

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  
 ) Filed Electronically  
UNITED STATES OF AMERICA; *et al* )  
 )  
Defendants. )  
\_\_\_\_\_ )

**NOTICE OF ADDITIONAL AUTHORITY IN SUPPORT OF  
PLAINTIFF’S OPPOSITION TO DEFENDANTS’ MOTION TO  
DISMISS CERTAIN CLAIMS (DKT. NO. 111)**

Plaintiff hereby gives Notice that on December 13, 2005, the Oregon District Court entered judgment against the Defendants awarding an Indian Tribe statutory money damages under the Indian Self-Determination Act due to the Defendants’ failure to pay contract support costs. *Shoshone-Bannock Tribes v. Leavitt, et al.*, --- F.Supp.2d. ---, 2005 WL 3610351 (D. Or. Dec. 13, 2005) (“*Shoshone-Bannock V*”) (copy attached). The Oregon District Court’s new ruling, issued pursuant to Fed.R.Civ.P. 60(b)(6), vacates the district court’s 2002 final judgment in favor of the Defendants (which was issued following *Shoshone-Bannock Tribes of the Fort Hall Reservation v. Thompson*, 279 F.3d 660 (9th Cir.2002)), and reinstates the district court’s original 1998 judgment in favor of the Plaintiff (bringing the court’s final judgment into conformity with the law announced in *Cherokee Nation v. Leavitt*, 542 U.S. 631, 125 S. Ct. 1172 (2005)).

The district court in *Shoshone-Bannock V* observes that “[h]undreds of other Tribal contractors were experiencing problems similar to those the Shoshone-Bannock Tribes were experiencing with CSC shortfalls.” *Id.* \*4. With reference to the instant class action pending here, the court also notes that “[e]xcept for the unfortunate timing of the Ninth Circuit’s ruling in *Shoshone-Bannock IV*, the Tribes would today be a member of that putative class or otherwise be able to recover damages for the CSCs IHS failed to pay.” *Id.* at \*5. The court further observes that the Supreme Court in *Cherokee Nation* has “flatly rejected” the “sole defense” that the Government asserted in the mid-1990s when it refused to pay contract support costs to hundreds of tribal contractors (including the Shoshone-Bannock Tribes). *Id.* at \*6-\*7, *discussing and quoting Cherokee Nation*, 125 S.Ct. at 1177-78. In finding that the circumstances presented warranted granting relief under Rule 60(b), the district court further observed that the Shoshone-Bannock Tribes were “one of many victims of a single wrong, namely the IHS’s decision to refuse to pay the CSCs,” and that the case “involves a request for relief by a co-victim of the same wrongful act.” *Id.* at \*7.

The district court’s observations and holdings in *Shoshone-Bannock V* support the Plaintiff’s arguments in Plaintiff’s Opposition to the Motion to Dismiss (Dkt. No. 111), at pages 2 (describing the nature of the Defendants’ unlawful conduct toward Tribal contractors), 7 n.5 (describing statutory damage claims now reaffirmed in *Shoshone-Bannock V*), 12-13 (describing the nature of the Defendants’ conduct), and 21-23 (arguing Defendants’ motion should not be considered ahead of upcoming class certification proceedings).

Respectfully submitted this 20th day of January 2006.

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*/s/ Lloyd B. Miller*

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