

CIVILIAN BOARD OF CONTRACT APPEALS

ARCTIC SLOPE NATIVE ASSOCIATION, LTD.,)	
)	
Appellant,)	
)	
vs.)	CBCA 190-ISDA and 289-ISDA through 297-ISDA
)	
MICHAEL O. LEAVITT, SECRETARY U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, <i>et al.</i> ,)	
)	
Appellees.)	
)	

APPELLANT’S NOTICE OF ADDITIONAL AUTHORITY

In the interest of keeping the Board fully apprised of any developments in contract support cost litigation bearing on the two issues identified in the Board’s Order of January 11, 2008 (*i.e.*, limitations and appropriations law), Appellant Arctic Slope Native Association (ASNA) respectfully gives notice of *Menominee Indian Tribe v. United States*, No. 07-812, 2008 WL 680379 (D.D.C. Mar. 14, 2008).

The decision in *Menominee* touches on the limitations issue. However, since the decision contains little analysis, it is of limited assistance to this Board in resolving that issue here. For instance, the decision grants IHS’s motion to dismiss *Menominee*’s older claims as time-barred, by assuming that the Contract Disputes Act’s limitations period for presenting a claim is not tollable simply because it is often referred to as being “jurisdictional.” *Menominee*, 2008 WL 680379 at *1. On this point, the decision relies centrally on *Bowles v. Russell*, 127 S.Ct. 2360 (2007), even though *Bowles* is of limited utility to the issue at hand. *See* ASNA’s Supp. Mem. at 3-4 (filed Feb. 13, 2008). The decision contains no discussion whatsoever of the key Supreme Court cases governing

the tolling of limitations periods, *Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89 (1990) and *John R. Sand & Gravel v. United States*, 128 S. Ct. 750 (2008). Indeed, the only real discussion of tolling is relegated to footnote 2's citation to *Pueblo of Zuni v. United States*, 467 F. Supp. 2d 1099, 1106 (D.N.M. 2006). But in that case the district court expressly chose not to resolve the tolling issue, *id.* at 1114. *See also Pueblo of Zuni v. United States*, 243 F.R.D. 436, 443 (D.N.M. 2006) (again choosing not to resolve the tolling issue). The *Menominee* decision on limitations thus carries little persuasive force on the tolling issue presented here.

Respectfully submitted this 20th day of March, 2008.

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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 electronic mail and first class mail to the following parties of record this 20th day of March 2008:

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