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CIVILIAN BOARD OF CONTRACT APPEALS

FOND DU LAC BAND OF LAKE)	
SUPERIOR CHIPPEWA,)	
)	
Appellant,)	
vs.)	CBCA 829-ISDA through 837-ISDA
)	
MICHAEL O. LEAVITT, SECRETARY,)	
U.S. DEPARTMENT OF HEALTH AND)	
HUMAN SERVICES; CHARLES GRIM,)	
DIRECTOR, INDIAN HEALTH)	
SERVICE; UNITED STATES OF)	
AMERICA,)	
)	
Appellees.)	
_____)	

REPLY IN SUPPORT OF MOTION FOR STAY

For the many obvious reasons that have persuaded this Board *sua sponte* to extend stays in all other contract support cost cases through October 2007, this appeal, too, should be stayed.

The only new argument IHS raises in opposition to the requested stay is that the asserted lack of commonality for purposes of Fed. R. Civ. P. 23(a) (as found by the *Zuni* Court) is somehow controlling on whether a stay should be issued here pending the outcome of the *ASNA*, *Metlakatla*, and *Coos* appeals.

IHS improperly equates Rule 23's standard for certifying a class with the CBCA's "inherent power to suspend these proceedings." *Appeals of Harddrives, Inc.*, 91-2 BCA ¶ 23769 (IBCA 1991). But the two standards have absolutely nothing to do with each other, and this Board certainly does not have to find "commonality" under Rule 23 before temporarily suspending proceedings in an appeal. To the contrary, there need only be "good cause" to do so,¹ such as a desire for "economy of time and effort for itself, for counsel, and for litigants."² This standard is readily met here. The other CSC appeals all involve the Government's liability for IHS's failure to pay full contracts support costs in various years. So does this appeal. The other appeals all involve questions of timeliness, including various tolling principles. So does this appeal. The other appeals all challenge IHS's contention that its published policies for underpaying contract support costs were not really at issue in *Cherokee Nation v. Leavitt*, 543 U.S. 631 (2005). So does this appeal. Nothing can be served in terms of sound management of this Board's docket and the efficient use of the litigants' time by breaking this one small appeal off from the nearly two dozen other CSC-related appeals now pending before this Board.

For the foregoing reasons, and those set forth in Appellant's opening brief, the request for a stay should be granted. A proposed Order accompanies this Reply.

¹ CBCA Rule 6101.12(b).

² See *Landis v. North American Co.*, 299 U.S. 248, 254 (1936), cited approvingly in *Harddrives*, 91-2 BCA ¶ 23769 (IBCA 1991); see also *In re Government Business Services Group, LLC*, 05-2 BCA ¶ 33059 (AGBCA 2005) ("The Board has the inherent authority to manage its docket and to stay or suspend proceedings in appropriate circumstances.") (citation omitted).

Respectfully submitted this 17th day of August 2007.

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ORDER GRANTING STAY

Appellant’s Motion to Extend Stay of Proceedings is hereby GRANTED. The appeal is stayed until October 31, 2007.

SO ORDERED this 17th day of August 2007.

Honorable Candida Steel
Presiding Judge

CERTIFICATE OF SERVICE

I hereby certify that I mailed, or caused to be mailed by first-class mail, postage prepaid, true and correct copies of the foregoing **REPLY IN SUPPORT OF MOTION FOR STAY** together with a **PROPOSED ORDER** to the following parties of record this 17th day of August 2007:

Jeffery Cusic
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