

Settlement Agreement in its capacity as the class representative for all direct contract support cost claims.

3. In early 1999 the Pueblo contacted Lloyd Miller to explore the Pueblo's outstanding claims and potential claims against the United States for damages arising out of the government's failure to pay the Pueblo full contract support costs associated with its Bureau of Indian Affairs and Indian Health Service self-determination contracts. The Pueblo had become concerned in the course of the proceedings associated with the First Partial Settlement Agreement that the *Ramah* class action, as it then stood, was seriously deficient in failing to address most of the problems that had led to the Pueblo's severe underpayments over a period of many years. The Pueblo sought out Mr. Miller based upon his reputation throughout Indian country as an expert attorney in the matter involving Indian Self-Determination Act.

4. In April 1999, I, my staff, and several Councilmembers met with Mr. Miller in Albuquerque. We explained to Mr. Miller that, although the "miscalculated rate" claim being then litigated in the *Ramah* case was important to the Pueblo, the Pueblo had suffered far greater damages over many years by the (1) failure of the BIA to fully pay even the undercalculated rate, (2) the failure of the BIA to ever pay "direct contract support costs," and (3) the failure of the BIA's "fixed with carry-forward" indirect cost rate methodology to include, as an adjustable under-recovery in future years, the amounts by which the BIA had failed to pay the Pueblo in prior years. In the course of this and subsequent meetings with the Pueblo Tribal Council, the Pueblo spent many hours conferring with Mr. Miller, collecting financial information to permit Mr. Miller to undertake an analysis of our potential claims, and researching the Pueblo's historic data back to 1992.

5. The Council met with Mr. Miller on at least three occasions in calendar year 1999 to review these matters. The Council also received reports from Mr. Miller, and conducted numerous telephone conferences with Mr. Miller to further refine the Pueblo's approach. In September 1999 the Pueblo Council carefully weighed its options in consultation with Mr. Miller, and ultimately decided to go forward with the filing of a damages claim under the Contract Disputes Act against the United States. I instructed Mr. Miller to prepare a final claim for my execution, and a claim was submitted to the contracting officer for the BIA in late September 1999.

6. In making the decision to go forward with such a claim, I and the Council understood that we were proceeding with the first step in the eventual filing of litigation against the United States that would be complimentary to the existing *Ramah* lawsuit (as it stood at that time). The Pueblo's September 1999 claim was limited to what has now become known as the "shortfall" claim (*i.e.*, the claim for the failure of the BIA to pay even undercalculated indirect cost requirements of the Pueblo), and the direct contract support cost claim. At the time the Pueblo filed its claim, the *Ramah* case was strictly limited to the "miscalculated rate" claim. Pursuant to my instructions, the Pueblo's financial staff spent dozens of hours researching stored financial records and contract modification documents covering multiple contracts through the BIA for each covered year beginning with 1992, in order to quantify the total amount of the contract support cost damages suffered by the Pueblo of Zuni as a result of the BIA's failures as described in this Affidavit.

7. In late February 2000, I received a decision from the BIA contracting officer denying the Pueblo of Zuni's claims in their entirety. Shortly before receiving the contracting officer's letter, I learned that the Oglala Sioux Tribe had sometime earlier moved to intervene in the *Ramah* case, and that the case was being expanded to include the same shortfall claim that the Pueblo of Zuni had been asserting for several months. Since I did not want the Pueblo of Zuni to file any litigation that was already covered by the *Ramah* case, after discussing this matter at length with Mr. Miller I concluded that the Pueblo of Zuni case to be filed should be limited to the direct contract support cost claim. Mr. Miller was then instructed to promptly prepare a Complaint for my final review. Thereafter a Complaint was filed in March 2000 and identified as Case No. 00-0365 in this Court.

8. The Pueblo of Zuni's individual claims are not substantial. In early discussions with Mr. Miller it became clear that there was no financial sense in the Pueblo of Zuni retaining legal counsel on an hourly basis to recover damages against the Bureau of Indian Affairs for the Pueblo's losses. However, the Pueblo of Zuni believed strongly that the BIA had violated its sacred trust responsibilities to the Pueblo by transferring over the BIA's trust programs, but then underfunding the Pueblo's contract support cost requirements to run those programs, and that the Bureau's misconduct had similarly harmed hundreds of other Tribes across the Country. After giving the matter considerable reflection in the Council chambers, the Pueblo of Zuni finally concluded that the importance of the issue, both as a matter of principle and for all Tribes in the United States, warranted the high burden the Pueblo would have to shoulder in bringing a class action lawsuit and in serving in the capacity as the class

representative of the whole class. After extensive discussions with Mr. Miller, Mr. Miller and his firm eventually agreed to undertake our representation on a strictly contingent fee basis.

9. After the filing of the Complaint, in April 2000 I and Zuni Finance Director Bryceson Pinto attended a meeting in the Washington, D.C. Office of the U.S. Department of the Interior, together with representatives of the Ramah Navajo Chapter and the Oglala Sioux Tribe. The purpose of the meeting was to explore possible settlement of all the contract support cost damage claims then pending against the BIA, including the claims that by then were set forth in the Pueblo of Zuni's Case No. 00-0365. Extensive private consultations with the attorneys both preceded and followed this first settlement session with the government. Subsequent negotiating sessions and other meetings associated with the litigation demanded my attendance in Albuquerque, New Mexico on July 6, 2000; Albuquerque, New Mexico on July 31 - August 2, 2000; Washington, D.C. on November 18-22, 2000; Washington, D.C. on December 6-8, 2000; Washington, D.C. on January 29-31, 2001; and Albuquerque, New Mexico on January 8, 2002. In addition, Finance Director Pinto attended several meetings on the Pueblo's behalf at which I could not be present (due to conflicting travel commitments), in Albuquerque, New Mexico on September 22, 1999; Albuquerque, New Mexico on July 6, 2000; Albuquerque, New Mexico on January 6, 2001; Los Angeles, California on June 20-22, 2001; San Diego, California on September 4, 2001, and Albuquerque, New Mexico on September 9, 2002 (for the preliminary approval hearing on the Second Partial Settlement Agreement).

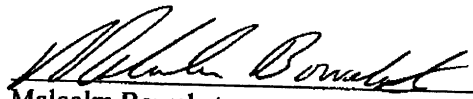
10. In the reconstituted *Ramah-Oglala-Zuni* litigation, this Court recently entered an Order deferring any further action on the pending cross-motions for summary judgment until the Tenth Circuit acts in another case involving contract support costs under the Indian Self-Determination Act and known as *Cherokee Nation and Shoshone-Paiute Tribes v. Thompson*. Given the importance of this Tenth Circuit appeal to the remaining claims in this case, I and Mr. Pinto also attended the recent oral argument held before the Tenth Circuit in Denver, Colorado on September 24-25, 2002.

11. Total out-of-pocket travel costs that the Pueblo of Zuni has incurred in connection with my attendance at the meetings identified earlier totals \$4,364.00. Total out-of-pocket travel costs that the Pueblo of Zuni has incurred in connection for Mr. Pinto to attend the meetings identified in earlier paragraphs of this Affidavit total \$6,300. In addition, Mr. Pinto has calculated that approximately \$16,817 were devoted by the staff of our Finance Department to provide support in connection with the litigation. In addition to these sums, the Pueblo of Zuni committed several dozen hours of my time and Mr. Pinto's time in Zuni in order to meet the Pueblo's responsibilities as the class representative of the direct contract support cost claims. (None of these sums include amounts for labor devoted to completing the direct contract support costs survey we received in November 2000, the costs of which are separately reimbursable under the Second Partial Settlement Agreement.) In addition, I estimate that during the time frame covered by this Affidavit, each Tribal Councilmember spent approximately forty hours

spread across six meetings devoted to this litigation, including consultations in Zuni, New Mexico with attorney Lloyd Miller.

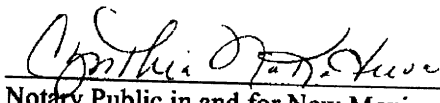
FURTHER YOUR AFFIANT SAYETH NOT.

Dated this 21 day of October 2002.



Malcolm Bowekaty

SUBSCRIBED AND SWORN to before me this 31 day of October 2002.



Notary Public in and for New Mexico
My Commission Expires: February 22, 2004