Cook Inlet Tribal Council, Inc. v. Dotomain, 10 F.4th 892 (D.C. Cir. 2021)

- **Holding:** Facility expenses attendant to operation of an alcohol recovery treatment program under an ISDEAA self-determination contract are not contract support costs entitled to reimbursement.
- **Summary:** Plaintiff has operated an alcohol recovery treatment program since 1992 in Anchorage, Alaska pursuant to a self-determination contract with the Indian Health Service under the Indian Self-Determination and Education Assistance Act. In 2014, Plaintiff proposed adding $400,000 to the annual agreement as "contract support costs" to defray the expense of operating the program's facilities. It sued the IHS officials later that year after the agency declined the proposal. The district court agreed with Plaintiff that the expenses were properly characterized as contract support costs and entered judgment in its favor. The D.C. Circuit, however, reversed on appeal.

  As the panel explained, ISDEAA authorizes reimbursement for the "secretarial amount"—"a negotiated sum that can't be less than what Indian Health Service would have spent on the program if it directly provided the health care"—and contract support costs—"contract compliance expenses Indian Health Service doesn't incur (and therefore doesn't pay) when it runs the program" such as workers' compensation. *See* 25 U.S.C. §§ 5325(a)(1), 5325(a)(2)(A). Here, it reasoned:

  > [I]t is self-evident that the agency normally pays for space and staff when it runs a health care center, especially one with in-patient services. Whether or not a health center is government-run, patients need a place to be treated. And they need medical and support staff to treat them and maintain the space. The staff, in turn, needs a place to work. And at the risk of belaboring the obvious, all of the above—staff, workspace, and patient rooms—costs money whether or not the program is government-run.

  The facility expenses, therefore, were not contract support costs. The panel continued on to reject Plaintiff's reliance on § 5325(a)(3), which "divides contract support costs into 'direct program expenses,' 25 U.S.C. § 5325(a)(3)(A)(i), and 'any additional administrative or other expense incurred' in operating the program, *id.* § 5325(a)(3)(A)(ii)" as effectively expanding the overall scope of reimbursable costs:

  > [N]othing about § (a)(3) changes the limits on contract support costs provided by § (a)(2). An expense can be neither a direct contract support cost nor an indirect contract support cost if it is not, as defined by § (a)(2), a contract support cost. And under § (a)(2), no expense is a contract support cost if it—like facility costs—is "normally" paid by the agency that would otherwise administer the program directly.

  Instead, "[i]f a tribe's secretarial amount does not cover the same facility costs 'normally' incurred by the agency, the tribe's recourse is simple: Sue for a larger secretarial amount."
- **Relevant (2021) Deskbook Section:** 1:13 n.41