

**CIVIL COVER SHEET**

JS-44 (Rev. 3/13 DC)

<b>I. (a) PLAINTIFFS</b>   (b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____ (EXCEPT IN U.S. PLAINTIFF CASES)	<b>DEFENDANTS</b>   COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____ (IN U.S. PLAINTIFF CASES ONLY) <small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small>
(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)	ATTORNEYS (IF KNOWN)

<b>II. BASIS OF JURISDICTION</b> (PLACE AN x IN ONE BOX ONLY)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) <b>FOR DIVERSITY CASES ONLY!</b>																												
<table style="width:100%;"> <tr> <td><input type="radio"/> 1 U.S. Government Plaintiff</td> <td><input type="radio"/> 3 Federal Question (U.S. Government Not a Party)</td> </tr> <tr> <td><input type="radio"/> 2 U.S. Government Defendant</td> <td><input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)</td> </tr> </table>	<input type="radio"/> 1 U.S. Government Plaintiff	<input type="radio"/> 3 Federal Question (U.S. Government Not a Party)	<input type="radio"/> 2 U.S. Government Defendant	<input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)	<table style="width:100%;"> <thead> <tr> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> </tr> </thead> <tbody> <tr> <td>Citizen of this State</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input type="radio"/> 4</td> <td style="text-align: center;"><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="radio"/> 5</td> <td style="text-align: center;"><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="radio"/> 6</td> <td style="text-align: center;"><input type="radio"/> 6</td> </tr> </tbody> </table>		PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
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Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6																								

**IV. CASE ASSIGNMENT AND NATURE OF SUIT**

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

<input type="radio"/> <b>A. Antitrust</b>  410 Antitrust	<input type="radio"/> <b>B. Personal Injury/Malpractice</b>  310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury 362 Medical Malpractice 365 Product Liability 367 Health Care/Pharmaceutical Personal Injury Product Liability 368 Asbestos Product Liability	<input type="radio"/> <b>C. Administrative Agency Review</b>  151 Medicare Act  <u>Social Security</u> 861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g))  <u>Other Statutes</u> 891 Agricultural Acts 893 Environmental Matters 890 Other Statutory Actions (If Administrative Agency is Involved)	<input type="radio"/> <b>D. Temporary Restraining Order/Preliminary Injunction</b>  Any nature of suit from any category may be selected for this category of case assignment.  *(If Antitrust, then A governs)*
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<input type="radio"/> <b>E. General Civil (Other)</b>		<b>OR</b>	<input type="radio"/> <b>F. Pro Se General Civil</b>	
<u>Real Property</u> 210 Land Condemnation 220 Foreclosure 230 Rent, Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property  <u>Personal Property</u> 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability	<u>Bankruptcy</u> 422 Appeal 27 USC 158 423 Withdrawal 28 USC 157  <u>Prisoner Petitions</u> 535 Death Penalty 540 Mandamus & Other 550 Civil Rights 555 Prison Conditions 560 Civil Detainee – Conditions of Confinement  <u>Property Rights</u> 820 Copyrights 830 Patent 840 Trademark  <u>Federal Tax Suits</u> 870 Taxes (US plaintiff or defendant) 871 IRS-Third Party 26 USC 7609	<u>Forfeiture/Penalty</u> 625 Drug Related Seizure of Property 21 USC 881 690 Other  <u>Other Statutes</u> 375 False Claims Act 400 State Reapportionment 430 Banks & Banking 450 Commerce/ICC Rates/etc. 460 Deportation 462 Naturalization Application 465 Other Immigration Actions 470 Racketeer Influenced & Corrupt Organization	480 Consumer Credit 490 Cable/Satellite TV 850 Securities/Commodities/Exchange 896 Arbitration 899 Administrative Procedure Act/Review or Appeal of Agency Decision 950 Constitutionality of State Statutes 890 Other Statutory Actions (if not administrative agency review or Privacy Act)	

<input type="radio"/> <b>G. Habeas Corpus/ 2255</b>  <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> <b>H. Employment Discrimination</b>  <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation)  *(If pro se, select this deck)*	<input type="radio"/> <b>I. FOIA/Privacy Act</b>  <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act)  *(If pro se, select this deck)*	<input type="radio"/> <b>J. Student Loan</b>  <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> <b>K. Labor/ERISA (non-employment)</b>  <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> <b>L. Other Civil Rights (non-employment)</b>  <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input checked="" type="radio"/> <b>M. Contract</b>  <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran’s Benefits <input type="checkbox"/> 160 Stockholder’s Suits <input checked="" type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> <b>N. Three-Judge Court</b>  <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

**V. ORIGIN**  
 1 Original Proceeding  
  2 Remand from State Court  
  3 Remanded from Appellate Court  
  4 Reinstated or Reopened  
  5 Transferred from another district (specify)  
  6 Multi-district Litigation  
  7 Appeal to District Judge from Mag. Judge

**VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)**  
 41 U.S.C. 7101 - Contract Dispute Act; Suit for underpayment by HHS of contract support costs owed Tribal contractor

<b>VII. REQUESTED IN COMPLAINT</b>	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	DEMAND \$ 270,160	Check YES only if demanded in complaint
		JURY DEMAND:	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>

<b>VIII. RELATED CASE(S) IF ANY</b>	(See instruction)	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	If yes, please complete related case form
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DATE: September 10, 2013	SIGNATURE OF ATTORNEY OF RECORD:
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**INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44**  
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk’s Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

\_\_\_\_\_  
**GRAND TRAVERSE BAND OF  
OTTAWA AND CHIPPEWA  
INDIANS**  
2605 N. West Bay Shore Drive  
Peshawbestown, MI 49682

Plaintiff,

v.

**UNITED STATES OF AMERICA;**  
and

**KATHLEEN SEBELIUS,**  
in her official capacity  
as Secretary,  
U.S. Department of Health & Human  
Services  
200 Independence Avenue, SW  
Washington, DC 20201

and

**YVETTE ROUBIDEAUX,**  
in her official capacity  
as Acting Director,  
Indian Health Service  
801 Thompson Avenue  
Rockville, MD 20852

Civil Case No. 1:13-cv-01371

**COMPLAINT**

Defendants.

Served: The Honorable Eric H. Holder, Jr.  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

The Honorable Ronald C. Machen, Jr.  
United States Attorney for the District of Columbia  
555 Fourth Street, NW  
Washington, DC 20530

## COMPLAINT

The Plaintiff, for its cause of action against the Defendants named above, alleges as follows:

### **INTRODUCTION AND SUMMARY**

1. This is a suit against the United States for breach of contract and statute by the Indian Health Service ("IHS"), an agency in the Department of Health and Human Services ("HHS"). Plaintiff, the Grand Traverse Band of Ottawa and Chippewa Indians ("the Tribe"), seeks money damages under the Contract Disputes Act, 41 U.S.C. § 7101 *et seq.* ("CDA"), based on the Secretary's repeated violations of the Tribe's contractual and statutory right to the payment of full funding of contract support costs ("CSC") for agreements entered under the Indian Self-Determination and Education Assistance Act ("ISDEAA"), Pub. L. No. 93-638, as amended, 25 U.S.C. § 450 *et seq.*

2. Defendants breached the Tribe's ISDEAA agreements by failing to pay the full CSC owed to the Tribe under the ISDEAA and the Tribe's ISDEAA agreements and annual funding agreements ("AFAs") for fiscal years 2006 through and including 2010.

3. Defendants paid only a portion of the CSC owed under the Tribe's ISDEAA agreements, due to their misapplication of federal contracting and appropriations law. In the appropriations acts each year, Congress imposed "caps" on aggregate CSC spending, which Defendants believed allowed them to underfund the Tribe's ISDEAA agreements. This resulted in CSC "shortfalls," which the IHS calculated for fiscal years 2006 through and including 2010 and reported to Congress.

4. The Supreme Court found Defendants' practice unlawful, holding that the IHS is responsible for fully funding ISDEAA agreements—including all of the required CSC—without regard to congressionally instituted caps on CSC funding as a whole. *Salazar v. Ramah Navajo*

*Chapter*, 567 U.S. \_\_\_, 132 S. Ct. 2181 (2012). As long as there are sufficient appropriations to cover an individual ISDEAA agreement's costs—even if there is not enough to fully fund all ISDEAA agreements—the federal government's obligation to fully pay each individual ISDEAA agreement remains. In the Court's words -- "[t]he agency's allocation choices do not affect the Government's liability in the event of an underpayment." *Ramah*, 132 S. Ct. at 2192, quoting *Cherokee Nation of Okla. v. Leavitt*, 543 U.S. 631, 641 (2005).

5. The Tribe's claims are indistinguishable from the claims in *Ramah*. The IHS received sufficient funds in each year at issue to fully pay the Tribe's CSC, although Congress limited the aggregate amount of funding for all CSC at the agency. The shortfall in CSC owed to the Tribe was a result of the agency's allocation choices, but the federal government remains liable for payment of the full amount, plus additional damages arising from the failure to pay the full amount.

#### **JURISDICTION AND VENUE**

6. This controversy arises under agreements between the United States and the Tribe for operation of Indian health programs carried out pursuant to ISDEAA agreements and funding agreements. This Court has subject matter jurisdiction under the CDA, 41 U.S.C. § 7104(b), and the ISDEAA. See 25 U.S.C. § 450m-1(a) (providing original jurisdiction to United States district courts, concurrent with the Court of Federal Claims, over civil actions for money damages arising under ISDEAA agreements).

7. On September 26, 2012, the Tribe requested an IHS contracting officer's decision on claims for underpaid CSC for fiscal years 2006 through and including 2010. In letters dated July 23, 2013, the IHS contracting officer denied these claims. Thus, the Tribe has exhausted its administrative remedies for its claims from fiscal years 2006 through and including 2010, and filed

this action within twelve months of receiving the decisions, as required by the CDA. 41 U.S.C. § 7104(b).

8. This Court has jurisdiction to review the IHS's decisions denying the Tribe's claims for fiscal years 2006 through and including 2010 under the CDA and Section 110 of the ISDEAA. 41 U.S.C. § 7104(b); 25 U.S.C. § 450m-1(a); 25 U.S.C. § 450m-1(d).

9. Venue is proper because Defendant Kathleen Sebelius in her official capacity as Secretary of HHS is located in the District of Columbia.

### **PARTIES**

10. Plaintiff is a federally recognized Indian Tribe, and as part of the governmental services it provides to its members, administers a tribal health clinic system. The Tribe's health clinic system provides a wide range of health care services, including medical services, dental support services, community health services, chemical dependency treatment programs, and mental health counseling. Pursuant to a self-governance compact and funding agreement with IHS, the Tribe has contracted with the IHS under the ISDEAA to carry out these functions.

11. Defendant United States is a party to every ISDEAA funding agreement, including the Tribe's agreements for each of fiscal years 2006, 2007, 2008, 2009, and 2010. Agreements between the Grand Traverse Band of Ottawa and Chippewa Indians and the Secretary of Health and Human Services Indian Health Service (Compact of Self-Governance executed June 30, 1993; Funding Agreements executed for fiscal years 2006, 2007, 2008, 2009, and 2010).

12. Defendant Kathleen Sebelius is the Secretary of Health and Human Services, and is charged by law with the responsibility for implementing the ISDEAA, and other health laws benefiting Indians, on behalf of the United States. 25 U.S.C. § 450f(a)(1); 25 U.S.C. § 450b(i); 42 U.S.C. § 2001. Defendant Sebelius is sued in her official capacity.

13. Defendant Yvette Roubideaux is the Acting Director of the IHS, the primary agency that carries out HHS's responsibility for implementing the ISDEAA, and other health laws benefiting Indians, on behalf of the United States. See 25 U.S.C. § 1661. Defendant Roubideaux is sued in her official capacity.

## STATEMENT OF FACTS

### The ISDEAA

14. During fiscal years 2006 through and including 2010, the Tribe provided health care services to eligible Indians and other eligible beneficiaries pursuant to agreements entered into with the Secretary of the HHS and the IHS under Title V of the ISDEAA, 25 U.S.C. § 450 *et seq.*

15. The ISDEAA authorizes the Tribe, other tribal organizations, and tribes to assume responsibility to provide programs, functions, services and activities ("PFSAs") that the Secretary would otherwise be obligated to provide. In return, the Secretary must provide the Tribe two types of funding under section 106(a) of the ISDEAA: (1) "program" funds, the amount the Secretary would have provided for the PFSAs had the IHS retained responsibility for them, *see* 25 U.S.C. § 450j-1(a)(1), sometimes called the "Secretarial amount" or the "106(a)(1) amount"; and (2) "contract support costs," the reasonable administrative and overhead costs associated with carrying out the PFSAs, *see* 25 U.S.C. § 450j-1(a)(2) and (3).<sup>1</sup>

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<sup>1</sup> Section 106(a)(2) of the ISDEAA mandates as follows:

- (2) There shall be added [to the 106(a)(1) amount] contract support costs which shall consist of an amount for the reasonable costs for activities which must be carried on by a tribal organization as a contractor to ensure compliance with the terms of the contract and prudent management, but which—
- (A) normally are not carried on by the respective Secretary in his direct operation of the program; or
  - (B) are provided by the Secretary in support of the contracted program from resources other than those under contract.

25 U.S.C. §450j-1(a)(2).

16. There are three types of CSC: (1) start-up costs, which are one-time costs to plan, prepare for and assume operation of a new or expanded PFSA, see 25 U.S.C. § 450j-1 (a)(5) & (6); (2) indirect costs, costs incurred for a common or joint purpose benefiting more than one PFSA, such as administrative and overhead costs, see 25 U.S.C. § 450j-1(a)(2); and (3) direct CSC ("DCSC"), expenses directly attributable to a certain PFSA but not captured in either the indirect cost pool or the 106(a)(1) amount, such as workers compensation insurance or other expenses the Secretary would not have incurred because, for example, the Government is self-insured, see 25 U.S.C. § 450j-1(a)(3)(A).

17. The ISDEAA requires that, upon approval of the contract, "the Secretary shall add to the contract the full amount of funds to which the contractor is entitled [under section 106(a) of the ISDEAA]," including CSC. 25 U.S.C. § 450j-1(g) (emphasis added); see also *Cherokee Nation*, 543 U.S. at 634 ("The [ISDEAA] specifies that the Government must pay a tribe's costs, including administrative expenses."). As noted above, one component of the required CSC under section 106(a) is indirect cost funding, which covers administrative and overhead costs, allowing all program funds to be used to provide health care PFSA's for tribal members and other beneficiaries.

18. For the Tribe, the "full amount" of indirect costs was (and is) determined by multiplying a negotiated indirect cost rate by the amount of the direct cost base. The Tribe's indirect cost rate, direct cost base, resulting indirect cost requirement, and any shortfall in funding were memorialized in the CSC "shortfall reports" IHS prepared for, and delivered to, the U.S. Congress each year in accordance with the ISDEAA. See 25 U.S.C. § 450j-1(c).

#### The CSC Shortfalls and the *Ramah* Case

19. Despite the ISDEAA's requirements that the Secretary shall pay the full amount of CSC, the IHS has not done so. Since at least fiscal year 1993, IHS has underpaid the vast majority



of ISDEAA contractors, as documented in the agency's annual CSC "shortfall reports" to Congress. IHS prepares the shortfall reports in compliance with ISDEAA section 106(c), which requires that the agency submit to Congress an annual report on the implementation of the ISDEAA, including:

- (1) an accounting of the total amounts of funds provided for each program and the budget activity for direct program costs and contract support costs of tribal organizations under self-determination;
- (2) an accounting of any deficiency in funds needed to provide required contract support costs to all contractors for the fiscal year for which the report is being submitted....

25 U.S.C. § 450j-1(c).

20. Each IHS Area Office, including the Bemidji Area (which administratively serves the Tribe), prepares a shortfall report that shows how much each tribe and tribal organization in the Area was paid in CSC for the fiscal year, how much IHS would have paid had Congress appropriated sufficient CSC funding to pay every ISDEAA contractor in full, and the resulting shortfall. The reports reflect the data in the contracts and compacts, funding agreements, and indirect cost rate agreements of tribal contractors.

21. Though the form of the shortfall reports has varied somewhat over the years, the essential information in the reports used to calculate the shortfalls has remained the same for each given year: the total CSC requirement minus the actual CSC paid by the IHS equals the CSC shortfall, which is reported to Congress.

22. Prior to fiscal year 1998, Congress imposed no statutory restriction on availability of CSC, but IHS limited its payment to the amounts recommended in congressional committee reports. In 2005, the U.S. Supreme Court held this practice unlawful, ruling that the appropriations available to pay tribes the full CSC due under section 106(a) and their contracts included the IHS's entire unrestricted lump-sum appropriation. *Cherokee Nation*, 543 U.S. at

642-43 (2005). The Court held that IHS should have reprogrammed funds to pay the Cherokee Nation the full CSC due under its contracts.

23. Despite the *Cherokee* ruling, Defendants continued their practice of paying less than full CSC to ISDEAA contractors. Defendants justified the systematic underpayment of CSC by pointing to the CSC spending "caps" Congress has placed in the appropriations acts beginning in fiscal year 1998. *See, e.g., Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, Pub. L. No. 105-277, 112 Stat. 2681, 2681-279 (1998)* ("not to exceed \$203,781,000 shall be for payments to tribes and tribal organizations for contract or grant support costs associated with [ISDEAA] contracts").

24. In 2012, the U.S. Supreme Court considered the Government's responsibility to fully fund CSC during years when Congress placed a cap on the amount of funding available for CSC. Echoing its reasoning in *Cherokee*, the Court held that—even if Congress appropriates insufficient funds to cover the aggregate amount due to every contractor, but enough to pay any individual contractor's CSC—the Government is obligated to pay each contractor's CSC in full. *Ramah*, 132 S. Ct. at 2186.<sup>2</sup>

25. The Court explicitly rejected arguments that the government is not liable for full CSC because Congress did not appropriate sufficient funding for all CSC, and that the ISDEAA states that the Secretary "is not required to reduce funding for programs, projects, or activities serving a tribe to make funds available to another tribe." *Ramah*, 132 S. Ct. at 2192, quoting 25 U.S.C. § 450j-1(b). The Court found this idea was "inconsistent with

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<sup>2</sup> "Once Congress has appropriated sufficient legally unrestricted funds to pay the contracts at issue, the Government normally cannot back out of a promise to pay on grounds of 'insufficient appropriations,' even if the contract uses language such as 'subject to the availability of appropriations,' and even if an agency's total lump-sum appropriation is insufficient to pay *all* the contracts the agency has made." *Ramah*, 132 S. Ct. at 2190 (internal quotations omitted) (emphasis in the original).

ordinary principles of Government contracting law," and that the "agency's allocation choices do not affect the Government's liability in the event of an underpayment." *Id.*<sup>3</sup>

26. The Tribe was one of the tribal contractors underpaid in fiscal years 2006 through and including 2010 as a result of IHS's allocation choices. According to the agency's own CSC shortfall reports, the Tribe suffered significant CSC underpayments in these years. The shortfalls documented in the reports for those years are summarized in the following table:

**Table 1. Shortfall Report Summary**

Year	Total Requirement (\$)	Total Paid (\$)	Shortfall (\$)
2006	620,851	518,703	102,148
2007	540,308	523,051	17,257
2008	548,107	506,921	41,186
2009	570,417	502,170	68,247
2010	582,361	541,039	41,322
<b>TOTAL</b>			<b>270,160</b>

#### **CAUSE OF ACTION - Breach of Contract**

27. All prior allegations are adopted by reference.

28. The Tribe's ISDEAA agreements incorporate the statutory duty to fully fund CSC. 25 U.S.C. § 450j-1(a) & (g); *see also, e.g.*, fiscal years 2006-2009 Multi-Year Funding Agreement between the Grand Traverse Band of Ottawa and Chippewa Indians and the IHS. The Supreme Court affirmed this duty in *Ramah*, which other courts have followed. Despite this statutory and contractual duty, during the years in question, the IHS failed to provide the full funding due under its ISDEAA agreements with the Tribe.

<sup>3</sup> The *Ramah* decision concerned CSC from the Bureau of Indian Affairs, but after that decision, the Court vacated a Federal Circuit case involving the IHS that had reached a contrary conclusion. On remand, the Federal Circuit followed *Ramah*, noting the IHS appropriations were limited by identical language as the BIA appropriations in *Ramah*, and holding the Secretary was obligated to pay all of the tribal contractor's CSC. *Arctic Slope Native Ass'n, Ltd. v. Sebelius*, 2012 WL 3599217, No. 2010-1013 (Fed. Cir., Aug 22, 2012) *on remand from Arctic Slope Native Ass'n, Ltd. v. Sebelius*, 133 S. Ct. 22 (2012), *vacating* 629 F.3d 1296 (Fed. Cir. 2010).

29. Instead, the IHS paid significantly less than its full CSC requirement in fiscal years 2006 through and including 2010, as acknowledged in IHS's own shortfall reports. In doing so, the IHS violated the ISDEAA's requirement of full payment from available appropriations without regard to total appropriations or any congressionally imposed aggregate caps, as affirmed by the Supreme Court in *Ramah*, and breached its agreements with the Tribe, which incorporate the full-funding requirement of section 106(a).

Claim 1: Fiscal Year 2006

30. As indicated in the IHS's own shortfall report, the Tribe's CSC requirement for fiscal year 2006 was \$620,851, yet the IHS paid only \$518,703. Therefore, the Tribe asserts a claim under the ISDEAA and its ISDEAA agreement in the amount of \$102,148.

Claim 2: Fiscal Year 2007

31. As indicated in the IHS's own shortfall report, the Tribe's CSC requirement for fiscal year 2007 was \$540,308, yet the IHS paid only \$523,051. Therefore, the Tribe asserts a claim under the ISDEAA and its ISDEAA agreement in the amount of \$17,257.

Claim 3: Fiscal Year 2008

32. As indicated in the IHS's own shortfall report, the Tribe's CSC requirement for fiscal year 2008 was \$548,107, yet the IHS paid only \$506,921. Therefore, the Tribe asserts a claim under the ISDEAA and its ISDEAA agreement in the amount of \$41,186.

Claim 4: Fiscal Year 2009

33. As indicated in the IHS's own shortfall report, the Tribe's CSC requirement for fiscal year 2009 was \$570,417, yet the IHS paid only \$502,170. Therefore, the Tribe asserts a claim under the ISDEAA and its ISDEAA agreement in the amount of \$68,247.

Claim 5: Fiscal Year 2010

34. As indicated in the IHS's own shortfall report, the Tribe's CSC requirement for fiscal year 2010 was \$582,361, yet the IHS paid only \$541,039. Therefore, the Tribe asserts a claim under the ISDEAA and its ISDEAA agreement in the amount of \$41,322.

**PRAYER FOR RELIEF**

35. The Plaintiff therefore requests that this Court:
- A. Award the Tribe \$270,160 in damages, as detailed in paragraphs 30-34 above;
  - B. Award such other damages as may be proven in this action;
  - C. Order the payment of interest on these claims pursuant to the CDA, 41 U.S.C. § 7109, and the Prompt Payment Act, Chapter 39 of Title 31, United States Code;
  - D. Award the Tribe its attorney fees and expenses pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 and 25 U.S.C. § 450m-1(c), and other applicable law; and
  - E. Grant the Tribe such other and further relief as the Court deems appropriate.

Respectfully Submitted,



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