

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

PUEBLO OF ZUNI,

Plaintiff,

Case No. CV 01-1046 WJ/WPL

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.

**STIPULATION REGARDING CONTRACT SAMPLING**

The parties, by and through undersigned counsel, hereby enter the following Stipulation:

1. The purpose of this Stipulation is to set forth the method by which the parties randomly selected contracts for use in connection with the Plaintiff's anticipated motion for class certification.

2. As used herein, the term "contract" includes contracts, compacts, modifications, annual funding agreements, and amendments thereto between a Tribe or Tribal organization ("Tribal contractor") and the Indian Health Service ("IHS") under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. §§ 450 *et seq.*

3. For purposes of the random selection, the Defendants prepared the following three

lists: Tribal contractors that had contracts in fiscal years 1994, Tribal contractors that had contracts in 1997, and Tribal contractors that had contracts in 2001. Each list was divided by IHS Area Office and then the Area Offices were arranged alphabetically (*e.g.*, Aberdeen, Alaska, Albuquerque, etc.). Each Area Office sub-list was also arranged in alphabetical order (*e.g.*, Cabazon, Central Valley, Chapa De, etc.). (Later in the process, a few errors were identified, *i.e.*, a few Tribal Contractors were included when in fact they should not have been. Neither party believes that these errors affected the sample in any significant manner.)

4. The parties agreed to select one-sixth of the Tribal contractors for inclusion in the sample. In order to select the one-sixth, the first Tribal contractor on the list (*i.e.*, the 1994 Aberdeen list) was considered #1, and the parties thereafter counted down the lists by numbering each Tribal contractor 1 through 6. The first Tribal contractors in 1997 and 2001 were given the next number following the number of the last Tribal contractor for the prior year. (Thus, if the last Tribal contractor on the 1994 list was numbered 5, the first Tribal contractor on the 1997 list was numbered 6.)

5. With this order established, the parties then randomly picked a number from 1 to 6. The number selected was 4. All Tribal contractors falling in the fourth position of the 1 through 6 numbering system were selected for the sample.

6. The Defendants then prepared the list of the selected Tribal contractors and provided the Plaintiff with an opportunity to verify its accuracy. A final list of the selected Tribal contractors was agreed upon by the parties.

7. For each Tribal contractor on the final list, the Defendants produced to the Plaintiff

the contract documents for the relevant year. In every instance where the selected Tribal contractor for a given year had more than one contract, the Defendants produced to the Plaintiff the contract documents associated with the lowest-numbered contract.

8. Both parties may use these contracts for purposes of briefing the Plaintiff's anticipated motion for class certification. The parties also may, in lieu of introducing into evidence the actual contracts, introduce summaries of those contracts consistent with applicable rules of evidence.<sup>1</sup>

9. Nothing in this Stipulation shall be construed as an admission by the plaintiff that the content of any contract or any difference among contracts is relevant to any issue to be presented to the Court in connection with the class certification motion.

10. Nothing in this Stipulation shall be construed as an admission by the Defendants that any contracts for years other than 1993-1998 have any relevance to the Complaint.

11. Nothing in this Stipulation shall be construed as an admission by the Defendants that the content of any contract or summary thereof not before the Court is identical to any contract or summary thereof before the Court.

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<sup>1</sup> The parties were unable to agree on whether the sample should constitute the universe of non-Pueblo of Zuni contracts that should be admissible for purposes briefing the Plaintiff's motion for class certification. The Pueblo believes the universe should be limited to the sampled contracts, the Pueblo's contracts, and the contracts at issue in the Cherokee cases (to the extent they provide guidance on the holding in *Cherokee Nation v. Leavitt*, 543 U.S. 631 (2005)). The Defendants believe that universe should include the sampled contracts plus other relevant contracts (e.g., the contracts of one of the Plaintiff's witnesses), all of which were produced to the Pueblo during discovery. The Pueblo reserves the right to object to the introduction of non-sample contracts.

Respectfully submitted this 6th day of May 2006.

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*/s/ Melanie Baca Osborne*

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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 **STIPULATION REGARDING CONTRACT SAMPLING**, to the following attorneys of record (or their co-counsel) this 6th day of May, 2006:

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*/s/ Lindy O. Bockhorst*  
By: \_\_\_\_\_  
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