-counsel (collectively, “Gross”), respectfully apply under Rule 23(g), F.R.Civ. P., for appointment as Class Counsel for the discrete claims that allege errors and illegalities in how defendants calculate indirect contract support costs under 25 U.S.C. § 450j-1(a)(2) through 450j-1(a)(5) (the Rate-Making Claims).

Gross is best qualified to represent the Class for the Rate-Making Claims. He first pled the basic miscalculation at the heart of those claims. He successfully prosecuted that complaint against the Bureau of Indian Affairs in *Ramah Navajo Chapter, et al. v. Kempthorne, et al.*, USDC NM No. CIV 90-0957 LH/KBM. He has demonstrated his expertise and zealous advocacy for the Rate-Making Claims both in the *Ramah* case and in *Tunica-Biloxi Tribe, et al. v. USA, et al.*, USDC DC No. CV 02-2413 (RBW) – in which the same claims are asserted against the Indian Health Service. He is best able to coordinate the Rate-Making Claims in the

instant case with those in *Ramah*, in which he is Class Counsel, and *Tunica*, a putative class action in which he is lead counsel for plaintiffs.

The sub-claims for which Gross seeks appointment pertain to:

All class members contracting or compacting with the United States for health programs administered by the Secretary of Health and Human Services under the Indian Self-Determination And Education Assistance Act of 1970, 25 U.S.C. §§ 450 *et seq.*, as amended, whose indirect contract support costs are determined by application of the indirect cost rate system or its rules and principles set forth in OMB Circular A-87, OMB Circular A-122, and derivative circulars or policy statements of the Indian Health Service.

The facts and law supporting this motion are set forth in the accompanying memorandum and its attachments. A proposed order accompanies this motion.

Concurrence of Plaintiff has been sought but denied.

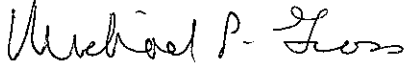
Concurrence of Defendants has been sought and in response Defendants have authorized

Applicant to state:

Defendants take the position that no class should be certified and that appointment of class counsel is unnecessary. Defendants reserve the right to oppose Mr. Gross's application to be appointed class counsel, but plan to seek leave of Court to address Mr. Gross's application in their opposition to the Pueblo of Zuni's motion for class certification.

Respectfully submitted this 20th day of July, 2006.

M.P. GROSS & ASSOCIATES, P.C.



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