

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

FILED

APR 25 2006

WILLIAM D. GUTHRIE
Clerk, U.S. District Court
By
Deputy Clerk

CHEROKEE NATION OF OKLAHOMA, and)
SHOSHONE-PAIUTE TRIBES OF THE)
DUCK VALLEY RESERVATION,)

Plaintiffs,)

v.)

Case No. 99-092-S CIV

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 MOTION FOR ENTRY OF CONSENT JUDGMENT

Pursuant to Fed. R. Civ. P. 7(b), Plaintiff Shoshone-Paiute Tribes of the Duck Valley Reservation (hereafter Shoshone-Paiute Tribes) and the Defendants (hereafter the "parties") jointly move for entry of the attached Consent Judgment with respect to the claims of the Shoshone-Paiute Tribes. The Supreme Court has ruled that the Indian Health Service is liable for not paying contract support costs to the Shoshone-Paiute Tribes, as specified in the Indian Self-Determination Act, 25 U.S.C. §§ 450 et seq., and the Tribes' self-determination contracts. See Cherokee Nation of Okla. v. Leavitt, 543 U.S. 631 (2005). The parties have reached an agreement as to the amount of damages Defendants will pay in settlement of the Shoshone-Paiute Tribes' claims for contract support costs in this lawsuit. The Consent Judgment embodies that agreement and also provides, inter alia, for the dismissal of the Shoshone-Paiute Tribes' claims

with prejudice. The parties therefore respectfully request that the Consent Judgment be entered so that the portion of the case concerning Plaintiff Shoshone-Paiute Tribes can be resolved.

Respectfully submitted this 15th day of April 2006.

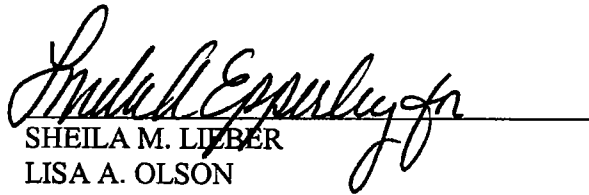
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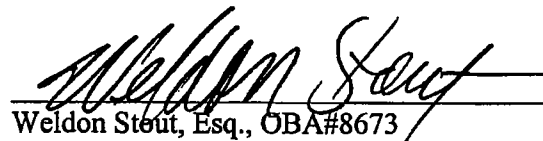
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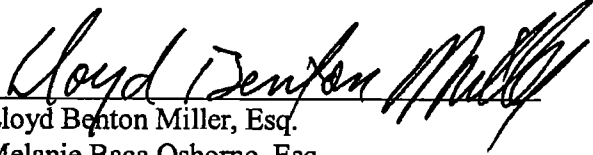
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United States Department of Health)
and Human Services; and CHARLES W.)
GRIM, Director of the Indian)
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Health and Human Services,)

Defendants.)

CONSENT JUDGMENT

WHEREAS plaintiff Shoshone-Paiute Tribes of the Duck Valley Reservation ("Plaintiff") and Defendants United States of America, Michael O. Leavitt in his official capacity as 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") (collectively "parties") have agreed to settlement of that portion of this action involving Plaintiff, upon the following terms and conditions,

THEREFORE, on the joint motion of the Plaintiff and the Defendants, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. As used herein, the term "Suit" means the above-captioned action, which is an appeal of the Defendants' denial of certain Contract Dispute Act claims presented by the Plaintiff

involving alleged shortfalls in the payment of certain contract support cost requirements, and related statutory claims involving such alleged shortfalls.

2. In full and final settlement of all the claims for damages by Plaintiff in the Suit, the parties agree to the following:

(a) As soon as practicable after the entry of this Consent Judgment, and in full and final settlement of the claims for damages in the Suit, Defendants shall pay to Plaintiff in compensation for damages the amount of \$3,735,152.00 plus interest as specified herein. This figure consists of:

(1) \$1,906,542 for the principle amount of unpaid direct contract support costs and indirect costs for FY 1996;

(2) interest under the Contract Disputes Act on the \$1,906,542, from September 20, 1996, up to the date of payment, to be calculated by the Treasury;

(3) \$1,795,067 for the principle amount of unpaid direct contract support costs and indirect costs for FY 1997;

(4) interest under the Contract Disputes Act on the \$1,795,067, from September 23, 1997, up to the date of payment, to be calculated by the Treasury; and

(5) \$33,543.40 in unpaid interest on the nonrecurring startup and preaward costs, which sum shall not incur interest.

(b) Notwithstanding any provision contained herein, compliance with all applicable federal, state, and local tax requirements shall be the sole responsibility of Plaintiff.

Plaintiff shall indemnify and hold harmless Defendants from any claim, liability, penalty, expenditure, or expense of any kind imposed by law or regulation, except as specifically provided herein.

(c) Defendants' payment as described in subparagraph (a) of this paragraph represents the full extent of the consideration flowing from Defendants for any of the matters released in paragraph 3, including any obligation of any party under applicable federal, state, and local tax requirements. No further payment or contribution of damages will be required of or made by Defendants to Plaintiff with respect to this Suit. Plaintiff does not hereby waive its right to seek attorney's fees and costs, and Defendants do not hereby waive their right to oppose any such request, except that the parties agree that the Plaintiff is prevailing.

3. Release: In consideration for the payment described in paragraph 2, the Plaintiff and its heirs, administrators, successors and assigns, hereby release and forever discharge Defendants and any department, agency, or establishment thereof and any current or former officers, employees, agents, or successors of any such department, agency, or establishment, whether in their official or individual capacities, from any and all claims for damages that have been asserted by Plaintiff in the Suit.

4. Merger Clause: The terms of the numbered paragraphs of this Consent Judgment constitute the entire settlement agreement of the parties with respect to damages, and no statement, remark, agreement, or understanding, oral or written, that is not contained herein shall be recognized or enforced, nor does this Consent Judgment reflect any admission by either party, or any agreed-upon purpose other than the desire of the parties to reach a full and final conclusion of any dispute over damages and to resolve that matter without the time and expense

of further litigation.

5. **Binding Successors:** This Consent Judgment shall be binding upon and inure to the benefit of the Plaintiff and the Defendants and their respective heirs, executors, successors, assigns, and personal representatives, including any person, entity, department, or agency succeeding to the interests or obligations of the parties, or having an interest herein.

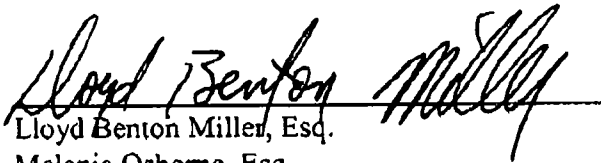
6. **Consultation with Counsel:** Plaintiff acknowledges that it has discussed this Consent Judgment with its counsel, who has explained these documents to it, and that it understands all of the terms and conditions of this Consent Judgment. Plaintiff further acknowledges that it has read this Consent Judgment, understands the contents thereof, and executes this Consent Judgment of its own free act and deed.

7. **Dismissal of Claims:** In consideration of the promises set forth herein, Plaintiff's claims for damages and all remaining claims by Plaintiff against Defendants brought in this Suit shall be dismissed with prejudice (except that Plaintiff does not hereby waive its right to seek attorney's fees and costs, and Defendants do not hereby waive their right to oppose any such request).

8. **Taxation of Costs:** The Parties agree that the clerk may tax appropriate costs, upon proper application or upon stipulation of the parties.

The parties, by their counsel, hereby consent to the terms and conditions of this Consent Judgment as set forth above and consent to the entry thereof.

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Date: April 24th, 2006

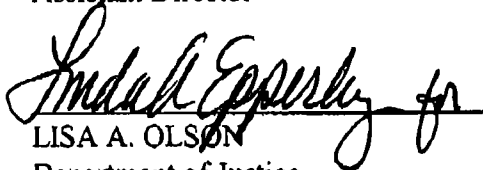
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Date: April 24, 2006

Counsel for Defendants

ORDER

The foregoing Consent Judgment shall be entered forthwith.

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: _____, 2006

Honorable Frank S. Seay
United States District Judge