

**CIVILIAN BOARD OF CONTRACT APPEALS**

ST. CROIX CHIPPEWA INDIANS OF )  
WISCONSIN, )  
24663 Angeline Avenue )  
Webster, Wisconsin 54893 )  
Appellant, )  
vs. )  
MICHAEL O. LEAVITT, SECRETARY, )  
U.S. DEPARTMENT OF HEALTH AND )  
HUMAN SERVICES, CHARLES GRIM, )  
DIRECTOR, INDIAN HEALTH SERVICE; )  
UNITED STATES OF AMERICA )  
Appellees. )

IBCA Nos. 4810-2006 through  
IBCA 4818-2006

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CIVILIAN BOARD OF  
CONTRACT APPEALS

**APPELLANT’S REPLY IN SUPPORT OF  
MOTION TO EXTEND STAY OF PROCEEDINGS**

When this appeal was initially filed on September 1, 2006, Appellant St. Croix Chippewa Indians of Wisconsin moved to stay the proceedings pending the determination of whether a class would be certified in *Pueblo of Zuni v. United States of America*, Case No. CV 01-1046 WJ/WPL, pending in U.S. District Court in New Mexico. Appellant noted at the time that it is a putative member of the *Zuni* class, and that the “disposition of the Motion for Class Certification affects whether the Tribe will proceed with this appeal. . . . Given the pendency of the class certification motion in the *Zuni* matter, the most efficient course of action is to stay this litigation.” Protective Notice of Appeal and Request for a Stay (Sept. 1, 2006) at 3.

The Board granted the stay on September 5, 2006.

Although the Government last October moved to lift the stay, that request has not been granted. The Government now acknowledges that “[a]ll the reasons we opposed the stay argue against” its extension. Appellee Opp. at 1. But all of the reasons that supported the stay in the

first place, and that supported the Board's grant of the stay, argue *for* its extension: the proceedings to determine if a class will be certified in *Zuni* have not yet been completed, and pending the final determination, considerations of judicial economy and efficiency support the continuation of a stay of these proceedings. There continue to be good reason for the Board to exercise its "inherent power to suspend these proceedings." *Appeal of Harddrives, Inc.*, 91-2 BCA ¶ 23769 (IBCA 1991).

*Zuni*'s petition to the Tenth Circuit under Fed.R.Civ.P. 23(f), seeking interlocutory review of the district court's denial of class certification, was filed on June 6, 2007. The Government's response is due on June 15, 2007, and we expect the Court to rule shortly thereafter as to whether the petition will be granted. If it is, then the Tenth Circuit will hear on the merits *Zuni*'s appeal of the denial of class certification. If it reverses the district court determination and orders a class to be certified, Appellant here will participate as a member of the *Zuni* class, thus requiring no further proceedings before the Board. If the petition is denied, then the *Zuni* case will proceed in the district court as a claim brought by a single plaintiff, and Appellant here can pursue its remedies before the Board if it so chooses.

As we have previously pointed out, the Government's opposition to a stay is premised on burdening tribes with a patently unfair dilemma: in the *Zuni* case, the Government has argued that tribes must "present" claims and exhaust remedies (*i.e.*, file an appeal here) in order to participate in a class; yet here, the Government argues that once having filed an appeal with the Board, a tribe makes an irreversible "election" that precludes any right to participate in the class action, if a class is certified. The Government thus strives to make a class action impossible.

It promotes judicial economy for these matters to be resolved in the context of a class action, if one is eventually certified, so that numerous tribes across the country are not required to

proceed with individual appeals of small claims in this forum, or in the Court of Federal Claims or the district courts.

For the foregoing reasons, the Appellant's Motion to Extend Stay of Proceedings should be granted.

Respectfully submitted,

Date: June 15, 2007

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**CERTIFICATE OF SERVICE**

I hereby certify that I emailed and mailed by first-class mail, postage prepaid, a true and correct copy of the foregoing document to the following attorneys of record this 15<sup>th</sup> day of June, 2007:

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