

Lawsuit seeks \$525 million from corporations

Village sues regional corporations for share of NOL money under 7(i)

by Jeff Richardson
Tundra Times staff

Section 7(i) of the Alaska Native Claims Settlement Act (ANCSA) has raised its ugly head once again. Bayview Inc., village corporation for Ivanof Bay on the Alaska Peninsula, has filed a lawsuit claiming that proceeds of net operating losses sold by regional Native corporations should be shared with village corporations and at-large shareholders of the regional corporations under the revenue-sharing provisions of ANCSA.

Section 7(i) provides that:

"Seventy percentum of all revenues received by each Regional Corporation from the timber resources and subsurface estate patented to it . . . shall be divided annually by the Regional Corporation among all twelve Regional Corporations . . . according to the number of Natives enrolled in each region."

According to a statement issued by Sam Fortier and Thomas A. Holman, attorneys for Bayview, "Plaintiffs seek an accounting of (Sec.) 7(i) revenues,

a declaratory judgment, unspecified compensatory and punitive damages for the alleged violation of ANCSA (Sections) 7(i), (j) and (m) and injunction."

Plaintiffs allege that as much as \$525 million should have been shared by the regional corporations.

The question raised by the lawsuit is whether the NOL transactions made by regional corporations are subject to revenue sharing. For example, is the money made by selling timber losses considered to be the same as the money made from selling the timber itself. Regional corporations are expected to argue that, unlike revenues received from the sale of resources which are subject to revenue sharing, tax consequences of resource ownership such as NOL transactions are not to be shared. In support of this argument, the corporations are expected to rely on a lack of legislative history on the subject, Internal Revenue Service rulings and a court-brokered 7(i) agreement between the regional corporations which resolved a number of 7(i) issues in

Page 7, please

Lawsuit seeks \$525 million . . .

Continued from page 1

the mid-1970s.

"The 7(i) agreement is dense, thorny and impenetrable as a document, but it was blessed by the court," said Tom Hawkins, senior vice president and chief operating officer of Bristol Bay Native Corporation. "I don't think that the Congressional record is at all clear on it."

More recently, 10 of the 12 corporations—excepting NANA Corp. and Bristol Bay—reaffirmed their agreement on 7(i) and NOLs, although this more recent consensus was not reached under the auspices of the court.

Although not entirely unexpected, the Bayview lawsuit nonetheless has the defendants—the 12 regional Native corporations—scrambling to respond. Many were reluctant to comment until they had a chance to study the suit and coordinate joint statement.

"I think it's unfortunate," Hawkins said.

Arctic Slope Regional Corp. has asked the court to dismiss the suit out of hand.

Among concerns identified by regional corporations, about the lawsuit are:

- The decision by Bayview to file the suit so many years after the comprehensive 7(i) negotiations and the appearance that it has been filed now only because of the impression that corporations have a lot of NOL cash available;

- The fact that some NOL funds have already been disbursed to shareholders;

- The fear that fallout from the suit may seriously complicate bookkeeping.