

**Ramah Navajo Chapter, Oglala Sioux Tribe & Pueblo of Zuni v. Jewell**

**Class Counsel Question and Answer Fact Sheet**

**UPDATE: November 28, 2016**

**CLAIM FORMS FOR \$816,703,271 APPROVED FOR PAYMENT**

So far, the Settlement Administrator and Class Monitor have approved payments to 573 Class Members for their shares of the Net Settlement Amount. These payments total \$816,703,271.92, almost 95% of the total to be paid to all Class Members. Most of these payments have already been made.

The Settlement Administrator (KCC/Gilardi & Co. LLC) and the Class Monitor (Moss Adams) continue to process Claim Forms received from other Class Members.

Eighty-eight Class Members have not yet sent signed Claim Forms to the Settlement Administrator. We urge those Class Members to return their signed Claim Forms at the earliest opportunity. If you believe your Tribe or tribal organization is a Class Member, but you have not received a Claim Form, please contact the Settlement Administrator for a replacement Claim Form.

Payments are made on a rolling basis. To learn if the Settlement Administrator and Class Monitor have approved payment of a Class Member's share, see the exhibits attached to the Declarations prepared by KCC and Moss Adams. Here:

<[WWW.RNCSETTLEMENT.COM/COURTFILINGS.HTML](http://WWW.RNCSETTLEMENT.COM/COURTFILINGS.HTML)>

The Settlement Administrator and Class Monitor are continuing to review Claim Forms as they are received. As each group of Claim Forms is approved, the Settlement Administrator and Class Monitor file Declarations with the Court. The approved list is then sent for payment to Huntington National Bank (the Designated Bank). Huntington Bank will directly wire the money to Class Members that opted to receive the funds by wire transfer, and will prepare checks for those Class Members that opted to receive payment by check. The Settlement Administrator handles the actual mailing of all checks.

All Claim Forms MUST be signed and returned to the Settlement Administrator before payment is made. If a Claim Form is found to be improperly executed or otherwise has an irregularity, the Settlement Administrator or Class Counsel will contact the Class Member. Nineteen Claim Forms are currently in this category.

In some instances, the Tribal leader or the chief executive of a tribal organization may have changed since the Class address list was prepared. If the authorized agent signing the Claim Form is not the person to whom the Claim Form was addressed, the Class Member should provide documentation showing that the person signing the Claim Form is authorized to do so. The Settlement Administrator and Class Monitor prefer to receive a resolution, certificate of election results, or similar official document showing the person signing the Form has the authority to do so.

Huntington advises any Class Member that wishes to be paid by wire transfer to check with its bank for the proper routing information for wire transfers. The routing number may be different from that printed on the Class Member's checks, and the name of the account must be exactly as it appears in the Class Member's bank's records. Incorrect routing information has delayed a number of

payments.

Because of leadership disputes, seven Class Members will not receive Claim Forms now. Instead, Class Counsel have asked the Court to determine who is authorized to act for the Class Member.

For ten Class Members affected by the Treasury Offset Program, the amount on the Claim Form will not be the amount of funds actually sent to the Class Member. These ten Class Members had federal debts and/or liens, and Treasury has offset some or all of their settlement shares against those debts and/or liens.

Inquiries may be directed to the Settlement Administrator at (Toll Free) 877-290-6637 or to any of the three Class Counsel listed on the Class website <WWW.RNCSETTLEMENT.COM>.

## **BASICS OF THE SETTLEMENT**

### **1. When is the settlement going to be paid out to Class Members?**

Payments have now been paid to most of the Class Members. Once a Class Member has returned its properly-executed Claim Form to the Settlement Administrator, the Class Member should receive payment of its share within 3 to 4 weeks.

### **2. Has the federal court approved the settlement, including deductions for attorneys' fees and costs?**

Yes. On February 23, 2016, the federal court issued a lengthy opinion and a final judgment approving all aspects of the proposed settlement. (On March 2 the court issued a corrected opinion, correcting minor errors in the original opinion.)

### **3. When did the settlement become final?**

The settlement became final on April 25, 2016.

### **4. How much is the settlement amount?**

The total settlement is \$940,000,000, plus \$7,965,659.39 in accrued post-judgment interest from February 23, 2016. The final payment from the U.S. Treasury was received in the Class bank account on July 11.

Individual Class Members can find their final Claim Form amounts at <WWW.RNCSETTLEMENT.COM>. The majority of Class Members will receive the amount of funds listed on their Claim Form. However, there are ten Class Members whose shares were subject to offset under the Treasury Offset Program, because they owed a federal debt or lien. (More information about this program can be found below.) Those ten Class Members should have received additional information from Treasury about their offset, and their Claim Form package will also include information about it. For these Class Members, their actual payment amount will be different than the Claim Form amount.

Because of the confidentiality requirements of the Treasury Offset Program, we cannot

identify the ten affected Class Members or post the payment amounts for every Class Member.

**5. Who is eligible to share in the settlement?**

Class Members eligible to share in the settlement are the 699 Indian Tribes and tribal organizations that are listed in the revised Distribution Appendix approved by the Court on December 17, 2015. These are all Tribes and tribal organizations that contracted or entered into self-governance funding agreements with the BIA or the Office of Self Governance under the Indian Self-Determination Act (Public Law 93-638) during any fiscal year from 1994 through 2013.

The Class Members are listed on the Ramah Class Action website, at <[WWW.RNCSETTLEMENT.COM/COURTFILINGS.HTML](http://WWW.RNCSETTLEMENT.COM/COURTFILINGS.HTML)> (Scroll down to “Jt response USET obj Exh B new Distrib Appx 12/16/2015”).

**6. Where can the Final Settlement Agreement be found?**

The Final Settlement Agreement, the table of Class Members’ percentage shares and estimated dollar shares, the application for attorneys’ fees, and other important documents are posted on this Class Website at

<[WWW.RNCSETTLEMENT.COM/FINALSETTLEMENT.HTML](http://WWW.RNCSETTLEMENT.COM/FINALSETTLEMENT.HTML)>.

**BACKGROUND**

**7. What is the background to this settlement?**

The *Ramah* litigation is a class action lawsuit against the BIA over unpaid contract support costs. Two earlier settlements in the case generally dealt with unpaid contract support costs between the years 1989 and 1993. A third settlement in 2008 made adjustments to the system for negotiating indirect cost rates. Earlier settlements left unresolved claims for unpaid contract support costs from 1994 to the present.

**8. Why was 1994 a significant year?**

Since 1994, Congress has capped the maximum appropriation the BIA could spend on contract support cost payments. As a result, the BIA long asserted that it could not be held liable for any resulting underpayments.

**9. What happened in the 2012 United States Supreme Court decision?**

In 2012, the United States Supreme Court held that capped “not to exceed” agency appropriations in and after 1994 did not relieve the government of its contract obligation to pay full contract support costs to Indian Self-Determination Act contractors.

**10. Why is this case significant?**

Congress wanted Tribes to be able to control and operate their own programs and services

under contract without diminishing the quantity or quality of the services. Contract support costs ensure that Tribes and their organizations contracting under the Indian Self-Determination Act can operate their programs and services in parity with those operated by the Federal Government.

**11. How much in contract support costs did the BIA pay to Tribes and tribal organizations over the years 1994-2013?**

The BIA paid a total of approximately \$2.4 billion for those years. This settlement increases that amount by more than one-third.

**12. What has been the impact of the Supreme Court’s ruling in the *Ramah* case on subsequent congressional appropriations?**

In direct response to the *Ramah* decision, Congress has appropriated enough to pay full contract support costs. For fiscal years 2014, 2015 and 2016, the increased appropriations for Interior and HHS contract support cost payments to Tribes have totaled approximately \$740 million.

**KEY ELEMENTS OF THE SETTLEMENT**

**13. What does the settlement do?**

The settlement resolved claims against the BIA for unpaid contract support costs during the years 1994 through 2013.

**14. What is included and what is excluded from the settlement?**

The settlement generally resolved all past claims involving contract support cost underpayments where the underpayment was caused by an agency-wide regulation, policy, or practice. But, it did not settle certain claims that are unique to a particular tribal contractor. The settlement also specifically excluded one category of contract support cost claims: claims for unpaid startup costs or pre-award costs.

**15. Did this settlement cover 2014, 2015, and 2016?**

No. This settlement did not cover 2014, 2015 and 2016. In these years Congress appropriated sufficient funds for the BIA to pay tribal contract support cost requirements in full.

**DISTRIBUTION OF THE SETTLEMENT AMOUNT**

**16. How is the settlement amount being distributed?**

The settlement agreement includes a detailed table showing the share of the settlement to be paid to each Tribe or tribal organization that contracted for any portion of the 20 years covered by the settlement. These shares were calculated by examining the government’s records of contract support cost payments, combined with the information the government and the tribal plaintiffs secured during a major statistical sampling project. A special Distribution Appendix that is part of the Final Settlement Agreement describes in detail how the percentage shares were

computed, and sets forth each Class member's share percentage. In general, the larger the contract support cost payments made to a tribal contractor over the years, the larger the share of the settlement allocated to that contractor. In addition, the Distribution Appendix provides a minimum payment of \$8,000 for each year that a tribal contractor had a contract with the BIA. (On December 17, 2015, the federal court made slight modifications to the pre-determined percentages to accommodate 55 new Class Members, in conformity with section VIII.D.1 of the Final Settlement Agreement.)

After Treasury paid the settlement funds, Class Counsel and the Settlement Administrator calculated the amounts due to each Class Member. The Claim Form amounts can be found at [WWW.RNCSETTLEMENT.COM](http://WWW.RNCSETTLEMENT.COM). Under the Treasury Offset Program, Treasury offset the amounts for ten Class Members with federal debts or liens. For these ten Class Members, their payment amount will not be the amount listed on their Claim Form. If your Tribe or tribal organization is one of the ten Class Members subject to the Treasury Offset Program, it should have been notified by Treasury. Additionally, the cover letter accompanying your Claim Form contains information about the Treasury Offset Program.

**17. What is the process for obtaining a share of the settlement?**

Each Class Member should have received a Claim Form from the Settlement Administrator. The Claim Form shows the Class Member's dollar share of the net settlement amount. The Court has now approved the payments to be made to each Class Member. For all but ten Class members, the amount on the Claim Form is the same as the payment amount. As noted above, however, for the ten Class Members who are subject to the TOP, the amount on the Claim Form will not be the amount they receive in payment.

The Form has been prepared to comply with the Contract Disputes Act, and it must be executed by the authorized official and returned to the Settlement Administrator.

If you have not received a Claim Form, please contact the Settlement Administrator at (Toll Free) 877-290-6637 or any of the Class Counsel listed on the Class website <[WWW.RNCSETTLEMENT.COM](http://WWW.RNCSETTLEMENT.COM)>.

**18. What if a dispute casts doubt on the proper recipient of a payment to a Class Member?**

As provided in the Final Settlement Agreement, Class Counsel has filed "interpleader" actions so the Court can resolve the matter. Only seven interpleaders have been filed to date.

If your Tribe has a leadership dispute, you should receive notice of the interpleader action soon. Please contact the Settlement Administrator with any questions.

**19. What deductions have been made from the \$940 million settlement amount before the distribution?**

Deductions have been made for a "Reserve Account," covering the costs of implementing the settlement and unexpected contingencies, and for the Court-awarded attorneys' fees and litigation costs.

**20. How were attorneys’ fees handled?**

As in most class actions, the attorneys for the Class are paid only on success, that is, on a “contingent fee” basis. The Class attorneys’ application for an award of fees and costs is posted on the Class website, at

<[WWW.RNCSETTLEMENT.COM/CLASSCOUNSELAPP.HTML](http://WWW.RNCSETTLEMENT.COM/CLASSCOUNSELAPP.HTML)>

The Court considered this application at a January 20, 2016, Fairness Hearing, and approved the application by Order entered February 23, 2016. The Court approved a fee of 8.5% of the settlement amount. The government in the Settlement Agreement agreed “that an 8.5 percent fee is fair and reasonable and support[ed]” the proposed fee. No Class Member objected to the fee.

**21. Is there any provision for additional compensation to be paid certain Class Members?**

Yes, the settlement agreement provides for reimbursing Class Members selected for and participating in the sampling process for their reasonable costs of participation. The agreement also provides for enhancing by 20% the shares that would otherwise be computed for the Ramah Navajo Chapter, Oglala Sioux Tribe and Pueblo of Zuni, in recognition of the considerable work these three Class Representatives did to achieve this settlement

**22. Who is supervising the settlement?**

The actual distribution of funds is being handled by KCC/Gilardi & Co., the court-approved Settlement Administrator. The Settlement Administrator’s work is supervised by Class Counsel and checked by Moss Adams, LLP, the accounting firm that is the Court-approved Class Monitor. Both the Settlement Administrator and the Class Monitor are required to report on their work to the Court.

**23. How does the Treasury Offset Program figure into the settlement?**

Under the Settlement Agreement, if a Class Member owed money to the United States, the Treasury Department has collected that debt from the Member’s share of the settlement amount. The Treasury released any amount left after the offset of the debt for payment to the Class Member, after deduction of its share of the Reserve Account, costs, and attorneys’ fees.

**OPT OUT RIGHTS**

**24. Did any Class Member opt out of the settlement?**

No Class Member opted out of the settlement.

**25. Is there any circumstance under which the settlement could be terminated?**

No. The settlement agreement allowed the government to terminate the settlement in one unusual circumstance: if the Court permitted at least 15 tribal contractors to opt out of the settlement, and if those 15 tribal contractors’ collective share of the settlement exceeded 15% of the

total settlement amount. But no Class Members opted out of the settlement.

### **COURT APPROVAL OF THE SETTLEMENT**

#### **26. Was Notice of the settlement provided to Class Members?**

Yes. Class Counsel mailed a Class Notice to all known Class Members. A summary of the Notice was also published in Indian Country Today, on the Class website, at <[WWW.RNCSETTLEMENT.COM/CLASSNOTICES.HTML](http://WWW.RNCSETTLEMENT.COM/CLASSNOTICES.HTML)>, and on websites maintained by the BIA and the Interior Department's Interior Business Center. The BIA also mailed and e-mailed the Notice to Class Members eligible to participate in the settlement.

#### **27. Did anyone object to any aspect of the Settlement?**

No.

#### **28. Did anyone ask to be added as a Class member?**

Yes, one entity objected to being excluded from the settlement. This entity received no contract support costs during any of the relevant years and so was not identified as a Class Member. Based upon this objection, the parties discovered 54 other contractors that had received no contract support costs, and asked the Court to include these additional contractors as Class Members. The Court, by Order entered December 17, 2015, approved this request. The revised Distribution Appendix showing these additional Class Members is posted on the Class website, at <[WWW.RNCSETTLEMENT.COM/COURTFILINGS.HTML](http://WWW.RNCSETTLEMENT.COM/COURTFILINGS.HTML)>. (Scroll down to "Jt response USET obj Exh B new Distrib Appx 12/16/2015".)

#### **29. Can interested entities still ask to be added as Class Members?**

No. The deadline to be added as a Class Member expired in October 2015.

### **PERMISSIBLE USE OF SETTLEMENT FUNDS**

#### **30. How may a Class Member use its proceeds from the Settlement?**

Funds paid to Class Members under this settlement may be used for any purpose or expenditure that the Class Member would otherwise be permitted to make under its governing documents and under applicable law. Settlement funds paid by a Class Member to individuals may be subject to income taxation and may impact an individual's eligibility for needs-based programs.

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