

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

_____	)	
THE NAVAJO NATION,	)	
	)	
Plaintiff,	)	
	)	Civil Action No. 99-469 (EGS)
v.	)	
	)	
PEABODY HOLDING CO.,	)	
INC., et al.,	)	
	)	
Defendants.	)	
_____	)	

**ORDER**

On March 6, 2008, the Court referred this case to Magistrate Judge Alan Kay for a Report and Recommendation. On March 20, 2008, Plaintiff filed a Motion for Protective Order, and Defendants filed a Motion to Compel Production of Documents. The motions were fully briefed, and Magistrate Judge Kay issued a Report and Recommendation on June 13, 2008. The Court has considered Plaintiffs' objections to the Report and Recommendation, the responses and replies thereto, the applicable law, and the entire record. Pursuant to Local Civil Rule 72.3(c), the Court accepts the findings and adopts the Recommendation of Magistrate Judge Kay contained in the June 13 Report. Accordingly, it is by the Court hereby

**ORDERED** that Plaintiff's Motion for Protective Order and Order Requiring the Returns of Navajo Nation's Privileged Materials is **DENIED**; and it is

**FURTHER ORDERED** that Defendants' Motion to Compel Production of Documents Withheld by the Navajo Nation with respect to (1) all documents that the Navajo Nation disclosed to the Hopi during the Possessory Interest Tax ("PIT") litigation and (2) the 578 documents relating to the same subject matter as the documents that the Navajo Nation disclosed to the Hopi during the PIT litigation or to Defendants during the instant litigation is **GRANTED**; and it is

**FURTHER ORDERED** that Defendants' Renewed Motion to Compel with respect to privileged documents that bear on the Navajo Nation's claims of fraudulent concealment and justifiable reliance is **DENIED**; and it is

**FURTHER ORDERED** that Plaintiffs and Defendant shall file a joint recommendation by **February 9, 2009** for future proceedings; in the event that the parties are unable to agree on a joint proposal, the parties shall file separate proposals on the issues on which they cannot reach an agreement.

**SO ORDERED.**

Signed: **Emmet G. Sullivan**  
**United States District Judge**  
**January 9, 2009**