

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

THE INTER-TRIBAL COUNCIL OF)	
ARIZONA, INC.,)	
Plaintiff,)	No. 15-342L
)	(Judge Hertling)
v.)	
)	
THE UNITED STATES OF AMERICA,)	
Defendant.)	

MOTION FOR PARTIAL SUMMARY JUDGMENT

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March 21, 2023

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MOTION FOR PARTIAL SUMMARY JUDGMENT

Under Rule 56 of the Rules of the United States Court of Federal Claims (RCFC), the United States respectfully requests partial summary judgment against Claim I of the Second Amended Complaint to the extent it alleges that the United States failed to monitor and maintain adequate collateral to secure the loan obligation of Barron Collier Co. (Collier), rejecting the claim of Plaintiff Inter-Tribal Council of Arizona, Inc. (ITCA) as one recipient of Collier's loan payments.

ITCA is a council of federally recognized Indian tribes designated by Congress to receive, in an educational trust, 95 percent of payments by Collier on a thirty-year, \$34.9 million secured loan extended by the Department of the Interior. After fifteen years of loan payments without incident, Collier ceased paying and attempted to abandon its obligations in 2012. The United States promptly sued Collier to enforce collateral-maintenance terms of the loan. The United States recovered \$48 million from Collier and, as Congress prescribed, assigned 95 percent of that recovery to ITCA. But ITCA demands still more money, insisting that the United States should pay all future interest. No such liability exists.

QUESTION PRESENTED

The statute establishing an Indian education trust fund based on future payments by Collier defines a trust duty of the United States with respect to those deposits and affords the Secretary of the Interior discretion to determine the adequacy of collateral in securing Collier's payment obligations. The statute also generally provides that the United States hold the security provided by Collier in accordance with a Trust Fund Payment Agreement (TFPA). The United States executed a TFPA with Collier and, under that agreement, obtained collateral securing Collier's principal payment obligation. ITCA previously challenged the sufficiency of that collateral in this Court, the District of Arizona, the Federal Circuit, and the Ninth Circuit, without success. This Court and the Federal Circuit have also held that the United States is not a guarantor of Collier's payment obligations. Following Collier's breach of its obligations under the trust agreement, the United States faithfully discharged its trust duties with respect to collateral maintenance by suing to force Collier to maintain the value of the trust estate at 130% of a defined "Release Level Amount" as agreed in the TFPA and obtaining a judgment against Collier. The United States' settlement with Collier successfully recovered additional security to meet the amount mandated by the TFPA. The United States won a sum in excess of the value of the collateral that the United States was required to hold in trust under the TFPA and thereafter appropriately assigned those proceeds to ITCA's trust account. Therefore, is the United States entitled to summary judgment against ITCA's claim that the government breached its fiduciary duty to maintain sufficient collateral for Collier's payment obligations?

STATEMENT OF FACTS

1. Congress approves the Arizona-Florida Land Exchange Act

On November 18, 1988, Congress approved a complicated land exchange between the United States and Collier by passing the Arizona-Florida Land Exchange Act (Act), which was in Title IV of the Arizona-Idaho Conservation Act of 1988, Public Law No. 100–696, 102 Stat. 4577 (1988); SOF ¶ 1.¹ Under the Act, the United States would receive title to about 108,000 acres of wetlands in Florida, and Collier would receive federal land in Phoenix, Arizona. Act, Sec. 402; SOF ¶ 2 The Arizona land Collier received is commonly known as the Phoenix Indian School property because Interior had operated a school for Native Americans on the federally owned land since 1891, but by 1988 the school was slated for closure. SOF ¶ 3.

The Act also required Collier to pay \$34.9 million to the United States because the Phoenix Indian School land was worth more than the Florida land. *Id.* ¶ 4; *see also* Act, Sec. 402(h). The Act authorized the Secretary of the Interior to accept the \$34.9 million as either (i) a cash payment at closing or (ii) over time with annual interest payments at a rate between 8.5% and 9.0% per annum for thirty years, followed by a balloon payment of the principal in year thirty. Act, Sec. 403(b); SOF ¶ 5. If the thirty-year payment option was selected, the Secretary was required to execute a Trust Fund Payment Agreement with Collier under which the annual payments were to be made to the United States. Act, Sec. 403(c)(4). Also, under this option, the United States was required to “hold in trust the security provided in accordance with the Trust Fund Payment Agreement.” Act, Sec. 405(c)(2); SOF ¶ 6. The Act did not delineate any security requirements, *Inter-Tribal Council of Arizona, Inc. v. United States*, 140 Fed. Cl. 447, 458

¹ The United States relies upon its Statement of Undisputed Material Facts (SOF), filed contemporaneously and incorporated herewith.

(2018) (*Dismissal Order II*), *aff'd in part, rev'd in part*, 956 F.3d 1328 (Fed. Cir. 2020), leaving this decision-making to the discretion of the Secretary. *Inter-Tribal Council of Arizona, Inc. v. Babbitt*, 51 F.3d 199, 203 (9th Cir. 1995) (*ITCA v. Babbitt*). The Act does not require the United States to make any payment if Collier fails to make them. *Inter-Tribal Council of Arizona, Inc. v. United States*, 956 F.3d 1328, 1345 (Fed. Cir. 2020) (*Appellate Order*).

Congress mandated that payments made by Collier be deposited into trust accounts for ITCA and the Navajo Nation. The Act directs that all of Collier's payments are to be used to establish two Indian education trust accounts, the Arizona Inter-Tribal Trust Fund (Trust) and the Navajo Trust Fund (Navajo Trust). Act, Sec. 405(a)(1)–(2); SOF ¶ 7. The Act specifies that 19 tribes belonging to ITCA are to receive 95 percent of the money paid by Collier.² Act, Sec. 405(e); SOF ¶ 8.

2. In accord with the Act, Collier obtains a secured thirty-year loan from the United States

The Secretary accepted Collier's request to make annual interest payments for thirty years, with a balloon payment of the principal. SOF ¶ 10. The arrangement achieved between Interior and Collier under the Act uses three main instruments: the Trust Fund Payment Agreement, a Deed of Trust, and a Promissory Note. *Id.* ¶ 11.³ The Promissory Note and the Deed of Trust are exhibits to the TFPA and, according to the parties to the agreement, “constitute” a part of the “Trust Fund Payment Agreement” referred to in the Act. *Id.* ¶ 12.

The Promissory Note required Collier to pay thirty annual interest payments of

² The remaining five percent is deposited into the Navajo Trust for the benefit of the Navajo Nation. Act, Sec. 405(e). The Navajo Nation is not a party to this litigation.

³ ITCA is not a party to any of these instruments. SOF ¶ 13. Although dated in 1992, the transaction closed in 1996. SOF ¶ 11.

\$2,966,500 (reflecting an 8.5% rate), and also to make thirty payments into a private annuity. *Id.*

¶ 14. The annuity was supposed to equal the \$34.9 million principal sum at the end of the thirty-year term. *Id.* ¶ 15. According to the TFPA, the Promissory Note was secured by the Annuity and the “Trust Estate,” which the Deed of Trust defined as the collateral pledged for the loan. *Id.*

¶ 16. The loan was also to be nonrecourse, in that “resort for payment of the Promissory Note shall be solely against the Annuity and the Trust Estate under the terms of the Deed of Trust. . . .” *Id.* ¶ 17. After the land exchange closed in December 1996, Collier began making its annually scheduled payments of interest and annuity deposits in December 1997. *Id.* ¶ 21.

To secure the loan, Collier pledged collateral in the Deed of Trust that gave the United States a lien on the portion of the Phoenix Indian School land that Collier would retain after consummating the exchange, as well as Collier’s rights in two other Phoenix lots. *Id.* ¶ 22. This initial collateral structure reflected a side deal that Collier made with the City of Phoenix, before consummating the transaction with the United States, to exchange part of the Indian School land for development rights in other lots owned by the City in downtown Phoenix, referred to as the Downtown Lots. *Id.* ¶ 23. The Deed of Trust also provided that, if Collier requested a release of any lien property from the United States, the United States was required to grant the release so long as the value of the remaining collateral exceeded 130% of a defined Release Level Amount. *Id.* ¶ 24.

The TFPA, in the Deed of Trust, defines the Release Level Amount as:

(i) the unpaid principal plus accrued interest on the Promissory Note, less (ii) the value of United States Government-backed Securities and Deposited Monies held in the Trust Estate, and further less, after the expiration of two years from the Closing Date . . . (iii) the fair value, at the time of the calculation, of the Annuity.

Id. ¶ 25. Collier twice requested a release of lien, in 1998 and 2007. *Id.* ¶¶ 26–27. After the United States granted the second release as required by the TFPA, the collateral for Collier’s

loan consisted of the Phoenix Indian School, which remained in the Trust Estate, and the Annuity. *Id.* ¶ 27.

Collier's lien release request triggered another term of the Deed of Trust. That term provided that Collier must supplement collateral by adding Government-backed securities or employing other methods of increasing the value of the collateral if the value of the lien property fell below 130% of the Release Level Amount. *Id.* ¶ 28. As described in further detail below, this collateral maintenance term and Collier's duty under it were central to the United States' successful suit and \$54.5 million settlement against Collier after it ceased payments on the loan in 2012.

3. The Act directs how Collier's loan proceeds were to be allocated and deposited by the United States into a trust account for use by ITCA

The Act governs the specific educational and child-welfare purposes for which trust funds and income may be used. *Id.* ¶ 9; Act, Sec. 405. Collier began making payments in 1997. SOF ¶¶ 21, 30. As Collier made each interest payment to the United States, the United States deposited 95 percent into the Trust. SOF ¶ 31. The Act further contemplates that when Collier finally paid the principal, 95 percent of that amount would also be deposited into the Trust. *Id.* ¶ 34; Act, Sec. 405(b)(1)(A); 405(e)(1). Likewise, when the United States recovered funds from Collier after its lawsuit to enforce the TFPA, 95 percent of those proceeds were assigned to the Trust in the same manner. SOF ¶ 35.

4. ITCA's previous attempt to challenge Collier loan's terms

Before the deal between the United States and Collier was even consummated, ITCA sued in 1992 to enjoin the United States from proceeding under the TFPA with Collier. *Id.* ¶ 18; *Inter-Tribal Council of Arizona, v. Lujan*, No. 2:92-cv-01890-SMM (D. Ariz. 1992). In that suit, ITCA

alleged that the security obtained by the United States under the TFPA constituted “a violation by the Secretary under the terms of the [Act] which requires that the payment of all amounts due be adequately collateralized at the time of closing.” SOF ¶ 18. ITCA sought to enjoin “the Secretary from agreeing to inadequately collateralize the trust fund payments.” SOF ¶ 18. The district court denied relief, finding that “the Secretary’s decisions regarding the adequacy of the collateral . . . are precluded from judicial review under subsection 402(h) of the [Act].” *Id.* ¶ 19. The Ninth Circuit affirmed the district court’s dismissal for lack of subject-matter jurisdiction and failure to state a claim. *Id.* ¶ 20. The appellate court held that the Secretary’s decisions as to the adequacy of collateral were “shielded from judicial review” “because they [were] committed to agency discretion by law.” *Id.*; *ITCA v. Babbitt*, 51 F.3d at 201, 203.

The Ninth Circuit noted that “[t]he federal government owes a fiduciary obligation to all Indian tribes as a class” and “also incurs specific fiduciary duties toward particular Indian tribes when it manages or operates Indian lands or resources.” *ITCA v. Babbitt*, 51 F. 3d at 203. But because the Phoenix Indian School “was not part of Indian lands” and instead “owned and controlled by the United States government,” the United States owed no fiduciary duty to the Tribes apart from its obligations under the Act. *Id.*

5. Collier makes 15 years of payments and then ceases

Collier’s annual and Annuity payments were due December 18 of each year, beginning in 1997. SOF ¶ 29. From 1997 to 2011, Collier made 15 annual interest payments to the United States without incident, totaling \$44,497,500. *Id.* ¶ 30. As required by the Act, the United States deposited ninety-five percent of those payments (\$42,272,625) into the Trust. *Id.* ¶ 31. Collier also made 15 required payments into the private annuity, totaling \$9,662,000 as of November 30, 2012. *Id.* ¶ 32. The annuity was managed by U.S. Trust/Bank of America, N.A. *Id.* ¶ 33.

But Collier did not make its annual payment in December 2012 and notified Interior in January 2013 that it did not intend to make further payments. *Id.* ¶ 36. According to Collier, when it stopped making payments, Collier still had another 15 years of annual interest payments left (totaling \$44,497,500) and \$22 million in remaining principal deposits to fund into the Annuity, for a total of approximately \$66.5 million through the end of 2026. *Id.* ¶ 37.

6. The United States successfully sues Collier to supplement collateral

The United States sued Collier in district court in Arizona in January 2014. *Id.* ¶ 38; *see United States v. Collier*, 2:14-cv-00161-PGR (D. Ariz. 2014). The United States sought specific performance of the Deed of Trust’s maintenance-of-collateral-value provision, or alternatively, imposition of a constructive trust on Collier’s interests in the properties for which the United States had released liens in 1998 and 2007. *Id.* ¶ 39. On December 23, 2015, the United States moved for summary judgment, explaining that 130% of the Release Level Amount at that time was \$43,485,224. *Id.* ¶ 40. This sum reflected the principal obligation (\$34.9 million) plus the accrued interest to date (\$11,866,000, *i.e.*, four years of missed annual payments), less the value of any government-backed securities in the Trust Estate (\$0) and the Annuity at that time (\$13,315,828). *Id.* Because the value of the collateral in the Trust Estate was only \$25 million,⁴ Collier was clearly in breach of its duties under the maintenance-of-collateral provision. *Id.* ¶¶ 41–42.

The district court agreed and granted summary judgment in favor of the United States on June 29, 2016. *Id.* ¶ 43; *Collier*, 2016 WL 3537802, at *9. The district court concluded that the Deed of Trust’s maintenance-of-collateral-value provision imposed “a continuing obligation on

⁴ The value of the Phoenix Indian School land was appraised at \$25 million in September 2015. SOF ¶ 41.

Collier to supplement the Trust Estate with government-backed securities if the remaining collateral in the Trust Estate falls below the 130% level.” SOF ¶ 44; *Collier*, 2016 WL 3537802, at *6. In its August 18, 2016 judgment, the district court ordered Collier to provide government-backed securities valued at \$20,452,281, plus \$10,565 multiplied by the number of days between July 22, 2016, and the date of performance. SOF ¶ 45. Thereafter, Collier and the United States executed a settlement on July 18, 2017, under which Collier surrendered title to the Phoenix Indian School parcel, the Annuity, and \$16 million cash to the United States. When the settlement took effect, the estimated gross recovery from Collier was \$54.5 million, consisting of \$16 million cash, \$13.5 million from the Annuity, and \$25 million based on the appraised value of the Indian School property. *Id.* ¶¶ 46–47.

Interior received the \$16 million in cash (95% of which is held for ITCA) from the settlement on July 26, 2017. *Id.* ¶ 48. Due to the long-term nature of the Annuity’s holdings, it was not prudent to convert them immediately to cash, and thus Interior held the Annuity investments, cashing them out over time as they matured, with deposit into trust. *Id.* ¶ 49. The United States General Services Administration (GSA) sold the Indian School property for \$18.5 million, such that the total recovery from the settlement was just under \$48 million. After deduction for GSA’s statutorily authorized administrative costs (\$77,902), 95% of the sale proceeds was deposited in trust for the benefit of ITCA. *Id.* ¶¶ 50–51.

7. ITCA’s suit against the United States and its present posture

A. This Court dismissed in part ITCA’s original complaint and Second Amended Complaint

Before the United States succeeded in its suit against Collier, ITCA filed this suit against the United States on April 2, 2015, bringing three claims for breach of trust. The United States

moved to dismiss the original complaint, which this Court granted in part and denied in part.

Inter-Tribal Council of Arizona, Inc. v. United States, 125 Fed. Cl. 493 (2016) (*Dismissal Order I*). The Court ruled that it lacked jurisdiction over ITCA’s claim (Claim I) that the United States had a fiduciary duty to collect, deposit, and make the payments not timely made by Collier, holding that the Act did not establish any duty for the United States to substitute for Collier’s missed payments. *Id.* at 500–501.

But the Court denied, in part, the motion to dismiss ITCA’s claims (Claim II) related to the collateral specified in the TFPA, concluding that the Act’s provision requiring the United States to hold the security in trust in accordance with the TFPA allows the Court “to infer that the government has a duty to hold and maintain adequate security for the benefit of the trust.” *Id.* at 502. The Court did, however, dismiss ITCA’s other claims for failure to state a claim related to the location where the security was held. *Id.* at 505.

In Claim III, ITCA alleged a breach of trust for failure to prudently invest Trust money and for failure to account. Complaint ¶¶ 151–53. Although the Court agreed that the United States had an obligation to invest the Trust funds prudently, it dismissed Claim III because ITCA did not allege sufficient facts to state a claim that the United States had breached an investment or accounting duty. *Dismissal Order I*, 125 Fed. Cl. at 505.

ITCA then filed a First Amended Complaint (ECF No. 34), which—like the original complaint—alleged three claims for breach of trust. The first claim in the amended complaint was nearly identical to Claim I in the original complaint that the Court dismissed. *See* First Amended Complaint (AC) ¶¶ 310–314. Claim II in the AC was similar to Claim II in the original complaint, except that ITCA added a new claim for breach of a supposed duty to “obtain” sufficient security, *see* AC ¶ 318, and ITCA abandoned a claim for waste for unpaid property

taxes. Claim III in the AC was similar to Claim III in the original complaint, but ITCA added some minor allegations related to the mix of long and short-term investments. *See* AC ¶ 305.

The United States moved to dismiss the AC. ECF No. 35. While that motion was pending, this Court ordered supplemental briefing on the status and relevancy of the pending settlement between the United States and Collier. ECF No. 44. Following supplemental briefing and notice to the Court that the United States had settled its suit against Collier, ECF No. 46, the Court *sua sponte* held a status conference on August 30, 2017. ECF No. 47. There, Judge Firestone observed that the anticipated recovery by the United States appeared to offer ITCA a “fair amount of money.” *Id.* at 9:13–15. She questioned “what more [ITCA] believe[d] it was entitled to,” given the settlement, ECF No. 50, 10:3–7, and she concluded by encouraging ITCA to reevaluate its claims “in reality,” *id.* at 15:25, 16:1–2. She noted that she assumed the purpose of the litigation was to ensure that ITCA was provided with the resources that “Congress had wanted them to receive,” and that the United States had taken that responsibility seriously in its litigation against Collier. *Id.* at 16:3–10. The Court then rejected the AC entirely, giving ITCA until October 30, 2017, to file a second amended complaint demonstrating that its claims survived the recovery from Collier. ECF No. 48. The case was stayed pending mediation. *See* ECF No. 52.

When mediation proved unsuccessful, ITCA filed the instant Second Amended Complaint (2AC). ECF No. 58. This version reiterates the same three basic claims alleged in the original and in the first amended complaint, except that the claims are now reordered and ITCA has added the treatment of the Collier settlement monies to its underinvestment claim.

The gravamen of the first two claims is that the United States is a guarantor for the payments of principal and interest that the Act required Collier to make and is therefore liable for

breach of trust for failing to “seek or obtain all 30 years of interest payments together with the guaranteed \$34.9 million at the end of that period” in the lawsuit against and settlement with Collier. *Dismissal Order II*, 140 Fed. Cl. at 454.

Claim I alleges that the United States breached the Act by failing to obtain sufficient security when it negotiated and executed the TFPA in 1996. ITCA contends that the amount of security obtained from Collier at that time was insufficient from inception to cover the full amount of what Collier was obligated to pay through 2026. 2AC ¶¶ 255-259. ITCA contends that the security imposed on Collier should have covered “the 30 annual payments of \$2.9 million and the final lump sum payment of \$34.9 million.” *Dismissal Order II*, 140 Fed. Cl. at 457. Claim I also asserts that the United States failed to maintain sufficient security at various times throughout the life of the Trust, in particular: (1) when it released its liens on Collier property in 1998 and 2007; (2) when property values fell during the economic downturn in 2007; (3) when Collier stopped making payments; and (4) when it recovered the settlement money and security from Collier. 2AC ¶¶ 260-65.⁵

Claim II in the Second Amended Complaint simply reasserts the dismissed Claim I from the original complaint that the United States had a trust obligation to collect, deposit, and make the trust payments that the Act required Collier to make. 2AC ¶¶ 269-275.⁶

On October 17, 2018, this Court dismissed the first two claims of ITCA’s Second Amended Complaint. *Dismissal Order II*, 140 Fed. Cl. at 447. The Court held that the statute of

⁵ Claim I also reasserted the dismissed claim from the original complaint regarding the location of the security. 2AC ¶ 266. ITCA abandoned this claim on appeal.

⁶ Claim III of the 2AC alleged a breach of trust for failure to prudently invest the Trust money and for failure to account. This Court has narrowed the scope of this claim. *Dismissal Order II*, 140 Fed. Cl. at 459, and stayed its litigation. ECF No. 120.

limitations barred ITCA’s claim that the United States breached a trust “duty to obtain” by failing to collateralize all thirty years of Collier’s annual interest payments, plus principal, because ITCA has known about the security requirements “since the inception of the TFPA.” *Id.* at 457. And ITCA’s claim that the United States failed to maintain sufficient security was dismissed for failure to state a claim because “neither the Act nor the Deed of Trust required the government to do anything more than it did in filing suit in district court to obtain additional security from Collier,” *id.*, specifically seeking to recover “amounts owed to make up the 130% of the Release Level Amount, i.e., the missed four annual payments of \$2.9 million . . . and the lump sum of \$34.9 million minus the amount in the annuity and remaining property held in security.” *Id.* Having sued Collier to obtain the additional security to meet the amount mandated under the TFPA, this Court held the United States fulfilled its trust obligations. *Id.*

Similarly, this Court concluded that ITCA’s Claim II (that the United States should have made the payments missed by Collier) failed to state a claim, agreeing with the United States that this claim was “nothing more than a repackaging of Claim I in its initial complaint,” which the Court had dismissed because “the Act does not . . . impose any obligation on the government to make payments if Collier fails to make payments.” *Id.* at 458. This Court stressed that the Act did not identify any specific security requirements, imposing only on the government the obligation to ensure that the Trust held sufficient security. *Id.* Having fulfilled this duty by suing Collier to provide additional security, the United States discharged its trust obligations. *Id.*

On March 18, 2019, this Court entered a Rule 54(b) partial final judgment on these two dismissed claims. ECF No. 85. ITCA filed a notice of appeal on April 9, 2019. ECF No. 89.

B. The Federal Circuit affirms in part and reverses in part this Court’s dismissal

On April 17, 2020, the Federal Circuit issued its opinion affirming in part and reversing

in part this Court’s dismissal order. *Appellate Order*, 956 F.3d at 1328.

The Federal Circuit upheld dismissal of Count I to the extent it arose from the United States’ alleged breach of a trust duty to obtain adequate security when it negotiated the TFPA, that is, security sufficient to cover the thirty annual payments of \$2.9 million and the final lump sum payment of \$34.9 million. The Federal Circuit noted that ITCA’s position that the United States had a duty to “ensure adequate security” when it negotiated the TFPA was not “support[ed] in the [Act], case law, or otherwise[.]” *Id.* at 1344–45. The Federal Circuit further agreed with this Court and the United States that this portion of Claim I was time-barred given that ITCA was made aware of the TFPA’s terms “well before the six-year statute of limitations.” *Id.* at 1345.

The Federal Circuit also affirmed dismissal of Claim II, which generally alleged that the government had breached its fiduciary obligations to “collect, deposit[,] and make Trust Fund Payments required by the [Act].” The Federal Circuit affirmed this Court’s holding that the Act imposes no obligation on the United States to make payments if Collier fails to do so. The appellate court rejected ITCA’s contentions that this court “ignored the [Act’s] mandates and erred under applicable case law[,]” *id.* at 1345, instead concluding that ITCA’s claim, once again, did “not [find] support in the [Act], case law, or otherwise.” *Id.* at 1345–46 (noting that “those portions of the [Act] cited by ITCA for support . . . impose, at most, a duty upon Collier, not the Government” and that ITCA’s reliance on its cited case law was “misplaced”).

The Federal Circuit did, however, remand with respect to one narrow issue. *Id.* at 1340. (concluding that dismissal was premature “at this stage of the proceeding.”). Consistent with this Court’s previous orders, the Federal Circuit held that a substantive source of law—Section 405(c)(2) of the Act—established the government’s specific fiduciary duty to “‘hold in trust’

security, at a level adequate to secure Collier's payment obligations, for the benefit of ITCA and the Navajo Nation[.]" *Id.* at 1341. The Federal Circuit departed from this Court's conclusion, however, that ITCA had not stated a claim for relief that the United States had breached this fiduciary duty. *Id.* at 1343. Whereas this Court held that the United States had discharged its duty by filing suit against Collier to obtain additional security, the Federal Circuit determined that the Second Amended Complaint contained sufficient allegations that, if proven, would show that the government breached this duty. *Id.*

The Federal Circuit further explained that this Court, in issuing its ruling, did not address the parties' dispute as to "whether the security to be held by the Government was intended to secure all thirty years of required annual interest payments, i.e., Trust Fund Payments, or only accrued interest." *Id.* at 1340, n. 11. The Federal Circuit concluded that, because the government had acknowledged that Collier's debt had become under collateralized and because the complaint adequately alleged that this under-collateralization arose from the government's breach of its trust duty to ensure sufficient collateral, it need not address this dispute for purposes of the appeal. The Federal Circuit noted, however, that "this issue will ultimately need to be resolved" for purposes of adjudicating ITCA's failure-to-maintain claim. *Id.*

C. Remaining Legal Issues

Following the ruling from the Federal Circuit, on August 22, 2022, the parties filed a joint status report with this Court identifying the legal issues requiring further litigation. ECF No. 199. The parties agreed that ITCA has two surviving breach of trust claims from the Second Amended Complaint: (1) a claim that the United States failed to monitor and to maintain sufficient security (Claim I from the Second Amended Complaint); and (2) a claim that the United States failed to properly invest the money held in trust (Claim III from the Second

Amended Complaint). The latter claim has been stayed pending resolution of Claim I. The parties agree that the resolution of Claim I hinges on the legal question of how much security the United States was required to hold under the Act. *Id.*

ARGUMENT

1. Legal Standards

A. The Federal Circuit held that jurisdiction exists to adjudicate ITCA's failure-to-maintain claim

It is well-established that the Court of Federal Claims has limited jurisdiction. *Inter-Coastal Xpress, Inc. v. United States*, 296 F.3d 1357, 1365-66 (Fed. Cir. 2002). Absent congressional consent to entertain a claim against the United States, the trial court lacks authority to grant relief. *United States v. Testan*, 424 U.S. 392, 399 (1976).

Here, this Court's jurisdiction over ITCA's breach of trust claims is premised on the Tucker Act, 28 U.S.C. § 1491(a)(1), and the Indian Tucker Act, 28 U.S.C. § 1505. *United States v. Mitchell*, 445 U.S. 535, 538-39 (1980); *United States v. Navajo Nation*, 556 U.S. 287, 290 (2009) (*Navajo Nation II*). Although the Indian Tucker Act waives sovereign immunity by granting jurisdiction over certain claims, it does not itself create any substantive right of recovery against the United States; rather, the source of such money-mandating rights must be found in a separate, independent statute. *Navajo Nation II*, 556 U.S. at 290.

A plaintiff asserting a breach of trust claim under the Tucker Act or Indian Tucker Act must, therefore, clear "two hurdles" to invoke federal jurisdiction. *Navajo II*, 556 U.S. at 290. "First, [plaintiff] must identify a substantive source of law that establishes specific fiduciary or other duties, and allege that the Government has failed faithfully to perform those duties." *Id.* (citations and internal quotations omitted). The government's duties must be defined by

“specific, applicable, trust-creating statute[s] or regulation[s],” not “common-law trust principles.” *Id.* at 302. Second, “[i]f that threshold is passed,” plaintiff must show that “the relevant source of substantive law can fairly be interpreted as mandating compensation for damages sustained as a result of a breach of the duties” imposed by the governing law. *Id.* at 290–91 (citation omitted).

Applying these standards, this Court and the Federal Circuit have determined that jurisdiction exists to adjudicate ITCA’s failure-to-maintain claim. *Appellate Order*, 956 F.3d at 1340; *Dismissal Order I*, 125 Fed. Cl. At 501–02.

B. Summary Judgment Standard of Review

Summary judgment is appropriate only if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Little Six, Inc. v. United States*, 280 F.3d 1371, 1374 (Fed. Cir. 2002); RCFC 56(a). If both parties move for summary judgment, “the court must evaluate each motion on its own merits, resolving all reasonable inferences against the party whose motion is under consideration.” *Id.*; *see also ATK Thiokol, Inc. v. United States*, 68 Fed. Cl. 612, 628 (2005), *aff’d*, 598 F.3d 1329 (Fed. Cir. 2010) (“The fact that both parties have moved for summary judgment does not relieve the trial court of responsibility to determine the appropriateness of summary disposition.”).

2. The United States is entitled to summary judgment because as a matter of law it fulfilled its duty to “hold in trust the security provided in accordance with the Trust Fund Payment Agreement”

At the heart of this litigation is ITCA’s erroneous contention that the United States is liable for every payment Collier would be required to make, including thirty years of future interest payments, plus the \$34.9 million principal. ITCA has specifically insisted that by allowing Collier to pay \$2.9 million in interest per year for thirty years with a \$34.9 million lump

sum payment at the end of the thirty-year period, the United States had a statutory trust duty to ensure that the trust received the full principal payment obligation *and* thirty years of interest payments—regardless of when Collier ceased making payments. But it is well-established that the United States is not a guarantor of Collier’s payment obligations. Nor is it liable for any breach of a duty to obtain adequate collateral to secure these obligations. Notwithstanding its previously rejected legal challenges and the \$48 million that the United States recovered from Collier after its breach, ITCA persists in arguing that the United States must make up for any future interest not recovered from Collier, styling its allegation as a failure to maintain collateral.

This claim must fail. Precedent holds that the Act affords the Secretary discretion to determine sufficient collateral to secure Collier’s payment obligations and generally provides that the Government will hold that collateral in trust. *Appellate Order*, 51 F.3d at 203; *Dismissal Order II*, 140 Fed. Cl. at 458. The TFPA’s terms, executed in the Secretary’s discretion, ensured that Collier would furnish the trust with sufficient collateral to secure its principal payment obligation and, if liens were released, supplement this collateral if the trust’s value was less than 130% of the Release Level Amount and therefore deficient. Having recovered a sum in excess of this amount from Collier,⁷ the United States is entitled to summary judgment in its favor.

ITCA’s rationale defies common sense and runs contrary to fundamental principles of finance, as well as the economics underlying this payment arrangement. After being paid its share of the \$48 million settlement recovery, ITCA now maintains that the collateral was inadequate because it failed also to secure all future interest. ITCA’s theory insists that interest continue to be paid even after the principal debt has been satisfied. As demonstrated below,

⁷ See *infra* p. 28 for a comparison of the settlement recovery to 130% of the Release Level Amount.

nothing in the Act supports such a duty, much less such a collateral requirement, especially when common parlance uses collateral to mean security for the principal debt. As reflected in an analysis by the Congressional Budget Office, the interest was intended only to recognize the time value of the loan, not an extra income stream. Second, the plain text of the Act establishes that the United States need not have held in trust, nor demanded from Collier, any additional security beyond the amount established in the TFPA.

Moreover, when Collier failed to perform under the TFPA, the United States faithfully discharged its trust duties and dutifully took legal action to enforce the TFPA's security requirements by successfully suing Collier. The United States won summary judgment and exacted a settlement, ultimately recovering \$48 million from Collier on behalf of the trust beneficiaries. This sum exceeded the value of the collateral that the United States was required to hold in trust—130% of the Release Level Amount once liens were released—and fully remedied any harms that ITCA may have suffered from the United States' alleged breaches of its trust duties. Any other outcome would contravene this Court's and the Federal Circuit's conclusion that the United States has no trust duty to be a guarantor for missed payments by Collier.

A. The United States was not required to hold collateral to cover all future interest payments

ITCA theorizes that the government is liable for breaching its "duty to maintain" by not seeking or obtaining, in the settlement with Collier, all remaining future interest payments together with the \$34.9 million principal. *Dismissal Order II*, 140 Fed. Cl. at 454. ITCA thus seeks to recover the difference between the settlement recovery and the amount ITCA would have received if the remaining fifteen annual interest payments were paid in addition to the principal obligation. ITCA's theory ignores the early payment of principal and presumes without

basis that the United States was required to hold security valued at the principal amount *plus* all future interest payments rather than the amount mandated by the TFPA.

Basic principles of finance as well as an analysis by the Congressional Budget Office establish that collateral is ordinarily intended to secure a principal debt while future interest payments compensate for the time value of money, rebutting ITCA's novel theory that the United States is liable for all thirty years of interest payments. In any event, the United States' trust duties are strictly defined by the Act. The plain text of the Act rebuts ITCA's contention, for it specifies that the United States' collateral obligations must simply be "in accordance with the Trust Fund Payment Agreement." Act, Sec. 403(b). This agreement set forth the collateral that United States was to hold at its inception⁸ as well as the collateral obligations if Collier was entitled to a release of any liens. Accordingly, as with ITCA's other legal theories already rejected by this Court and the Federal Circuit, this theory finds no support in the "Act, case law, or otherwise."

(1) The Act does not require the United States to collateralize all future interest, defying the time value of money

ITCA's theory that the value of the security held in trust was inadequate to the extent it focused on the principal debt with accrued interest but not all thirty annual interest payments is unsupported by and inconsistent with basic principles of finance and laws of economics.

The Act requires the United States to hold "security" or collateral sufficient to secure Collier's payment obligations. Act, Sec. 402(h)(3)(D) (requiring any offer to the United States to enter into a TFPA to include "a detailed description of the collateral to be provided by the offeror to secure the payment obligations under the [TFPA]" and "evidence of ownership and value of

⁸ As noted, the Courts have previously ruled against ITCA's challenges to the sufficiency of the original security. *Appellate Order*, 956 F.3d, at 1344-45; *ITCA v. Babbitt*, 51 F.3d at 203.

such collateral sufficient to permit the Secretary to determine such collateral is adequate to secure the payment obligations of the Purchaser under the [TFPA]”), 405(c)(2) (directing the United States to “hold in trust the security provided in accordance with the [TFPA]” if the trust fund payment option was selected); *Dismissal Order I*, 125 Fed. Cl. at 502 (explaining that the Act’s security requirement imposed a duty on the United States “to ensure there will be sufficient collateral to cover Collier’s payments to the trust fund, presumably in the event of default.”).

Though the Act does not define what collateral the United States was to hold in trust (leaving this determination to the Secretary’s discretion, as explained above), this duty should be understood consistent with customary business practices. Unless otherwise defined, “[i]t is a fundamental canon of statutory construction that . . . words will be interpreted as taking their ordinary, contemporary, common meaning.” *New York and Presbyterian Hosp. v. United States*, 881 F.3d 877, 882 (Fed. Cir. 2018), which may be determined by reference to dictionaries, *Massachusetts Mut. Life Ins. Co. v. United States*, 782 F.3d 1354, 1367 (Fed. Cir. 2015) (relying on Black’s Law Dictionary). The Act’s terms thus must be afforded their “ordinary, contemporary, common meaning[s].” *New York and Presbyterian Hosp.*, 881 F. 3d at 882.

It is an axiom of the marketplace that collateral is designed to secure a principal owed on a debt in the event of default. *Collateral*, *Black’s Law Dictionary* (11th ed. 2019) (“‘Collateral’ in the commercial sense of the word, is a security given in addition to a principal obligation.”); *see also Security*, *Black’s Law Dictionary* (11th ed. 2019) (“‘[C]ollateral security’ . . . stands by the side of the principal obligation.”). The lender forecloses on collateral to recover the unpaid principal, plus perhaps unpaid accrued interest, but not all *future* interest. It is customary that future interest is obtained from reinvesting or relending the recovered principal; it is not charged to the debtor. This is because the purpose of interest is simply to reimburse the time value of

money, “making the same amount similarly valuable when paid at different times.” *Holland v. Bibeau Const. Co.*, 774 F.3d 8, 17 (D.C. Cir. 2014); *see also Hicks v. Capitol Am. Life Ins. Co.*, 943 F.2d 891, 895 (8th Cir. 1991) (awarding unearned future interest as damages on a note “flies in the face of fundamental principles of finance and accounting” whereas awarding accrued interest “flows logically from the basic finance principle that a dollar today is worth more than a dollar tomorrow.”); *Burt v. Ford Motor Co.*, No. 4:07CV00038, 2008 WL 373659, at *3 (W.D. Va. Feb. 11, 2008) (calculating future unpaid interest due under contract “does not adequately account for the economic reality of the time value of money”). “It is axiomatic that a sum certain received today is worth more than the promise to pay that same amount in the future, because money in hand can be immediately reinvested to earn more money.” *In re Pringle*, No. 05-CV-144S, 2006 WL 2528502, at *2 (W.D.N.Y. Aug. 31, 2006).

Indeed, the Congressional Budget Office confirmed that the collateral terms, over the life of the loan to Collier, afforded an equivalent return. Before passage of the Act in 1988, the Congressional Budget Office analyzed whether a lump sum payment at closing or thirty annual payments equal to the interest due annually under the Act plus a balloon payment of the principal would ultimately (*i.e.*, at the end of thirty years) produce a different result in terms of funding for the Trust Funds. *See* 134 Cong. Rec. S13519-02, 1988 WL 176577 (Sep. 28, 1988). The CBO analysis demonstrates this rudimentary lending practice: “Under CBO interest rate assumptions,” the investment of \$34.9 million over thirty years does not produce a different result than thirty years of interest payments with a lump-sum payment of the \$34.9 principal at the end of the thirty years. *See* 1988 WL 176577 at 3.

The CBO analysis shows that, given then-prevailing interest rates, security valued at \$34.9 million dollars at the inception of the trust would be expected to produce the same amount

of money after thirty years as thirty annual interest payments with a final lump sum payment of \$34.9 million. In other words, when the Act was passed, the CBO informed Congress that payment of full principal at loan closing and payment of thirty annual interest payments, with a lump sum principal payment at the end, would result in the same value at the loan's conclusion. It necessarily follows that the thirty-year annual payment option was not intended to provide greater compensation than if Collier had paid a lump sum at the outset; rather, the interest payments guaranteed that the trust beneficiaries were compensated for the time value of money—Congress did not intend an extra revenue stream.⁹ The CBO analysis thus rebuts ITCA's logic that it should have also been paid another fifteen years of interest some fifteen years ahead of time. Thus, applying the ordinary convention that interest reflects the time value of money, the security was sufficient as a matter of law—the Act did not require security to cover both the \$34.9 million principal and all thirty years of interest payments.

(2) The Act only requires that the United States hold security in accordance with the TFPA

Economics aside, the United States' trust duties are defined by "applicable statutes." *Jicarilla Apache Nation v. United States*, 112 Fed. Cl. 274 (2013). The Act defines the United States' trust duties with respect to the Trust and its beneficiaries and requires only that the United States "hold in trust the security provided in accordance with the Trust Fund Payment Agreement," Act, Sec. 405(c)(2), for the purpose of securing Collier's payment obligations. *Appellate Order*, 956 F. 3d at 1341. The Act by its express terms does not identify any specific security amount, either greater than or different from that specified in the TFPA. *Dismissal*

⁹ ITCA's claims here also ignore the fortuitous above-market interest it enjoyed during the first 15 years of interest payments. Those payments reflected an 8.5 percent rate, while by 2012, market interest had fallen as low as 2.92 percent on thirty-year Treasury bonds.

Order II, 140 Fed. Cl. at 458. Instead, the Act vests the Secretary with discretion with regard to security, limited only by the terms of the TFPA. Act, Sec. 405(c)(2); *ITCA v. Babbitt*, 51 F.3d at 203. The TFPA thus sets forth the United States’ trustee duties with respect to collateral maintenance.

In accord with the Act, the TFPA granted the United States liens on a portion of the Phoenix Indian School land as well as Collier’s rights in the Downtown Lots. The TFPA also required the United States to release a lien if the value of the trust exceeded 130% the Release Level Amount (that is, outstanding principal plus accrued interest less the value of any government-backed securities and, after two years, the value of the Annuity). And, to maintain the sufficiency of the security in the trust, the TFPA required Collier to supplement collateral if, after a lien release, the value of the trust fell below 130% of the Release Level Amount. Put simply, once a release occurred, the TFPA’s collateral-maintenance provision was triggered, and the value of the collateral was to be maintained at 130% of the Release Level Amount.¹⁰ So long as the United States complied with the TFPA’s requirements, it abided by the Act’s *only* security mandate: to “hold in trust the security provided in accordance with the Trust Fund Payment Agreement.”

Moreover, the United States could only have been required to *maintain* what was actually *obtained* under the TFPA and “to ensure that Collier held sufficient security to meet the 130% Release Level Amount in the event that a lien was released.” *Dismissal Order II*, 140 Fed. Cl. at 458. It was *not* required to maintain some other amount—such as principal *and* future interest—not set forth in the Act nor the TFPA. And ITCA has lost *every* attempt to challenge the

¹⁰ The TFPA, by requiring Collier to maintain security at 130% of the remaining accrued obligation, plainly reflects an effort in the TFPA to over-secure the debt.

adequacy of the collateral obligation initially imposed against Collier. The Federal Circuit affirmed this Court’s dismissal of ITCA’s claim that the United States breached a “duty to obtain” because the value of the collateral obtained when the TFPA was negotiated secured only the principal debt but not the thirty annual interest payments. *Appellate Order*, 956 F.3d, at 1345 (dismissing on statute of limitations grounds but noting that ITCA’s theory that the United States had a duty to “negotiate terms in the TFPA and related documents to ensure adequate security” was unsupported “by the [Act], case law, or otherwise.”). And the Ninth Circuit, affirming the District of Arizona’s decision, held that the Secretary had discretion to decide the adequacy of collateral and that such decision-making was not subject to judicial review. *ITCA v. Babbitt*, 51 F.3d at 203.

The Act is clear and its mandate unambiguous: the United States need only hold in trust security in accordance with the TFPA. ITCA cannot identify any statutory duty that required the United States to maintain more security than that specified by and obtained under the TFPA.¹¹ Any attempt to impose a collateral duty beyond what the TFPA requires finds no support in the Act and would impose upon the discretion given to the Secretary under the Act. Accordingly, ITCA’s allegation that the United States breached a duty by failing to hold such an amount in trust must fail.

For these reasons, the Act imposed no requirement that the United States secure all future interest payments. The only duty was to observe the security requirements set by the TFPA, in accord with basic common sense and business practices. ITCA’s alternative theory lacks any

¹¹ And, as noted, the United States’ duties to ITCA are limited to those defined in the Act given that the Phoenix Indian School “was not part of Indian lands” and instead “owned and controlled by the United States government.” *ITCA v. Babbitt*, 51 F.3d at 201, 203.

foundation in the Act or the TFPA, undermines previous court holdings, and must be disregarded.¹²

B. The United States discharged its duty under the Act and complied with the security requirements of the TFPA when it successfully sued Collier to provide additional security and recovered \$48 million for the Trust Estate

The United States was not derelict in its duties to ITCA—on the contrary, it honored those duties by initiating suit against Collier to obtain additional collateral and executing a settlement with Collier that ensured the trust beneficiaries were made whole.

The Deed of Trust, which is an exhibit to and incorporated within the TFPA, contains a “Maintenance of Collateral” provision in section 6.3(a). Once Collier received the lien releases it was entitled to under the TFPA, this provision required Collier to monitor the level of security and to supplement that collateral, as necessary, with government-backed securities. The Arizona District Court, in granting summary judgment in favor of the United States in its suit against Collier, determined that the Deed of Trust’s maintenance-of-collateral-value provision imposed “a continuing obligation on Collier to supplement the Trust Estate with government-backed securities if the remaining collateral in the Trust Estate falls below the 130% level.” *Collier*, 2016 WL 3537802, at *9. This provision thus served as the mechanism for monitoring collateral sufficiency as well as a form of collateral maintenance that required Collier to supplement the collateral if the value of security became deficient under the TFPA. This meant that if, as

¹² Unable to find anything in the Act that requires the United States to obtain more security than specified in the TFPA, ITCA has previously argued that its claim is supported by statements from Interior officials purporting to acknowledge the United States had some duty to assure that the full amount owed by Collier to the Trust under the Act and the TFPA would be paid. But such individual opinions do not, as a matter of law, create a trust duty for the United States. *See Mercier v. United States*, 786 F.3d 971, 977 (Fed. Cir. 2015) (“[E]quitable considerations cannot grant a money remedy Congress has not authorized[.]”) (citing *Office of Pers. Mgmt. v. Richmond*, 496 U.S. 414 (1990)); *Penny v. Giuffrida*, 897 F.2d 1543, 1547 (10th Cir. 1990) (“[C]itizens . . . may not rely on government agents’ incorrect interpretations of the law.”)

happened here, the value of the collateral dropped, then the United States was entitled to rely on this provision of the TFPA to assure collateral supplementation.

This is precisely what the United States did. When the value of the Phoenix Indian School property, plus the value of the Annuity, fell below the minimum specified in the Deed of Trust, Collier became automatically obligated to add government-backed securities to the collateral. When Collier shirked this duty, the United States drew upon the TFPA to force Collier to honor its collateral obligation, suing Collier for specific performance of the collateral maintenance provision. The United States specifically demanded that Collier supplement the Trust Estate in accordance with the TFPA, that is, with additional collateral to reach 130% of the Release Level Amount, calculated based on the principal obligation (\$34.9 million) plus Collier's missed annual interest payments, which had reached four years (or \$11,866,000) by 2016, less the Annuity at that time (\$13,315,828), and the value of the government-backed securities held in trust (\$0). The United States successfully obtained a judgment requiring Collier to supplement the security accordingly and, after years of aggressive litigation against Collier, won a favorable settlement with a projected recovery of \$54.5 million.

Over ITCA's objections that the United States breached a trust duty by not seeking all future interest from Collier, this Court held that the United States fully discharged its fiduciary duties by suing Collier to provide additional security in accordance with the TFPA.¹³ *Dismissal Order II*, 140 Fed. Cl. at 457. The Federal Circuit however, determined that this claim could not

¹³ Notably, while this Court did not expressly rule on whether the United States was required to collateralize principal plus future interest or just principal, the Court *did* hold that the United States discharged its duty by suing to obtain additional collateral that would have covered principal plus four years of accrued interest; the court did *not* give any credit to ITCA's argument that the United States should have sought to recover all future interest.

be resolved on a motion to dismiss. It explained that this Court had left unanswered the question of what security was required to be held in trust, which is integral to resolving the issue of whether the United States was liable for damages arising from the alleged breaches of its trust duty. The Federal Circuit similarly refrained from deciding what constituted adequate security—an amount sufficient to cover future unpaid interest, as ITCA alleged, or the amount identified in the TFPA that accounted for accrued interest—thus leaving unresolved whether the recovery from Collier remedied any potential injury suffered by ITCA as a result of the United States’ alleged breaches, if proven. *Appellate Order*, 956 at 1340, n. 11.

As explained above, the latter view of collateral reflects the statutory duty imposed on the United States and is consistent with basic business principles. The United States faithfully discharged its trust duty to “hold in trust security in accordance with the Trust Fund Payment Agreement” by vigorously and successfully litigating its claim against Collier to ensure the trust estate was adequately collateralized and thereafter executing a settlement that made the trust beneficiaries financially whole. Pursuant to the TFPA, the value of the collateral that the United States was required to hold in trust was 130% of the Release Level Amount. The Release Level Amount at the time of settlement was \$36,232,500, representing the principal obligation (\$34.9 million) plus the five annual payments of \$2,966,500 for years 2012–2016 that had come due and gone unpaid at the time of the July 2017 settlement (\$14,832,500), less the value of the Annuity at that time (\$13.5 million) and any government-back securities (\$0). And 130% of \$36,232,500 is \$47.1 million. The \$48 million settlement proceeds clearly exceed this amount.¹⁴

¹⁴ Indeed, the projected recovery of \$54.5 million would have arguably overcompensated ITCA for unaccrued interest payments. Although the parties to the Arizona litigation estimated the Indian School property at an appraised value that turned out to be higher than the sale value, the Court and the United States were entitled to rely on the best available information at the time. In any event, as stated above, the actual recovery of \$48 million exceeded the amount the United

That is the *only* security that the United States was required to hold in trust. The settlement recovery thus placed ITCA in the same position it would have been in had the Trust Estate been adequately collateralized.

Accordingly, the United States fully discharged its duties to ensure that Collier’s payment obligation was adequately secured. ITCA’s demand for additional funds despite receiving the benefit of that obligation being fully satisfied 15 years *early*—in other words, getting its dollar today instead of tomorrow—defies reason and would impose an unwritten obligation on the United States to pay *more* than the present value of the loan obligation, when it is already law of the case the United States had no trust duty to make up any lost payments. *Appellate Order*, 596 F.3d, at 1345–46 (holding that ITCA’s claim that the United States was required to make Collier’s missed payments was not supported by “the [Act], case law, or otherwise.”). The United States therefore has *no* obligation to compensate for Collier’s missed interest payments. Again, interest merely equalizes the time value of money, ensuring the same amount will be similarly valuable when paid at different times. ITCA cannot claim any entitlement to future interest that simply would have represented the time value of the principal obligation if it were paid at a later date. ITCA’s contention that the United States failed to discharge its trust duty by not collateralizing and thereafter seeking to recover all future interest payments must fail.

ITCA also alleges the United States committed various other breaches of its duty to hold sufficient collateral—for example, not demanding additional collateral from Collier sooner—contending that such breaches precipitated Collier’s breach of its payment obligations. 2AC ¶ 263. But regardless of the alleged instances, the United States can only be held liable for “damages sustained as a result of a breach of the duties[.]” *Navajo Nation II*, 556 U.S. at 291.

States was required to hold in trust based on the Release Level Amount at the time of settlement.

ITCA has sustained no such damages. Any harm that may have arisen from the alleged breaches was fully remedied through the recovery from Collier. This settlement provided ITCA with complete recovery of the value of security that the United States was required to hold in trust, ensuring ITCA was made whole.

CONCLUSION

For these reasons, the defendant respectfully urges the Court to grant partial summary judgment in defendant's favor.

March 21, 2023

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