

Feds' Spend on Lawsuits Up

Government paid \$3.3B to resolve cases in 2014.

BY JENNA GREENE

The federal government paid more than \$3 billion last year to resolve lawsuits, almost twice as much as it did the year before, according to an analysis by The National Law Journal of hundreds of payment records.

The departments of Energy, Interior and Health and Human Services accounted for the largest share of expenditures. Those agencies spent a combined \$2.35 billion to settle a series of long-running disputes that included government contracts litigation over health care programs run by Indian tribes.

And, while not a high dollar total, the government made payouts to former military employees let go under the since-reversed "Don't Ask, Don't Tell" policy.

The payments were logged in the Judgment Fund, a Treasury Department database of money the feds use to satisfy court judgments or settle lawsuits. Created in 1956, the fund is a permanent, indefinite appropriation, exempt from annual congressional approval. Its records are opaque. Payments are identified only by citation codes and agency file numbers that may or may not correspond to federal court case numbers.

As in years past, the Energy Department spent the most on lawsuits in 2014, paying \$929 million in taxpayer money. Most of the money went to nuclear power plants to settle breach-of-contract claims involving the stor-



SETTLE: Interior Secretary Sally Jewell signs a \$554 million payout to the Navajo Nation.

age of spent nuclear fuel. The agency has spent more than \$4 billion on such claims during the past four years.

The federal government was supposed to begin storing spent nuclear fuel at Yucca Mountain, Nevada, in 1998. But the facility has not been completed—it's unclear if it ever will be—and the power plants have been stuck with the waste.

"Plaintiffs have honored all of their contractual obligations under the standard contracts. The government

breached the standard contracts by failing to accept [spent nuclear fuel] for disposal as required," Morgan, Lewis & Bockius partner Arnold Fagg wrote in a complaint on behalf of Progress Energy Inc. subsidiaries Carolina Power and Light Co. and Florida Power Corp. The company accepted a \$90 million settlement last year.

FIFTY SUITS COST \$650 MILLION

Another major outlay came from the Indian Health Service, which

pulled more than \$650 million from the Judgment Fund to settle about 50 suits. Indian tribes accused the agency of underpayment of government contracts for running health care clinics and hospitals on reservations.

"It was a 20-year battle, but we finally started to see the results," said Lloyd Miller, a partner at Sonosky, Chambers, Sachse, Miller & Munson who represents about 70 tribes and intertribal organizations in pending and settled cases.

Both sides agreed the government routinely shortchanged the tribes, underpaying contract support costs when Congress failed to appropriate enough money to pay everyone in full.

In 2012, the U.S. Supreme Court in *Salazar v. Ramah Navajo Chapter*, a related case against the Bureau of Indian Affairs, nixed that practice. "Consistent with longstanding principles of government contracting law, we hold that the government must pay each tribe's contract support costs in full," Justice Sonia Sotomayor wrote for the majority.

Many of his clients "thought we'd never be able to prevail against the United States. The Justice Department mounted such an aggressive defense," Miller said. "My clients are overjoyed they can finally secure compensation."

Settlements have ranged from \$4,500 to \$153 million, he said. A related class action against the Bureau of Indian Affairs is pending.

Indian tribes also netted awards stemming from mismanagement of tribal trust funds. The Navajo Nation, represented by BuckleySandler and the Nordhaus Law Firm, sued the government in the Court of Federal Claims, alleging the Interior Department breached its fiduciary duty to properly manage the tribe's mineral royalties since 1946. The case settled for \$554 million.

Another class action that settled last year was notable more for its policy implications than dollar amount. The government paid \$1.7 million to 103 former members of the armed forc-

Some members of Congress are trying to force the fund to divulge more information. In February, Sen. Deb Fischer, R-Nebraska, and Sen. Cory Gardner, R-Colorado, re-introduced



AP PHOTO/NEVADA APPEAL, RICK GUNN, FILE

WASTE: The delayed opening of the nuclear storage site at Yucca Mountain, above, is costing the feds millions of dollars.

es who were involuntarily discharged under the "Don't ask, don't tell" policy. The soldiers had their separation pay cut in half because there were "deemed to be not fully qualified for retention and denied re-enlistment or continuation because of homosexuality," according to the complaint filed by the American Civil Liberties Union. Payments to the former soldiers ranged from \$6,257 to \$72,337.

For every Judgment Fund payment that can be detailed, many more remain untraceable. The Commerce Department last year spent \$45 million to settle an administrative "miscellany" tort claim. A Freedom of Information Act request by the NLJ about the payment is pending.

legislation that would require the fund to list the claimants, counsel, agency, fact summary and payment amounts. The bill has earned the backing of Senate Judiciary Committee Chairman Chuck Grassley, R-Iowa. "A little sunshine can go a long way to bringing greater accountability to the Judgment Fund," he said in a written statement then. "More transparency leads to greater accountability, which is something the federal government could use more of."

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