

NEGOTIATING A LAND EXCHANGE



“Since 1980, [a variety of lawsuits] have challenged the conveyance of the Admiralty Island lands to Shee Atiká and the various permits issued to it. Shee Atiká now contends that as a result of years of litigation and their resulting inability to proceed with the planned development of their land, they are facing imminent bankruptcy.”

– Sen. Frank Murkowski, opening the oversight hearings,
November 2, 1983



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o one who knew Roger Snippen would describe him as conciliatory. Shee Atiká's lobbyist Richard Baenen described him as "a cowboy," adding, "on the other hand, I don't know if any other person could have withstood the Sierra Club." According to board member Ethel Staton, "he was the right man at the right time."

Snippen made his point with the Sierra Club in September 1983 when a small logging crew clearcut a few hundred acres of timber on a prominent knoll easily visible from Chatham Strait. Snippen avoided the necessity of getting permits for a log transfer facility by hiring Ericksen Air Crane of Oregon to haul the timber by helicopter to a barge anchored in Cube Cove.*

* See Endnote:
"Pre-Atikon
Timber
Harvests"

Two months later, Alaska's junior senator, Frank Murkowski, presided over a U.S. Senate oversight hearing in an attempt to resolve the Admiralty Island dispute. The hearing brought all parties to the same table.

Despite Sen. Murkowski's opening statement—"It is not the purpose of this hearing to air past grievances...."—most of those who testified could not contain their hard feelings.

"You have a national institution [the Sierra Club] which is dedicated to destroying a Native corporation. They do not care about the 1,900 Natives out of Sitka.... They have no respect for them.... If I sound hot under the collar, I am doing my very best to restrain myself."

- Richard Baenen, Shee Atiká's lobbyist

Several people who testified described Angoon as a pawn of the Sierra Club, a characterization hotly denied by those who spoke on behalf of the Admiralty Island village.

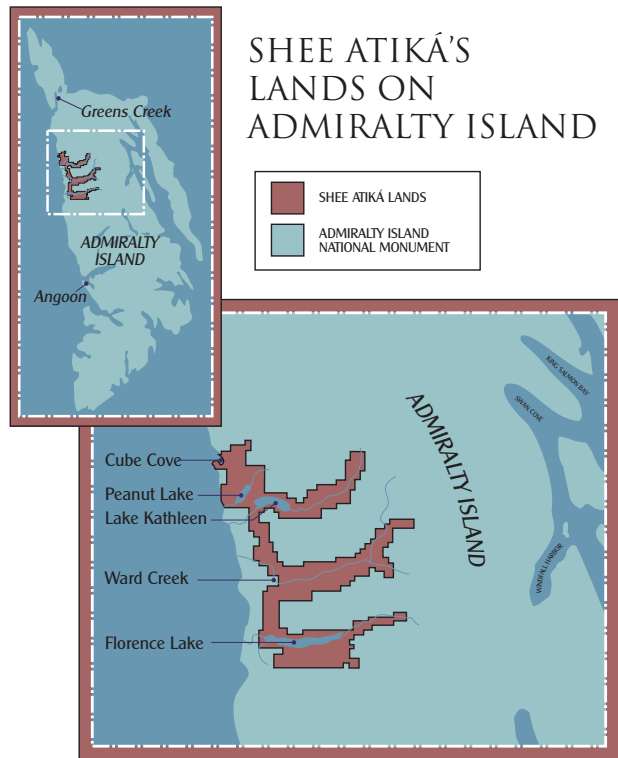
The search for solutions during the hearing began when Robert Loescher, who was natural resources manager for Sealaska at the time, presented a series of options that would provide Shee Atiká with land selections off Admiralty Island. His introductory remarks underscored the key problem of an off-island exchange: it was not supported by the U.S. Forest Service.



"[Everyone was telling us] You'll never cut a tree on Admiralty Island. The helicopter logging was to demonstrate that no matter what the Sierra Club did, no matter what our opposition did, we were going to cut timber. In fact, I told the Sierra Club, 'If I've got to cut every tree out there and let it lay there and rot, I'll do it just to make a point.'"

- Roger Snippen, Shee Atiká President/CEO, 1981-1987





SHEE ATIKÁ'S LANDS ON ADMIRALTY ISLAND

When environmental litigation stopped Shee Atiká from developing its timber resources on Admiralty Island, efforts were made to forge a land exchange, but none of the proposals provided Shee Atiká with adequate guarantees and compensation.

"We have had very little support from the U.S. Forest Service in the formulation of these options that we have advanced here today. [There] is a reluctance on the part of the Department of Agriculture and the Forest Service to pursue any of these exchanges."

- Robert Loescher, testimony before Congress, November 3, 1983

Two weeks after the hearing, at Sen. Murkowski's invitation, Angoon and the Sierra Club produced a proposal to resolve the conflict. In concept, it was a refinement of an option presented by Loescher.

During the next several months, mediation efforts began taking on a constructive tone. But in the background, not much had really changed. Snippen viewed Sealaska's mediation efforts with suspicion.*

"Sealaska was dragging us back to Washington, D.C. They wanted the exchange because they were eyeballing Greens Creek Mine and their agenda was to get subsurface near the mine."

- Roger Snippen

Sealaska wasn't the only party to the conflict that Snippen suspected of having its own agenda.

"The Forest Service didn't want us off the island because a land selection elsewhere would take away from the commercial forest base; the Sierra Club wanted us off the island for the same reason: it would take [timber out of] the commercial forest base."

By September 1984, Shee Atiká agreed in writing to "seriously consider proposals for land exchange, which will increase the net assets of the corporation, and will respond in good faith to offers made in good faith."

Throughout 1985 and into 1986, efforts continued to craft a congressional solution that would provide a comprehensive "off-island" settlement.

Special interests began lining up: Sealaska wanted subsurface claims adjacent to the Greens Creek Mine on north Admiralty; the mine's owner, Noranda, sought an extension of an exploration deadline to prove

* See Endnote:
"Sealaska's
Subsurface
Rights"

up its claims; several Southeast village and urban corporations wanted to perfect their own land selections—all of this piled on top of the original intent of the legislation: to provide Shee Atiká adequate incentive to move off Admiralty Island.

On May 26, 1986, congressional staffers prepared, in draft form, House Resolution 4883, “A bill to provide options for land exchanges involving lands on Admiralty Island, Alaska and for other purposes.”

This was a true compromise in the sense that no one party was satisfied: Angoon strongly objected to the provision allowing timber harvest at Cube Cove; environmentalists didn’t like the bill but would not actively oppose it; and Shee Atiká’s support was tepid at best.

“H.R. 4883, in its present form, is unacceptable to Shee Atiká Inc. However, if it is modified to satisfy Shee Atiká’s concerns, and technical analysis proves the valuation components, it would be considered for presentation to the Shee Atiká shareholders for ratification.”

– Ted Borbridge, chairman of the board, 1984 - 1986

Kootznoo’oo’s lobbyist, Sterling Bolima, succeeded in getting a pared down version of the bill introduced in Congress on August 11, 1986.

Cutting the federal deficit, which had ballooned during the Reagan presidency, had become a top congressional priority. Congress would not commit to an appropriation, a deal sweetener Shee Atiká required before it would agree to an off-island settlement. The Forest Service, whose support was crucial, had never liked the bill. With Shee Atiká the reluctant bride and the Forest Service an even more reluctant groom, the timber industry crashed the party in September 1986, demanding amendments favorable to Southeast Alaska pulp mills that were offensive to environmentalists. The carefully crafted compromise fell apart.*

By then, the “net operating loss” era had begun.

* See Endnote: “The Comprehensive Exchange”



Photo by Peter Metcalfe

Shee Atiká director Gary Eddy, President/CEO Roger Snippen, and Sealaska negotiators Bob LeResche and Robert Loescher share a light moment in the midst of otherwise serious negotiations.

“It was all fluff. The real issue was getting money appropriated, and that was a hollow promise. Quite frankly, without a guarantee of money, we weren’t interested in a land exchange.”

– Roger Snippen

BANKING ON NET OPERATING LOSSES



“1986 and 1987 were the two critical years for Shee Atiká.”

– Dr. Kenneth Cameron, chairman,
1986-1993 / 2008 - present

“It was very tough. It was hard to say what we were going to do in the future when we weren’t sure we had a future.”

– Shirley Yocum, Shee Atiká director, 1987 - present

“Even though they had a lot of wood out there worth a lot of money, Shee Atiká couldn’t get financing to do anything. The lodge was a burden that had to be fed cash.”

– John Ferris, Shee Atiká auditor



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early \$30 million in debt, with interest expenses growing at an alarming rate, the corporation seriously considered bankruptcy. The only good news in early 1986 was that Shee Atiká was finally defeating the Sierra Club's best efforts.*

* See Endnote:
"Shee Atiká's
Long-term Debt"

"Our litigation to prevent, or mitigate, the clear cutting of the 23,040-acre inholding within the Admiralty Monument Wilderness has about run its course."

- Durwood Zaelke, Sierra Club lawyer

By the second half of 1986, net operating loss (NOL) transactions with Alaska Native Corporations were in full swing. Prior to the Tax Reform Act of 1984, profitable businesses could capture the tax benefits of NOLs suffered by other businesses. One method was to engage in a complex transaction and create a "paper company" combining the profits of one company with the losses of another—a classic tax shelter. In 1984, Congress closed this particular tax loophole (among many others) for U.S. corporations, but Alaska's Sen. Ted Stevens was able to temporarily exempt ANCSA corporations from the NOL provision.**

** See Endnote:
"NOL
Transactions"

Low timber prices, high interest rates, and poor business decisions had pushed many ANCSA corporations to the brink of insolvency. The NOL transactions were to provide desperately needed cash infusions to recapitalize the corporations.

"Not many people did much until the provision was clarified in the 1986 tax act; then they were all over Seattle trying to do NOL deals."

- John Ferris, Shee Atiká auditor

While most ANCSA corporations had hard net operating losses to cash in, most of the losses for corporations with timber assets were from depletion—the difference in the value of timber from the time it was conveyed to when it was sold. When the NOL provision of the 1984 Tax Reform Act was clarified in 1986, some of the largest businesses in the United States began courting ANCSA corporations, especially those in timber-rich Southeast Alaska.

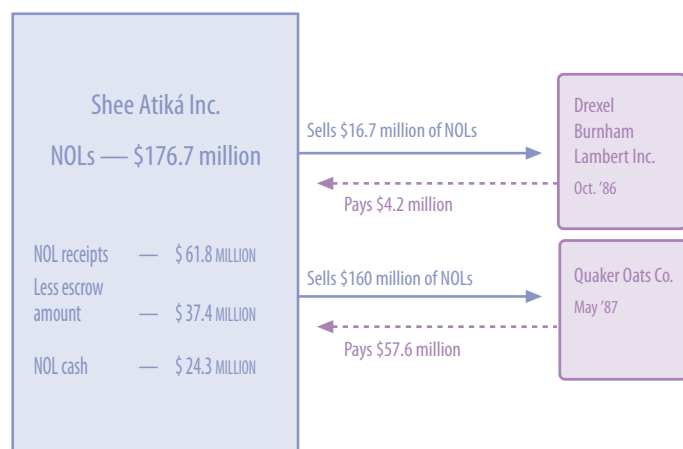


The Shee Atiká board and management in late 1986 included, from left, John Davis, Gene Bartolaba, Ted Borbridge, Ray Perkins, Roger Snippen, Ethel Staton, Dr. Kenneth Cameron, and Andy Hope. Not pictured are directors Margaret McVey and Nelson Frank.

"This company was not built by the advisors—they were not the guys with the vision. Shee Atiká was built by its directors."

- Dr. Kenneth Cameron, chairman, 1986-1993 / 2008 - present

PRE-AUDIT NOL TRANSACTIONS



“Basically, all the NOLs sold to Drexel were hotel and corporate losses. We put the transaction together to show we were a serious business, and to get some operating capital. It allowed us a little bit of breathing room.”

– Roger Snippen, Shee Atiká President/CEO, 1981-1987

SUMMARY OF THE TWO NOL TRANSACTIONS

	QUAKER	DREXEL	TOTAL
NOLS SOLD	\$ 160,000,000	\$ 16,700,000	\$ 176,700,000
CASH RECEIVED	23,040,000	1,300,000	24,340,000
ESCROW AMOUNTS	34,560,000	2,900,000	37,460,000
TOTAL PROCEEDS	\$ 57,600,000	\$ 4,200,000	\$ 61,800,000

“There were serious corporations looking to do NOL deals with us—Disney, Marriott, Heinz—but one of the things hindering Shee Atiká was its balance sheet. Anyone looking at it would have to think Shee Atiká could disappear. Not a good negotiating position.”

– Dr. Kenneth Cameron

Enter Drexel Burnham Lambert, a company synonymous with the term “junk bonds” and headed by the infamous Michael Milken, the junk bond king of the 1980s.

“The key for Shee Atiká was that [the Drexel transaction] was clean – it gave other potential NOL creditors a chance to peek at Shee Atiká, to see that we were using the money to pay down debt. Without the Drexel transaction, the timber sale to Atikon and the larger NOL sale to Quaker Oats could not have gone forward.”

– Dr. Kenneth Cameron

Although the outcome was fairly simple, the actual transaction was complicated. An important part of the agreement required that 70 percent of the amount paid to Shee Atiká by Drexel for the NOLs—\$2.9 million of the \$4.2 million price—would be withheld by Drexel pending the outcome of an expected Internal Revenue Service (IRS) audit of the transaction.

The directors followed these developments with intense interest, none more so than Dr. Kenneth Cameron, who was intimately involved in the NOL negotiations. Considering his growing expertise in these transactions, the board passed a resolution requiring Cameron’s signature to accompany that of Snippen’s on all NOL documents, making Cameron the de facto senior executive officer of Shee Atiká.

While the Drexel deal did little to resolve Shee Atiká’s tenuous financial position, it allowed management to begin putting together a longer-term strategy. Having sold the tax losses based on actual expenditures (the so-called “hard losses”), the question was how to create more tax losses. Hobbled by its battles with the Sierra Club and Angoon, Shee Atiká had harvested only a small fraction of its timber. In theory, tax

law permitted the NOLs to be created through a stumpage sale. Several Southeast Native corporations had already sold substantial portions of their remaining timber to create the losses, but with stumpage prices at the lowest value in recent memory, directors had serious concerns about selling Shee Atiká’s principal asset, timber, just to generate NOLs, especially since these transactions had yet to be tested by an IRS audit.

The board, not willing to risk everything on a hope and a prayer, turned down several timber purchase offers, including one from Sealaska Timber Corp. (a wholly owned subsidiary of Sealaska).*

* See Endnote:
"The Sealaska
Offer."

"I did a work-up of three serious offers—side by side: time value of money, and all that other stuff. When you looked at (Sealaska’s) pricing, you could just see the deal wasn’t there."

- Roger Snippen, President/CEO, 1982 - 1987

One deal that did make sense came by way of an offer from Koncor Forest Products Company, a consortium of northern Gulf Coast Native corporations (Yak-Tat Kwaan, Chenega, Natives of Kodiak, and Ouzinkie).

Under Koncor’s offer, the two parties, Shee Atiká and Koncor, would form a new corporation, Atikon Forest Products Inc., which would buy all of Shee Atiká’s timber. Shee Atiká would own 49 percent of Atikon, Koncor the remaining 51 percent.

"On the face of it, the Atikon deal looks real aggressive. You can do that when you are so far behind like we were - basically in a bankrupt situation."

- Dr. Kenneth Cameron

Quaker Oats, a hugely profitable corporation, was waiting in the wings to consummate a major NOL transaction with Shee Atiká following the timber sale to Atikon.

"[Quaker Oats] is one of the few companies in the United States that has large enough profits to be able to absorb the NOLs that will be generated by the impending stumpage sale."

- John Ferris

NET OPERATING LOSS TRANSACTIONS

TIME PERIOD	APPROXIMATE VALUE PER NOL DOLLAR
Prior to 1984	10¢
1984 to 1985	20¢ to 23¢
1986 to 1987	23¢ to 37¢

Net operating losses occur when expenses exceed revenues. "Hard losses" result when cash expenditures exceed cash revenues. "Soft losses" are those from depreciation and depletion, which are tax deductions even though there is no expenditure of cash.

The Tax Reform Act of 1984 closed many loopholes, including that which allowed profitable corporations to acquire net operating losses from unprofitable corporations. Typically, this was done by a profitable corporation acquiring an unprofitable corporation, blending the losses with profits to create a tax advantage. A more complicated transaction occurred when third-party corporations were created to effect the deal.

An amendment to the Tax Reform Act allowed ANCSA corporations to continue to engage in NOL transactions, which boosted the value of NOLs up to 23 cents on the dollar. A clarifying amendment made by the Deficit Reduction Act of 1986 further increased the value of ANCSA NOLs by removing other uncertainties within the tax law. The NOL transactions that were consummated after the 1986 act became law continued the climb in value, topping out at approximately 37 cents on the dollar by 1987.

Photo by Peter Metcalfe



In 1987, Native leaders representing Sealaska and the twelve village and urban corporations of Southeast met in Juneau to learn more about the proposed “1991 Amendments” to the Alaska Native Claims Settlement Act. Ethel Staton and Andy Hope, right, represented Shee Atiká. The principal goal was to amend ANCSA so that Native-held shares could not be sold beginning December 18, 1991, 20 years after the Act became law. The package of amendments, which Congress passed in March 1988, included provisions for “gifting” (giving shares to family members), protection of ANCSA lands from seizure, and the establishment of settlement trusts, among others.

While the NOL transactions captured the attention of Native corporations, the “Admiralty Island Land Exchange Act” failed to pass Congress. Although not responsible for the legislation’s failure, Shee Atiká might have improved the bill’s chances of success by showing some enthusiasm, but the complicated legislative package failed to provide adequate compensation for values Shee Atiká stood to lose in such an exchange.

Sealaska had invested much time, money, and influence in the bill. With the bill’s failure, the regional corporation lost the provision that would have allowed it to claim subsurface rights to part of a gold mine. When, on top of it all, Shee Atiká rejected Sealaska’s offer to purchase the Cube Cove timber, the regional corporation sought and received, on March 1, 1987, a court order that prohibited Shee Atiká from logging any of the “security timber” that was serving as collateral for Sealaska’s loans.

“Sealaska mistakenly believed that because Shee Atiká couldn’t pay them back that they could yank them around. But there was so much money involved in the NOL deals that it neutralized Sealaska’s position.”

– John Ferris

Sealaska’s legal maneuvering did not stop Shee Atiká from signing, on May 22, 1987, an agreement to sell Quaker Oats the net operating losses that would be generated by the sale of its Cube Cove timber. The stumpage sale with Atikon was concluded a month later.

“This will be a sale of a portion of our trees on the stump, not a sale of our lands. Due to impending changes in corporate tax rates we have to hold the stumpage sale before June 30th to get the best value for our NOLs.”

– Andy Hope, Shee Atiká director, corporate newsletter, June 1987

The timber sale to Atikon was an “arm’s length” transaction—a transaction in which the two parties were independent of each other—but it was not a transaction without risk.*

* See Endnote: “Sale to Atikon”

“Our strategy was to be as conservative as we could in that arm’s length sale. The tax code clearly said it was arm’s length if it was 50-50, so we chose to take a more conservative position by owning 49 percent, but the IRS challenged that and challenged it very strongly.”

– Dr. Kenneth Cameron

Whether the sale was actually “arm’s length” would eventually be debated at great length with the IRS, which would approve such a transaction only if the seller actually gave up control of the assets sold.

“To this day, I believe the Shee Atiká Board understood NOLs, and what was at stake, far better than just about everyone else involved with NOL sales.”

– Bruce Edwards, attorney for Shee Atiká

In August 1987, Shee Atiká shareholders approved the stumpage sale to Atikon by a margin of 97 percent. The vote of approval for the timber sale was so overwhelming there can be little doubt shareholders understood and approved the concept, but it helped that the sale was coupled with a promise by Shee Atiká’s Board to make the first-ever cash distribution. Subsequent to the vote, shareholders received \$30 per share, or \$3,000 for a typical owner of 100 shares.*

* See Endnote:
“Cash
Distributions”

“[The Quaker Oats transaction] did two big things: gave us money up front to pay off our immediate debt—got the creditors off our back—and gave us money to operate with. We were able to begin planning for the future; to decide what we really wanted Shee Atiká to accomplish.”

– Gene Bartolaba, Shee Atiká director, 1986 - present

Snippen resigned from his post on December 16, 1987, and moved over to Atikon, becoming its first chief executive officer.**

** See Endnote:
“Snippen
Resigns”



In 1987, Atikon purchased all of the timber on Shee Atiká’s Cube Cove lands. That timber is now harvested. The net revenues from timber sales were shared by Atikon owners Koncor and Shee Atiká according to the respective stock ownership of 51 percent and 49 percent. Atikon was governed by a five-member board: three directors appointed by Koncor and two appointed by Shee Atiká. Following clean-up activities at Cube Cove, the owners dissolved Atikon in 2008.

ADDRESSING DISSENT



“The Atikon deal was very complicated. How much wood was there? Did you have to barge or water-load the wood? There were environmental concerns. Did you have to restore the shoreline? Who was going to be responsible? There were lots of considerations affecting Shee Atiká’s commitment to the sale.”

– John Ferris, Shee Atiká auditor



The executive search to replace Roger Snippen resulted in the selection of James P. Senna to be Shee Atiká's next president and chief executive officer. An attorney and former head of Olympia Brewing Co., Senna assumed his duties on December 16, 1987.

"We were looking for a CEO with two major qualifications: financial expertise, especially since we expected to receive a good chunk of money from our NOL escrow accounts; and the other was someone who could assist the board with long-term planning on how to handle that money once we got it."

- Marta Ryman, chairman of Shee Atiká, 1995 - 2000

Senna walked into a corporation reeling from a sudden change in its status from that of a beleaguered, debt-ridden company to a business with a future. It was during Senna's first twelve months with Shee Atiká that the corporation shook off years of setbacks, paid down debt, refinanced loans, and enjoyed its first profitable year ever. This change in circumstances would normally be something to cheer about, but instead it brought to a boil long-simmering shareholder frustrations.*

Being on the receiving end of criticism from shareholders was something board members had come to expect, but no one was prepared for the anger that materialized just as Shee Atiká achieved some financial stability. Directors began receiving hate mail and verbal abuse; they were harassed by late-night phone calls, and some even suffered instances of vandalism to personal property.

"It got so bad, there were times when I just didn't want to get out of bed in the morning."

- Gene Bartolaba, Shee Atiká director, 1986 - present

Dissident shareholders banded together as the "Ad Hoc Group" and focused on the board's decision in 1988 to forgo a distribution. The boards of other ANCSA corporations were authorizing huge cash distributions—why couldn't Shee Atiká do the same?

But, at the time, Shee Atiká was in no position to send checks to shareholders: a major shareholder distribution would have violated the NOL



James P. Senna

"Once the NOL deals were done, it was obvious that we needed a CEO with a new set of skills."

- Dr. Kenneth Cameron
Chairman, 1986-1993 / 2008 - present

* See
Endnote:
"Recall
Elections"



A question arose during the earliest days of the Atikon partnership over whether or not Shee Atiká was obligated to build a rock breakwater, which would have had to be removed at the completion of operations – in all, a potential \$18 million liability. The issue was finally resolved when Atikon and Shee Atiká agreed that the better (and cheaper) alternative would be to barge the logs to Hoonah, 35 miles west, for transshipment to Asian log ships. Tensions between Shee Atiká and Atikon over the best solution to the situation underscored Shee Atiká's later assertions to the IRS that the timber sale to Atikon had indeed been a third-party, "arm's length" transaction.

agreement with Quaker Oats. In addition, Atikon claimed that Shee Atiká was obligated to fund construction of a rock breakwater at Cube Cove to protect the log transfer facility — at an estimated cost of \$9 million. But regulatory permits required that any rock structure be removed at the conclusion of logging — estimated to cost another \$9 million.

During this controversy, Shee Atiká chairman Dr. Kenneth Cameron negotiated on behalf of the corporation. Snippen, now on the other side of the table as CEO of Atikon, very much favored building the breakwater.

"Roger now answered to Koncor. He was committed to building the breakwater, and Koncor was extremely nervous that logging could be stopped without a breakwater – that the Sierra Club would come in and sue over alternative methods of transporting the logs. But the breakwater would be at Shee Atiká's expense, and I felt it could have eaten us alive."

– Dr. Kenneth Cameron

While the directors grappled with the start-up of logging operations at Cube Cove, shareholder frustration increased. It was not unusual for shareholders of two or more ANCSA corporations to reside in the same home. For many Shee Atiká shareholders, acutely aware of the generous distributions being made by other corporations, it seemed an unlikely excuse that their distributions were being withheld over a breakwater issue.

But it wasn't just the withheld distributions that fueled the fire of shareholder discontent. Relatively innocuous issues became explosive, such as a board retreat in Arizona that included spouses. Although such retreats were a common and accepted practice in corporate America, Shee Atiká shareholders held their directors to a different standard.

Citing withheld dividends and the Arizona retreat, and aided by rumors and innuendos roiling the shareholder community, the Ad Hoc Group secured enough signatures on a petition to force a recall election for the purpose of removing Gene Bartolaba, Dr. Kenneth Cameron, John Davis, Lloyd Lee, Marta Ryman, and Ethel Staton.

If the recall were successful, the three remaining directors not targeted by the Ad Hoc Group could fill the vacancies by appointing new board members. There was no doubt that such an outcome would put the dissidents in control of Shee Atiká.

From the point of view of most directors, especially those who had served through the truly hard times, the recall effort was mind-boggling. But it soon became obvious that while the recall campaign felt personal, it was really about money and control.

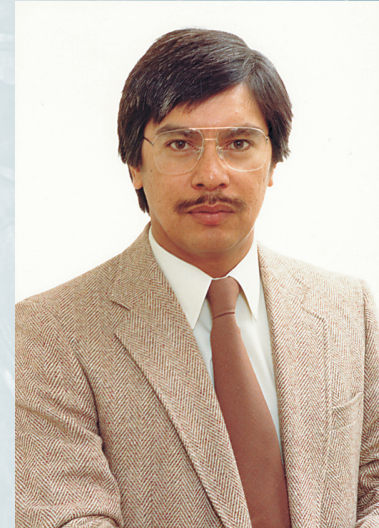
What it all boiled down to was that, for the first time in its history, Shee Atiká was worth fighting over.

The recall meeting was held on April 22, 1989, and in the subsequent voting, each of the directors slated for recall received a majority of votes in their favor.

"I felt the vote was a repudiation of the 'Ad Hoc Group.' It was a strong rejection of the dissidents overall, and a show of support for the company."

- Dr. Kenneth Cameron

Although the recall attempt had failed, it would not be the last.



Gene Bartolaba

"There is a group of shareholders out there, no matter what you do, it will never be good enough. The only thing we have been able to say to those people is that we are trying as best we can.... Compare what we have now to what we had then, and ask if it is any better."

- Gene Bartolaba, director 1987 - present

BUILDING THE RIGHT TEAM



“The board was very, very dedicated. It didn’t matter how long a meeting would take—if we had to stay ‘til midnight, or if we had to meet on Saturdays and Sundays—we did that. If we needed to call for outside help, like our attorneys or accountants, or other outside specialists, we did that; and we met with them on weekends, or at night after work. We felt that it was that important to get as much information as we could.”

– Gene Bartolaba, Shee Atiká director



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he board of directors that hired James P. Senna was seasoned by its brush with bankruptcy and the years of courtroom warfare with the Sierra Club and Sealaska. It had prevailed in a recall attempt and withstood unrealistic demands for large distributions.

“It is my firm belief, based on fact and observation, that the board took a very, very strong leadership role. Certainly, management gave direction; [CEO] Jim Senna was excellent in that. The outside professionals, while they participated to some degree, were really members of a team. I think the continuing thread with Shee Atiká is that a number of its board members, many of whom are still there, played a significant role. Without them, this corporation wouldn't be around today.”

- John Ferris, Shee Atiká auditor

Senna would lead Shee Atiká for more than 11 years. By ANCSA standards, his was one of the longest terms of service for a chief executive officer, and arguably one of the most successful. Senna recognized from the start that Shee Atiká's directors were not there to rubber-stamp his decisions.

“The board of directors has to deliberate and make the decisions. Management's job is to give them enough information to make those decisions. I would not sit at the table with the board. I was not a member of the board, and I trusted the decisions they made.”

- Jim Senna, President/CEO, 1987 - 1998

The prospect of an Internal Revenue Service audit of the net operating loss transactions would focus the board's attention and demand teamwork like no other issue that had ever confronted Shee Atiká.

“If the IRS faults the sales, the U.S. Treasury could claim part or all [of an ANCSA corporation's] gains including that already distributed to shareholders plus 10 percent annual interest for overdue taxes.”

- Anchorage Daily News, December 20, 1987

The NOL deals of every Southeast ANCSA corporation depended on the basis value of its timber—the fair market value when the timberland



Ethel Staton, director 1974-2007

“[Founding director] Ethel Staton is a hallmark of the corporation. She for one went forward with the idea of ‘let's work together as a team.’ [Director] Gene Bartolaba helped put together the team. Andrew Hope, who was involved initially with the Drexel transaction, left the board shortly thereafter, but also was very instrumental in supporting the team concept.”

- Dr. Kenneth Cameron, chairman, 1986-1993 / 2008 - present



Wesley Rickard

“A lot of the professionals involved in these NOL deals were scared to death of the premium Rickard assigned to [large tracts of timber]. I had read through Wes’ appraisal; I talked to him, did the due diligence, and came to the conclusion that his valuation techniques were acceptable, so why should I be afraid of that? I’ve seen the flip side, where you’re in a down market, and you discount.

“Whenever you’re involved in an estimate it is always open to interpretation and adjustment. I was never concerned that Wes’ valuation would be thrown out; my only concern was the extent to which it might be adjusted.”

– John Ferris, Shee Atiká auditor

was conveyed from the U.S. government (or, if higher, the fair market value when the timber was first commercially developed).

Shee Atiká had to prevail on the basis value established by its 1981 timber appraisal. At risk were the NOL escrow accounts, about \$40 million.

“Our valuation technique included a high premium for a large tract of timber. The price paid per m.b.f. (thousand board feet) for large tracts of timber varied from 10 to 30 percent above the price of short-term timber sales in the years we were looking at.”

– Wesley Rickard, timber appraiser

“We ran a lot of numbers. If the IRS knocked even 30 percent off our timber values, that meant getting zero out of the escrows.”

– Bruce Edwards, attorney for Shee Atiká *

But the worst-case scenario was that the IRS would not recognize the sale to Atikon on the premise that it wasn’t a true arm’s length transaction. **

“The IRS may aggressively attack the sale of the remaining timber to Atikon as a ‘sham’ and seek to assert a variety of penalties.”

– Proxy disclosure to Shee Atiká shareholders, July 1987

If the IRS prevailed and the sale was not recognized as legitimate, the \$160 million NOL transaction with Quaker Oats would come undone, ruining the corporation and, since the distributions from the sale would likely be declared taxable income, leaving shareholders to face their own IRS problems.

“If the sale wasn’t recognized, that was a show-stopper. We felt all along that we had structured the sale to Atikon correctly, and that it was an issue we could win, but the strategy of the IRS was to attack both the sales issue and the value issue, hoping a judge would favor their position on one or the other.”

– Bruce Edwards

* See Endnote: “Audit Calculations”

** See Endnote: “Two Threatening Issues”

In 1988, the IRS notified Shee Atiká of its intention to audit the NOL transactions. By then, the board had established its strategy for the audit: do everything possible to expedite the process but do not yield anything in negotiations. Shee Atiká's goal was to be the first Alaska Native corporation to go through the NOL audit process.

"The typical thing that occurred, as companies got notice of audits, and as the IRS saw their 'in' bin piling up, is that they would contact the company and ask to extend the deadline and give the IRS more time. In a lot of situations a tax attorney would tell you to extend; ours didn't. Shee Atiká was asked several times to extend and every time we declined. We wanted to keep our situation moving forward."

- Dr. Kenneth Cameron

Being first in line presented an advantage recognized by the board and its advisers. Shee Atiká, they believed, was well prepared and capable of setting a favorable precedent.

"We were concerned that another ANCSA corporation would take an easy settlement with the IRS and set a precedent that would be difficult for Shee Atiká to overcome."

- Bruce Edwards

Photo by Peter Metcalfe



"The strategy we followed was to be first in line with the IRS. By law, the IRS has three years to audit your tax returns, and in this case the deadline was September of 1991. They've got to get their audit report done by then or they lose the opportunity because of the statute of limitations. We kept them to the deadline as much as possible and eventually they bumped into the time limit and wrote up what they had. While we did not block the audit, it was not in our interest to agree to an extension of the deadline."

- Bruce Edwards, attorney for Shee Atiká

BEATING THE AUDIT



“The IRS will challenge the basis of our timber at Cube Cove, claiming the timber was only worth about \$67 million in 1981 and not the \$176 million that was established by independent appraisers nine years ago. The IRS will also claim that there was no real sale of the timber to Atikon because Atikon was somehow controlled by Shee Atiká.”

- Letter from Jim Senna to shareholders,
August 14, 1990



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he board's faith in their team of advisers was reinforced during the crisis brought about by the collapse of Drexel Burnham Lambert, one of the most famous flameouts in the history of American business.*

*See Endnote:
"The Drexel
Flameout"

"As much as \$60 million belonging to Alaskan natives may be lost because of the bankruptcy filing of Drexel Burnham Lambert, a Wall Street brokerage."

- *Seattle Times*, February 23, 1990

Well before Drexel's bankruptcy filing, Shee Atiká's advisers alerted the board of the impending crisis.

"We had some knowledge that Drexel was going to find themselves in severe difficulties. My contacts told me the noises just weren't good. I told my clients, 'Get your cash if you can.' Sometimes you get it right"

- John Ferris, Shee Atiká auditor

"I can remember requesting our advisers to report to the board in February 1987 about Drexel. By December 1988, we had become convinced that Drexel was going to eventually have problems, so we convinced Drexel to repay its note and put cash into escrow."

- Dr. Kenneth Cameron, chairman of the board, 1986 - 1993

As good as the advisers were, even they recommended hiring the best talent available to help handle the tax case with the Internal Revenue Service.

On January 9, 1991, the corporation retained Brook Voght, of the Washington, D.C. law firm Miller & Chevalier.

"We were fortunate to get one of the best tax litigators in the country to help negotiate a settlement with the IRS."

- Marta Ryman, chairman of the board, 1993-94

The IRS was taking the negotiations equally seriously, recognizing how much money was at stake.

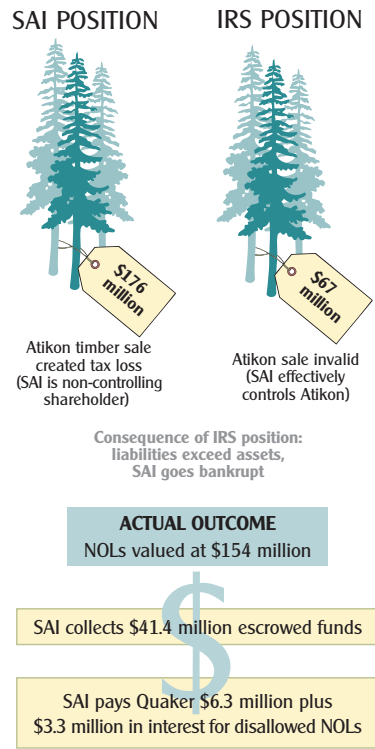
"The IRS decided they should appoint one of their most experienced appellate conferees, which they did; they designated Gerald Taylor out of LA."

- Bruce Edwards, attorney for Shee Atiká



The Shee Atiká Board of Directors held numerous meetings with shareholders during 1991, a year in which the directors grappled with a serious recall attempt and pursued a settlement of the NOL tax case with the Internal Revenue Service. At the table are directors Marietta Williams, Ethel Staton, Dr. Kenneth Cameron (Chairman), Gene Bartolaba, Marta Ryman, and, back to camera, Shirley Yocum.

THE NOL AUDIT



The IRS audit focused on Shee Atiká's sale of net operating losses to the Quaker Oats Company, losses created by selling the Cube Cove timber to Atikon. The earlier sale of NOLs to Drexel was easier to defend since those were "hard" losses (based on expenditures exceeding revenues), as opposed to the "soft" NOLs resulting from the reduction of the timber's market value, a "paper loss." The Cube Cove timber, sold to Atikon in 1987 for just over \$10 million, had been appraised in 1982 at \$176 million. The IRS appraisal valued the timber at \$67 million. Overshadowing this argument was the issue of whether the sale of timber to Atikon actually created valid tax losses. The sale was defended, and the tax basis value of the timber settled at \$154 million. By prior agreement, Shee Atiká compensated Quaker for the lost (or disallowed) NOLs.

In the middle of this, a process of enormous consequence to the corporation, dissident shareholders (in this incarnation, the *Reform Group*) made another recall attempt, targeting the May 18, 1991, annual meeting. Rather than seeking to remove individual directors, as was tried in 1989, the Reform Group intended to remove the entire board, arguably easier to do than removing individual directors.

This recall effort was led by Mike Gravel, a colorful former U.S. Senator who had served Alaska for two terms (1968-1980). Gravel succeeded in making himself the issue, which, in the end, did not sit well with a large majority of shareholders. At that time he was also embroiled in a lawsuit against Ferris, Shee Atiká's tax auditor, and had dragged in Edwards' Seattle law firm as a co-defendant.*

"Gravel went after the arcane legal theories underlying the NOLs, which are: *'This is not a sale, this is a sham,'* and *'You didn't get enough for your timber.'* He wanted to knock the board out so he could have a better chance to win his lawsuit against the professionals."

- Bruce Edwards

The stated intention of the Reform Group was to seat a new board of directors, replace Senna with Gravel, and dismiss Edwards and Ferris.

It was a contest the board had to win. If the Reform Group removed the board, the IRS tax case would have been lost before it had been argued. The dissidents' platform essentially mirrored the IRS case against the corporation, and if the dissidents prevailed, the new management would be headed up by Gravel, who advocated immediate peace with the IRS and who was himself suing the professionals crucial to the corporation's defense.**

At the May 1991 annual meeting the board slate won re-election, a sound defeat for the Reform Group. Thus passed the most dangerous threat to Shee Atiká's corporate existence.

By the end of August 1991, the IRS had capitulated on the issue of the Atikon sale; as a practical matter, all that remained to be decided was the valuation issue.

* See Endnote: "The Gravel Lawsuit"

** See Endnote: "The Second Recall"

“The Internal Revenue Service has dropped its most serious challenge to Shee Atiká’s 1987 sale of a Net Operating Loss, company officials reported today. ... Had the IRS prevailed... Shee Atiká then would have had to repay the entire \$58 million realized from the NOL sale, plus interest and penalties, which would have exceeded the corporation’s net worth of \$63 million.”

– *Sitka Sentinel*, September 10, 1991

At a special meeting on Monday, September 9, 1991, the board of directors demonstrated their confidence in the outcome of the IRS audit by approving a \$5.57 per share distribution—money previously earmarked for distribution to shareholders but that could not be paid out previously because of the IRS case.

The valuation issue remained, although Shee Atiká’s tax attorneys, Voght and Edwards, had the matter well in hand. In October, Shee Atiká presented its rebuttal to the appraisal done by International Forestry Consultants (IFC), hired by the IRS. IFC argued that the original value of Shee Atiká’s timber was worth less than \$67 million, not the \$176.7 million claimed by the corporation—a difference of \$109.7 million.*

“Although seeking to support the... appraisal, the [IRS agent in charge] actually gives [the IRS] appraisal only a half-hearted endorsement. The [agent] cites fundamental valuation principles, but fails to recognize that the IRS appraisal plainly ignores them.”

– Letter from Bruce Edwards to the district director of the IRS

As the year came to an end, Shee Atiká’s directors were certain they were winning the tax case, although not until August of 1992 would the tax issue be fully resolved.

At long last, a plan envisioned by the board of directors and shaped by Senna could be implemented: the creation of the Shee Atiká Fund Endowment — SAFE.

* See Endnote: “Rebutting the IRS Appraisal”

Photo by Ray Nielsen



The trust concept is rooted in the Alaska Native tradition of safeguarding things of value (atóow in Tlingit) for the benefit of present and future generations. In this 1998 photo, Sitka clan leaders gather for the launching of a canoe by the Southeast Alaska Indian Cultural Center. From left, Herman Kitka of the Kaagwaantaan, James John Nielsen of the Chookaneidí, Herman Davis of the L’uknaḡ.ádi, and Alfred Perkins of the Kiks.ádi. Holding the microphone is Chuck Miller of the L’uknaḡ.ádi Clan.

SAFEGUARDING THE FUTURE



“Dividends are viewed as the most effective way of sharing the ANCSA benefits with all shareholders on a fair and equitable basis. The strategy is to establish a permanent fund, settlement trust or otherwise.”

– Shee Atiká Strategic Plan, September 1, 1989



By August of 1992, the Internal Revenue Service audit had been resolved and \$41.4 million released to Shee Atiká from the escrow accounts.

Negotiations with the IRS had settled the timber valuation issue at 88 percent of Shee Atiká's original appraisal. Considering that the IRS had valued the timber at only \$67 million, or 38 percent of the corporation's \$176 million appraisal, this was a huge victory.*

The question of what to do with the escrow money, were it to be released, had been a subject of discussion since late 1987.

"One of the major strengths of our corporation is the long-range planning, and achieving the goals we set in the planning process."

- Marta Ryman, chairman of the board, 1993 - 1994

During the four-year period when the IRS audit had clouded the corporation's prospects, the directors had been educating themselves about how to establish and manage an investment portfolio.

"Shee Atiká's board asked their professionals to inform and educate, and to analyze various alternatives in a way that could be explained to the board and, in turn, the board would have sufficient understanding to be able to explain things to the shareholders. I've got to tell you, that was not the norm for a board of directors."

- John Ferris, Shee Atiká auditor

Throughout 1987, major revisions to ANCSA were under consideration by Congress. What came to be known as the "1991 Amendments" included a provision for establishing "settlement trusts."**

The amendments became law in 1988, allowing Native corporations to establish special trusts for specific purposes. If approved by shareholders, ANCSA corporations could create trusts to provide special benefits to certain shareholders, such as elders; to protect assets, including land; or to produce investment earnings for distribution to all shareholders.

* See Endnote:
"The NOL Tax
Audit Settlement"

** See Endnote:
"The 1991
Amendments"

Photo by Peter Metcalfe



With the support of chairman Marta Ryman, foreground, Jim Senna, standing, organized and produced informational meetings during his tenure to help interested shareholders understand the complexities of ANCSA corporate issues, such as net operating loss transactions, the IRS audit, issuance of stock to "left-outs," corporate investments, and the creation of settlement trusts. Seated behind Ryman are Francine Eddy Jones, Marilyn Roberts, Gary Eddy, and Marion Berry.

"Nine out of ten shareholders think it is important to preserve the cash assets of the corporation for future generations as well as the present shareholders."

- Executive Summary, 1992 shareholder survey.*

* See Endnote: "The McDowell Group Surveys".



Paying the Bureau of Indian Affairs the almost \$6 million balance on its loan, which Shee Atiká used to build the Shee Atiká Lodge, marked a big event worthy of a big check. In April 1993, BIA agency director Niles Cesar, left, accepted the payment from Ethel Staton, Dr. Kenneth Cameron, and Marta Ryman.

“Our grandparents and parents fought for ANCSA; they were always looking towards the future for their grandchildren. The settlement trust gives us that.”

- Loretta Ness, Shee Atiká director

Settlement trusts offer distinct advantages over the corporate form.*

“The concept of the settlement trust is a generational view. The shareholders have the chance to enjoy the benefits of the trust as it matures. So by putting a certain amount of dollars in the trust, it grows and provides benefits for many generations. It is the same idea as an endowment. The settlement trust provides a resource for shareholders for generations to come.”

- Dr. Kenneth Cameron, chairman, 1986-1993 / 2008 - present

Shee Atiká’s board, recognizing cash distributions as one of the primary benefits shareholders expected from their corporation, chose to create an investment trust that could generate significant distributions. From the first, Shee Atiká’s directors described the proposed settlement trust as a “permanent fund”—a term familiar to all Alaskans because of the Alaska Permanent Fund Corporation, a public agency that provides each resident of the state an annual dividend.**

A meeting was scheduled for November 21, 1992, at which shareholders would consider the creation of the Shee Atiká Fund Endowment (SAFE). If approved, the trust would be governed by a board of trustees composed of Shee Atiká directors and would be irrevocable—its duration perpetual.

“We looked at all the different types of trusts and we came up with the idea of a settlement trust, because when you put the money in a settlement trust it means none of us can take it back. We can’t say, ‘We didn’t mean to put that much money in there; we need the money to do this; we need to do that; so let’s take the money back.’ We can’t do that.”

- Shirley Yocum, chairman, 1994 - 1995

Shareholder approval of SAFE was not a foregone conclusion. At the time, federal law provided that a majority of *all voting shares* were required to establish such a trust. As the meeting date approached, SAFE had received strong support, but not quite half of all voting shares. The board of directors postponed the meeting for 45 days and by January 4, 1993, had garnered enough votes to establish the fund.

* See Endnote: “The Settlement Trust Advantage”

** See Endnote: “The Shee Atiká Fund Endowment”

* See Endnote:
"Capitalizing
SAFE"

In May of 1993, following receipt of the necessary IRS rulings, the board approved a transfer of \$24 million to SAFE. Over the years, the Board has made contributions of over \$51 million to the trust.*

"We worked out safeguards to protect the trusts so that even if the corporation failed, the trusts would remain."

- John Davis, director, 1982 - 2000

A point of pride for Shee Atiká's shareholders is that Native graduates from Sitka schools — Sheldon Jackson and Mt. Edgecumbe — were key figures in the battles to win civil rights for Alaska Natives and to confirm aboriginal title to Alaska, which led to the Alaska Native Claims Settlement Act. Accordingly, Shee Atiká's directors had a strong base of support when, in 1989, they initiated what became a highly popular shareholder scholarship and benefit program. The program was formalized eight years later with the creation of the Shee Atiká Benefits Trust (SABT, pronounced *sab-but*, similar to "Sabbath"), an irrevocable trust that provides shareholders educational and funeral benefits.**

** See Endnote:
"Shee Atiká
Benefits Trust"

"The board wanted to make it easy for shareholders to get scholarships. The only shareholders who haven't received an award are those who didn't complete the form."

- Marta Ryman, director, 1993 - 2010

SABT benefits are provided regardless of the number of shares held. The settlement trust model has proven impervious to lawsuits challenging the distribution of benefits to special groups of shareholders, like seniors, or distributions not based on a per share formula.

"Educational grants open the door to all shareholders. Not all will apply, but at least the opportunity is there for everyone."

- Harold Donnelly, director, 1996 - present

SAFE ASSETS

Total Transfers from the Corporation	\$ 51,281,519
Total Distributions	(\$37,929,518)
Investment Gains	\$ 45,039,156
Balance	\$ 58,391,157

Figures current to 12/31/2010

With Shee Atiká shareholders there was one thing always more important than dividends, and that was education. Shareholders have consistently been willing to forgo some of their dividends in order to offer educational scholarships. I believe it is because shareholders are farsighted enough to realize that education brings a permanent enhancement to the lives of Native people.

- Eric McDowell, economic and business consultant; founder, McDowell Group