



U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the General Counsel

Writer's Direct Dial: (312) 886-1694
Fax: (312) 886-1718
e-mail: fred.garzino@hhs.gov

Office of the Chief Counsel, Region V
233 North Michigan Avenue, Suite 700
Chicago, Illinois 60601-5502

Telephone: (312) 353-1640
Facsimile: (312) 886-1718

August 7, 2007

Beatrice Jones, Clerk
Civilian Board of Contract Appeals
1800 M Street, N.W.
Washington, DC 20036

RE: St. Croix Chippewa Indians of Wisconsin v. Michael O. Leavitt, Secretary, Health and Human Services; Charles Grimm, Director, Indian Health Service; United States Of America, Docket Nos. CBCA 193-ISDA, CBCA 298-ISDA, CBCA 299-ISDA, CBCA 300-ISDA, CBCA 301-ISDA, CBCA 302-ISDA, CBCA 303-ISDA, CBCA 304-ISDA, CBCA 305-ISDA.

Dear Ms. Jones:

Enclosed for filing are the original and two copies, and a computer disc in WordPerfect, of "Appellees' Objection to Motion to Extend Stay of Proceedings," and proposed "Order Denying Motion to Extend Stay of Proceedings."

Appellees respectfully request that the additional copy of the brief and Proposed Order be date stamped by the Recorder and returned to Appellees' counsel in the self-addressed, postage-paid envelope provided.

The undersigned certifies that on August 7, 2007 he sent a copy of those documents and this letter to Appellant's counsel, at the address listed on the attached Certificate of Service.

Thank you for your attention to this matter.

Sincerely,

Donna Morros Weinstein
Chief Counsel, Region V

By

Fred R. Garzino
Assistant Regional Counsel
(312) 886-1694

Encl.

Circuit issued an Order denying permission to appeal the May 22, 2007 decision of the district court denying class certification in *Pueblo of Zuni v. United States of America*, Case No. CV 01-1046 WJ/WPL (“*Zuni*”). Accordingly, the extension of the stay of these proceedings, granted by this Tribunal on June 21, 2007, expired by its own terms on June 25, 2007.

4. St. Croix cites dicta from this Tribunal’s June 21, 2007 Order granting an extension of the stay saying that this “case would most likely be stayed in any event pending decisions in other cases before this Board.”¹ *Motion* at ¶ 3. However, the instant cases raise a unique, dispositive presentment issue not briefed in the other cases cited in St. Croix’s Motion. As Appellees explained in their briefs in support of their fully-briefed Motion to Dismiss,² St. Croix’s original filing with the Interior Board of Contract Appeals did not properly invoke the jurisdiction of this Board and should be dismissed. St. Croix did not unequivocally state its intention to proceed before this Board within 90 days as mandated by the CDA. “The mere filing of a document, which is not a ‘proceeding’ on the merits, is not a viable election pursuant to the statute.” *Nat’l Neighbors, Inc. v. U.S.*, 839 F.2d 1539, 1543 (Fed. Cir. 1988). This particular presentment issue does not arise in the fully briefed *Arctic Slope*, *Coos* or *Metlakatla* cases, and so it will not be resolved by awaiting decisions in those cases.

¹ The June 21, 2007 Order listed the appeals of *Arctic Slope Native Association, Ltd.*, CBCA 289-297-ISDA, *Confederated Tribes of Coos Lower Umpqua*, CBCA 171-ISDA, CBCA 235-237-ISDA, and *Metlakatla Indian Community*, CBCA 279-282-ISDA.

² Appellees’ “Motion to Lift Stay and to Dismiss ‘Protective Notice of Appeal’” was filed with the Interior Board of Contract Appeals (“IBCA”) on October 16, 2006. Appellees’ “Reply to St. Croix’s Response to ‘Appellees’ Motion to Lift Stay and to Dismiss ‘Protective Notice of Appeal’” was filed with the IBCA on November 8, 2006. Additionally, these matters were summarized again in “Appellees’ Opposition to Appellant’s Motion to Extend Stay of Proceedings,” filed on June 13, 2007 with the Civilian Board of Contract Appeals. Appellees have argued all along that there is no basis for a stay and that these docketed cases should be dismissed.

5. Lifting the stay will not result in duplication of discovery and briefing because a dispositive Motion to Dismiss has already been fully briefed by the parties. Nor is there judicial economy to be gained by this Tribunal by granting a stay because the other cases cited above will not resolve the presentment issue in St. Croix's cases. Accordingly, Appellees respectfully request that this Tribunal now consider and rule on Appellees' Motion to Dismiss which has been pending fully briefed since November 8, 2006.

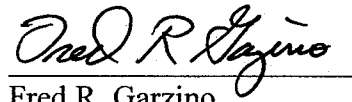
Dated: August 7, 2007

Respectfully submitted,

Daniel Meron
General Counsel

Alan S. Dorn
Acting Chief Counsel, Region V

By:



Fred R. Garzino
Assistant Regional Counsel
United States Department of Health and
Human Services
233 North Michigan Avenue, Suite 700
Chicago, IL 60601
(312) 886-1694
Fax: (312) 886-1718
E-mail: fred.garzino@hhs.gov

Claire D. de Chazal
Assistant Regional Counsel
United States Department of Health and
Human Services
233 North Michigan Avenue, Suite 700
Chicago, IL 60601
(312) 886-1703
Fax: (312) 886-1718
E-mail: claire.dechazal@hhs.gov

CIVILIAN BOARD OF CONTRACT APPEALS

_____)	Docket Nos. CBCA 193-ISDA
ST. CROIX CHIPPEWA INDIANS)	CBCA 298-ISDA
OF WISCONSIN,)	CBCA 299-ISDA
Appellants,)	CBCA 300-ISDA
)	CBCA 301-ISDA
vs.)	CBCA 302-ISDA
)	CBCA 303-ISDA
MICHAEL O. LEAVITT, SECRETARY,)	CBCA 304-ISDA
HEALTH AND HUMAN SERVICES;)	CBCA 305-ISDA
CHARLES GRIM, DIRECTOR, INDIAN)	
HEALTH SERVICE; UNITED STATES)	
OF AMERICA,)	
Appellees.)	
_____)	

ORDER DENYING MOTION TO EXTEND STAY OF PROCEEDINGS

Appellant's Motion to Extend Stay of Proceedings is hereby DENIED. The Board will consider the fully briefed Motion to Dismiss and issue its decision in due course.

SO ORDERED this _____ day of _____, 2007.

Candida S. Steel
Board Judge

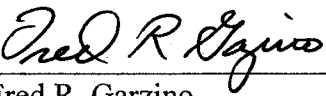
CERTIFICATE OF SERVICE

I, Fred R. Garzino, an attorney, certify that I have caused copies of the attached documents, "Appellees' Objection to Motion to Extend Stay of Proceedings," and proposed "Order Denying Motion to Extend Stay of Proceedings," to be served via Federal Express overnight mail, upon the following persons:

Beatrice Jones, Clerk
Civilian Board of Contract Appeals
1800 M Street, N.W.
Washington, DC 20036

Lloyd Benton Miller, Esq.
Sonosky, Chambers, Sachse, Miller & Munson, LLP
1425 K Street, NW, Suite 600
Washington, DC 20005

This 7th day of August, 2007.



Fred R. Garzino
Assistant Regional Counsel