

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

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RED LAKE BAND OF CHIPPEWA INDIANS )  
A federally recognized Indian Tribe )  
P.O. Box 550 )  
Red Lake, MN 56671 )

Plaintiff, )

v. )

Civil Action No. \_\_\_\_\_

UNITED STATES DEPARTMENT )  
OF HEALTH AND HUMAN SERVICES )  
200 Independence Avenue, S.W. )  
Washington, D.C. 20201, )

and )

XAVIER BECERRA, in his official capacity )  
as Secretary, United States Department )  
of Health and Human Services )  
200 Independence Avenue, S.W. )  
Washington, D.C. 20201, )

Defendants. )

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF  
AND MONEY DAMAGES**

1. Plaintiff Red Lake Band of Chippewa Indians (the "Tribe") seeks relief for Defendants' violations of the Indian Self-Determination and Education Assistance Act, as amended, 25 U.S.C. § 5301 *et seq.* ("ISDEAA"), and regulations promulgated thereunder, with respect to compensating the Tribe for a lease of tribal property.

## **PARTIES**

2. The Tribe is a federally recognized Indian tribe whose Reservation covers 1,260.3 square miles in northwestern Minnesota, with headquarters located at Highway #1 East, Red Lake Tribal Office Building, Red Lake, MN 56671.

3. The United States Department and Human Services ("Department") is an executive department within the U.S. government, with headquarters located at 200 Independence Avenue, S.W., Washington, D.C. The Department's constituent agencies and programs include the Indian Health Service ("IHS"), which contracts on behalf of the United States with Indian tribes and tribal organizations under the ISDEAA to carry out Indian health service programs.

4. Xavier Becerra is the Secretary of the Department and has overall responsibility for administering the Department as well as overseeing its constituent agencies and programs, including the IHS. His office is located within the headquarters of the Department at 200 Independence Avenue, S.W., Washington, D.C.

## **JURISDICTION AND VENUE**

5. This Court has jurisdiction under the ISDEAA, 25 U.S.C. § 5331(a), and under 28 U.S.C. § 1331.

6. Venue in the District of Columbia is proper under 28 U.S.C. § 1391(b) and (e).

## **FACTS**

7. The Tribe operates health programs pursuant to ISDEAA contracts with the IHS, including one contract for an alcohol program and one for a substance abuse/rehabilitation program ("Contracted Programs").

8. Between 2018 -2020, the Tribe constructed the Obaashiing Chemical Health Treatment Center (“Obaashiing CHTC”) at 19195 North Ponemah Road, Ponemah, Minnesota, 56666, on its Reservation to help support the operation of its Contracted Programs.

9. The Tribe financed construction of the Obaashiing CHTC with \$856,493 of its own funds and a loan of \$4,950,000 from the U.S. Department of Agriculture (“USDA”).

10. Following completion of the Obaashiing CHTC, the Tribe submitted a proposal to IHS on August 31, 2020, to lease the facility to the IHS pursuant to Section 105(l) of the ISDEAA, 25 U.S.C. § 5324(l), and a companion proposal to amend one of its existing ISDEAA contracts to include the lease use of the facility in carrying out its ISDEAA contracted health care programs.

11. The Tribe began providing health care services at the Obaashiing CHTC in December 2020.

12. The parties agreed to enter into two leases: a pro-rated one-month lease for calendar year 2020 and a 12-month lease for calendar year 2021.

13. During 2020/2021 lease negotiations, the parties eventually reached agreement on almost all of the elements of compensation to be provided under the two leases, including depreciation based on the full acquisition cost of the facility, calculated at \$148,884.41 annually. They disputed only one element -- whether the Tribe was entitled to an amount of \$136,186.29 to cover annual principal and interest payments owed by the Tribe on the USDA loan.

14. IHS refused to compensate the Tribe for these loan payments. It took the position that repayment of a construction loan from a federal agency was not reasonable compensation allowable under Section 105(l) and the implementing regulations.

15. Accordingly, by a letter of January 15, 2021, IHS agreed to enter leases for the facility covering one month of 2020 and the entire 2021 year at a lease compensation amount of \$63,648 for 2020 (one-twelfth of \$763,770) and \$763,770 for 2021. It partially declined the Tribe's compensation proposals for these leases, and the corresponding Annual Funding Agreements ("AFAs") for the ISDEAA contract, to the extent that they sought greater amounts. A copy of this letter is attached as Exhibit A.

16. On February 14, 2022, the Tribe submitted a lease proposal for the Obaashiing CHTC for 2022 to IHS.

17. During lease negotiations between the parties, the USDA loan once again became the point of contention but IHS changed its position from the previous year.

18. By a letter of June 21, 2022, IHS agreed to a lease for 2022 at a compensation level of \$648,709 and declined the Tribe's proposal for a greater amount. A copy of this letter is attached as Exhibit B.

19. IHS announced in this letter that it had revisited its position and now agreed that the Tribe's payments of principal and interest on the USDA loan are properly compensable under Section 105(l) and would be included in the lease compensation for 2022.

20. However, IHS stated that the inclusion of principal and interest in the lease compensation required an offsetting reduction of the amount included in the lease compensation for depreciation.

21. The Tribe had proposed that the 2022 lease compensation include \$145,268.80 for straight-line depreciation of the facility based on its "book value," i.e., the acquisition cost of \$5,806,493.50, amortized over a 39-year useful life.

22. IHS took the position that the Tribe is not entitled to depreciation to the extent that the acquisition cost was financed by the USDA loan. It asserted that this would violate 25 CFR § 900.70.

23. Accordingly, IHS reduced the lease compensation by \$123,307.80, the amount of depreciation that it attributed to the portion of the facility's acquisition cost that had been funded by the \$4,950,000 USDA loan.

24. IHS's refusal to compensate the Tribe for both (a) depreciation based on the full acquisition cost of the facility, and (b) principal and interest paid or accrued on the USDA loan for 2020, 2021, and 2022 contravened Section 105(l) of the ISDEAA and/or 25 CFR § 900.70.

#### **FIRST CLAIM FOR RELIEF—DECLARATORY JUDGMENT**

25. The Tribe re-alleges and incorporates by reference the allegations of paragraphs 1-24 above, as if fully set forth herein.

26. Pursuant to Section 105(l) of the ISDEAA and 25 CFR § 900.70, the Tribe is entitled to lease compensation that includes both (a) depreciation based on the full acquisition cost of the facility, and (b) principal and interest paid or accrued on the USDA loan.

27. The Tribe is entitled to a judgment declaring that lease compensation for the Obaashiing CHTC must include depreciation based on the full acquisition cost of the facility, and principal and interest paid or accrued on the USDA loan.

#### **SECOND CLAIM FOR RELIEF—INJUNCTIVE RELIEF**

28. The Tribe re-alleges and incorporates by reference the allegations of paragraphs 1-27 above, as if fully set forth herein.

29. The Tribe is entitled to injunctive relief compelling the Secretary to provide lease compensation for the Obaashiing CHTC that includes both (a) depreciation based on the full acquisition cost of the facility, and (b) principal and interest paid or accrued on the USDA loan.

**THIRD CLAIM FOR RELIEF—DAMAGES**

30. The Tribe re-alleges and incorporates by reference the allegations of paragraphs 1-29 above, as if fully set forth herein.

31. The Tribe is entitled to money damages in the amount of \$11,349 for 2020, \$136,186 for 2021, and \$123,308 for 2022.

**PRAYER FOR RELIEF**

**WHEREFORE**, the Tribe respectfully requests that the Court enter judgment in favor of the Tribe and against Defendants:

A. Declaring that annual lease compensation paid to the Tribe for the Obaashiing CHTC must include both (a) depreciation based on the full acquisition cost of the facility, and (b) principal and interest paid or accrued on the USDA loan;

B. Compelling the Secretary to include funding in the 2020, 2021 and 2022 lease compensation for the Obaashiing CHTC that covers both (a) depreciation based on the full acquisition cost of the facility, and (b) principal and interest paid or accrued on the USDA loan;

C. Awarding damages to the Tribe in the approximate amount of \$270,843 plus interest, expenses, and fees, including reasonable attorneys' fees; and

D. Granting the Tribe such other relief as the Court deems just and proper.

Dated this 10th day of January, 2023.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: /s/ Steven D. Gordon  
Steven D. Gordon (D.C. Bar No. 219287)  
Philip Baker-Shenk (D.C. Bar No. 386662)  
800 17<sup>th</sup> Street, N.W., Suite 1100  
Washington, D.C. 20006  
Tel: (202) 955-3000  
Fax: (202) 955-5564

*Attorneys for Plaintiff Red Lake Band of  
Chippewa Indians*