

Receipt number 9998-3995262

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**

JUN 2 2017

KANE COUNTY, UTAH, individually and on behalf of all others similarly situated,	)	
	)	
Plaintiffs,	)	No. <b>17-739 C</b>
v.	)	
	)	CLASS ACTION COMPLAINT
THE UNITED STATES,	)	
	)	
Defendant.	)	

**COMPLAINT**

1. This Court has jurisdiction pursuant to 28 U.S.C. § 1346(a)(2).
2. Plaintiff Kane County is a political subdivision of the state of Utah.
3. Kane County is also a “unit of general local government” in which “entitlement land” is located, as these terms are defined in 31 U.S.C. § 6901.
4. On October 20, 1976, Congress enacted P.L. 94-565, commonly known as the Payment in Lieu of Taxes Act, herein referred to as “PILT” or the “statute.”
5. PILT was originally codified at 31 U.S.C. § 1601, *et seq.*
6. Pursuant to P.L. 97-258, on September 23, 1982, the statute was re-codified “without substantive change” at 31 U.S.C. §§ 6901, *et seq.*
7. 31 U.S.C. § 6902 provides that:  
  
“the Secretary of the Interior shall make a payment for each fiscal year to each unit of general local government in which entitlement land is located as set forth in this chapter.”
8. 31 U.S.C. § 6903(b)(1) sets forth the manner by which the annual payment to each eligible unit of local government is specifically determined.

**FILED**

9. As the Supreme Court found in *Lawrence County v. Lead-Deadwood School District, No. 40-1*, 469 U.S. 256, 258 (1984), the purpose of the statute was to compensate local governments for the loss of tax revenues resulting from the tax-immune status of federal lands located in their jurisdictions and for the cost of providing services related to these lands.

10. As the Court also noted, the Federal Government had, for many years prior to the enactment of PILT, been providing payments to partially compensate state and local governments for revenues lost as a result of the presence of tax-exempt federal lands within their borders, but Congress and others had identified a number of flaws in the existing programs. Prominent among congressional concerns was that, under systems of direct payment to the States, local governments often received funds that were insufficient to cover the full cost of maintaining the federal lands within their jurisdictions.

11. In this regard, in enacting PILT, Congress was well aware that users of these federal lands, such as tourists and hunters, suffer accidents requiring emergency services or hospitalization for which they cannot always pay; commit crimes that call for police protection, prosecution, and incarceration; create waste that necessitates the construction of sewage treatment plants; use roads that must be paved and maintained; and generally impose a strain on a local government's limited resources without providing much in the way of compensating revenues.

12. The above notwithstanding, the PILT statute from the date it was originally enacted until it was amended on October 3, 2008, contained the following section, which was codified in 31 U.S.C. § 6906:

“Necessary amounts may be appropriated to the Secretary of the Interior to carry out this chapter [31 U.S.C. §§ 6901, *et seq.*]. Amounts are available only as provided in appropriation laws.”

13. As noted, this language was excised from the PILT statute on October 3, 2008, the date upon which P.L. 110-343 was enacted.
14. Moreover, that language was never reinserted into the statute.
15. Division C, Title VI, § 601(c)(1) of P.L. 110-343, enacted on October 3, 2008, amended 31 U.S.C. § 6909 to read:

For each of fiscal years 2008 through 2012—

“(1) each county or other eligible unit of local government shall be entitled to payment under this chapter; and  
(2) sums shall be made available to the Secretary of the Interior for obligation or expenditure in accordance with this chapter.”

16. Since 2008, the only amendments made to § 6906 merely extended its applicability – first to FY 2013 and then to FY 2014.
17. For FY 2015 and 2016, the inapplicability of § 6906 meant that the funding of the annual PILT payments, which § 6902 required the Secretary of the Interior to make, would have to come through the appropriations process.

### **Count I – Fiscal Year 2015**

18. For FY 2015, Congress appropriated a total of \$442,000,000 for PILT.
19. The Department of the Interior determined that, under the formula in § 6903, the total payment amounts due the PILT counties for FY 2015 totaled \$451,525,101.
20. As a result of the under-appropriation, for FY 2015, PILT counties failed to receive \$9,925,101 (*i.e.*, 2.2%) of the amount to which they were entitled.<sup>1</sup>

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<sup>1</sup> Because a portion of the funds appropriated by Congress was sequestered, OMB Report to the Congress on the Joint Committee Reductions for Fiscal Year 2016, at 3 (Feb. 2, 2015), the actual underpayment to Kane County and other PILT counties for FY 2015 was actually greater than the \$9.9 million stated above, *i.e.*, \$2,500,000 greater for all PILT counties and \$6,076 greater for Kane County. In this action, without prejudice, Plaintiffs do not challenge the

21. Under the formula set out in § 6903, for FY 2015, Kane County was entitled to \$1,090,460. Due to the under-appropriation, \$23,969 (2.198%) remains unpaid.

22. Due to the under-appropriation, in FY 2015, each of the other PILT counties also failed to receive 2.198% of the amount to which it was entitled under the formula set forth in the statute.

### **Count II – Fiscal Year 2016**

23. Plaintiffs restate paragraphs 1 through 17.

24. For FY 2016, Congress appropriated a total of \$452,000,000 for PILT.

25. \$400,000 of the amount appropriated was for administrative expenses of the program. The remaining \$451,600,000 was to be used to make annual PILT payments.

26. The Department of the Interior determined that, under the formula in § 6903, the total payments amounts due the PILT counties for FY 2016 totaled \$459,497,244.

27. As a result of the under-appropriation, for FY 2016, PILT counties failed to receive \$7,897,244 (\$459,497,244-\$451,600,000), or 1.72%, of the amount to which they were entitled.

28. Under the formula set out in § 6903, for FY 2016, Kane County was entitled to \$1,098,440. Due to the noted under-appropriation, it was paid only \$1,079,562. \$18,878 (1.72%) remains unpaid.

29. Due to the under-appropriation, in FY 2016, each PILT county failed to receive 1.72% of the amount to which it was entitled under the formula set forth in the statute.

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government's reduction of PILT payments by the amount sequestered and seek only the difference between the statutory entitlement and the amount appropriated, as if no sequestration had occurred.

**Count III – Class Allegations**

30. The Named Plaintiff seeks to represent a class defined as:

All “units of local government” as defined in 31 U.S.C. § 6901(2) entitled to payment under 31 U.S.C. § 6902(a) of the Payment in Lieu of Taxes Act that did not receive payment of the amount to which they were entitled under the Act in FY 2015 and/or FY 2016 solely as a result of Congress’ under-appropriation of funds in those years.

31. A class action may be maintained if the class representative plaintiff(s) meet(s) the requirements of RCFC 23(a) and (b).

32. The requirements of RCFC 23(a) and (b) can be grouped into five categories: (1) numerosity, (2) commonality, (3) typicality, (4) adequacy, and (5) superiority. *Douglas R. Bigelow Trust v. United States*, 97 Fed. Cl. 674, 676 (2011).

33. Numerosity requires a class so large that joinder is impracticable. The class in this case numbers almost 2,000 members. More than several hundred members are recognized to meet the numerosity requirement. *Adams v. United States*, 93 Fed. Cl. 563, 575 (2010).

34. The commonality requirement contains three parts: (1) whether there are questions of law or fact common to the class, (2) whether those common questions predominate over any questions affecting only individual members, and (3) whether the United States has acted or refused to act on grounds generally applicable to the class.

35. In this case, all potential class members have an identical legal claim for underpayment of PILT funds. While the amount due each claimant is different, the exact amount due each claimant is easily calculated using the statutory formulas and the amount actually paid each county. The United States has treated all members of the putative class identically by refusing to pay the full amount due them under the statute. There are no significant issues that are not common to all potential class members.

36. Typicality requires that the claims of the representative parties be typical of the claims of the class. In this case, the claims of the representative party are not only typical of the class, they are identical to the class.

37. The adequacy requirement has two components: (1) class counsel must be qualified, experienced and capable of conducting the litigation; and (2) the class members must not have interests antagonistic to one another.

38. The undersigned is a partner in the well-recognized firm of Smith, Currie & Hancock LLP where he specializes in government contract and appropriation laws and has substantial experience litigating class action lawsuits against the United States in this Court. Smith Currie has the financial resources to represent and protect the interests of the class.

39. The representative party and other potential class members have no antagonistic interests. The Named Plaintiff and each potential class member seek to obtain the unpaid portion of the annual statutory payment due it in accordance with the formulas set out in the statute.

40. The superiority requirement is met when a class action will achieve economics of time, effort, and expenses, and promote uniformity without sacrificing procedural fairness or bringing about other undesirable results. In this case, many potential class members have claims less than \$25,000, and would have difficulty asserting their claims outside a class action. The class is manageable because each member's individual claim can be precisely calculated using the statute's formulas. Certifying this class will allow for consolidation of claims, reduce the time and expense of litigation, and ensure a consistent decision regarding the government's liability.

41. For the reasons set forth above, all of RCFC 23's requirements for class certification are easily met in this case.

WHEREFORE, Plaintiffs respectfully request that this Court:

- (a) certify this case as a class action under RCFC 23;
- (b) find that Plaintiffs are entitled to the portion of the amounts to which they were entitled for the fiscal years 2015 and 2016 that was not paid them due to Congress' under-appropriation of funds for those fiscal years;
- (c) award Plaintiffs their costs and attorney's fees incurred in pursuing this case; and
- (d) grant Plaintiffs such further relief as this Court deems just and proper.

Respectfully submitted,

s/Alan I. Saltman

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Dated: June 2, 2017

# In The United States Court of Federal Claims

JUN 2 2017

## Cover Sheet

Plaintiff(s) or Petitioner(s)

Names: Kane County, Utah, individually and on behalf of all others similarly situated

Location of Plaintiff(s)/Petitioner(s) (city/state): Kane County, UT

(If this is a multi-plaintiff case, pursuant to RCFC 20(a), please use a separate sheet to list additional plaintiffs.)

Name of the attorney of record (See RCFC 83.1(c)): Alan I. Saltman **17-739 C**

Firm Name: Smith, Currie & Hancock LLP

Contact information for pro se plaintiff/petitioner or attorney of record:

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E-mail Address: aisaltman@smithcurrie.com

Is the attorney of record admitted to the Court of Federal Claims Bar?  Yes  No

Nature of Suit Code: \_\_\_\_\_  
Select only one (three digit) nature-of-suit code from the attached sheet. See attached sheet for three-digit codes. If number 213 is used, please identify partnership or partnership group:  
528

Agency Identification Code: DOI  
Number of Claims Involved: to be determined

Amount Claimed: \$ to be determined  
Use estimate if specific amount is not pleaded.

Bid Protest:  
Indicate approximate dollar amount of procurement at issue: \$ \_\_\_\_\_

Was this action preceded by the filing of a protest before the GAO?  Yes  No

If yes, was a decision on the merits rendered?  Yes  No

Takings Case:  
Specify Location of Property (city/state): \_\_\_\_\_

Vaccine Case:  
Date of Vaccination: \_\_\_\_\_

Related Case:  
Is this case directly related to any pending or previous cases?  Yes  No  
If yes, you are required to file a separate notice of directly related case(s). See RCFC 40.2.



# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Kane County, UT Sues U.S. for Under-Appropriation of Funds](#)

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