

# In the United States Court of Federal Claims

No. 02-25L

(Filed: October 15, 2014)

JICARILLA APACHE NATION, formerly  
JICARILLA APACHE TRIBE,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

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## ORDER

On January 8, 2002, plaintiff Jicarilla Apache Nation (Jicarilla) filed its complaint in this case. On October 7, 2008, following discussions with the parties, this court issued an order breaking this case up into several phases (tranches). The first phase (Phase 1) was limited to fiscal claims relating to defendant's management of certain Jicarilla trust accounts from 1972 through 1992.

Trial on Phase 1 was conducted in November 2011. On June 4, 2013, the court issued its opinion on the Phase 1 issues, finding that defendant breached its fiduciary obligations to Jicarilla, and granting plaintiff damages in the amount of \$21,017,491.99. *Jicarilla Apache Nation v. United States*, 112 Fed. Cl. 274, 278 (2013). On May 16, 2014, defendant filed a Motion to Modify Phase 1 Ruling. Plaintiff filed its response on June 2, 2014, and defendant filed its reply on June 9, 2014.

In the guise of a motion under RCFC 54(b) and 59(a)(1), defendant would have the court consider issues that were not raised during the trial in this case – issues that defendant could have raised, but did not. As plaintiff makes perfectly clear, defendant is seeking to litigate in this tranche issues involving **intra-pooling of funds**, when the issues before this first stage of the case involved the **inter-pooling of funds**. Compare *Jicarilla Apache Nation*, 112 Fed. Cl. at 301-02. Defendant could have raised these issues in discovery or even during the pretrial filings in this case, but did not. Nor does defendant rely upon any newly-discovered evidence. The court will not allow defendant to raise these issues at this late stage.

Because the Phase 1 decision is not yet a final judgment, the Government's motion is governed by RCFC 54(b) and 59(a)(1). *See Petro-Hunt, L.L.C. v. United States*, 108 Fed. Cl. 398, 399 (2013). As this court has stated, "[a] motion for reconsideration is not an opportunity to make new arguments that could have been made earlier." *CANVS Corp. v. United States*, 110 Fed. Cl. 19, 25 (2013); *see Bluebonnet Sav. Bank, F.S.B. v. United States*, 466 F.3d 1349, 1361 (Fed. Cir. 2006); *Gen. Electric Co. v. United States*, 416 F.2d 1320, 1322 (Ct. Cl. 1969). "A motion for reconsideration is not intended . . . to give an 'unhappy litigant an additional chance to sway' the court." *Matthews v. United States*, 73 Fed. Cl. 524, 525 (2006) (quoting *Froudi v. United States*, 22 Cl. Ct. 290, 300 (1991)); *see also Sharpe v. United States*, 112 Fed. Cl. 468, 473 (2013); *Stueve Bros. Farms, LLC v. United States*, 107 Fed. Cl. 469, 475 (2012), *aff'd*, 737 F.3d 750 (Fed. Cir. 2013); *Seldovia Native Ass'n v. United States*, 36 Fed. Cl. 593, 594 (1996), *aff'd*, 144 F.3d 769 (Fed. Cir. 1998). That is precisely what defendant seeks to accomplish here. The court will not allow this.

Because of the complexity of this case, the court dealt with this case in stages – and plaintiff and defendant clearly understood this. The court will not allow defendant to alter the stages in this case, as defendant deems fit. Therefore, defendant's motion is **DENIED**. Further violations by defendant of this court's orders, both for discovery and pretrial filings purposes, may lead to the imposition of sanctions.

**IT IS SO ORDERED.**

s/Francis M. Allegra  
Francis M. Allegra  
Judge