

CIVILIAN BOARD OF CONTRACT APPEALS

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2007 SEP 27 P 12: 09

ARCTIC SLOPE NATIVE ASSOCIATION,)
 LTD.,)
)
 Appellant,)
)
 vs.)
)
 MICHAEL O. LEAVITT, SECRETARY)
 U.S. DEPARTMENT OF HEALTH AND)
 HUMAN SERVICES, *et al.*,)
)
 Respondents.)
)

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 CONTRACT APPEALS
 CBCA 190-ISDA, and
 289-ISDA through 297-ISDA
 (IBCA 4794-4803-2006)

NOTICE OF FILING STATEMENT OF UNCONTESTED FACTS IN SUPPORT OF APPELLANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT ADDRESSING THE GOVERNMENT'S LIABILITY UNDER THE COMPLAINT'S FIRST CAUSE OF ACTION

Pursuant to CBCA Interim Rule of Procedure 8(g)(2), Appellant Arctic Slope Native Association (ASNA) respectfully submits herewith its Statement of Uncontested Facts in support of Appellant's Motion for Partial Summary Judgment, addressing the Government's liability under the Complaint's First Cause of Action.

In further explanation of this submission, Appellant shows as follows:

1. Appellant ASNA filed its summary judgment motion on November 20, 2006. Consistent with the informality of proceedings before the Interior Board of Contract Appeals (IBCA), as well as past practices, Appellant did not also submit a Statement of Uncontested Issues.
2. Appellant's summary judgment motion was the subject of a February 28, 2007, oral argument (together with two other motions filed by Respondents). At that time, Presiding Judge Steel asked the parties' counsel if it was possible to identify the areas of disagreement between the parties. Thereafter the parties' counsel explored the feasibility of developing a comprehensive joint

statement of uncontested issues. In time, however, this effort foundered.

3. On July 5, 2007, the Board published an interim rule setting forth proposed procedures for the management of cases pending before the Board. 72 Fed. Reg. 36794 (July 5, 2007). Following the close of the comment period on September 28, 2007, the Board “intends to issue final, revised rules.” *Id.* Given the prospective nature of the interim rule, which applies to “all further proceedings in cases then pending,” *id.* at 36795, CBCA Rule 1(a), the July 2007 Rules did not govern the Appellant’s previously-filed motion. Nonetheless, it is clear that the new Rules contemplate that in future summary judgment motion practice a movant will be required to file a “Statement of Uncontested Facts.” Rule 8(g)(2).

4. Over the past several weeks, the Board has issued Orders in related cases indicating that no decision in this appeal is expected until October 2007, at the earliest. Given this delayed timeframe, and the possibility that a Statement of Uncontested Issues might be helpful to the Board, Appellant hereby submits such a Statement to accompany its November 2006 summary judgment motion. Consistent with the new Rules, Appellant expects Respondents may wish to file with the Board within 20 days a Statement of Genuine Issues (to the extent Respondents believe any such genuine issues exist and have been preserved in Respondents’ previously-filed oppositional memoranda as “a genuine issue necessary to be litigated”). Rule 8(g)(3).

Respectfully submitted this 27th day of September 2007.

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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 27th day of September 2007:

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