

INTERIOR BOARD OF CONTRACT APPEALS

ARCTIC SLOPE NATIVE ASSOCIATION, Ltd.)	
)	
)	IBCA Nos. 4794 through 4803/06
Appellant,)	ISDA Contract No. 243-96-6025
vs.)	(effective through Sept. 30, 1997)
)	
MICHAEL O. LEAVITT, SECRETARY U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; <i>et al</i>)	ISDA Compact No. 58G980054
)	(effective Oct. 1, 1996 to present)
)	
Appellees.)	
)	

APPELLANT’S MOTION FOR PARTIAL SUMMARY JUDGMENT

Appellant Arctic Slope Native Association, Ltd. (ASNA) respectfully moves this honorable Board to grant partial summary judgment of liability against the Secretary on ASNA’s First Cause of Action.

By this Motion Appellant seeks a ruling that the Secretary is liable in damages for all shortfalls that may be proven at trial between the “contract support cost requirements” that the Secretary determined ASNA was entitled to be paid under its contracts, the Indian Self-Determination Act (25 U.S.C. §§ 450-450n), and IHS’s contract support cost Circulars, and the lower amounts the Secretary actually paid to ASNA under its contracts with the Secretary in effect during fiscal years 1996 through 2000.

By this Motion Appellant also seeks a ruling that the damages Appellant is entitled to recover at trial include expectancy damages reflecting the reasonably foreseeable amounts the Secretary would have paid to Appellant in subsequent years under the anti-reduction provisions of 25 U.S.C. § 450j-1(b)(2), had the Secretary not failed each year to pay ASNA its full contract support cost

requirement.

In support of this Motion the Board is respectfully referred to the accompanying Memorandum. As explained therein, these appeals are a replica of *Appeals of Cherokee Nation*, Nos. 3877-3879, 99-2 B.C.A. (CCH) ¶ 30,462, 1999 WL 440045 (I.B.C.A. June 30, 1999), a decision issued by this Board, affirmed in the Federal Circuit, and ultimately affirmed by the Supreme Court in *Cherokee Nation v. Leavitt*, 543 U.S. 631 (2005) (*Cherokee III*), *aff'g Thompson v. Cherokee Nation*, 334 F.3d 1075 (Fed. Cir. 2003) (*Cherokee II*). Indeed, these appeals arise out of the precise same statutory scheme and course of conduct as the appeals at issue in the *Cherokee* litigation, although the government has raised several new defenses herein. For the reasons stated in those opinions and in the Appellant's Memorandum, Appellant therefore respectfully requests that this Motion be granted.

Respectfully submitted this 20th day of November 2006.

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By: /s/ Lloyd B. Miller, by ALJr.

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CERTIFICATE OF SERVICE

I hereby certify that I mailed, or caused to be mailed, a true and correct copy of the foregoing document by first class mail to the following parties of record this 20th day of November 2006:

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