

**FILED**

AUG 13 2002

*[Signature]*  
CLERK

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

\*\*\*\*\*

CIV. NO. 99-4106

CASIMIR LEBEAU and VERNON  
ASHLEY, on behalf of themselves and  
all other persons similarly situated,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant

DEFENDANT'S MOTION FOR  
STAY AND MEMORANDUM  
OF LAW

\*\*\*\*\*

Defendant, the United States of America, respectfully moves for a stay of all proceedings in this action pending a decision from the United States Supreme Court in the appeal of United States v. Navajo Nation, 46 Fed. Cl. 217 (Fed. Cl. 2000), *rev'd*, 263 F.3d 1325 (Fed. Cir. 2001), *cert. granted* 122 S.Ct. 2326 (June 3, 3002) (No. 01-1375) and United States v. White Mountain Apache Tribe, 46 Fed. Cl. 20 (Fed. Cl. 1999), *rev'd* 249 F.3d 1364 (Fed. Cir. 2001), *cert. granted* 122 S.Ct. 1604 (April 22, 2002) (No. 01-1067). Because these appeals to the Supreme Court involve the same questions of law presented in this Court's decision in the above-entitled action on breach of trust, principles of judicial economy strongly favor a stay of this action pending the Supreme Court's decision in these two cases.

## MEMORANDUM OF LAW

A stay would be a proper exercise of the Court's discretion in this case because the issues presented for the Supreme Court's determination in the White Mountain Apache Tribe and Navajo Nation cases, *supra*, are the very same issues that this Court found to be dispositive in the LeBeau case, i.e., whether the district court has jurisdiction to award money damages for a breach of trust claim based on a common law trust duty or a statute.

In the case of United States v. Navajo Nation, the question presented is what is the threshold standard that an Indian Tribe must meet to establish the breach of a money-mandating duty on the part of the United States with respect to a statute (i.e., the Indian Mineral Leasing Act). In the case of United States v. White Mountain Apache Tribe, the question presented is whether money damages are an available remedy for an alleged breach of general trust duties to an Indian tribe. Counsel for the United States has been informed that the two cases have not been consolidated, but are to be argued contemporaneously before the Supreme Court.

A motion for a stay of proceedings pending resolution of other federal proceedings is committed to the court's discretion. Stephenson v. United States, 37 Fed. Cl. 396, 401 (1997); Nat'l Bank of Detroit v. United States, 1 Cl. Ct. 712, 714 (1983). A stay of proceedings is properly granted "to avoid duplicative litigation." Stephenson, 37 Fed. Cl. at 401. *See also* Nat'l Bank of Detroit, 1 Cl. Ct. at 714 ("A motion for stay of proceedings pending resolution of related claims in another forum is directed to the

court's discretion." (citing Will v. Calvert Fire Ins. Co., 437 U.S. 655, 662-64 (1978)). A court's decision to stay an action before it pending resolution of a different action before another court turns on consideration of factors such as judicial economy, economy to the parties, and priority in assertion of jurisdiction. Nat'l Bank of Detroit, 1 Cl. Ct. at 714.

Defendant submits that this Court should exercise its discretion to stay this case pending resolution of the Supreme Court appeals. *Cf.*, Tikkanen v. Citibank (South Dakota) N.A., 801 F.Supp. 270, 274 (8th Cir. 1992) (court held a stay inappropriate because there was no case pending before the United States Supreme Court that would resolve the issues); *see*, Marshel v. AFW Fabric Corp., 552 F.2d 471, 472 (2nd Cir. 1977) (stay on damages issue was proper when final decision in case recently argued in United States Supreme Court would have an impact on the damages issue before the trial court); Wysinger v. City of Benton Harbor, 968 F.Supp. 349, 353 (W.D. Mich. 1997) (stay on qualified immunity issue would be appropriate because of pending United States Supreme Court decision on that issue, although appeals court ruled on other basis). A stay would be appropriate in this case because the issues before the United States Supreme Court are on all fours with the Court's bases for its memorandum decision, and it would be in the interest of judicial economy and economy for the parties to stay any further action, including the briefing on interest, until the United States Supreme Court has decided on the issues.

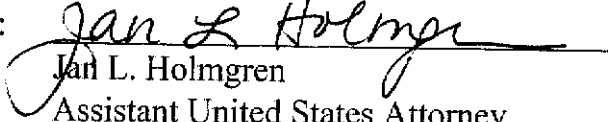
**CONCLUSION**

For the foregoing reasons, Defendant respectfully requests that the Court exercise its discretion and stay all proceedings in this action, including the briefing schedule on interest accrual, pending a decision from the Supreme Court in the appeal of the White Mountain and Navajo cases.

Dated this 12 day of August, 2002.

Respectfully submitted,

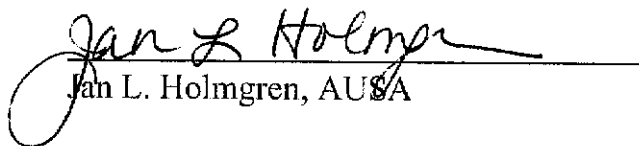
JAMES E. McMAHON  
UNITED STATES ATTORNEY

By:   
Jan L. Holmgren  
Assistant United States Attorney  
PO Box 5073  
Sioux Falls, SD 57117-5073  
605-330-4401, Ext. 141

**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that on this the 12 day of August, 2002, she served a true and correct copy of the foregoing Motion for Stay upon the Plaintiffs by mailing by first class United States mail, postage affixed, and addressed to counsel as follows:

J.M. Grossenburg, Esq.  
501 S. Main Street  
Winner, SD 57580

  
Jan L. Holmgren, AUSA