IN THE UNITED STATES COURT OF FEDERAL CLAIMS

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

MOTION FOR PARTIAL SUMMARY JUDGMENT ON REMAINING CLAIM I ALLEGATIONS

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This Motion seeks summary judgment in favor of the United States for the few remaining damages allegations asserted by the Inter-Tribal Council of Arizona, Inc. (ITCA) in Claim I of the operative complaint. ITCA sued the United States in 2015 after the Barron Collier Co. (Collier) ceased paying on its $34.9 million obligation to the United States, the proceeds of which Congress dedicated to ITCA and nonparty Navajo Nation, but before the United States successfully enforced its trust agreement against Collier and recovered $48 million on behalf of the trust beneficiaries. From that recovery, the United States ensured that ITCA received its share of the $34.9 million obligation with accrued interest. In addition to its $45.6 million share of the Collier recovery, ITCA also received over $42 million from interest payments made by Collier, such that ITCA has already received nearly $88 million on Collier's $34.9 million obligation.

Now, after multiple rounds of dispositive motions, only a narrow set of ITCA's allegations in Claim I remain, all relating to the value of the trust estate over the life of the United States' trust agreement with Collier. But after nearly nine years of litigation, and the United States' successful lawsuit against Collier to enforce the trust agreement, ITCA has never identified any harm it suffered arising from the remaining alleged breaches.

Having received its rightful share of that recovery from Collier, no uncompensated, concrete injury is left to support what remains of Claim I. Additionally, the injury thus far identified by ITCA—the loss of future interest payments—is traceable to *Collier's* breach of its duty to pay, not to the remaining alleged breaches. The future interest due from Collier that ITCA continues to seek has been foreclosed by this Court and the Federal Circuit. With no concrete injury left, ITCA's claims must be dismissed because ITCA cannot satisfy the essential elements of standing.

Accordingly, under Rule 56 of the Rules of the United States Court of Federal Claims (RCFC), the United States respectfully requests partial summary judgment rejecting the breaches alleged in paragraphs 260 through 263 of the Second Amended Complaint.

QUESTION PRESENTED

After ITCA initiated this lawsuit nearly nine years ago, the United States successfully enforced its Trust Fund Payment Agreement (TFPA) with Collier, recovering enough to satisfy the full $34.9 million principal owed by Collier and accrued interest, according to the terms of the TFPA. ITCA has received its proper share of that recovery. Through successive dispositive motions, ITCA's various theories of injury, including ITCA's challenges to the TFPA and the United States' interpretation thereof, have been largely rejected by this Court and pared to a few narrow allegations in Claim I. The remainder now turns not on the truth of ITCA's remaining allegations, but on whether any cognizable but uncompensated harm exists that can be traced to the conduct of the United States, not Collier, and can be redressed by relief not foreclosed by this Court and the Federal Circuit.

To date, ITCA's only theory of harm has been rooted in the United States' purported obligation to secure, and subsequent failure to recover, *all* future interest payments, a theory

expressly rejected by this Court and the Federal Circuit. Given the law of the case and the controlling decision of the Federal Circuit, the United States had no duty to guarantee any payments to ITCA, no matter how framed. This Court has determined that ITCA "is in no way entitled to recover" from the United States ten future interest payments that Collier was scheduled to make. *Inter-Tribal Council of Arizona, Inc. v. United States*, No. 15-342, 2023 WL 4881967, at *5 (Fed. Cl. Aug. 1, 2023).

At issue now are a narrow set of Claim I allegations that the United States failed to have sufficient security when it authorized partial releases of liens in 1998 and 2007; that the United States failed to act following the economic recession; and that the United States failed to hold sufficient security when Collier ceased making its payments in 2012.

But having already received the full benefit of what the TFPA required of the United States and having received its proper share of the $48 million recovery against Collier, is the United States entitled to summary judgment because ITCA lacks standing to pursue further recovery when its asserted harms are neither concrete, uncompensated, nor traceable to the United States?

STATEMENT OF FACTS

Despite a protracted procedural history and complex factual background, no dispute exists over the material facts pertinent to Claim I. The following summary covers the relevant background given the previous rulings by this Court and the Federal Circuit in this case.

I. Factual background

A. Congress approved the 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). Under the Act, the United States would acquire title to about 108,000 acres of wetlands in Florida, and Collier would receive federal land in Phoenix, Arizona commonly known as the Phoenix Indian School property. Act, Sec. 402; US-SOF[1] ¶¶ 1-3.

The Act required Collier to pay $34.9 million to the United States because the Phoenix Indian School property was worth more than the Florida land. US-SOF ¶ 4; *see also* Act, Sec. 402(h). The Act authorized the Secretary of the Interior to accept the $34.9 million as either a lump sum payment or over thirty years with annual interest payments and a balloon payment of the principal in year thirty. Act, Sec. 403(b); US-SOF ¶¶ 5, 6. Under the thirty-year payment option, the Secretary was required to execute a Trust Fund Payment Agreement (TFPA)with Collier under which the annual payments were to be made to the United States. Act, Sec. 403(c)(4). The United States was also required to "hold in trust the security provided in accordance with the Trust Fund Payment Agreement." Act, Sec. 405(c)(2); US-SOF ¶ 7. The Act does not require the United States to make any payments if Collier fails to make them. *Inter-Tribal Council of Arizona, Inc. v. United States*, 956 F.3d 1328, 1345 (Fed. Cir. 2020) (*Circuit Opinion*); *Inter-Tribal Council of Arizona, Inc. v. United States*, No. 15-342, 2023 WL 4881967, at *4 (Fed. Cl. Aug. 1, 2023) (*Summary Judgment Order*). Nor does the Act impose liability on the United States if the TFPA did not collateralize all thirty years of Collier's interest payments under the thirty-year payment option. *Summary Judgment Order*, at *7 (dismissing paragraphs 255 through 259 of ITCA's second amended complaint attacking the TFPA as well as paragraph 264 challenging the United States failure to recover all thirty annual payments).

[1] The United States relies upon its Statement of Undisputed Material Facts (US-SOF) and the parties Joint Statement of Undisputed Facts (J-SOF), filed this same day.

The Act directs that all of Collier's payments be used to establish two Indian education trust accounts, the Arizona Inter-Tribal Trust Fund (Trust) and the Navajo Trust Fund (Navajo Trust), and it requires those trust funds be used for specific educational and child-welfare purposes. Act, Sec. 405. The Act specifies that 19 tribes belonging to ITCA are to receive 95 percent of all money paid by Collier. Act, Sec. 405(e); US-SOF ¶¶ 8-12.

B. In accord with the Act, the United States executed a TFPA with Collier, and Collier made 15 years of payments as required

The Secretary accepted Collier's request to make annual interest payments for thirty years, with a balloon payment of the principal at year thirty. US-SOF ¶ 13. The United States and Collier executed the Trust Fund Payment Agreement on December 18, 1992, agreeing to a land exchange, loan repayment, and collateralization on the terms described therein. The arrangement between Interior and Collier under the Act uses three main instruments: the Trust Fund Payment Agreement, a Deed of Trust, and a Promissory Note, which constitute a part of the "Trust Fund Payment Agreement." US-SOF ¶¶ 14-15; J-SOF ¶¶ 1-2. ITCA is neither a party to nor a third-party beneficiary of any of these instruments. US-SOF ¶ 16.

The Promissory Note required Collier to pay thirty annual interest payments of $2,966,500 (reflecting an 8.5% rate), and also to make thirty payments into a private annuity that was to equal the $34.9 million principal sum at the end of the thirty-year term. US-SOF ¶¶ 17-18; J-SOF ¶¶ 3-4. The Promissory Note was secured by the Annuity and the "Trust Estate," that is, the collateral pledged for the loan. US-SOF ¶ 19; J-SOF ¶ 5. To secure the loan, Collier gave the United States a lien on the Phoenix Indian School property that Collier retained after consummating the exchange, as well as Collier's rights in two other Phoenix lots referred to as

the "Downtown Lots."[2] US-SOF ¶ 32-33; J-SOF ¶ 6. The loan was also to be nonrecourse. US-SOF ¶ 20; J-SOF ¶ 7.

The Deed of Trust required the United States to grant Collier's request for a lien release so long as the value of the remaining collateral in the Trust Estate (the "Unreleased Property") exceeded 130% of a defined "Release Level Amount." US-SOF ¶ 21-24; J-SOF ¶¶ 8-11. Accordingly, Collier was entitled to a lien release at any point that the value of the Unreleased Property exceeded this amount. The Release Level Amount is defined 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, . . . (iii) the fair value, at the time of the calculation, of the Annuity." US-SOF ¶ 25; J-SOF ¶ 12. Although "accrued interest" is undefined in the Deed of Trust, the United States, throughout the life of the TFPA, measured accrued interest by accounting for interest earned each year but not yet paid. US-SOF ¶¶ 26-27; J-SOF ¶¶13-14.

Once Collier obtained a lien release, the Deed of Trust's "Maintenance of Collateral Value" provision imposed a continuing obligation on Collier to monitor the value of the collateral in the Trust Estate and to supplement this collateral if it fell below 130% of the Release Level Amount. US-SOF ¶ 28-29; J-SOF ¶¶ 15-17.

After the land exchange closed in December 1996, Collier began making its annual payments of interest to Interior and deposits in the Annuity in December 1997. Collier made 15 annual interest payments, totaling $44,497,500, without issue, from 1997 to 2011. US-SOF ¶ 36;

[2] 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. US-SOF ¶ 33.

J-SOF ¶ 36. The United States deposited 95 percent of those payments ($42,272,625) into the Trust. Collier also made 15 required payments into the private annuity, totaling $9,662,000 as of November 30, 2012. US-SOF ¶¶ 34-38.

C. As required by the TPFA, the United States granted Collier's partial lien release requests in 1998 and 2007.

Collier twice requested a release of lien, in 1997 and 2007, both of which the United States granted, US-SOF ¶¶ 39, 47; J-SOF ¶¶ 18, 26, because the value of the Unreleased Property exceeded 130 percent of the Release Level Amount. US-SOF ¶¶ 39-42, 47-56.

First, in 1997, Collier requested a partial release from lien on its east side downtown lot, which the United States granted in 1998. US-SOF ¶¶ 39-40; J-SOF ¶¶ 18-19. In support of this request, Collier submitted an appraisal to the United States that showed that the value of the Unreleased Property exceeded 130% of the Release Level Amount. US-SOF ¶ 41; J-SOF ¶ 20. The United States thus granted the partial release in 1998 (1998 Lien Release) because, based on the value of the Unreleased Property, Collier was entitled to the partial release. US-SOF ¶¶ 42.

The 1998 Lien Release triggered the Maintenance of Collateral Value provision in the Deed of Trust, imposing a continuing, affirmative duty on Collier to monitor the value of collateral in the Trust Estate and to supplement it if it ever fell below 130% of the Release Level Amount. US-SOF ¶¶ 44-46.

Collier requested a second lien release in 2007, involving its west side Downtown Lot. US-SOF ¶¶ 47-48; J-SOF ¶¶ 26-27. As in 1997, Collier submitted an appraisal of the Unreleased Property showing that, if the second release were granted, more than 130% of the Release Level Amount would remain as collateral. US-SOF ¶ 49; J-SOF ¶ 28. The United States thus granted the release (2007 Lien Release), concluding that Collier was entitled to the release based on the

value of the Unreleased Property. US-SOF ¶¶ 50-56. Collier continued to have an ongoing, affirmative duty to monitor and maintain 130% collateral in the Trust Estate. US-SOF ¶¶ 58-59.

After the second lien release, Collier continued to fulfill its payment obligations through 2011. US-SOF ¶ 60; J-SOF ¶ 36.

D. The United States successfully enforced the TPFA following the 2007 Lien Release and Collier's failure to fulfill its payment obligations in 2012

Collier's annual interest and Annuity payments were due December 18 of each year, beginning in 1997. US-SOF ¶ 34. After 15 years of timely payments without incident, 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. Collier also stated that the value of the Phoenix Indian School property, previously appraised at $48 million in 2007, had dropped to $6 million as a result of the significant economic downturn in 2008. US-SOF ¶ 61; J-SOF ¶ 36, 38.

Interior promptly demanded that Collier make its payments. Interior also noted that the value of the Unreleased Property appeared to be less than 130 percent of the Release Level Amount and demanded that Collier supplement the Trust Estate as required by the Maintenance of Collateral Value provision. US-SOF ¶ 63; J-SOF ¶ 42.

Collier refused to comply with the United States' demands, so the United States sued Collier in district court in Arizona in January 2014. The United States sought specific performance of the Deed of Trust's Maintenance of Collateral Value provision. US-SOF ¶ 65-67; J-SOF ¶¶ 44-45. Following discovery, the United States moved for summary judgment,

explaining that 130% of the Release Level Amount at that time was $43,485,224.[3] US-SOF ¶¶ 69-75; J-SOF ¶¶ 47-48. Because the value of the collateral in the Trust Estate was only $25 million,[4] Collier was clearly in breach of its duties. US-SOF ¶¶ 73; J-SOF ¶ 48. The district court agreed and granted summary judgment in favor of the United States on June 29, 2016. US-SOF ¶¶ 76-77; J-SOF ¶ 17; *Collier*, No. CV-14-00161-PHX-PGR, 2016 WL 3537802, at *6, 9 (D. Ariz. June 29, 2016). The district court concluded that the Deed of Trust's Maintenance of Collateral 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 *6; US-SOF ¶¶ 76-77; J-SOF ¶ 17.

Collier and the United States thereafter 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. 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. US-SOF ¶¶ 78-83; J-SOF ¶¶ 50-51.

[3] 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 interest payments), less the value of any government-backed securities in the Trust Estate ($0) and the Annuity at that time. ($13,315,828). US-SOF ¶¶ 68-74.

[4] The value of the Phoenix Indian School land was appraised at $25 million in September 2015. US-SOF ¶¶ 73; J-SOF ¶ 49.

ITCA's share of the settlement recovery is approximately $45.6 million. US-SOF ¶¶ 84; J-SOF ¶ 52. In addition to the settlement recovery, ITCA previously received its share of the annual interest payments made by Collier from 1997 through 2011, totaling $42,272,625.00, such that ITCA has received $87,872,625 on Collier's $34.9 million principal obligation. US-SOF ¶ 85.

II. The case's current posture

The operative complaint alleges three claims for breach of trust, filed after this Court dismissed, in part, ITCA's original complaint; dismissed ITCA's first amended complaint entirely; and permitted ITCA to file a second amended complaint to allege what claims survived the settlement with Collier. ECF Nos. 22, 48, 58. The Second Amended Complaint (SAC), ECF No. 58, alleges that the United States breached the following duties:

1. to negotiate a TFPA that obtained sufficient security (Claim I);
2. to maintain sufficient security after the execution of the TFPA (Claim I);
3. to recover future interest payments from Collier (Claim I);
4. to collect, deposit, and make the payments not timely made by Collier (Claim II); and
5. to prudently invest Trust money (Claim III).

As summarized below, prior decisions of this Court and the Federal Circuit have disposed of the Claim I and II allegations numbered 255 to 259 and 264 to 267, leaving only the Claim I allegations numbered 260 to 263.

On October 17, 2018, this Court dismissed Claims I and II and narrowed Claim III. ECF No. 69. The Court then entered partial final judgment on Claims I and II, allowing ITCA to appeal the dismissal of those claims to the Federal Circuit. ECF No. 54. Claim III has been stayed pending resolution of Claim I.

The Federal Circuit affirmed this Court's dismissal of ITCA's claim alleging that the United States had a duty to make up Collier's missed payments as well as ITCA's challenges to the TFPA, stating that neither claim was "support[ed] in the [Act], case law, or otherwise." *Circuit Opinion*, 956 F.3d at 1344-45. The Federal Circuit also held that any challenges to the TFPA were time-barred. *Id.*

The Federal Circuit did, however, narrowly reverse one aspect of this Court's dismissal concerning ITCA's allegation that the United States breached a "duty to maintain" by failing to adequately preserve the value of the Trust Estate. The Federal Circuit stated that dismissal of this claim was premature "at this stage of the proceeding," *id.* at 1340, and departed from this Court's conclusion 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 suing Collier to obtain additional security, the Federal Circuit determined that the Second Amended Complaint contained sufficient allegations that, if proven, could show that the government breached its duty to preserve the Trust Estate. *Id.*

The Federal Circuit did not address what harm, if any, arose from these alleged breaches, nor did the appellate court address whether the recovery in the *Collier* litigation was sufficient to remedy any such harm. Instead, the Federal Circuit wholly refrained from addressing the dispute of "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 maintain

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." *Id.*

On remand, the parties determined that litigation was necessary to answer the legal question of how much security the United States was required to maintain under the Act, agreeing that the Federal Circuit left this unresolved. With permission of this Court, the parties filed simultaneous motions for partial summary judgment on the surviving portions of Claim I relating to whether the United State had failed to maintain sufficient security at various times throughout the life of the trust. In sum, the United States argued that the TFPA appropriately secured Collier's principal obligation, with accrued interest, which had now been realized through the *Collier* litigation. Conversely ITCA maintained that the TFPA should have secured (or alternatively that the term "accrued interest" in the TFPA should be interpreted to include) all thirty years of interest payments, and thus the United States was liable for failing to secure, and later recover, all future payments—notwithstanding that the plain language of the Act imposed no such duty on the United States to secure all future interest payments

This Court granted in part and denied in part the United States' Motion for Partial Summary Judgment (ECF No. 129). The Court denied ITCA's Motion for Partial Summary Judgment (ECF No. 137). In granting the United States' motion in part, the Court reiterated, consistent with the Federal Circuit's ruling and the dismissal of Claim II, that the United States is not liable for any deficiency in Collier's annual interest payments. The Court agreed with the United States that ITCA could not revive this dismissed claim by resort to the Act's trust provisions. The Court explained:

> ["ITCA's] proposed reading of the Federal Circuit's reversal . . . renders the Federal Circuit's holding inconsistent—if the plaintiff can collect all annual payments under Claim I, the Federal Circuit's decision on Claim II is rendered academic. Even if the

> defendant were found to have breached its duty to maintain adequate security, holding the defendant liable for annual payments it had no obligation to pay would be illogical."

Summary Judgment Order, 2023 WL 4881967, at *4.

The Court further explained that ITCA's argument made "a logical leap," *id.*, at *5, and that "[t]here is a fundamental difference between the [United States'] obligation to hold sufficient security in trust to encourage Collier's continued performance and the [United States'] supposed obligation to assume all Collier's financial obligation[s]." *Id.* While the former obligation remained a viable claim, "the latter supposed obligation lacks legal foundation." *Id.* Accordingly, the Court held that "[ITCA] is in no way entitled to recover from the [United States] the $2.9 million annual interest payments under Claim I." *Id.*

This Court also rejected ITCA's allegation, set out in Claim I of the SAC, that the United States breached its trust obligations by holding the Annuity at a private bank, rather than at the Department of Treasury. SAC ¶ 266. The Court concluded that ITCA lacked standing to pursue this claim, explaining that, on summary judgment, "plaintiff must set forth by affidavit or other evidence specific facts that show the elements of standing," that is, that the plaintiff "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Summary Judgment Order*, 2023 WL 4881967, at *6. ITCA did not establish, with reference to specific facts, "how it was harmed by the fact that Treasury did not hold and manage the Trust Estate." *Id.* The Court found this lack of injury in fact to be dispositive and dismissed the claim. *Id.*

Although the Court granted partial summary judgment to the United States, the Court explained that "a portion" of ITCA's claim for breach of duty to maintain sufficient security remained viable on remand, specifically those allegations stated in the SAC paragraphs 260 through 263, *id.* at *6-7, but that additional factual development was needed. ITCA's remaining

Claim I allegations are that the United States: (1) did not hold sufficient security to grant Collier's lien release requests in 1998 and 2007; (2) failed to take action in response to the economic downturn in 2008; and (3) lacked sufficient security in the Trust Estate in 2012 when Collier stopped making payments. *Id.* at *7-8.

The Court explained that these remaining allegations could not be resolved at summary judgment because there was "a genuine dispute of material fact as to the value of the trust fund over time relative to the required value of the trust fund." *Id.* at *1. This dispute involved questions: (1) whether the United States complied with specific provisions of the Deed of Trust; and (2) whether the United States acted as a "prudent person" would have in the management of the Trust Estate with respect to the remaining allegations of Claim I. *Id.* at *8.

With respect to the first issue, the Court explained that it was unclear whether the United States complied with the Deed of Trust's provision requiring the Trust Estate to be maintained at a certain value. *Id.* Although it rejected ITCA's argument that the United States was liable for the future annual interest payments, the Court noted that a question remained as to the precise amount of security the United States was required to maintain in the Trust Estate (whether principal plus all thirty annual interest payments, or just principal plus annual interest payments as they came due). *Summary Judgment Order*, 2023 WL 4881967, at *5. The Court later explained that the relevant question was the value of the estate "relative to the Release Level Amount." *Id.* at *9. The Release Level Amount accounts for "accrued interest," which, as discussed herein, means payments that had come due each year but not yet been paid—not future (unaccrued) interest payments. ITCA's claims challenging the United States interpretation and application of the TFPA have now been dismissed, *id.* at *7, 10, as have its claims challenging the TFPA for failing to secure all future interest payments or defining accrued interest to include

future interest payments. Accordingly, the United States' interpretation of accrued interest prevails.

Neither party, however, presented evidence of the value of the Trust Estate at the times identified as crucial by ITCA: the two lien releases in 1998 and 2007 and in 2011 when Collier stopped paying. *Id.* at *9. Because the Court was without evidence as to the "value of the Trust Estate over time relative to the Release Level Amount," the Court concluded that "there was a genuine dispute of material fact regarding whether the provision in the Deed of Trust requiring a certain level of security in the Trust Estate was violated." *Id.*

As to the second issue of whether the United States acted as a "prudent person," the Court explained that an open question remained as to whether the United States acted reasonably under common law to maintain the value of the Trust Estate at the required level. *Id.* Whether the United States should have done more, such as performing independent appraisals or demanding collateral sooner, required more factual development. Because neither party submitted "sufficient uncontested facts" to demonstrate whether the United States violated its common law duty to preserve the Trust Estate, the Court concluded summary judgment was inappropriate. *Id.* at *9-10. The Court noted that these facts were relevant to resolving whether the United States breached its trust duty to maintain adequate security, notwithstanding the United States' successful lawsuit against Collier. *Id.* at *10.

Finally, the Court addressed one additional issue remaining on Claim I of "whether and to what extent the plaintiff remains harmed by the defendant's alleged breach." *Id*. at *9. The Court explained that "the parties dispute the effect of the settlement [in *Collier*] on the plaintiff's claim," *id*., and that "[t]here is a genuine dispute of material fact" as to whether ITCA remains harmed by the surviving allegations. *Id.* To remedy the alleged breaches, ITCA seeks monetary

relief, alleged in SAC ¶ 268(c), "of the difference between the actual return on the $34.9 million once it has been recovered in full, and the [Arizona Florida Land Exchange] Act's mandated minimum rate of return of 8.5 % on the $34.9 million as of the same time, through the full thirty-year annual payment time period." *Id.,* at * 9 (quoting SAC, ¶ 268(c)).

Of equal importance to the Court's delineation of the remaining issues is the Court's confirmation of all allegations that have been dismissed and thus cannot be relitigated by ITCA. The Court's Summary Judgment Order disposed of and dismissed the following allegations:

- ¶ 255: The United States negotiated and agreed to a TFPA and related documents that failed to comply with or meet the Act's Trust Fund Payments security requirements, and also agreed to nonrecourse provisions for Collier not permitted by the Act that allowed, and in fact, incentivized, Collier to breach its obligations at Collier's convenience.

- ¶ 256: Alternatively, the United States' subsequent interpretation and application of the TFPA and related documents as written failed to comply with or meet the Act's Trust Fund Payments security requirements, which, coupled with the agreed upon nonrecourse provisions for Collier allowed, and in fact, incentivized, Collier to breach its obligations at Collier's convenience.

- ¶ 257: The TFPA and related documents did not make clear, as they should have, that under the annual payment method the Act required the United States to hold sufficient security both for the $34.9 million final payment and for all thirty years of $2.9 million annual payments which could not be prepaid, i.e., all thirty years of the congressionally-mandated minimum rate of return of 8.5% on $34.9 million.

- ¶ 258: In particular, the Deed provision regarding accrued interest was not clearly defined to mean any and all unpaid $2.9 million annual payments for the annual payment method's entire thirty year period.

- ¶ 259: The United States' failure to negotiate terms in the TFPA and related documents to ensure adequate security for the Trust Funds Payments obligations in full was a breach of trust in violation of the Act.

- ¶ 264: The United States' failure to recover from Collier sufficient security or cash to meet in full the Trust Fund Payments obligations was a breach of trust in violation of the Act.

- ¶ 265: To the extent that the United States deducts the costs of the online sale by the GSA of the Phoenix Indian School Property from the sale price, such deduction is a breach of trust in violation of the Act.

- ¶ 266: The United States' failure to have the Treasury hold the Trust Fund Payments security in trust was a breach of trust in violation of the Act.

- ¶ 267: Because the United States' duties under the Act regarding the Trust Fund Payments security are continuing unless and until the Act's Trust Fund Payments obligations are satisfied in full, the United States' breaches of trust in violation of the Act regarding the security also are continuing.

Id. at *7.

Pursuant to this Court and the Federal Circuit's dismissals of these claims, ITCA is barred from challenging the terms of the TFPA or the United States' interpretation or application thereof. This includes any arguments that the United States should have obtained more collateral than what the TFPA secured; that the Trust Estate was required to be maintained at any value other than what the TFPA required, that is, 130% of the Release Level Amount; that the release provisions were inadequate in any way; or that the term "accrued interest" in the Release Level Amount should be construed to include all thirty interest payments. Having dismissed paragraphs 255 through 259 and 264 through 267 of the SAC, the Court confirmed that ITCA was not entitled to the relief sought in SAC paragraphs 268(a) and (b) (seeking recovery of ITCA's (95%) share of the $34.9 million final payment and future annual payments Collier owed for years 2017-2027). *Id.* at *8.

ARGUMENT

I. Legal Standards

A. Absent Standing, This Court Lacks Jurisdiction To Resolve ITCA's Claims

"Federal courts are not courts of general jurisdiction; they have only the power that is authorized by Article III of the Constitution and the statutes enacted by Congress pursuant

thereto." *Starr Int'l Co., Inc. v. United States*, 856 F.3d 953, 964 (Fed. Cir. 2017) (quoting *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986). Accordingly, the doctrine of standing "serves to identify those disputes which are appropriately resolved through the judicial process." *Id.* (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990)). The Court of Federal Claims, though an Article I court, enforces the standing requirements enforced by Article III courts. *Id.* Because standing is jurisdictional, it is not subject to waiver, *Pandrol USA, LP v. Airboss Ry. Prod., Inc.*, 320 F.3d 1354, 1367 (Fed. Cir. 2003), and a lack of standing precludes a ruling on the merits. *Media Techs. Licensing, LLC. v. Upper Deck Co*., 334 F.3d 1366, 1370 (Fed. Cir. 2003). As here, if no concrete injury traceable to the defendant can be established, jurisdiction fails. *Consumer Watchdog v. Wisconsin Alumni Rsch. Found*, 753 F.3d 1258, 1261 (Fed. Cir. 2014).

Although this Court and the Federal Circuit reviewed the nature of ITCA's claims to determine that jurisdiction exists under the Tucker Act, 28 U.S.C. § 1491(a)(1), and the Indian Tucker Act, 28 U.S.C. § 1505 to adjudicate ITCA's failure-to-maintain breach of trust allegations, no court has considered ITCA's standing to assert these claims. While the Federal Circuit ruled that the remaining allegations had not been sufficiently considered below, it did not evaluate standing. Just as this Court concluded that ITCA lacks standing to pursue its claim about Treasury holding the security, a close inspection of the undisputed facts compels a like conclusion. ITCA has no standing to pursue these remaining theories because ITCA can cite no harm, traceable to the United States and redressable by this Court, for which it has not already been made whole.

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.").

II. Jurisdiction is lacking for ITCA's remaining Claim I allegations, because no concrete injury exists to establish ITCA's standing, and the alleged injury is not traceable to the United States nor can it be redressed by this Court

ITCA's last remaining allegations under Claim I reflect a futile quest because no identifiable injury, traceable to the United States, exists to support standing. ITCA bears the burden of establishing that it has "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). At summary judgment, ITCA "must set forth by affidavit or other evidence specific facts that show the elements of standing." *Summary Judgment Order*, 2023 WL 4881967, at *6. The failure to do so is dispositive. *Id.*

After nearly nine years of litigation and several rounds of dispositive motions, ITCA has failed to articulate *any* harm it suffered as a result of the remaining allegations that has not been fully compensated already. Simply put, no injury exists. Moreover, any resort to counterfactual hypotheses about how Collier might have acted differently but for the remaining alleged breaches by the United States is speculative, and conjecture cannot save ITCA's surviving claims.

Additionally, any potential injury arising from Collier's failure to pay is traceable to *Collier's* conduct, not the United States, and is not redressable by this Court given that the United States is not liable for Collier's missed payments.

A. ITCA has not—and cannot—identify a concrete "injury in fact" arising from the remaining Claim I allegations

Resolution of the remaining claims depends not on whether ITCA's allegations are true, but on whether ITCA suffered a resulting harm arising from this alleged conduct, even if proven, that has not already been remedied.

This Court and the Federal Circuit have narrowed ITCA's Claim I to a narrow set of allegations concerning the United States' conduct in the years before Collier breached the TFPA. These include:

1. whether the United States held sufficient security "relative to the Release Level Amount" in 1998 and 2007 when it granted Collier partial releases;

2. whether the United States should have demanded additional security following the 2008 economic downturn; and

3. whether the level of security held was sufficient "relative to the Release Level Amount" when Collier stopped making payments in 2012.

Not only does ITCA bear the burden of proving the United States committed the remaining alleged breaches of duty, but it also bears the burden of answering the Court's question of "whether and to what extent [it] remains harmed" by these specific breaches. *Summary Judgment Order*, 2023 WL 4881967, at *9. The Court can begin and end its analysis with this question.

To satisfy the first element of standing, ITCA must have suffered an injury in fact that is "concrete and particularized," "not conjectural or hypothetical." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). The "injury must be more than a general grievance . . . or abstract

harm." *Consumer Watchdog*, 753 F.3d at 1261. Nor will cursory allegations of injury suffice. Instead, as this Court recognized, ITCA must "set forth by affidavit or other evidence specific facts" that establish how ITCA was harmed by the remaining allegations of breach, even if a breach is proven. *Summary Judgment Order*, 2023 WL 4881967, at *6. ITCA's failure to do so demands dismissal. *Id.*

To date, ITCA's only asserted theory of harm has been rooted in the United States' failure to fulfill its purported obligation to secure, and later recover, all *future* interest payments—claims that both the Federal Circuit and this Court have firmly and categorically rejected. ITCA has never identified any other harm caused by the United States' alleged failure to maintain sufficient security in the Trust Estate at various times. ITCA has yet to articulate, for example, how it was separately harmed by the United States' alleged failure to conduct its own appraisals or to request additional security from Collier prior to 2012. ITCA's previous general allegation that the United States is liable for damages sought "as a result of its breaches," SAC ¶ 268, is not sufficient proof for standing at this stage. Rather, to survive the instant motion, ITCA must proffer specific facts, supported by evidence, of a concrete harm it suffered that 1) arises from the remaining allegations rather than a dismissed claim or theory, and 2) has not been remedied by the *Collier* recovery.

ITCA cannot show that any such harm remains. Regardless of the value of the Trust Estate over time, the parties agree that the United States recovered $48 million from Collier on behalf of the trust beneficiaries. No serious dispute exists that this sum exceeds the required value of the Trust Estate, which was $47.1 million at the time of the 2017 settlement with

Collier.[5] Rather than accept this reality, ITCA has anchored itself to the position that the United States should have additionally secured the thirty years of interest payments and pursued that amount in its litigation against Collier—a rejected theory that cannot now be relitigated. Additionally, any argument from ITCA that the Release Level Amount is anything other than what is outlined in the TFPA—130% of the unpaid obligation plus accrued interest, meaning interest payments that have come due each year and gone unpaid, is refuted by the prior rulings of this Court and the Federal Circuit that the Act imposed no duty upon the United States to cover missed payments by Collier. The law of the case fixes the terms of the TFPA and delineates the duty of the United States in a way that renders Interior's negotiation and enforcement of the TFPA immune from ITCA's final attack. *Intergraph Corp. v. Intel Corp*., 253 F.3d 695, 697 (Fed. Cir. 2001) ("The doctrine of law of the case generally bars retrial of issues that were previously resolved."). For these reasons, it is indisputably established that the United States fully recovered the value of collateral that was required to be held in trust pursuant to the TFPA, with the proper 95 percent share allocated to ITCA, thus placing ITCA in the same position it would have been had the Trust Estate been adequately collateralized during every moment of its operation.

Thus, even if the United States were assumed to have committed the breaches alleged by ITCA in the last surviving allegations of its operative complaint, no concrete injury to ITCA remains uncompensated as the proximate result of the United States' alleged failure to maintain the value of the trust in line with the TFPA in 1998, 2007, 2008, or 2012. This conclusion is

[5] 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.

compelled by the United States' recovery of the full value of what was required to be held in trust and ITCA's receipt of its rightful share. Indeed, Judge Firestone struggled with this very same concern during a 2018 status conference that she ordered *sua sponte* following the *Collier* settlement. The judge questioned "what more [ITCA] believe[d] it was entitled to"? ECF No. 50, 10:3-7. Having lost its various attempts to hold the United States liable for the future interest payments, ITCA still cannot answer this central question: What harm remains from these last alleged breaches, if the United States is not liable for all future interest payments? The answer is definitive: none. ITCA suffered no cognizable loss until Collier ceased making payments under the TFPA. And the *Collier* recovery returned ITCA to the position it would have been in had the Trust Estate been adequately collateralized all along, so no harm remains.

ITCA may argue otherwise, but this Court's Summary Judgment Order did not hold that the *Collier* recovery was insufficient to remedy any harm that ITCA may have suffered because of the remaining alleged breaches. Though this Court noted that the United States' "successful suit in district court to recover funds owed to the trust" did not resolve ITCA's pending allegations of breach, and that further factual development regarding the value of the Trust Estate over time was needed to determine if the United States had *breached* its duties as trustee, this Court did not consider whether any concrete injury remained that was not remedied by the recovery from *Collier*. Instead, the Court expressly acknowledged the dispute between the parties as to the effect of the settlement recovery on ITCA's claims and whether ITCA remained harmed. *Summary Judgment Order*, 2023 WL 4881967, at *9. In reserving decision, the Court noted that ITCA's belief that the settlement was not "anywhere" near what was needed to remedy ITCA's injuries, based on ITCA's "assert[ion] that Collier still owed $66.4 million" when it stopped paying. *Id.* (quoting ITCA Reply, p. 20). But the Court's reference to $66.4

million reflects Collier's future interest payments damages under ITCA's now-rejected theory that the United States was liable for future interest owed by Collier. ITCA Reply, ECF No. 142 at 19–20 ("Collier stated that the unpaid amount due the Trust Funds by 2027 totaled approximately $66.4 million including 15 years of unpaid $2.9 million annual Payments . . . This assessment accurately reflects the Act's Trust Fund Payment 30-year option requirements."); *id.* at 20 (" . . . $48 million will not return anywhere near $66.4 million . . . The US as trustee is liable for the shortfall."). These alleged injuries are not due to the value of the Trust Estate falling below a requisite amount, but from ITCA's now-rejected theory that the United States was required to secure all thirty years of interest payments.

To date, neither this Court nor the Federal Circuit has addressed whether the recovery in *Collier* also remedied the alleged harm that ITCA may have suffered as a result of the remaining alleged breaches. Judge Firestone considered that the act of suing Collier itself discharged the United States' fiduciary duties under the Act. *Inter-Tribal Council of Arizona, Inc. v. United States*, 140 Fed. Cl. 447, 458 (2018), *aff'd in part, rev'd in part*, 956 F.3d 1328 (Fed. Cir. 2020). The Federal Circuit disagreed, explaining that certain actions, if proven, could constitute *breaches* of the United States' duties notwithstanding the United States' lawsuit against Collier. *Circuit Opinion*, 956 F.3d at 1343. But even if any other breaches are identified, the United States can only be held liable for "damages sustained as a result" of a breach of those duties. *U.S v. Navajo Nation*, 556 U.S 287, 291 (2009). The Federal Circuit never considered whether ITCA suffered actual injury by reason of the alleged remaining breaches, even if proven, and expressly refrained from determining the value of collateral to be held in trust. *Circuit Opinion*, 956 F.3d at 1340, FN 11. This question as to the required value of collateral has now been resolved, and it is beyond dispute that the value to be maintained is the amount set out in the TFPA. Having

recovered this value in the *Collier* litigation, it is clear that no concrete harm remains to support standing as to these last remaining allegations of breach.

ITCA must do more than point to the alleged breaches and counterfactual speculation about harm to establish standing. ITCA must, to carry its burden, identify through specific facts and without reliance on rejected legal theories, how it was uniquely harmed by the surviving breaches. That it cannot do.

The question whether ITCA sustained an identifiable harm is distinct from the question of calculating damages if the Court were to hold that ITCA has suffered from the breach. *See Sugar Hill, LLC v. United States*, 106 Fed. Cl. 314, 330 (2012) (distinguishing between the "facial question of whether damages were even sustained" and measuring damages). ITCA need not have yet quantified the exact damages it seeks in ¶ 268(c), but it must identify *how* it suffered a concrete harm or what injury resulted from the alleged breaches that was not cured by the *Collier* settlement. That ITCA has not calculated its potential damages, i.e., the difference between the actual return on the recovered funds and the mandated interest it expected to obtain from future payments, does not absolve it of the burden to identify the missing link between the breach and the alleged harm.

ITCA's failure to identify any uncompensated injury other than its now-rejected theory of entitlement to future interest leads to but one conclusion: ITCA has suffered no harm arising from the allegations in paragraphs 260 through 263 of the SAC for which it has not already been compensated. Just as the Court previously recognized with respect to ITCA's lack of standing to sue over where the collateral was held, *Summary Judgment Order*, 2023 WL 4881967, at *6, the absence of injury with respect to these other breaches is dispositive. Even if these alleged breaches had occurred, ITCA cannot identify—with any evidence beyond mere speculation—

specific facts establishing how it was harmed by these breaches. Accordingly, the Court must dismiss the remaining allegations for lack of standing.

B. ITCA cannot rely on hypothetical or speculative facts to create standing

It is well established that standing requires an injury that is "concrete and particularized." *Lujan*, 504 U.S. at 560-61. Injuries based on conjecture or hypotheticals must be dismissed. *Id.*; *JTEKT Corp. v. GKN Auto. LTD.*, 898 F.3d 1217, 1220 (Fed. Cir. 2018). Accordingly, to withstand this motion and get to trial, ITCA must show that, "but for the breach, the alleged damages would not have been suffered." *See Sugar Hill, LLC*, 106 Fed. Cl. at 329–30 (finding alleged injury to be speculative and granting judgment to the United States). Any argument that but-for the remaining alleged breaches Collier would have completed its thirty-year payment obligation is inherently hypothetical. The argument rests upon "what ifs"—for example, what if the United States had conducted appraisals and determined that Collier was not entitled to the releases, or what if the United States had demanded that Collier supplement the Trust Estate in 2007? Such suppositions do not prove that Collier would have continued paying all thirty years of interest. Any theory of harm that is "contingent on a chain of attenuated hypothetical events and actions by third parties independent of the defendant[]" cannot establish standing. *Beck v. McDonald*, 848 F.3d 262, 268 (4th Cir. 2017); *see also Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 410 (2013) ("[R]espondents' theory of standing, which relies on a highly attenuated chain of possibilities, does not satisfy the [injury] requirement."); *Circiello v. Alfano*, 612 F. Supp. 2d 111, 114 (D. Mass. 2009) (holding that an injury based on a "series of 'what ifs'" was too speculative to confer standing.). ITCA has no ability to prove that Collier would have completed its payment obligations through year thirty but for the United States' alleged breaches. No facts exist to prove post hoc whether Collier would—or would not— have fulfilled these obligations,

even if the Trust Estate never fell below the requisite amount. To do so would be pure conjecture. To be "concrete," however, ITCA's injury must be based on facts that "actually exist." *Spokeo*, 578 U.S. at 340.

In reality, Collier could have stopped paying at any time, just as it did in 2012, even if the Trust Estate was fully collateralized. The remedy, under any set of facts that could be conjured up, would be the same: a recovery from the Trust Estate, which was to be maintained at 130 percent of the Release Level Amount. No factual basis exists to prove that if the United States acted differently at any point in time it would have caused Collier to continue to make payments in 2012 and beyond. For example, assuming *arguendo*, that the United States had demanded additional collateral sooner than 2013 because the Trust Estate's value dipped, such as after the 2007 recession, the remedy would have been to bring the value of the estate back to 130% of the Release Level Amount. This is what would have been available in the event of Collier's failure to pay at any point in time, and exactly what the United States recovered when Collier did, in fact, stop paying in 2012. Whether the United States sought more collateral in 2007 or thereafter in 2013, the result is the same: recovery of 130% of the Release Level Amount. These are the facts that actually exist.

Additionally, per the terms of the TFPA, Collier was entitled to a lien release if the value of the unreleased property exceeded 130 percent of the Release Level Amount. It follows that if the Trust Estate ever exceeded this amount, Collier could seek a lien release to which it was contractually entitled. While it is impossible to predict how Collier may or may not have responded had the United States acted differently at various points, such as by conducting its own appraisals or demanding a collateral supplement sooner, it is safe to say that the value of the Trust Estate would never have exceeded 130 percent of the Release Level Amount given

Collier's contractual right to a lien release. Accordingly, if Collier had stopped paying at some unknown and unpredictable point in time, all that could be recovered was what was to be held in trust: 130 percent of the Release Level Amount. As bears repeating, 130 percent of the Release Level Amount is exactly what the United States sought and successfully recovered in its litigation against Collier to enforce the TFPA.

It is therefore inapposite whether the collateral's value dipped at any point, and it is just as immaterial when the United States demanded the additional collateral. Through the United States' efforts in the *Collier* litigation, the TFPA effectively accomplished what it was created to do—ensure that ITCA received its share of the $34.9 million from Collier, with accrued interest. US-SOF ¶ 30. As a result, the United States recovered what would have been held in trust had it been adequately secured at any point if Collier ceased paying, and curing any potential harms that could have arisen from how the value of the collateral was monitored or maintained at any given time.

Without any non-speculative, concrete injury in fact, ITCA's remaining Claim I allegations must be dismissed.

C. ITCA cannot establish that any injury is traceable to the United States and redressable by this Court

Not only must ITCA identify a non-speculative, concrete injury in fact, but that injury must be traceable to the United States' conduct—that is, caused by the United States and not a third party, *Mil.-Veterans Advoc. v. Sec'y of Veterans Affs.*, 7 F.4th 1110, 1121 (Fed. Cir. 2021)—and redressable by this Court. *Consumer Watchdog*, 753 F.3d at 1261. ITCA has not shown that it satisfies either of these elements.

First, because ITCA has identified no injury arising from the remaining alleged breaches, there can be no "traceability." That said, any alleged injury based on Collier neglecting its

payment obligations is traceable to *Collier*. However, to satisfy the traceability element, the injury must result from "the challenged action of the defendant," and not from the "independent action of some third party not before the court." *The Centech Grp., Inc. v. United States*, 167 Fed. Cl. 1, 7 (2023) (quoting *Lujan*, 504 U.S. at 560-561). Any argument from ITCA that the United States' actions could have facilitated Collier's breach, in addition to being too speculative to establish a concrete injury in fact, is likewise insufficient to establish traceability. It is "speculative at best" whether the United States' actions specified in the complaint caused Collier's breach or instead whether these alleged breaches, which could have occurred at any time, resulted from decisions made by Collier—for which the United States is *not* liable, per the law of this case. *Animal Legal Def. Fund v. Quigg*, 932 F.2d 920, 933 (Fed. Cir. 1991) (quoting *Simon v. Eastern Kentucky Welfare Rights Org*., 426 U.S. 26, 42 (1976). Such a theory that "require[s] guesswork as to how independent decisionmakers [] exercise[d] their judgment" and relies on a "speculative chain of possibilities" cannot establish either injury *or* traceability. *Clapper*, 568 U.S. at 413, 415; *see also Madstad Eng'g, Inc. v. U.S. Pat. & Trademark Off*., 756 F.3d 1366, 1381 (Fed. Cir. 2014) (quoting *Lujan*, 504 U.S. at 562) ("Plaintiffs cannot rely on speculation about 'the unfettered choices made by independent actors not before the court.'").

Additionally, to the extent the relief ITCA seeks remains Collier's unpaid interest payments to remedy its injury arising from Collier's failure to pay, such relief does not satisfy the redressability element of standing. To establish redressability, ITCA must show "that the court has the power to grant [its] requested relief, and that such relief would redress [its] injury." *Buscemi v. Bell*, 964 F.3d 252, 259 (4th Cir. 2020). If the court is "unable to grant the relief that relates to the harm, the plaintiff lacks standing." *Yazzie v. Hobbs*, 977 F.3d 964, 967 (9th Cir. 2020). Here, any injury based on Collier's failure to pay is not redressable—precedent and the

law of the case wholly prevent the court from awarding ITCA relief in the form of the annual interest payments that were owed by Collier. ITCA must do more than seek relief to remedy a harm caused by Collier to show its claims are redressable.

For these reasons, ITCA cannot establish the elements of standing, and its remaining claims must be dismissed.

CONCLUSION

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

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