

**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 LH/LFG
Filed Electronically

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.)

JOINT PROVISIONAL DISCOVERY PLAN

Pursuant to the Court's Initial Scheduling Order (Dkt. 29), the parties submit the following Provisional Discovery Plan.

1. Pursuant to Federal Rule of Civil Procedure 26(f), Lloyd Miller for the plaintiff and Rachel Hines for the defendants met and conferred via email during the week of March 21, 2005.

2. **Discovery Plan.** The parties jointly propose to the Court the following discovery plan:

A. The limitations and response times imposed on discovery in Rules 30, 33, 34, and 36 shall apply. The parties shall supplement their discovery responses under Rule 26(e) at

regular intervals. Merits discovery should be completed within six months of commencement.

B. The plaintiff served its initial disclosures under Rule 26(a)(1) on April 11, 2005.

The defendants served their initial disclosures on April 15, 2005.

C. Plaintiff will need discovery on the following subjects:

1. Requests for production of class members' contracts, compacts, AFAs, and indirect cost agreements, during the period covered by the Complaint.

2. Requests for production of documents, requests for admission, interrogatories and / or depositions regarding:

a. the defendants' practice and policies regarding the payment of contract support costs;

b. the defendants' damage calculations for their historical underpayment of contract support costs; and

c. the Department's Division of Cost Allocation's practice and policies with regard to calculation of indirect contract support cost requirements.

D. Defendants: As set forth in Defendants' Motion to Stay, Defendants propose that merits discovery be stayed pending Defendants' opportunity to answer or otherwise respond to the First Amended Complaint. If class certification briefing and merits discovery is ultimately required, discovery will be needed on the following subjects:

1. Class certification discovery (written discovery and/or depositions), including discovery of Plaintiff related to the typicality of their claims and their adequacy as class representative, as well as discovery of their proposed expert.

2. Merits discovery (written discovery and/or depositions) to determine the

basis for each of the allegations in the First Amended Complaint.

3. Merits discovery (written discovery and/or depositions) into the composition of Plaintiff's direct cost base for each relevant year and the share of CSC or other indirect costs paid by federal agencies other than IHS, including:

a. All documents submitted by Plaintiff to the U.S. Department of the Interior's National Business Center (and its predecessor, the Office of the Inspector General) in order to obtain an indirect cost rate for all years relevant to the allegations in the Complaint, including all indirect cost proposals.

b. Plaintiff's Single Audit and annual financial statements for all years relevant to the allegations in the Complaint.

c. Documentation related to all of the other grants and contracts awarded to Zuni.

4. If the Court were to certify a class, Defendants expect that they would seek discovery on all of the above matters as they relate to each class member.

E. Schedule. There are currently motions pending regarding scheduling issues, including the timing of discovery. Thus, the parties have been unable to agree regarding a discovery schedule. The parties set forth below their respective discovery schedule proposals.

Plaintiff proposes that discovery occur in two stages. Class discovery should commence at once, and should be completed 45 days thereafter. Merits discovery should commence upon the completion of class discovery, and should be completed by November 15, 2005. Reports from retained experts under Rule 26(a)(2) should be due 90 days before the trial date. Supplemental depositions of experts should be completed 30 days after disclosure of expert

reports.

Defendants propose that class certification and merits discovery be stayed pending defendants' opportunity to answer or otherwise respond to the First Amended Complaint and, if Defendants file a motion to dismiss under Rule 12(b)(1), Defendants propose that all discovery be stayed pending the resolution of such motion. If class certification briefing and merits discovery is ultimately required, defendants propose that class discovery be completed in 80 days, and that merits discovery commence upon a ruling on Plaintiff's Motion for Class Certification.

3. **Other Items.** The plaintiff requests a settlement conference within 90 days. The defendants do not request a settlement conference at this time.

The plaintiff requests a Pretrial Conference 30 days before trial. The parties agree that all issues of liability may be resolved on cross-motions for summary judgment, but that, should the plaintiff prevail, damages issues may require a trial (absent an intervening damages stipulation). The defendants request a Pretrial Conference after the resolution of the cross-motions for summary judgment.

Plaintiff should be allowed until 30 days after the defendants file the Answer or other responsive pleading in which to join additional parties and to amend the pleadings. Defendants do not anticipate joining any additional parties, but have not yet filed an Answer.

All potentially dispositive motions should be filed within 45 days of the close of discovery.

Plaintiff shall provide the Pretrial Order to defendants 45 days prior to trial, and defendants shall submit it to the Court 35 days prior to trial.

Defendants are of the view that settlement cannot be evaluated prior to the filing of an Answer by defendants. Plaintiff believes that settlement may be enhanced by the appointment of a settlement judge.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I sent by electronic mail, or caused to be sent by electronic mail, a true and correct copy of the following document:

JOINT PROVISIONAL DISCOVERY PLAN

to the following attorney of record this 15th day of April 2005:

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