FEDERAL COURT UPDATE*

Jake J. Allen, 2L
Hannah Bobee, 2L
Bryan T. Newland, 3L
Michigan State University College of Law

I. United State Supreme Court Decisions

Arizona v. California, 547 U.S. 150, 126 S.Ct. 1543 (U.S. 2006). March 27, 2006.

The Court issued a consolidated decree settling the federal reserved water rights claim for the Fort Yuma Indian Reservation.

On January 19, 1953, the Court granted the State of Arizona leave to file a bill of complaint against the State of California and seven of its public agencies, Palo Verde Irrigation District, Imperial Irrigation District, Coachella Valley County Water District, Metropolitan Water District of Southern California, City of Los Angeles, City of San Diego and County of San Diego. The United States and the State of Nevada intervened. The State of New Mexico and the State of Utah were joined as parties.

On January 9, 1979, the Court filed an opinion granting the joint motion for entry of a supplemental decree, entered a supplemental decree, denied in part the motion to intervene of the Fort Mojave Indian Tribe, and otherwise referred the case and the motions to intervene of the Fort Mojave Indian Tribe and the Colorado River Indian Tribes, et al., to Judge Elbert Tuttle as Special Master. On April 5, 1982, the Court received and ordered filed the report of Special Master Tuttle. On March 30, 1983, the Court filed an opinion rendering a decision on the several exceptions to the report of the Special Master, approving the recommendation that the Fort Mojave Indian Tribe, the Chemehuevi Indian Tribe, the Colorado River Indian Tribes, the Quechan Tribe, and the Cocopah Indian Tribe be permitted to intervene, and approving some of his further recommendations and disapproving others. On April 16, 1984, the Court entered a second supplemental decree implementing that decision.

This consolidated decree is a reference for all parties to determine the rights of all, and incorporate all changes made since the original 1964 decree.

BP America Production Co. v. Burton, 127 S.Ct. 638 (2006). December 11, 2006

Lessees under federal oil and gas leases brought action seeking declaratory judgment and injunction against administrative orders of the Department of the Interior's Minerals Management Service (MMS) assessing them for gas royalty underpayments. The United States District Court for the District of Columbia, 300 F.Supp.2d 1, granted summary judgment for defendant, and lessees appealed.

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The Court of Appeals for the District of Columbia, 410 F.3d 722, affirmed. Lessees applied for writ of certiorari which was granted.

The Supreme Court, Justice Alito, held that six-year statute of limitations for government contract actions was not applicable to administrative payment orders issued by the Department of the Interior's Minerals Management Service (MMS) for the purpose of assessing gas royalty underpayments on oil and gas leases, as the statute applies only to court actions; abrogating *OXY USA, Inc. v. Babbitt,* 268 F.3d 1001. Affirmed.

Gonzales v. O Centro Espirita Beneficente Uniao Do Vegetal, 126 S.Ct. 1211 (2006). February 21, 2006.

Religious sect brought suit, seeking to preliminarily enjoin government from enforcing Controlled Substances Act to ban sect's use of hoasca, a tea containing a hallucinogen, in religious ceremonies. The United States District Court for the District of New Mexico, 282 F.Supp.2d 1236, James A. Parker, J., granted preliminary injunction. Government appealed. The United States Court of Appeals for the Tenth Circuit, 342 F.3d 1170, affirmed. On en banc review, the Court of Appeals, 389 F.3d 973, affirmed. Certiorari was granted.

The Supreme Court, Chief Justice Roberts, held that:
(1) Government had burden to demonstrate compelling interest, and
(2) Government failed to demonstrate compelling interest in barring sect's sacramental use of hoasca.
Affirmed and remanded.

II. Federal Courts of Appeal

1st Circuit

Narragansett Indian Tribe v. Rhode Island, 449 F.3d 16 (1st Cir. 2006)

Background: Narragansett Indian Tribe of Rhode Island brought action for declaratory judgment against State of Rhode Island, seeking declaratory judgment that State could not enforce its cigarette sales and excise tax scheme against Tribe with respect to smoke shop located on Tribe's Settlement Lands. State brought action in state court against Tribe, seeking declaratory judgment that Tribe's failure to comply with state excise, retail, and sales taxes was unlawful. Tribe removed State's action to federal court, and actions were consolidated. On cross-motions for summary judgment, the United States District Court for the District of Rhode Island, William E. Smith, J., 296 F.Supp.2d 153, granted state's motion for summary judgment and denied Tribe's motion, and appeal was taken. A panel of Court of Appeals, 407 F.3d 450, disagreed in part, holding that the

Tribe's sovereign immunity insulated it from the State's criminal process.

Holding: On rehearing en banc, the Court of Appeals, Selya, Circuit Judge, held that, as a matter of first impression:
(1) joint memorandum of understanding and Settlement Act permitted State of Rhode Island to issue and enforce a search warrant relative to the sale of unstamped, untaxed cigarettes on Native American settlement lands, and
(2) State of Rhode Island did not violate federal law or sovereign rights of Narragansett Indian Tribe in enforcing criminal provisions of State's cigarette tax scheme by executing search warrant, seizing contraband, and making arrests on Tribe's Settlement Lands, overruling *Aroostook Band of Micmacs v. Ryan*, 404 F.3d 48. Affirmed.

2nd Circuit

U.S. ex rel. The Saint Regis Mohawk Tribe v. President R.C.--St. Regis Management Co., 451 F.3d 44 (2d Cir. 2006).

Background: Indian tribe filed qui tam action seeking declaration that construction contract entered into by casino management company was void and unenforceable under Indian Gaming Regulatory Act (IGRA). The United States District Court for the District of New York, David N. Hurd, J., 2005 WL 1397133, entered summary judgment in favor of company, and tribe appealed.

Holding: The Court of Appeals, Preska, District Judge, sitting by designation, held that:
(1) tribe had to exhaust its administrative remedies under IGRA before filing suit;
(2) IGRA superseded statutory provision permitting Indian tribes to bring qui tam actions; and
(3) qui tam statute did not give tribe standing to seek declaratory judgment. Affirmed.

3rd Circuit

Delaware Nation v. Pennsylvania, 446 F.3d 410 (3d Cir. 2006).

Background: Indian tribe brought action, pursuant to Indian Nonintercourse Act, claiming aboriginal and fee title to land. the United States District Court for the Eastern District of Pennsylvania, 2004 WL 2755545, James McGirr Kelly, J., dismissed. Tribe appealed.

Holding: The Court of Appeals, Roth, Circuit Judge, held that:
(1) tribe waived issue of whether purchaser of land lacked sovereign authority to extinguish its aboriginal title;
(2) tribe's aboriginal title was extinguished by the purchase regardless of any fraud in the transaction;
(3) allegation that tribe obtained fee title to land which it had previously sold, and which

was then granted back to a Chief of the tribe, failed to state a claim upon which relief could be granted. Affirmed.

4th Circuit

Yashenko v. Harrah's NC Casino Co., LLC, 446 F.3d 541 (4th Cir. 2006).

Background: Terminated casino employee filed state court action against casino management company that had contracted with Indian tribe to operate tribal gaming enterprise for violation of Family and Medical Leave Act (FMLA). Action was removed to federal court. Employee added claims of race discrimination under § 1981 and wrongful discharge in violation of North Carolina public policy. The United States District Court for the Western District of North Carolina, Lacy H. Thornburg, J., 352 F.Supp.2d 653, granted summary judgment for employer on FMLA and § 1981 claims and dismissed wrongful discharge claim without prejudice. Employee appealed.

Holding: The Court of Appeals, Dianna Gribbon Motz, Circuit Judge, held that:
(1) as a matter of first impression, Family and Medical Leave Act (FMLA) did not provide covered employee with absolute right to be restored to his previous job after taking approved leave;
(2) employee's position was eliminated for legitimate reasons unrelated to request for FMLA leave, defeating his FMLA interference claim;
(3) employee established prima facie case of retaliation under FMLA;
(4) employer's proffered reason for eliminating his job was legitimate and nonretaliatory and was not shown to be pretextual; and
(5) tribe was both necessary and indispensable party to employee's § 1981 cause of action, but its sovereign status prohibited its joinder. Affirmed.

6th Circuit

Keweenaw Bay Indian Community v. Naftaly, 452 F.3d 514 (6th Cir. 2006).

Background: The tribe sought declaratory and injunctive relief against attempts to assess and collect taxes on real property located on reservation. State Tax Commission and townships moved to dismiss and for summary judgment, and tribe cross-moved as to two counts of its complaint. The United States District Court for the Western District of Michigan, David W. McKeague, J., 370 F.Supp.2d 620, denied defendants' motions, granted judgment for tribe, and enjoined enforcement of the tax act. Commission appealed.

Holding: The Court of Appeals, Clay, Circuit Judge, held that State could not tax real property held in fee simple by Indian tribe or its members within the exterior boundaries of reservation. Affirmed.

7th Circuit

Burgess v. Watters, 467 F.3d 676 (7th Cir. 2006).

Background: Following affirmance of his involuntary commitment to state mental health facility as sexually violent person, petitioner sought writ of habeas corpus. The United States District Court for the Western District of Wisconsin, Barbara B. Crabb, J., 2005 WL 372259, denied petition, and petitioner appealed.

Holding: The Court of Appeals, Wood, Circuit Judge, held that Wisconsin Supreme Court did not unreasonably apply clearly established federal law in determining that State had power to involuntarily commit enrolled member of Indian tribe as sexually violent person under civil jurisdiction conferred by Congress on States. Affirmed.

Wisconsin v. Ho-Chunk Nation, 463 F.3d 655 (7th Cir. 2006).

Background: State of Wisconsin brought action to compel arbitration of dispute concerning gaming compact negotiated with Indian tribe under Indian Gaming Regulatory Act (IGRA) and for appointment of an arbitrator. The United States District Court for the Western District of Wisconsin, John C. Shabaz, J., exercised jurisdiction and appointed arbitrator, 402 F.Supp.2d 1008, denied State's motion for substitute arbitrator. Tribe appealed from former order, and State appealed from latter order. After State sought to voluntarily dismiss appeal, tribe moved for sanctions.

Holding: The Court of Appeals, Manion, Circuit Judge, held that:
(1) Federal Arbitration Act (FAA) did not provide independent basis for jurisdiction;
(2) IGRA did not provide basis for jurisdiction; and
(3) sanctions for filing frivolous appeal were not appropriate in case in which State gave notice and filed motion for voluntary dismissal before tribe filed opening brief. Vacated and remanded; appeal dismissed in part and motion for sanctions denied.

8th Circuit

Bone Shirt v. Hazeltine , 461 F.3d 1011 (8th Cir. 2006).

Background: Indian voters sued State of South Dakota, alleging that legislative redistricting plan violated Voting Rights Act. Following determination that plan violated § 5 of the Voting Rights Act, 200 F.Supp.2d 1150, determination that plan violated § 2 of the Voting Rights Act, 336 F.Supp.2d 976, and answer to certified question by South Dakota Supreme Court, 700 N.W.2d 746, legislature declined to submit new plan. The United States District Court for the District of South Dakota, Karen Schreier, J., 387 F.Supp.2d 1035, entered order imposing remedial redistricting plan proposed by Indian voters. State appealed.

Holding: The Court of Appeals, Heaney, Circuit Judge, held that:
(1) proposed remedial plan did not violation Equal Protection Clause;

(2) District Court did not abuse its discretion in admitting expert testimony;
(3) District Court did not clearly err in determining that Native-Americans were politically cohesive and that white majority voting bloc usually defeated Indian-preferred candidate;
(4) totality of circumstances indicated violation of § 2; and
(5) District Court did not abuse its discretion in adopting remedial plan. Affirmed.

U.S. v. White Plume, 447 F.3d 1067 (8th Cir. 2006).

Background: United States brought action for declaratory and injunctive relief against grower who, pursuant to tribal ordinance, had produced industrial hemp on tribal land without Drug Enforcement Agency (DEA) registration. Hemp companies intervened as defendants. The United States District Court for the District of South Dakota, Richard H. Battey, J., entered summary judgment in favor of United States. Grower and companies appealed.

Holding: The Court of Appeals, Beam, Circuit Judge, held that:
(1) industrial hemp is subject to regulation by Controlled Substances Act (CSA);
(2) Treaty of Fort Laramie of 1868 did not give grower right to grow industrial hemp; and
(3) regulation of industrial hemp by CSA did not violate companies' substantive due process rights. Affirmed.

Cottier v. City of Martin, 445 F.3d 1113 (8th Cir.2006).

Background: Action was brought on behalf of Native American voters challenging configuration of city wards as violative of Section 2 of Voting Rights Act and Fourteenth and Fifteenth Amendments. The United States District Court for the District of South Dakota, Karen Schreier, J., denied relief, and voters appealed.

Holding: The Court of Appeals, Heaney, Circuit Judge, held that exit polls and results of last eight aldermanic elections in which Indian-preferred candidates lost established third *Gingles* precondition for vote dilution claim, to wit, that white majority tended to vote as block to defeat Indian-preferred candidates. Reversed and remanded with directions.

U.S. v. Peltier, 446 F.3d 911 (8th Cir. 2006).

Background: Defendant convicted of two counts of first-degree murder moved to correct illegal sentence. The United States District Court for the District of North Dakota, Ralph R. Erickson, J., denied motion. Defendant appealed.

Holding: The Court of Appeals, Arnold, Circuit Judge, held that:
(1) rule allowing correction of illegal sentence was not appropriate vehicle for claim that District Court was lacked jurisdiction over prosecution;
(2) District Court was not deprived of subject matter jurisdiction by fact that murders occurred in Indian country;
(3) rule allowing correction of illegal sentence was not appropriate vehicle for claim that

statute criminalizing killing of federal officers was unconstitutional exercise of Congress's power under Commerce Clause; and
(4) Congress had power to enact such statute. Affirmed.

U.S. v. Brave Thunder, 445 F.3d 1062 (8th Cir. 2006).

Background: Defendants were convicted of theft from an Indian tribal organization, conspiracy to commit an offense against the United States, and making false statements to the Federal Bureau of Investigation (FBI), following jury trial in the United States District Court for the District of North Dakota, Daniel L. Hovland, Chief Judge. Defendants appealed.

Holding: The Court of Appeals, Murphy, Circuit Judge, held that:
(1) finding that defendants committed theft was supported by sufficient evidence;
(2) government was required to prove conspiracy involving United States;
(3) convictions for making false statements were supported by sufficient evidence; and
(4) District Court did not err in determining that defendants held positions of trust.
Affirmed.

Wilkinson v. U.S., 440 F.3d 970 (8th Cir. 2006).

Background: Heirs of enrolled members of Indian tribe sued Bureau of Indian Affairs (BIA) officials, alleging deprivation of rental income derived from trust land mortgaged by their parents. The United States District Court for the District of North Dakota, Daniel L. Hovland, J., 314 F.Supp.2d 902, granted summary judgment for officials, and heirs appealed.

Holding: The Court of Appeals, Melloy, Circuit Judge, held that heirs had standing to sue. Reversed and remanded.

Sac & Fox Tribe of the Mississippi in Iowa, Election Bd. v. Bureau of Indian Affairs, 439 F.3d 832 (8th Cir. 2006).

Background: Following recognition, by the Bureau of Indian Affairs (BIA), of tribal council elected in disputed election, election board that had been appointed by previous council brought action against BIA, objecting to its recognition of new tribal council. Recognized council appointed new election board, which moved to dismiss. The United States District Court for the Northern District of Iowa, Linda R. Reade, J., 360 F.Supp.2d 986, dismissed. Old board appealed.

Holding: The Court of Appeals, Wollman, Circuit Judge, held that district court lacked subject matter jurisdiction. Affirmed.

LaFromboise v. Leavitt, 439 F.3d 792 (8th Cir. 2006).

Background: Mother brought action under Federal Tort Claims Act (FTCA), alleging medical malpractice occurring during her son's treatment at government-operated medical facility on Indian reservation. The United States District Court for North Dakota, Daniel Hovland, Chief Judge, 329 F.Supp.2d 1054, dismissed, and mother appealed.

Holding: The Court of Appeals, Colloton, Circuit Judge, held that state law applied. Affirmed.

Thorstenson v. Norton, 440 F.3d 1059 (8th Cir. 2006).

Background: Purchaser, who paid monies under contract for deed with vendor for Indian trust lands that were never delivered, appealed determination of Bureau of Indian Affairs (BIA), denying his monetary claim against estate of vendor. The United States District Court for the District of South Dakota, Richard H. Battey, J., granted government's motion to dismiss, and purchaser appealed.

Holding: The Court of Appeals, Beam, Circuit Judge, held that:
(1) both tribal and state courts had jurisdiction over monetary claims;
(2) contract was not void under statute rendering land conveyances void without prior approval of BIA;
(3) tribal court judgment dismissing breach of contract claim barred subsequent recovery of monetary damages under contract; and
(4) judgment against vendor's widow was not enforceable against vendor's estate.
Affirmed.

9th Circuit

Doe v. Kamehameha Schools/Bernice Pauahi Bishop Estate, 470 F.3d 827 (9th Cir. 2006).

Background: Non-Native Hawaiian applicant brought suit against private high schools under § 1981, challenging schools' policy of giving preference to students of Native Hawaiian ancestry. The United States District Court for the District of Hawaii, Alan C. Kay, J., 295 F.Supp.2d 1141, entered summary judgment for schools, and applicant appealed. The Court of Appeals, Bybee, Circuit Judge, 416 F.3d 1025, affirmed in part and reversed in part. Rehearing en banc was granted.

Holding: The Court of Appeals, Graber, Circuit Judge, held that schools' policy of giving preference to students of Native Hawaiian ancestry did not violate § 1981. Affirmed.

U.S. v. Oregon, 470 F.3d 809 (9th Cir. 2006).

Background: United States brought action against states on behalf of Indian tribes to define treaty fishing rights. Confederation of tribes intervened as defendant, 43 F.3d 1284. The United States District Court for the District of Oregon, Malcolm F. Marsh, J.,

dismissed confederation's claim on behalf of constituent tribe. Confederation appealed.

Holding: The Court of Appeals, Hug, Circuit Judge, held that constituent tribe's claim was not barred by res judicata. Reversed and remanded.

Gros Ventre Tribe v. U.S., 469 F.3d 801 (9th Cir. 2006).

Background: Indian tribes brought action for equitable relief, alleging that the Government violated specific and general trust obligations by approving mining operations on non-tribal lands that caused pollution of tribal lands. The United States District Court for the District of Montana, Donald W. Molloy, Chief Judge, granted summary judgment to government and denied Tribes' motion to alter or amend judgment, 344 F.Supp.2d 1221. Tribes appealed.

Holding: The Court of Appeals, Tallman, Circuit Judge, held that:
(1) government did not owe general trust obligation to Tribes to take Indian interests into account regarding mining operations that would support common law breach of trust claim;
(2) government did not have specific trust obligation based on its treaties and agreements with tribes;
(3) government did not owe trust responsibilities regarding third-party use of non-Indian resources;
(4) government had no statutory duty to take discrete nondiscretionary actions under Federal Land Policy and Management Act (FLPMA) that could support failure to act claim under Administrative Procedure Act (APA); and
(5) Tribes did not suffer injury for purposes of standing as result of record of decision regarding mining operations that was subsequently vacated. Affirmed.

Pit River Tribe v. U.S. Forest Service, 469 F.3d 768 (9th Cir. 2006).

Background: Native American tribe and environmental groups filed claims against Bureau of Land Management, Forest Service, and Department of the Interior, alleging that leasing procedures and approval of geothermal plant on federal land that had religious and cultural significance to tribe violated National Environmental Policy Act (NEPA), National Historic Preservation Act (NHPA), National Forest Management Act (NFMA), and Administrative Procedure Act (APA), and that agencies violated fiduciary obligations to Native American tribes. The United States District Court for the Eastern District of California, David F. Levi, Chief Judge, 306 F.Supp.2d 929, granted summary judgment in favor of agencies. Tribe and environmental groups appealed.

Holding: The Court of Appeals, Wallace, Circuit Judge, held that:
(1) tribe had standing to pursue claims;
(2) Energy Policy Act's amendments to Geothermal Steam Act would not be applied retroactively so as to render claims moot;
(3) agencies violated NEPA by failing to complete environmental impact statement (EIS)

before extending leases that granted absolute rights to develop plant;
(4) subsequent preparation of EIS for plant did not cure prior violation of NEPA; and
(5) agencies violated NHPA by failing to conduct consultation or consideration of historical sites before extending leases. Reversed.

Idaho v. Shoshone-Bannock Tribes, 465 F.3d 1095 (9th Cir. 2006).

Background: Federally recognized Indian tribe brought declaratory judgment action against state, seeking determination as to types of games tribe could offer pursuant to tribal-state gaming compact. After consolidating action with similar action brought by state, the United States District Court for the District of Idaho, B. Lynn Winmill, J., granted summary judgment for tribe. State appealed.

Holding: The Court of Appeals, Canby, Circuit Judge, held that:
(1) amendment of compact was required for tribe to be able to operate video gaming machines as a result of permitted operation of such games by other tribes in state;
(2) amendment of compact to permit tribe to operate video gaming machines was mandatory, and did not reopen compact to renegotiation; and
(3) state statute imposing limitations on numbers of tribal video gaming machines and requiring tribes amending their gaming compacts to permit use of such machines to contribute to local educational programs and schools did not apply to tribe. Affirmed.

Allen v. Gold Country Casino, 464 F.3d 1044 (9th Cir. 2006).

Background: Former employee of casino, which was owned and operated by Indian tribe, brought action against employer. The United States District Court for the Eastern District of California, Lawrence K. Karlton, J., dismissed the claims. Plaintiff appealed.

Holding: The Court of Appeals, Canby, Circuit Judge, held that:
(1) casino acted as arm of tribe, and thus was entitled to tribal sovereign immunity, and
(2) casino did not waive tribal sovereign immunity. Affirmed in part, reversed in part, and remanded.

Kesser v. Cambra, 465 F.3d 351 (9th Cir. 2006).

Background: Prisoner filed petition for writ of habeas corpus, challenging state court murder conviction. The United States District Court for the Northern District of California, Phyllis J. Hamilton, J., 2001 WL 1352607, denied petition. Prisoner appealed.

Holding: The Court of Appeals, Bybee, Circuit Judge, held that prosecutor improperly struck potential juror on basis of her race. Reversed and remanded.

California Valley Miwok Tribe v. U.S., 197 Fed. Appx. 678, 2006 WL 2373434 (9th Cir. 2006).

This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by Ninth Circuit Rule 36-3.

The California Valley Miwok Tribe appeals the dismissal of its claims against the United States for breach of trust and violation of the Rancheria Act of 1958, as amended, arising out of the improper conveyance of tribal trust land to an individual Tribe member. We affirm.

Marceau v. Blackfeet Housing Authority, 455 F.3d 974 (9th Cir. 2006).

Background: Native American homeowners and lessees who resided in homes built pursuant to the Mutual Help and Homeownership Program (MHHP) brought action against Department of Housing and Urban Development (HUD), tribal housing authority, and its members, alleging violations of the Housing Act and regulations. The United States District Court for the District of Montana, Sam E. Haddon, J., dismissed. Plaintiffs appealed.

Holding: The Court of Appeals, Pregerson, Circuit Judge, held that:
(1) "sue and be sued" clause of the enabling ordinance which created a tribal housing authority was a clear and unambiguous waiver of tribal immunity;
(2) HUD funds were not a tribal resource, as required to establish that HUD owed fiduciary duty to tribes;
(3) action against HUD could not be maintained under the Administrative Procedure Act (APA); and
(4) District Court lacked jurisdiction under the Little Tucker Act over breach of contract action. Affirmed in part, reversed in part, and remanded.

In re Estate of Covington, 450 F.3d 917 (9th Cir. 2006). May 25, 2006

Background: In a Department of the Interior probate proceeding, grandchildren of Native American testatrix contested will disposing testatrix's Indian trust allotments. Testatrix's attorney filed a motion to quash a subpoena duces tecum compelling him to produce copies of all documents relating to the preparation of the will. The United States District Court for the Eastern District of Washington, Fred L. Van Sickle, Chief Judge, granted the motion to quash on the grounds that attorney-client privilege protected the materials, and Department of the Interior appealed.

Holding: The Court of Appeals, O'Scannlain, Circuit Judge, held that:
(1) state evidentiary law applied to questions of privilege in interpretation of a will disposing of Indian trust allotments, and
(2) resort to testatrix's attorney's notes was not appropriate under the generally accepted rules of evidence of Washington. Affirmed.

In re Emerald Outdoor Advertising, LLC, 444 F.3d 1077 (9th Cir. 2006).

Background: Chapter 11 debtor moved to assume certain executory leases to operate billboards on deed of trust property, and party that had purchased deed of trust property at foreclosure sale objected and moved for relief from stay in order to continue litigating her dispute with bankrupt advertising company in tribal court. The United States Bankruptcy Court for the Eastern District of Washington, Patricia C. Williams, Chief Judge, 300 B.R. 775, entered order denying motion to assume, and appeal was taken. The District Court, Robert H. Whaley, J., reversed.

Holding: On further appeal, the Court of Appeals, Silverman, Circuit Judge, held that:
(1) recording of deed of trust on Indian trust lands in office of auditor of county in which these trust lands were located, as required to perfect deed of trust under Washington law, gave deed of trust priority over subsequent lease that was thereafter recorded in appropriate Bureau of Indian Affairs (BIA) title plant; and
(2) while Indian owner of trust land had to obtain approval of the Bureau of Indian Affairs (BIA) in order to mortgage land, BIA's approval was effective immediately on issuance of certificate of approval. Order of district court reversed.

10th Circuit

Walton v. Tesuque Pueblo, 443 F.3d 1274 (10th Cir. 2006).

Background: Non-Indian vendor brought action against Indian tribe and various tribal officials, alleging that tribe's revocation of his flea market vendor's permit violated federal and state law. Defendants moved to dismiss on basis of sovereign immunity. The United States District Court for the District of New Mexico, Robert Brack, J., denied the motion in part and granted it in part, and parties cross-appealed.

Holding: The Court of Appeals, Tacha, Chief Circuit Judge, held that:
(1) district court lacked jurisdiction to hear non-habeas claims;
(2) habeas provision of Indian Civil Rights Act (ICRA) did not confer jurisdiction on district court; and
(3) tribe's waiver, pursuant to Indian Self-Determination and Education Assistance Act (ISDEAA), of its sovereign immunity with respect to suits arising out of its performance of its contractual duties, did not confer jurisdiction on district court. Affirmed in part and reversed in part.

Wyandotte Nation v. Sebelius, 443 F.3d 1247 (10th Cir. 2006).

Background: Following a raid by Kansas law enforcement authorities on a casino owned by an Indian tribe, tribe sought preliminary injunction requiring return of seized monies and gaming machines and barring Kansas from exercising jurisdiction over gaming or related activities on the site. The United States District Court for the District of Kansas, Julie A. Robinson, J., 337 F.Supp.2d 1253, granted the request, and also sua sponte enjoined tribe from conducting gaming or related activities on the site pending clarification of various issues. Parties cross-appealed.

Holding: The Court of Appeals, Lucero, Circuit Judge, held that
(1) district court abused its discretion in sua sponte enjoining tribe from conducting gambling, and
(2) tribe was entitled to preliminary injunction. Affirmed in part, vacated in part, and remanded.

Prairie Band Potawatomi Nation v. Wagnon, 467 F.3d 1279 (10th Cir. 2006).
November 7, 2006

Holding: In view of the Supreme Court's decision in *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95, 126 S.Ct. 676, 163 L.Ed.2d 429 (2005), and after supplemental hearing, the prior decision of this court is vacated, as is the portion of the district court's opinion that applies the interest-balancing test. The order of the district court granting summary judgment in favor of Defendant is AFFIRMED.

Miami Tribe of Oklahoma v. U.S., 198 Fed. Appx. 686, 2006 WL 2392194 (10th Cir. 2006).

Background: Indian tribe brought action against United States Department of Interior (DOI) under Indian Gaming Regulatory Act (IGRA) seeking approval to conduct gaming on tract of Indian land. The United States District Court for the District of Kansas, 2004 WL 2278584, dismissed action. Tribe appealed.

Holding: The Court of Appeals, Monroe G. Mckay, Circuit Judge, held that:
(1) DOI opinion letter was not final agency action;
(2) waiver of sovereign immunity for injunctive relief under Administrative Procedure Act (APA) did not apply to tribe's request for court to compel specific performance of joint stipulation; and
(3) United States did not waive its sovereign immunity through its fiducial relationship with Indian tribe. Appeal dismissed.

Burrell v. Armijo, 456 F.3d 1159 (10th Cir. 2006).

Background: Farm lessees sued federally recognized Indian tribe and tribal officials, alleging violations of their federal civil rights and breach of farm lease. The United States District Court for the District of New Mexico, William P. Johnson, J., dismissed, giving preclusive effect to tribal court ruling. Lessees appealed.

Holding: The Court of Appeals, Briscoe, Circuit Judge, held that:
(1) tribe did not waive tribal court jurisdiction over lease dispute;
(2) tribal court ruling dismissing lessees' claims was not entitled to preclusive effect due to failure to give lessees full and fair opportunity to litigate their claims in tribal court;
(3) tribe did not waive its sovereign immunity on breach of lease claim either under terms of lease or federal regulations;

(4) tribe's sovereign immunity did not extend to officials for actions allegedly taken outside scope of their official authority;
(5) tribal officials had no liability under § 1983 for actions allegedly taken under color of tribal law, as opposed to state law; and
(6) breach of lease claim was barred by failure to seek review of federal administrative determination that lessees breached lease. Reversed in part, dismissed in part, and remanded.

Tsosie v. U.S., 452 F.3d 1161 (10th Cir. 2006).

Background: Family of deceased member of Navajo Nation brought action against United States, alleging negligent failure of Indian Health Service (IHS) to diagnose hantavirus. The United States District Court for the District of New Mexico, M. Christina Armijo, J., dismissed action. Family appealed.

Holding: The Court of Appeals, Lucero, Circuit Judge, held that:
(1) treating physician was independent contractor at time of service, and
(2) United States was not estopped from asserting independent contractor defense.
Affirmed.

Bear v. Patton, 451 F.3d 639 (10th Cir. 2006).

Background: Defendant in state court action for dissolution of partnership sought declaration that partnership property lay within boundaries of Indian reservation, and thus outside of state court's jurisdiction. State court judge moved to dismiss. The United States District Court for the District of Kansas, Julie A. Robinson, J., 364 F.Supp.2d 1242, dismissed on basis of *Rooker-Feldman* doctrine. State court defendant, proceeding pro se, appealed.

Holding: The Court of Appeals, Brorby, Circuit Judge, held that remand was warranted to determine whether the state court judgment was final and appealable under Kansas law at time the federal action was filed. Vacated and remanded.

Jicarilla Apache Nation v. Rio Arriba County, 440 F.3d 1202 (10th Cir. 2006).

Background: Indian tribe brought civil rights action against county and county officials, alleging that county's reassessment of ranch for property tax purposes violated equal protection. The United States District Court for the District of New Mexico, James O. Browning, J., granted summary judgment for defendants, 376 F.Supp.2d 1096. Tribe appealed.

Holding: The Court of Appeals, McConnell, Circuit Judge, held that:
(1) *Rooker-Feldman* doctrine did not insulate reclassification decision of county property tax assessment board from review by federal court;

(2) tribe's request for prospective injunctive relief was mooted by passage of statute by New Mexico legislature;
(3) legislation did not moot claims brought by tribe for retrospective relief;
(4) reclassification decision was objectively reasonable; and
(5) property was not similarly situated to other elk hunting ranches.
Affirmed.

D.C. Circuit

Felter v. Kempthorne, 2007 WL 120302 (D.C. Cir. 2007).

Background: Plaintiffs, claiming to be "mixed-blood" members of the Ute Indian Tribe, brought action against the Department of the Interior (DOI), alleging that the Ute Partition & Termination Act (UPA) wrongfully terminated their status as federally recognized Indians and deprived them of reservation assets. The United States District Court for the District of Columbia, Roberts, J., 412 F.Supp.2d 118, granted DOI's motion to dismiss. Plaintiffs appealed.

Holding: The Court of Appeals, Tatel, Circuit Judge, held that:
(1) action accrued when plaintiffs' status as recognized Indians was terminated and the reservation's assets were distributed;
(2) lasting effects of termination were not continuing violations;
(3) equitable tolling did not apply; but
(4) remand was required to determine whether six-year limitations period for civil actions brought against the United States was modified by the Department of the Interior and Related Agencies Appropriations Act. Remanded.

Colorado River Indian Tribes v. National Indian Gaming Com'n, 466 F.3d 134 (D.C. Cir. 2006).

Background: Indian tribe sued National Indian Gaming Commission (NIGC), claiming that NIGC exceeded its authority by promulgating regulations establishing mandatory operating procedures for Class III gaming in tribal casinos. Tribe moved for summary judgment. The United States District Court for the District of Columbia, John D. Bates, J., 383 F.Supp.2d 123, granted tribe's motion for summary judgment and NIGC appealed.

Holding: The Court of Appeals, Randolph, Circuit Judge, held that Indian Gaming Regulatory Act did not give NIGC authority to promulgate regulations establishing mandatory operating procedures for class III gaming. Affirmed.

City of Tacoma, Washington v. F.E.R.C., 460 F.3d 53 (D.C. Cir. 2006).

Background: Petitions for review were filed as to a series of orders of the Federal Energy Regulatory Commission (FERC), granting a conditional license to city to operate a hydroelectric project. Petitions were consolidated.

Holding: The Court of Appeals, Brown, Circuit Judge, held that:
(1) FERC's issuance of a minor part license to city to operate a hydroelectric project in 1924 was not an ultra vires act;
(2) FERC's interpreting relicensing provision of Federal Power Act (FPA) to permit relicensing upon expiration of a minor part license to operate a hydroelectric project was entitled to *Chevron* deference;
(3) FERC had no authority to impose 60-day limitation unilaterally on Secretary of the Interior for submitting conditions on license deemed necessary for adequate protection and utilization of Indian reservation;
(4) Secretary of the Interior was not limited to mitigating impact project's access road and transmission line would have on Indian reservation;
(5) FERC complied with its obligations under National Historic Preservation Act;
(6) FERC reasonably concluded that a supplemental certification under Coastal Zone Management Act (CZMA) was unnecessary;
(7) Congress implicitly extended to FERC the power to shut down hydroelectric projects; and
(8) FERC was justified in relying on biological opinions (BiOps) prepared by National Marine Fisheries Service and the Fish and Wildlife Service. Petitions denied in part, granted in part, and remanded.

Cobell v. Kempthorne, 455 F.3d 317 (D.C. Cir. 2006).

Background: Beneficiaries of Individual Indian Money (IIM) trust accounts brought class action against United States government, alleging that Secretaries of Interior and Treasury breached their fiduciary duties by mismanaging accounts. The United States District Court for the District of Columbia, Royce C. Lamberth, J., 229 F.R.D. 5, granted beneficiaries' motion to order government to provide notice of its continuing inability or refusal to discharge fiduciary duties. Government appealed.

Holding: The Court of Appeals, Tatel, Circuit Judge, held that:
(1) district court's order was appealable injunction;
(2) district court lacked authority to issue order; and
(3) action would be properly assigned to different district judge. Vacated and remanded.

Amoco Production Co. v. Watson, 410 F.3d 722(D.C. Cir. 2005).

Background: Lessees under federal oil and gas mineral leases brought actions to enjoin Department of Interior (DOI) decisions relating to determination of royalties due on their production of coalbed methane gas from federal land. The United States District Court for the District of Columbia, William B. Bryant, J., 300 F.Supp.2d 1, granted summary judgment for DOI, and lessees appealed.

Holding: The Court of Appeals, Roberts, Circuit Judge, held that:
(1) finding that coalbed methane gas was not in marketable condition at wellhead was reasonable;
(2) policy letter was not rule subject to Administrative Procedure Act (APA) notice-and-

comment procedures; and
(3) order to pay additional royalties was not subject to statute of limitations on government actions to recover money damages. Affirmed.

In re Kempthorne, 449 F.3d 1265 (D.C. Cir. 2006).

Background: Secretary of Interior, in his official capacity, petitioned for writ of mandamus disqualifying special master and suppressing reports he filed with district court in on-going litigation involving Interior's management of trust accounts for benefit of American Indians.

Holding: The Court of Appeals, Ginsburg, Chief Judge, held that:
(1) petition was not rendered moot by special master's resignation;
(2) special master should have recused himself; and
(3) suppression of reports prepared by special master was warranted. Petition granted.

Federal Circuit

Wopsock v. Natchees, 454 F.3d 1327 (Fed. Cir. 2006).

Background: Members of Indian tribe brought action against tribal officials, officials of the Department of the Interior (DOI), and others, alleging abridgements of their rights to due process, equal protection, and freedom of speech, in violation of the Indian Civil Rights Act (ICRA) and the Indian Reorganization Act (IRA). The United States District Court for the District of Utah, 2005 WL 1503425, Ted Stewart, J., granted tribal officials' motion to dismiss and DOI officials' motion for summary judgment. Members appealed.

Holding: The Court of Appeals, Bryson, Circuit Judge, held that Court of Appeals for the Federal Circuit lacked jurisdiction. Transfer ordered.

DuMarce v. Scarlett, 446 F.3d 1294 (Fed. Cir. 2006).

Background: Heirs to allotted Indian lands sought declaratory and injunctive relief, alleging that provision of the Sisseton-Wahpeton Sioux Act of 1984 mandating that certain interests in Indian allotments escheat to the United States to be held in trust for tribe constituted taking in violation of Fifth Amendment. The United States District Court for the District of South Dakota, Charles B. Kornmann, J., 277 F.Supp.2d 1046, granted in part heirs' motion for summary judgment, finding that one heir's claim was not barred by statute of limitations and that Act effected taking without just compensation. Government appealed.

Holding: The Court of Appeals, Michel, Chief Judge, held that:
(1) government satisfied its fiduciary duty to heir, and

(2) equitable tolling did not apply against government to make timely heir's takings claim. Reversed.

III. District Courts

Alabama

Limbaugh v. Thompson, 2006 WL 2642388 (M.D. Ala. 2006).

Background: Plaintiff challenged the Alabama Department of Corrections' policy prohibiting Native American inmates from participating in sweat lodge ceremonies. The Magistrate Judge recommended that all aspects of the claim be dismissed.

Holding:
(1) To the extent the plaintiffs request injunctive and declaratory relief, the plaintiffs' claim that the ADOC's absolute prohibition of sweat lodge ceremonies is a violation of RLUIPA be DISMISSED as moot.
(2) To the extent the plaintiffs request damages, the plaintiffs' claim that the ADOC's absolute prohibition of sweat lodge ceremonies is a violation of RLUIPA be Dismissed.

Alaska

Native Village of Akutan v. Jackson, 442 F.Supp.2d 789 (D.Alaska 2006).

Background: Indian tribe and its housing authority sought review of Department of Housing and Urban Development's (HUD) rejection of block grant application. The parties filed cross-motions for summary judgment.

Holding: The District Court, Beistline, J., held that:
(1) application did not establish authority's eligibility to receive grant, and
(2) tribe had no protectible property interest in application.
Defendant's motion granted.

Arizona

Equal Employment Opportunity Com'n v. Peabody Western Coal Co., 2006 WL 2816603 (D.Ariz. 2006).

Background: On June 13, 2001 Plaintiff EEOC filed its Complaint against Defendant Peabody Western Coal Company asserting a violation of Title VII of the Civil Rights Act

of 1964 as amended, 42 U.S.C. §§ 2000e et seq. ("Title VII"), based upon the preference afforded to hiring Navajos over non-Navajo Native Americans in coal mining operations. Currently before the Court is Rule 19 Defendant Navajo Nation's Motion to Dismiss for Lack of Subject Matter Jurisdiction, Lack of Personal Jurisdiction, Insufficiency of Process, Failure to State a Claim, Lack of Capacity, Failure to Exhaust Tribal Remedies and Failure to Join the United States as an Indispensable Party and Memorandum in Support Thereof; Navajo Nation's Motion to Strike Exhibits 9 and 16 of the EEOC's Response; the Equal Employment Opportunity Commission's Motion to Strike Exhibits D and E of Peabody Coal's Response to the Navajo Nation's Motion to Dismiss; and the Navajo Nation's Motion for Leave to File Notice of Supplemental Authority

Holding: MARY H. MURGUIA, District Judge. ORDERED granting the Navajo Nation's Motion to Dismiss, which has been converted into a Motion for Summary Judgment and denying the Navajo Nation's Motion for Leave to File Notice of Supplemental Authority as moot.

BNSF Ry. Co. v. Ray, 2006 WL 2792174 (D.Ariz. 2006).

Background: The Sullivan Defendants filed a wrongful death action against BNSF Railway Company in Hualapai Tribal Court for damages stemming from a 2003 accident at a railroad crossing on tribal lands. BNSF subsequently filed a complaint in this Court seeking a permanent injunction to prevent the Sullivans and the Tribal Defendants from proceeding with the Sullivan Lawsuit. BNSF argues that the Tribal Court lacks jurisdiction over BNSF. Defendants filed a motion to stay all proceedings in this Court during their appeal of the Court's refusal to modify the preliminary injunction.

Holding: DAVID G. CAMPBELL, District Judge.
(1) The Court will deny Defendants' motion.

Casanova v. Norton, 2006 WL 2683514 (D.Ariz. 2006).

Background: In 2004, pursuant to its constitution, the Chemehuevi Indian Tribe began issuing "assignment deeds" to its members, purporting to convey an "exclusive right of use and possession to a parcel of the Tribe's Reservation lands for the purpose of building a home and maintaining a permanent or part-time residency on the Reservation." On April 12, 2004, the Tribe's secretary-treasurer sent the deeds to Wayne Nordwall, then Western Regional Director for the Bureau of Indian Affairs, accompanied by a request that he approve the deeds pursuant to 25 U.S.C. § 81. On April 20, 2004, the Tribe's attorney, Lester Marston, began calling the BIA to inquire about the deeds and the approval process. Mr. Marston called various officials within the BIA over the course of several months, attempting to obtain approval for the assignment deeds that had been submitted, or at the very least find out who would be in charge of approving the deeds. Finally, on February 12, 2005, following numerous phone calls by Mr. Marston, Mr. Nordwall left a recorded phone message for Mr. Marston indicating that the BIA would not approve the assignments under 25 U.S.C. § 81. Both parties filed motions for summary judgment.

Holding: ROSLYN O. SILVER, District Judge.
(1) Court dismissed the action due to Plaintiffs' failure to exhaust their administrative remedies.

U.S. v. Tawahongva, 456 F.Supp.2d 1120 (D.Ariz. 2006).

Background: Native American defendant filed motion to dismiss charges of violating Migratory Bird Treaty Act (MBTA).

Holdings: The District Court, Aspey, United States Magistrate Judge, held that:
(1) defendant did not have standing to assert the defense that the MBTA permitting system violated his constitutional right to the free exercise of his religion, and
(2) Religious Freedom Restoration Act (RFRA) did not prohibit defendant from being prosecuted under MBTA for failing to obtain a permit prior to taking golden eagles.
Motion denied.

U.S. v. Juvenile Male 1, 431 F.Supp.2d 1012 (D.Ariz. 2006).

Background: Juvenile was charged with aggravated sexual abuse of a minor on an Indian reservation. Indian tribe moved to quash subpoenas duces tecum for records maintained by school and social service agencies under control of tribe.

Holdings: The District Court, Martone, J., held that:
(1) juvenile's Sixth Amendment right to have compulsory process for obtaining witnesses extended to witnesses who were custodians of records maintained by school and agencies under control of tribe;
(2) tribe could not require "routine procedure for domestication of extra-territorial subpoenas through the Navajo Nation courts" as condition of complying with subpoena duces tecum; and
(3) tribe's sovereign immunity did not preclude enforcement of subpoenas duces tecum.
Motions denied.

In re Schugg, 2006 WL 1455568 (D.Ariz. 2006).
Not Reported in F.Supp.2d

Background: Michael Keith Schugg obtained approximately 657 acres of improved real estate from S & T Dairy, LLC. Section 16 was originally obtained from the State of Arizona around 1927 and held in fee simple by the subsequent owners, including the Appellant. The parcel is allegedly land-locked by land owned by or held in trust for the Gila River Indian Community (the “GRIC”) and was used as a dairy farm. On January 31, 2005, several cows in the Appellant's dairy herd tested positive for tuberculosis. The herd was destroyed pursuant to a depopulation agreement with the United States Department of Agriculture. Wells Fargo has a lien on the proceeds from the depopulation of the dairy herd. On April 26, 2005, the GRIC filed objections to certain “stipulations” between the Trustee and Wells Fargo. The GRIC alleged that it had “aboriginal title” to

Section 16. On May 13, 2005, the GRIC filed, for the first time, a proof of claim asserting an aboriginal title to the property, disputing the Appellant's ownership rights to Section 16. The Appellant raised four issues on appeal: did the bankruptcy court abuse its discretion by: (1) determining that the GRIC was entitled to the protections of a "good-faith purchaser" pursuant to 11 U.S.C. § 363(m); (2) approving the settlement of Section 16 and sale to the GRIC for $10.3 million; (3) declining to conduct an evidentiary hearing before approving the sale and settlement; and (4) holding that it lacked jurisdiction to sell the property on the open market?

Holding: TEIBORG, J.
(1) Because the GRIC is the one that caused any reduction in market value by affirmatively clouding title to Section 16 and chilling buyer interest, the terms of the sale in this case were neither fair nor reasonable.
(2) It was an abuse of discretion for the bankruptcy court to approve a compromise when it did not have before it a factual foundation sufficient to establish that the compromise is "fair and equitable."
(3) In accepting jurisdiction over the case, the District Court implicitly determined that this is a proper forum to litigate these issues.

Gila River Indian Community v. Winkelman, 2006 WL 1418079 (D.Ariz. 2006).
Not Reported in F.Supp.2d

Background: Pending before the Court was Defendant Winkleman's Motion to Dismiss based upon the sovereign immunity of Arizona, failure to join indispensable parties, and extinguishment of aboriginal title. This case involved a dispute "concerning rights to a 640-acre tract of land known as Section 36, Township 4 South, Range 4 East, of the Gila and Salt River Base and Meridian, Pinal County, Arizona." The disputed property is allegedly part of the reservation granted to the Gila River Indian Community, which claims unextinguished aboriginal title in the disputed property.

Holding: EARL H. CARROLL, District Judge.
(1) The Ex Parte *Young* exception to state sovereign immunity allows Plaintiffs to bring this suit against Defendant Winkleman.
(2) Arizona is not indispensable to the case.
(3) Determining whether the disputed property is within the land described in Finding 23 is a factual matter the Court couldn't decide based upon the record.

Defendant's Motion to Dismiss was DENIED.

U.S. v. Burruel, 2006 WL 1312533 (D.Ariz. 2006).
Not Reported in F.Supp.2d

Background: Count I charged that Defendant intentionally, knowingly and recklessly assaulted Eugene Rios an Indian, by shooting a firearm and wounding Rios in the leg, resulting in serious bodily injury. Count II charged that Defendant knowingly used and carried a loaded firearm during and in relation to a crime of violence, that is assault

resulting in serious bodily injury. Count III charged the Defendant with committing the offense by possessing a deadly weapon, having previously been convicted of the felony offense of second degree murder making him a felon in possession of a weapon. Defendant argued that the Government improperly applied the Assimilative Crimes Act (ACA) to charge the Defendant with a state law violation because his crime was covered by federal law. The Defendant filed a motion to dismiss Count III.

Holding: David C. Bury, District Judge
(1) Defendant has not been punished in tribal court for any of the charges lodged against him; therefore, he is not exempt from prosecution.
(2) The Court dismissed Count III of the Superceding Indictment. As well, it denied the Motion to Correct Count III of the Superceding Indictment as moot in light of its dismissal.

Motion to Dismiss Count III of the Superceding Indictment was GRANTED.

In re Schugg, 2006 WL 616635 (D.Ariz. 2006).
Not Reported in F.Supp.2d

Background: The Trustee brought an adversary proceeding seeking to have the proof of claim filed by Gila River Indian Community (GRIC) disallowed and to have certain rights regarding Section 16 and the Murphy and Smith Enke roads declared. In its proof of claim, GRIC asserts aboriginal title to the land encompassing Section 16. GRIC moved to dismiss the adversary complaint on the basis that it has sovereign immunity and that the United States is an indispensable party who cannot be joined.

Holding: TEILBORG, J.
(1) GRIC waived any such immunity when it filed a proof of claim in the Debtor's bankruptcy.
(2) Defendant has failed to meet its burden to show that the United States is an indispensable party in this matter.

The Motion to Dismiss was DENIED.

Arkansas

California

County of Madera v. Picayune Rancheria of Chukchansi Indians, 2006 WL 3734181 (E.D.Cal. 2006). December 18, 2006

Background: County brought nuisance abatement action in California state court against Indian tribe's construction of hotel and spa at its casino. Tribe removed case to federal court, county moved to remand and for a temporary restraining order, and tribe

moved to transfer.

Holding: The District Court, Anthony W. Ishii, J., held that court lacked subject matter jurisdiction over county's nuisance abatement action, requiring remand.
Motions granted in part and denied in part.

Hardwick v. U.S., 2006 WL 3533029 (N.D.Cal. 2006).

Background: In 1979, individuals from thirty-four of the terminated sought restoration of their status as Indians and entitlement to federal Indian benefits, as well as the right to reestablish their tribes as formal government entities. The litigation was certified as a class action.

In 1983, the litigation was settled with respect to the members of seventeen former tribes, including the Picayune Rancheria. Judge Williams entered a "Stipulation For Entry Of Judgment" ("1983 Stipulated Judgment") providing that "[t]he status of the named individual plaintiffs and other class members of the seventeen rancherias named and described in paragraph 1 as Indians under the laws of the United States shall be restored and confirmed." The judgment further provided that "[t]he Secretary of the Interior shall recognize the Indian Tribes, Bands, Communities or groups of the seventeen rancherias listed in paragraph 1 as Indian entities with the same status as they possessed prior to distribution of the assets of these Rancherias under the California Rancheria Act, and said Tribes, Bands, Communities and groups shall be included on the Bureau of Indian Affairs' Federal Register list of recognized tribal entities pursuant to 25 C.F.R., Section 83.6(b)." The 1983 Stipulated Judgment also provided a mechanism by which individuals holding former tribal lands could reconvey the lands to the United States to be held in trust.

Non-party Picayune Rancheria of Chukchansi Indians moves for enforcement of the Stipulated Judgment entered in this action in 1987. The motion is opposed by Defendant County of Madera.

Holding: Fogel, District Judge
(1) The matters raised by the Tribe go far beyond the scope of the 1987 Stipulated Judgment, and thus more properly should be addressed in a new action for declaratory relief.

The motion for enforcement of judgment is DENIED.

Russ v. Dry Creek Rancheria Band of Pomo Indians, 2006 WL 2619356 (N.D. Cal. 2006).

ORDER
CHARLES R. BREYER, District Judge.

Background: The dispute in this case involves a Tribal Redevelopment and Relocation Agreement ("Agreement") executed between Plaintiffs and Defendant. Complaint. Under the Agreement, Plaintiffs agreed to convey to the Tribe their rights and interests in their residences on the Dry Creek Rancheria reservation (which had been designated for "economic redevelopment" pursuant to a proposed gaming and casino project). In exchange, the Tribe agreed to help Plaintiffs locate permanent replacement housing, to provide a monthly "relocation allowance" to the Plaintiffs, and to pay the cost of such replacement housing up to a certain amount.

Plaintiffs allege that the Tribe did not help them find permanent replacement housing and did not provide them with money to purchase replacement housing. According to Plaintiffs, the Tribe's Board of Directors unilaterally informed them that their contract had expired, that Defendant no longer had any legal obligation to them, and that the Tribe would terminate their relocation allowance in ninety days. Plaintiffs complaint sets forth seven causes of action: (1) breach of written contract; (2) specific performance; (3) imposition of constructive trust; (4) fraud and deceit; (5) conversion; (6) negligent infliction of emotional distress; (7) wrongful eviction. Defendant countered with forth two arguments: (1) that this Court must stay the proceedings or dismiss the case because Plaintiffs have failed to exhaust tribal remedies; and (2) that Defendant is immune from suit because of its status as a recognized Indian tribe.

Holding: The proceedings were stayed until Plaintiffs exhausted the tribal remedies available to them.

Barber v. Simpson, 2006 WL 2548189 (E.D.Cal. 2006).

ORDER
GARLAND E. BURRELL, JR., District Judge.
Background: On February 27, 2006, Plaintiff moved for summary judgment on the issue of whether the Washoe Tribal Court exceeded its jurisdiction by adjudicating an eviction action Defendants brought against Plaintiff in tribal court to regain possession of allotted land held in trust for their benefit by the United States. In his motion for summary judgment, Plaintiff argued the Washoe Tribal Court had exceeded its jurisdiction because "the United States was an indispensable party ... [but] was in fact not a party (and could not be made a party) to the proceedings...." Plaintiff moved to amend the final judgment entered in favor of Defendants on July 6, 2006, under Rule 59(e) of the Federal Rules of Civil Procedure, and in the alternative, moves for an injunction pending appeal under Rule 62(c). Defendants opposed the motions.

Holding: Plaintiff's motion to amend the judgment filed July 6, 2006, and his motion for an injunction pending appeal are denied.

Native American Arts, Inc. v. Specialty Merchandise Corp., 451 F.Supp.2d 1080 (C.D. Cal. 2006).

Background: Wholly Indian owned arts and crafts organization involved in distribution of authentic Indian arts and crafts sued company, under The Indian Arts and Crafts Act and The Indian Arts and Crafts Enforcement Act, for allegedly selling counterfeit Indian products. Company filed motion to dismiss, and organization filed request for leave to amend its complaint.

Holding: The District Court, Larson, J., held that:
(1) organization failed to allege an injury in fact, arising from company's conduct, as was required to have Article 3 standing to bring action, and
(2) attempt by organization to amend complaint to establish standing would be futile.
Motion granted; request for leave to amend denied.

Barber v. Simpson, 2006 WL 1867643 (E.D. Cal. 2006).
Not Reported in F.Supp.2d

ORDER
GARLAND E. BURRELL, JR., District Judge.

Background: Plaintiff and Defendants are enrolled members of the Washoe Tribe of Nevada and California. Plaintiff alleges he "currently resides on, and exercises sole possession of a distinct portion of [an eighty acre parcel of land located in Alpine County, California,] consisting of approximately five acres known as '425 Barber Road, Marleeville, California.' " Plaintiff asserts "ownership of 425 Barber Road and a continuing right to possess the property pursuant to the doctrine of 'individual aboriginal title.' " Defendants moved to dismiss this action for lack of subject matter jurisdiction, or alternatively, for failure to exhaust tribal court remedies. Plaintiff moved for summary judgment on the issue whether the Washoe Tribal Court exceeded the lawful limits of its jurisdiction.
Holding: Defendants' motion to dismiss this federal action for lack of subject matter jurisdiction and failure to exhaust tribal remedies is denied. Further, since the tribal court did not exceed its jurisdiction, Plaintiff's motion for summary judgment on this issue and Plaintiff's claims for declaratory and injunctive relief are denied.

Ruelas v. Ealge Mountain Casino, 2006 WL 547964 (E.D.Cal. 2006).
Not Reported in F.Supp.2d

ISHII, J.
On February 5, 2006, Defendants removed this case from the Superior Court of Tulare County on the basis of a 28 U.S.C. § 1441(b). On February 10, 2006, Defendants moved for dismissal with prejudice on the basis of tribal immunity. It is unnecessary to reach Defendants's motion because the court has determined that it lacks subject matter jurisdiction over this case. Accordingly, the Court will remand this case back to the Superior Court of Tulare County.

Colorado

Connecticut

Golden Hill Paugussett Tribe of Indians v. Rell, 2006 WL 3422150 (D. Conn. 2006).

Background: Indian group brought actions under the Non-Intercourse Act against various individuals and corporations and the State of Connecticut, seeking restoration of lands and damages. Following dismissal of consolidated actions, 839 F.Supp. 130, the Court of Appeals, 39 F.3d 51, reversed, ordering a stay pending resolution, by the Bureau of Indian Affairs (BIA), of group's petition for federal tribal recognition, rather than dismissal. After the BIA denied the petition, group moved to reopen its original complaint. Defendants moved for judgment on the pleadings or for dismissal.

Holding: The District Court, Arterton, J., held that group was precluded from demonstrating that it was an Indian tribe.
Motions granted.

Schaghticoke Tribal Nation v. Norton, 2006 WL 3231419 (D.Conn. 2006).

RULING ON PENDING MOTIONS
PETER C. DORSEY, District Judge.
Background: STN and several of its members filed a land claim action in April 1975, seeking to restore certain aboriginal and reservation lands located in the Town of Kent, Connecticut, under the Nonintercourse Act, 25 U.S.C. § 177 (the "1975 land claim action"). In December 1985, the United States National Parks Service, a bureau within the United States Department of the Interior, initiated an action seeking to take possession of approximately 43.47 acres of land located in the Town of Kent, Connecticut. Several defendants who might have an interest in the land were named, including STN by virtue of the 1975 land claim action. In defending this action, it became necessary for STN to establish its existence as a tribe so that it could invoke the protections of 25 U.S.C. § 177, which prohibits alienation of tribal land. Accordingly, on December 7, 1994, STN submitted its petition for federal recognition to the Bureau of Indian Affairs ("BIA").

This action involves a petition for review brought by Petitioner, Schaghticoke Tribal Nation ("STN"), under the Administrative Procedure Act, 5 U.S.C. § 551 et seq. ("APA"). Currently pending are Intervenors-Respondents' Motion to Strike and STN's Motion for Leave to Take Discovery, Motion for Clarification of the Record and Motion for Supplemental Discovery.
Holding: Intervenors-Respondents' Motion to Strike is denied, STN's Motion for Leave to Take Discovery is granted in part and denied in part, and STN's Motion for Clarification of the Record and for Supplemental Discovery is granted in part and denied in part.

Dontigney v. Connecticut BIAC, 2006 WL 2331079 (D.Conn. 2006).

RULING ON DEFENDANTS' MOTIONS TO DISMISS
PETER C. DORSEY, District Judge.
Background: Plaintiff makes several allegations, some of which are difficult to comprehend. It appears that Plaintiff had ancestors that were Connecticut Indians. Plaintiff has tried unsuccessfully to become a member of several of the Connecticut Tribes, and he has filed three lawsuits including many of the current Defendants. Motions to Dismiss the Plaintiff's Complaint have been filed by Sandra Eichelberg, Aurelius Piper, Richard Heyward, the U.S. Secretary of State, and Connecticut Governor Jodi Rell, Connecticut Secretary of State Susan Bysiewicz, along with Connecticut Indian Affairs Council Coordinator Edward Sarabia.

Holding: For the reasons stated herein, Defendants Motions are all granted. The claims against Defendant Richard Valkey are dismissed.

Schaghticoke Tribal Nation v. Norton, 2006 WL 1752384 (D.Conn. 2006).
Not Reported in F.Supp.2d

RULING ON MOTION TO INTERVENE
PETER C. DORSEY, District Judge.
Background: For the past twenty-five years, Plaintiff has sought recognition from the United States government as a federally recognized Indian Tribe. In this action, Plaintiff seeks to have this Court order the Federal Defendants to recognize it as a tribe or, in the alternative, to set aside the BIA's Reconsidered Final Determination Denying Federal Acknowledgment, issued on October 12, 2005 and decide whether STN is a federally recognized tribe.
Holding: The State of Connecticut the Town of Kent the Kent School Corporation and the Connecticut Light and Power Company moved, pursuant to Rule 24(a) of the Federal Rules of Civil Procedure, to intervene as of right as parties in this action. The Movants' Motion to Intervene is granted.

Colebut v. Mashantucket Pequot Tribal Nation Tribal Elders Council. 2006 WL 1646155 (D.Conn. 2006).
Not Reported in F.Supp.2d

MEMORANDUM OF DECISION
DOMINIC J. SQUATRITO, District Judge.
Petitioner Neorck Colebut seeks a writ of habeas corpus directing reinstatement of his former status as a member of the Mashantucket Pequot Tribal Nation. Respondent has filed a motion to dismiss the petition.
Respondent's motion, however, is GRANTED because petitioner has not exhausted his available remedies.

Delaware

Florida

Miccosukee Tribe of Indians of Fla. v. U.S., 430 F.Supp.2d 1328 (S.D.Fla. 2006).

Background: Indian tribe brought action against United States Fish & Wildlife Service (FWS) and others, alleging, inter alia, that water management decisions of Army Corps of Engineers, designed to avoid jeopardy to an endangered bird species while carrying out water control projects in South Florida, damaged the habitat of the Everglades Snail Kite, in violation of the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). Government filed two motions to dismiss.

Holding: The District Court, K. Michael Moore, J., held that:
(1) tribe sufficiently alleged an injury in fact to establish its standing to bring action;
(2) FWS could be held accountable for failure to reinitiate required consultation even though Corps was the action agency;
(3) FWS was not liable under Endangered Species Act (ESA) provision prohibiting "taking" of endangered species;
(4) FWS was not required to issue an Environmental Impact Statement (EIS) on its Incidental Take Statement (ITS); and
(5) allegation that FWS violated Indian Trust Doctrine failed to state a claim.
Motions granted in part.

Georgia

Hawaii

Idaho

Shoshone-Bannock Tribes of Fort Hall Reservation v. U.S., 2006 WL 2949527 (D.Idaho 2006).

Background: The Court has before it Defendants' Motion for Summary Judgment (Docket No. 116). The Court heard oral argument on the motion on October 4, 2006 and now issues the following opinion. Plaintiffs are members of the Shoshone-Bannock Tribes of the Fort Hall reservation who receive farm lease income annually. Plaintiffs' claims stem from the court-ordered shutdown of the Department of Interior's computer system in 2001, which resulted in late payments to Plaintiffs for their farm lease income for calendar year 2002. After several failed attempts to settle the case, the Court certified the case as a class action on September 27, 2005.

Holding: B. LYNN WINMILL, Chief District Judge. Defendants now seek summary judgment based on lack of jurisdiction. Defendants' Motion for Summary Judgment shall be, and the same is hereby, GRANTED.

Washakie v. U.S., 2006 WL 2938854 (D.Idaho 2006).

Background: Oren Washakie filed this action under the Federal Tort Claims Act ("FTCA"), alleging that he was assaulted while in the Fort Hall Jail by officers of the Fort Hall Police Department and that, after the assault, the police placed him in an isolation cell and ignored his requests for medical attention for over eight hours. Washakie claims that the Shoshone-Bannock Tribe, the Fort Hall Police Department and the Police Department are, for the purposes of the FTCA, part of the Bureau of Indian Affairs ("BIA").

Holding: B. LYNN WINMILL, Chief District Judge. For the reasons expressed below the Court will grant the motion to the extent it claims Washakie was intentionally assaulted by the Fort Hall tribal police, but deny the motion to the extent it alleges that tribal police and EMTs negligently or intentionally failed to provide adequate medical care for the injuries suffered by Washakie. Also pending before the Court is Plaintiff Oren Washakie's Motion to Strike (Docket No. 14). That motion has been largely resolved by the parties' Stipulation (Docket No. 24). However, the motion will be granted to the extent that the Halbert declaration attempts to proffer a legal conclusion as to the status of the tribal police officers, but will be denied in all other respects.

Illinois

Indiana

Iowa

Kansas

Miami Tribe of Oklahoma v. U.S., 2006 WL 3848949 (D. Kan. 2006).

Background: This matter comes before the Court on Defendants' Motion for Rule 54(b) Judgment on Count I (doc. 74). Defendants request that the Court direct the entry of final judgment, pursuant to Federal Rule of Civil Procedure 54(b), as to its November 23, 2005 Memorandum and Order on Count I. In that ruling, the Court remanded the Bureau of Indian Affairs' decision denying a tribe member's application to give one-third of his restricted land interest to his tribe. Plaintiff opposes the motion arguing that an administrative agency remand is not a final decision, and that the request is untimely.

Holding: DAVID J. WAXSE, United States Magistrate Judge. For the reasons discussed below, the motion is denied.

In re Hutchinson, 2006 WL 2848654 (Bkrtcy. D.Kan. 2006).

Background: In case converted from Chapter 7 to Chapter 13, Chapter 7 trustee moved for turnover of per capita distributions from casino gaming revenues received by debtor-husband, as enrolled member of Indian Tribe. Chapter 13 trustee subsequently objected to confirmation of amended plan, moved to dismiss, and, after debtors claimed the per capita distributions as exempt, objected to the exemptions. United States Trustee (UST) objected to the motion to dismiss, asserting that case should be converted. Chapter 13 trustee then filed motion to re-convert.

Holding: The Bankruptcy Court, Janice Miller Karlin, J., held that:
(1) the per capita distributions, as well as the right to receive them in the future, were property of the estate;
(2) the per capita distributions were not exempt as "money accruing from any lease or sale of lands held in trust by the United States for any Indian";
(3) term "public assistance benefit," as used in the Bankruptcy Code exemption, refers to government aid to needy, blind, aged, or disabled persons and to dependent children;
(4) the per capita distributions, which were made in equal amounts to all enrolled tribal members regardless of need, were not exempt as a right to receive "a local public assistance benefit";
(5) the amended plan did not meet the "best interest of creditors" test; and
(6) Chapter 13 trustee could not compel the turnover of estate property.
Objections to confirmation and exemption sustained; motion for turnover denied in part.

In re McDonald, 353 B.R. 287, 2006 WL 2848611 (Bkrtcy. D.Kan. 2006).

Background: In case converted from Chapter 13 to Chapter 7, Chapter 7 trustee moved for an order requiring debtors to turn over any and all per capita distributions from casino gaming revenues, and the payment advices relative to those distributions, which debtor-wife, as enrolled member of Indian Tribe, received subsequent to the order of conversion. Debtors claimed the property as exempt.

Holding: Addressing issues of apparent first impression in the district, the Bankruptcy Court, Janice Miller Karlin, J., held that:
(1) the per capita distributions were property of the estate;
(2) debtors were not entitled to rely upon exemptions contained in tribal code; and
(3) the per capita revenues were not excludable from the bankruptcy estate as trust funds protected by a spendthrift provision.
Motion granted.

Wyandotte Nation v. National Indian Gaming Com'n., 437 F.Supp.2d 119 (D.Kan. 2006).

Background: Indian tribe brought action challenging decision of the National Indian Gaming Commission (NIGC) which concluded that tribe could not lawfully conduct gaming on a tract of land being held in trust for the tribe by the United States. Tribe moved for summary judgment.

Holding: The District Court, Robinson, J., held that:
(1) tract did not qualify for application of the last reservation exception to Indian Gaming Regulatory Act's (IGRA) prohibition of gaming on trust lands acquired after October 17, 1988; but
(2) NIGC's decision, that tract did not qualify for application of the settlement of a land claim exception to IGRA, was arbitrary, capricious and unsupported by law; and
(3) NIGC acted in accordance with law in determining that tract did not qualify for application of the restored lands exception.
Reversed and remanded.

Governor of Kansas v. Norton, 430 F.Supp.2d 1204 (D.Kan. 2006).

Background: Governor of Kansas and several Indian tribes brought action for declaratory and other relief from decision of the Secretary of the Interior (DOI) which took into trust for Wyandotte Indian Tribe a tract of land which the tribe intended to use for gaming purposes.

Holding: The District Court, Robinson, J., held that:
(1) DOI did not act arbitrarily or capriciously in interpreting statutory provision which limited Indian tribe's use of appropriated funds for land purchase to a set amount, to include monies derived from investment of the original funds;
(2) substantial evidence supported determination that earnest money in tribe's purchase of land was not applied to the purchase price;
(3) DOI did not act arbitrarily or capriciously in concluding that it was reasonable and acceptable for tribe to pay for land purchase with a margin account loan secured by bonds that remained in investment account that included the appropriated funds; and
(4) DOI did not act arbitrarily or capriciously in determining that price for tribe's purchase of land met requirements of statute despite allegation that initial contract for purchase was bifurcated into two contracts.

Kentucky

Louisiana

Tunica Biloxi Tribe of Indians v. Bridges, 437 F.Supp.2d 599 (M.D.La. 2006).

Background: Indian tribe brought action against Secretary of the Department of Revenue of the State of Louisiana, individually and in her official capacity, seeking an injunction to prevent Secretary from levying sales taxes on mobile homes sold to tribe

members, and on van sold to tribe.

Holding: The District Court, John V. Parker, J., held that:
(1) van purchased by Indian tribe for the use of tribal casino was subject to Louisiana sales tax, and
(2) tribe's order making its purchase of van from off-reservation dealership "contingent on inspection" did not bear upon transfer of ownership of the van, for sales tax purposes.
Judgment for Secretary, and action dismissed.

Maine

Nulankeyutmonen Nkihtaqmikon v. Impson, 2006 WL 3347591 (D.Me. 2006).

Background: Members of Indian tribe sought declaratory and injunctive relief against decision of the Bureau of Indian Affairs (BIA) which allegedly approved tribe's lease of land for a liquified natural gas terminal. BIA moved to dismiss.

Holding: The District Court, Woodcock, J., held that:
(1) claims that BIA's approval of lease violated National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA) were not ripe for adjudication;
(2) claims that BIA's approval of lease violated Government's trust obligations to tribe were not ripe for adjudication;
(3) members of tribe lacked standing to bring action alleging that BIA's approval of lease violated NEPA, NHPA, Endangered Species Act (ESA), Indian Long-Term Leasing Act, and Government's trust obligations to tribe; and
(4) members were not entitled to bring action alleging that BIA's approval of lease violated Administrative Procedure Act (APA).
Dismissed.

Nkihtaqmikon v. Bureau of Indian Affairs, 450 F.Supp.2d 113 (D.Me. 2006).

Background: In action under Freedom of Information Act (FOIA), alleging that Bureau of Indian Affairs (BIA) improperly withheld documents relating to its approval of a lease to operate a liquified natural gas terminal on tribal lands, the District Court, 2006 WL 2724037, granted summary judgment, for mootness, in favor of BIA as to claim that it improperly withheld specific document, but stayed decision to allow requestors to decide whether issues raised by their receipt, after the motion was filed, of a response to their FOIA request, warranted amendment of complaint.

Holding: Following filing of amended complaint, the District Court, Woodcock, J., held that claim that BIA improperly withheld specific document was moot.
Motion granted.

Nkihtaqmikon v. Bureau of Indian Affairs, 453 F.Supp.2d 193 (D.Me. 2006).

Background: Members of Indian tribe brought action under Freedom of Information Act (FOIA), alleging that Bureau of Indian Affairs (BIA) improperly withheld documents relating to its approval of a lease to operate a liquified natural gas terminal on tribal lands. BIA moved for summary judgment.

Holding: Construing the motion as a motion to dismiss, the District Court, Woodcock, J., held that
(1) claim that BIA improperly withheld specific document relating to its approval of lease, was moot; but
(2) Court would stay its decision as to BIA's motion for summary judgment, to allow requestors to decide whether issues raised by their receipt, after motion was filed, of a response to their FOIA request, generated the basis for a supplemental pleading; and
(3) Department of the Interior's (DOI) failure to rule within statutory deadline on requestors' appeal of BIA's decision did not warrant relief.
Ordered accordingly.

Maryland

Massachusetts

Michigan

State of Michigan v. Little River Brand of Ottawa Indians, 2006 WL 2092415 (W.D. Mich. 2006). Not Reported in F.Supp.2d

Background: This suit is brought under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 *et seq.* The Plaintiffs, State of Michigan and Michigan Economic Development Corporation (MEDC), claim that the defendants, Little River Band of Ottawa Indians (Little River Band) and Little Traverse Bay Bands of Odawa Indians (Little Traverse Bay Bands), breached Tribal-State Gaming Compacts that each Defendant had entered into with the Plaintiffs. Presently before the Court is Plaintiff's motion for preliminary injunction asking the court to order Defendants to pay into the registry of the court all the money they will owe under the compacts if Plaintiffs should prevail. Defendants have responded, and Plaintiffs replied. The IGRA regulates gaming operations by Indian tribes. The Act established three classes of gaming activities. Class I gaming is social games for prizes of minimal value, or traditional forms of gaming in connection with tribal ceremonies or celebrations. Indian tribes have exclusive jurisdiction over Class I gaming on Indian lands. Class II gaming includes bingo and certain card games. Class II gaming is within the jurisdiction of the Indians Tribes, subject to the provisions of IGRA. Indian Tribes do not need state consent to conduct Class I or Class II gaming on Indian land, and neither Class I or II gaming is implicated in this suit.

Holding: WENDELL A. MILES, Senior District Judge. A hearing on the motion was held on July 7, 2006, the Court denies the Plaintiffs' motion.

Minnesota

U.S. v. Person, 427 F.Supp.2d 894 (D.Minn. 2006).

Background: Defendant, indicted for conspiracy with intent to distribute crack cocaine, two counts of aiding and abetting the possession with intent to distribute crack cocaine, possession of a firearm during a drug trafficking crime, and possession of a firearm with an obliterated serial number, moved to dismiss, to quash her arrest, and to suppress evidence.

Holding: The District Court, Kyle, J., adopting the report and recommendation of Erickson, Chief United States Magistrate Judge, held that:
(1) allegation that indictment was not based upon competent evidence, but upon opinion evidence, provided no basis for dismissal;
(2) affidavits provided probable cause for searches of defendants' residences; and
(3) search warrants issued by State courts for search of residences on Indian reservation were valid.
Motions denied.

Mississippi

Missouri

Montana

Nebraska

Santee Sioux Nation v. Norton, 2006 WL 2792734 (D.Neb. 2006).

Background: Plaintiff Santee Sioux filed a complaint in this action, Filing No. 1, requesting declaratory and injunctive relief against the Department of Interior's February 2, 2005, decision disapproving the Tribe's application for a Class III gaming application under 25 C.F.R. Part 291. 28 U.S.C. §§ 2201 and 2202. The Tribe contends that DOI violated the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. §§ 2701 *et seq.*, and acted in an arbitrary and capricious manner that violated the Administrative Procedures Act (APA), 5 U.S.C. §§ 701 *et seq.*, when on February 2, 2005, the Secretary of the Department of Interior (Secretary) determined that the Tribe's application for Class III

gaming should be denied. The State of Nebraska (State) moved to intervene in this case as a party defendant and asserted a cross-claim challenging the validity of the Class III gaming procedures in 25 C.F.R. Part 291 used by the DOI to make its final decision regarding the application of the Tribe. In the alternative, the State also asks this court to grant its motion for summary judgment supporting the decision on the merits by the DOI. Currently before the court are motions for summary judgment filed by the State.

Holding: JOSEPH F. BATAILLON, District Judge. 1. The State's motion for summary judgment, Filing No. 26, is denied. 2. The State's motion for summary judgment, Filing No. 38, is granted. 3. The Tribe's motion for summary judgment, Filing No. 29, is denied. 4. The Department of Interior's motion for summary judgment, Filing No. 41, is granted. 5. This case is dismissed. A separate judgment shall be entered in accordance with this Memorandum and Order.

Nevada

Fallon Paiute-Shoshone Tribe v. U.S. Bureau of Land Management, 455 F.Supp. 2d 1207 (D.Nev. 2006).

Background: Native American tribe brought action against Bureau of Land Management (BLM), challenging agency's decision not to repatriate ancient human remains found in cave adjacent to tribal land. Parties cross-moved for summary judgment.

Holding: The District Court, Hicks, J., held that:
(1) BLM's decision was ripe for review;
(2) BLM did not fail duty to consult with tribe;
(3) BLM did not fail duty to observe importance of review committee; and
(4) BLM's determination that remains were not affiliated with any tribe was arbitrary and capricious.
Motions granted in part and denied in part.

New Hampshire

New Jersey

New Mexico

Pueblo of Zuni v. U.S., 2006 WL 3788825 (D.N.M. 2006).

Background: This case is a five-year old putative class action which seeks damages for the Government's alleged failure to pay the full contract amounts specified in contracts

between Indian Tribes ("Tribes") and the Indian Health Service ("IHS") that were awarded under the Indian Self-Determination and Education Assistance Act ("ISDA"), 25 U.S.C. § 450 et seq.

Holding: JOHNSON, District J. Having considered Plaintiff's arguments (Defendant have not filed a response), the Court finds these arguments to be without merit.

Pueblo of Zuni v. U.S., 2006 WL 3788824 (D.N.M. 2006).

Background: This case is a five-year old putative class action which seeks damages for the Government's alleged failure to pay the full contract amounts specified in contracts between Indian Tribes and the Indian Health Service that were awarded under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 450 et seq. These ISDA contracts provide that members of the Pueblo of Zuni will deliver health care services to its members that would otherwise be provided to Zuni's members by IHS. The lawsuit seeks damages for the Government's failure to pay certain "contract support costs" for ISDA contracts in fiscal years dating back to 1993.

Holding: JOHNSON, District J. Defendant's motion is well-taken and shall be granted.

U.S. v. Neha, 2006 WL 1305034 (D.N.M. 2006). Not Reported in F.Supp.2d

Background: THIS MATTER comes before the Court on the Defendant Donovan Jones Neha's Motion for Judgment of Acquittal on All Counts, filed December 8, 2005 (Doc. 270). The primary issue is whether the United States introduced sufficient evidence for a reasonable jury to conclude the alleged crime occurred in Indian Country. Because the jury could make a reasonable inference, from the testimony of Dancy Simplicio, Laisha Peyketewa, the alleged victim, and Aaron Cheama, and from exhibits introduced by the United States, that the scene of the alleged crime was located within the exterior boundaries of the Zuni Reservation at the time of the crime.

Holding: BROWNING, J.: the Court concludes that the United States introduced sufficient evidence on this element and will deny Neha's motion.

New York

Shinnecock Indian Nation v. New York, 2006 WL 3501099 (E.D.N.Y. 2006).

Background: Defendants move to dismiss this case under *inter alia* Rule 12(b)(6) of the Federal Rules of Civil Procedure on the ground that the plaintiffs have failed to state a claim for relief. [FN1] Plaintiffs the Shinnecock Indian Nation ("Shinnecocks" or "Nation") bring this action to redress wrongs committed against them more than 140 years ago. The Nation seeks to vindicate its rights to certain lands located in the Town of Southampton in Suffolk County, New York. The lands at issue are a portion of those

lands conveyed to the Nation by a lease for a term of 1,000 years executed in 1703 by the Trustees of the Commonality of the Town of Southampton, as lessor (the "1703 Lease").

Holding: PLATT, District Judge. Accordingly, defendants' motions under Fed.R.Civ.P. 12(b)(6) must be and are hereby GRANTED.

Debary v. Harrah's Operating Co., Inc., 2006 WL 3513114 (S.D.N.Y. 2006).

Background: Casino development group and land developer brought action against competitor alleging tortious interference with contractual relations and tortious interference with prospective business relationships in connection with development and management of Native American casino. Following grant of summary judgment for competitor, 217 F.Supp.2d 423, the District Court, 286 F.Supp.2d 309, vacated its decision for purpose of allowing limited discovery into issue of whether competitor engaged in wrongful means to induce tribe to enter into a casino development agreement, and entered summary judgment in favor of competitor on claims for tortious interference with prospective business relations, 345 F.Supp.2d 360. On appeal, the Court of Appeals, 169 Fed.Appx. 658, vacated and remanded.

Holding: On remand, the District Court, McMahon, J., held that:
(1) land developer was not a third-party beneficiary to land purchase agreement between casino development group and tribal instrumentality to which tribe assigned its authority over development and conduct of gaming on the property, and, thus, developer could not recover damages from competitor for alleged tortious interference with that contract, and
(2) even if District Court were to consider circumstances surrounding execution of land purchase agreement, such extrinsic evidence was not sufficient to confer third-party beneficiary rights under the contract on land developer.
Order, 217 F.Supp.2d 423, reinstated.

Bess v. Spitzer, 459 F.Supp. 2d 191 (E.D.N.Y. 2006).

Background: Indictee, member of Indian tribe arrested on-reservation for allegedly violating New York state and municipal cigarette tax laws, sued state officials and individual police officers, alleging that his prosecution violated, inter alia, Contract and Indian Commerce clauses of United States Constitution, and seeking injunctive and declaratory relief. Indictee moved for injunction against further prosecution, and defendants filed motions to dismiss or for judgment on the pleadings.

Holding: The District Court, Spatt, J., held that:
(1) res judicata and collateral estoppel barred action;
(2) Anti-Injunction Act precluded relief; and
(3) *Younger* abstention was appropriate.
Judgment for defendants.

Parry v. Haendiges, 458 F.Supp.2d 90 (W.D.N.Y. 2006).

Background: Member of the Seneca Nation of Indians brought a § 1983 suit seeking to enjoin a state court judge from exercising jurisdiction over a divorce action brought in the state court by his wife. The member moved for preliminary injunctive relief.

Holding: The Skretny, J., held that: (1)the divorce action was subject to the concurrent jurisdiction of courts of the state and courts of the Seneca Nation, and (2) balance of equities weighed in favor of state court retaining jurisdiction.
Motion denied.

Myers v. Seneca Niagara Casino, 2006 WL 2792745 (N.D.N.Y. 2006).

Background: Plaintiff Rachel Myers brings this action against the Seneca Niagara Casino, alleging violations of the Federal Family and Medical Leave Act. Plaintiff is an individual who resides in the City of Albany, County of Albany. Defendant is a corporation wholly owned by the Seneca Nation of Indians.

Holding: LAWRENCE E. KAHN, District Judge. ORDERED, that Defendant's Motion to dismiss for lack of subject matter jurisdiction, pursuant to Federal Rule of Civil Procedure 12(b)(1), is GRANTED; Plaintiff's Complaint is DISMISSED**.**

Carruthers v. Flaum, 450 F.Supp.2d 288 (S.D.N.Y. 2006).

Background: Limited liability companies which had contract with Indian tribe for casino development of property tribe was to purchase as ancestral land, and one member of companies, sued prospective vendors for breach of contracts for purchase and fraudulent misrepresentations during negotiations, vendors' attorney for breach of fiduciary duty as an escrow agent, real estate developer, who allegedly was the secret backer of vendors' activities, and their own attorney for malpractice in failing to secure parcels. Defendants filed summary judgment motions, and real estate developer and plaintiffs' attorney filed motions for sanctions.

Holding: The District Court, McMahon, J., held that:
(1) letter of intent did not satisfy New York's Statute of Frauds;
(2) doctrine of partial performance would not be invoked to bind prospective vendors to the terms of an oral agreement for sale of real estate;
(3) letter of intent regarding purchase of real estate was not a binding preliminary agreement under New York law;
(4) indemnification provision in letter of intent was not a promise to insure that clear title passed to tribe;
(5) vendors' alleged promise to ensure that Indian tribe would take clear title to property was not a misrepresentation that could support a fraud claim;
(6) vendors' attorney did not breach fiduciary duty to LLCs;
(7) LLC member failed to establish that he sustained any damages as result of alleged malpractice of LLC's attorney, under New York law; and
(8) Rule 11 sanctions could not be imposed after dismissal of offending claims.
Motions for summary judgment granted; motions for sanctions denied.

Oneida Indian Nation v. Oneida County, 432 F.Supp.2d 285 (N.D.N.Y. 2006).

Background: Indian Nation brought action seeking declaratory and injunctive relief preventing county from foreclosing on property owned by the Nation for non-payment of taxes. parties filed cross-motions for summary judgment, and separate Indian band filed a motion to intervene.

Holding: The District Court, Hurd, J., held that:
(1) Nonintercourse Act precluded county from foreclosing upon Indian Nation's land;
(2) sovereign immunity would bar any county's suit against Indian Nation to foreclose upon its property;
(3) failure to provide actual notice to Indian Nation of tax lien sale and the redemption period, at the beginning of the redemption period, violated the Nation's right to due process;
(4) equity precluded imposition of interest and penalties for non-payment of taxes during a time when Indian-owned lands were not taxable; and
(5) Indian band, whose ownership interest in a six-mile-square area was being litigated in a pending land claim action, was not entitled to intervene as of right.
Plaintiff's motion granted; motion to intervene denied.

Oneida Indian Nation of New York v. Madison County, 235 F.R.D. 559 (N.D.N.Y. 2006).

Background: County moved to amend or make additional findings, alter or amend the judgment, or for relief from the judgment permanently enjoining it from foreclosing on Indian Nation's property and declaring that Nation's reservation was not disestablished, 401 F.Supp.2d 219. Indian band moved to intervene as of right.

Holding: The District Court, Hurd, J., held that:
(1) county was not entitled to reconsideration of judgment, and
(2) Indian band, which claimed six-mile-square area as its reservation, was not entitled to intervene as of right.
Motions denied.

North Carolina

U.S. v. Taylor, 2007 WL 87746 (W.D.N.C. 2007).

Background: THIS MATTER is before the Court on the Government's proposed Order of Garnishment submitted to the undersigned. The record of this case shows that on February 9, 2000, the Defendant was sentenced to life imprisonment for his convictions of assault with intent to commit murder, assault with a dangerous weapon with intent to do bodily harm, assault resulting in serious bodily harm, using and carrying a firearm during a crime of violence, and possession of a firearm by a convicted felon. Judgment in

a Criminal Case, filed February 23, 2000, at 2. He was ordered to pay the sum of $42,053.51 in restitution. *Id.* at 4. On March 11, 2005, the undersigned issued a writ of continuing garnishment which provided notice to the Eastern Band of Cherokee Indians and the Defendant that the Government sought to garnish his *per capita* distribution of gaming proceeds in order to pay restitution.

Holding: IT IS FURTHER ORDERED that the writ of continuing garnishment entered March 11, 2005, continues to be a valid order of garnishment and attaches to each *per capita* distribution of gaming revenues on account of the Defendant until such time as restitution has been paid in full.

U.S. v. Arch, 2006 WL 2708589 (W.D.N.C. 2006).
ORDER

Background: This Matter is before the Court on the answer of the Eastern Band of Cherokee Indians ("Tribe"), as the Garnishee and the Response of the United States to that Answer of Garnishee.
On October 28, 2004, the undersigned sentenced the Defendant to serve 24 months incarceration for his convictions for sexual act(s) with a person between the age of 12 and 16 years, in violation of 18 U.S.C. §§ 2243(a), 1153. *Judgment in a Criminal Case, filed November 9, 2004.* As part of that Judgment, the Defendant was ordered to pay an assessment of $100.00 and restitution of $10,357.20 to the victims of the crime. *Id.*
The Government now seeks to garnish the Defendant's *per capita* distribution of gaming revenues received twice a year from the Tribe. The Tribe has answered that such funds are immune from garnishment due to the sovereign nature of the Tribe and also because there is an Order from the Cherokee Tribal Court for child support which must be paid from the distribution.

Holding: Lacy H. Thornburg, District Judge, held that Indian tribes have traditionally been considered sovereign nations which possess common law immunity from suit; however, that immunity may be abrogated by Congress. When Congress enacted the Federal Debt Collection Procedure Act in 1990, ("FDCPA"), it defined a "garnishee" as any person who has custody of any property in which the debtor has a nonexempt interest; and, it defined "person" as including an Indian tribe. It is, therefore, ordered that the Order entered in The Cherokee Tribal Court on October 22, 2004, *nunc pro tunc* to October 19, 2004, has priority over the writ of garnishment issued by this Court until such time as the child support obligation has expired; and that any *per capita* gaming revenue that exceeds the child support obligation shall be garnished in favor of the United States.

North Dakota

U.S. v. Rettinger, 2006 WL 3463424 (D.N.D. 2006).
AMENDED ORDER DENYING DEFENDANT'S MOTION TO DISMISS

Background: The defendant, Gordon D. Rettinger (Rettinger), is charged in an indictment with stalking in violation of 18 U.S.C. 2261 A(1). *See* Docket No. 2. The indictment alleges that Rettinger, a non-Indian, entered the Turtle Mountain Indian Reservation with the intent to harass and place under surveillance the victim, identified as J.P.
Before the Court is the Defendant's Motion to Dismiss filed on November 11, 2006. The Government filed a response to the motion on November 21, 2006. The Defendant filed a Reply Memorandum in Support of the Motion to Dismiss on November 27, 2006.

Holding: Daniel L. Hovland, Chief District Judge, denied motion.

Blue v. Marcellias, 2006 WL 2850600 (D.N.D. 2006).
ORDER DENYING PETITION FOR HABEAS CORPUS RELIEF

Background: Levi Blue is an enrolled member of the Turtle Mountain Band of Chippewa Indians. Blue is presently incarcerated in a tribal jail facility pursuant to an order issued by Tribal Judge Madonna Marcellais, Chief Judge of the Turtle Mountain Tribal Court. On August 21, 2006, Blue filed this petition for habeas corpus relief pursuant to Indian Civil Rights Act 25 U.S.C. § 1303, et. seq. On August 22, 2006, the Court entered an order directing Judge Marcellais to file a response as to the current status of Blue's Petition for Stay with the Tribal Appellate Court, Blue's Order of Detention, and the current status of Blue's criminal proceedings. On September 1, 2006, the Defendants filed a response to the Court's order.

Holding: Daniel L. Hovland, Chief District Judge, denied the petition for the reasons set forth below. Levi Blue filed a petition for habeas corpus relief which arises out of a long-standing custody dispute in the Turtle Mountain Tribal Court. The custody dispute is over Blue and Shanna Martin-Lill's two children and began on or around May 8, 2001. Since the dispute originated, the parties have been in and out of state and tribal court more than twenty times, going before at least three tribal trial court judges, three tribal appellate judges, and four state court judges. The first decision of the Tribal Court awarded custody of both children to Blue and was signed by Turtle Mountain Tribal Juvenile Judge Victor J. Delong on June 8, 2001. See Order Granting Custody, filed June 8, 2001. The decision by Tribal Judge Delong was affirmed by the Turtle Mountain Appellate Court by an Order of Remand dated October 31, 2001. See Memorandum Decision and Order Dismissing Motion to Amend Judgment in Case 18-98-R-0227 and Reinstating Judgment in Case 18-01-C-1509, filed December 1, 2002 in Grand Forks County District Court.

LaVallie v. Turtle Mountain Tribal Court, 2006 WL 1069704 (D.N.D. 2006).
Not Reported in F.Supp.2d

Background: On September 2, 2005, the plaintiff, Archie LaVallie Jr., appeared in Turtle Mountain Tribal Court in Belcourt, North Dakota, on charges of "Kidnaping, Criminal Terrorizing, Criminal Threats & Intimidation, Threats & Intimidation (12th) under the Domestic Violence Code, Terrorizing (11th) under the Domestic Violence Code and Destruction of Property (10th offense), under the Domestic Violence Code."

See Defendant's Brief in Support of Motion to Dismiss, p. 1. LaVallie entered a plea of guilty on each charge. LaVallie was sentenced to six (6) months in jail, two (2) years probation, required to attend anger management classes, and required to undergo an alcohol evaluation upon release. [FN1] LaVallie was assessed $1,500 in fines, $150 in court costs, $150 VOCA fees, and $150 in probationary fees. Before the Court is defendant Beverly May's Motion to Dismiss for Failure to Exhaust Tribal Court Remedies filed on March 9, 2006.

Holding: Daniel L. Hovland, Chief Judge, grants the motion and denies the Plaintiff's Petition for Habeas Corpus Relief.

Ohio

Eastern Shawnee Tribe of Oklahoma v. Ohio, 2006 WL 2711563 (N.D. Ohio 2006). ORDER

Background: This is a land possession case, in which the Eastern Shawnee Tribe of Oklahoma (Tribe) is suing the State of Ohio and its officials, entities and municipalities, as well as individual land owners, claiming aboriginal possessory land rights. The Tribe claims title and the right of occupancy to particular lands of Ohio currently owned, occupied, and used by the State of Ohio and landowners. Pending is the Ohio Attorney General's motion to intervene as a matter of right.

Holding: James G. Carr, Chief Judge, found that for the following reasons, the Attorney General's motion will be granted. The Tribe asserts it is a descendant of aboriginal clans of Shawnee. The Tribe claims these groups occupied Ohio during the 1700s until they were expelled by American settlers and forced onto reservations. The Tribe claims ancestral ownership of some of the original land, as well as reservation land obtained through treaties with the United States government. The Tribe claims that land sales to individual settlers were invalid under the Indian Non-Intercourse Act. 25 U.S.C. § 177.

Ottawa Tribe of Okla. v. Speck, 447 F.Supp.2d 835 (N.D. Ohio 2006).

Background: Indian tribe brought declaratory judgment action against state official seeking declaration of its hunting and fishing rights. State official moved to dismiss.

Holding: The District Court, Zouhary, J., held that:
(1) tribe suffered injury-in-fact, as required for standing;
(2) narrow exception to *Ex parte Young* doctrine for certain suits in nature of quiet title actions did not apply to present Eleventh Amendment bar to suit;
(3) United States was not an indispensable party to action;
(4) statute of limitations in Indian Claims Commission Act for claims against United States did not apply;
(5) neither issue nor claims preclusion applied to bar action; and

(6) resolution of issues of laches and abandonment was premature at pleading stage.
Motion denied.

Oklahoma

Ponca Tribe of Indians of Oklahoma v. Continental Carbon Co., 2007 WL 54835 (W.D.Okla. 2007).
MEMORANDUM OPINION AND ORDER

Background: Defendants Continental Carbon Company and CCC USA Corp. ("CCC") filed the present motion seeking dismissal of Plaintiffs Amended Complaint. CCC argues the amended pleading went beyond the scope of the Court's Order permitting the Amended Complaint and that Plaintiffs have failed to state a claim for relief as to several claims raised in the First Amended Complaint. In response, Plaintiffs argue they have precisely followed the limits of the Court's Order and that CCC's Motion is without merit.

Holding: Robin J. Cauthron, United States District Judge, held that Defendants Continental Carbon Company and CCC USA Corp.'s Motion to Dismiss First Amended Complaint and to Enforce the Court's Order (Dkt. No. 239) is GRANTED IN PART. Plaintiffs' class-wide personal injury claims, wrongful death claim, and reliance on 28 U.S.C. §§ 1345 and 1362 are stricken from the Amended Complaint. Plaintiffs' claim for failure to warn and reliance on federal common law and/or tribal law or custom are dismissed. This matter shall proceed on the remaining claims.

Ponca Tribe of Indians of Oklahoma v. Continental Carbon Co., 439 F.Supp.2d 1171 (W.D.Okla. 2006).

Background: Indian tribe, and various members of tribe, brought putative class action against corporation alleging that corporation harmed its land. Corporation brought motion for judgment on the pleadings.

Holding: The District Court, Cauthron, J., held that:
(1) evidentiary materials attached to parties' briefs could be considered on motion for judgment on the pleadings;
(2) motion properly was considered under standards governing motions to dismiss for lack of jurisdiction over subject matter;
(3) federal subject matter jurisdiction could not be premised on federal corporate charter of Indian tribe;
(4) Court did not have subject matter jurisdiction over lawsuit under statute which granted states enumerated therein jurisdiction over claims involving Indians located within state;
(5) resolution passed by Indian tribal committee did not create federal question;
(6) tribe could not rely on its corporate status to establish it as citizen of state; and
(7) class action claims of Native American landowners class and medical monitoring class could be prosecuted in federal court under Class Action Fairness Act (CAFA)

without complete diversity.
Motion granted in part and denied in part.

Cohen v. Winkleman, 428 F.Supp.2d 1184 (W.D.Okla. 2006).

Background: Former college administrator sued Indian tribe and president of tribal educational institution, alleging breach of contract and claim for violation of the Indian Civil Rights Act (ICRA). Defendants filed motion to dismiss.

Holding: The District Court, Heaton, J., held that:
(1) doctrine of sovereign immunity barred breach of contract claim;
(2) administrator failed to demonstrate non-availability of a tribal forum, as was required to maintain an action in federal court against tribe under ICRA; and
(3) administrator failed to demonstrate that conflict was outside internal tribal affairs, as was required to maintain an action under ICRA.
Motion granted.

Oregon

Butler v. Lincoln County, Or., 2006 WL 2711487 (D.Or. 2006).

Background: Plaintiff has filed an amended complaint alleging that defendants violated his civil rights as guaranteed by 42 U.S.C. § 1983 and the Protection of Religious Exercise in Land Use and by Institutionalized Persons Act, 42 U.S.C. § 2000cc, when they refused to allow him to possess an eagle feather in his cell for use in personal exercise of his religious beliefs. Presently before the court is defendants' motion for summary judgment. Plaintiff, pending his trial on various criminal charges, was held in pretrial detention in the Lincoln County Jail. On September 1, 2003, plaintiff, who is of Native American heritage and an enrolled member of the Siletz Tribe, sent a kyte to "whom it may concern" in which he requested to be allowed to possess an eagle feather, and for staff to be informed that they were not to touch the feather. That request was denied later that day by Sandra Barker. Plaintiff then sent another kyte, a "Step II Grievance," to Shift Sergeant Ty Rae Risewick, renewing the request. Risewick also denied the request, noting that he would be allowed to use a feather during ceremonies but could not keep it in his cell.

Holding: Magistrate J. Coffin, ordered that the Defendants' motion for summary judgment should be granted and this case should be dismissed.

Pennsylvania

Rhode Island

South Carolina

South Dakota

Yankton Sioux Tribe v. Gaffey, 2006 WL 3703274 (D.S.D. 2006).
MEMORANDUM OPINION AND ORDER

This case is on remand from the Eighth Circuit Court of Appeals. The Court finds that it must be decided on remand what remains of the Yankton Sioux Reservation following the diminishment of the reservation pursuant to the Supreme Court's decision in *South Dakota v. Yankton Sioux Tribe,* 522 U.S. 329, 358, 118 S.Ct. 789, 139 L.Ed.2d 773 (1998) (*"Yankton Sioux Tribe"*) and the Eighth Circuit's decision in *Yankton Sioux Tribe v. Gaffey,* 188 F.3d 1010, 1030 (8th Cir.1999). The Supreme Court held that the Yankton Sioux Reservation was diminished by the land ceded to the United States by the Yankton Sioux Tribe at the end of the nineteenth century.

Cottier v. City of Martin, 2006 WL 3499804 (D.S.D. 2006).

Background: Action was brought on behalf of Native American voters challenging the configuration of city wards as violative of section two of Voting Rights Act (VRA) and the Fourteenth and Fifteenth Amendments. The United States District Court for the District of South Dakota, Karen Schreier, J., denied relief, and voters appealed. The Court of Appeals, 445 F.3d 1113, reversed and remanded with directions.

Holding: On remand, the District Court, Karen E. Schreier, Chief District Judge, held that ordinance fragmenting Indian voters into three wards impermissibly diluted the Indian vote, in violation of section two of the Voting Rights Act (VRA).
Ordered accordingly.

Plains Commerce Bank v. Long Family Land and Cattle Co., Inc., 440 F.Supp.2d 1070 (D.S.D. 2006).

Background: Bank filed action against Indian-controlled ranching company and its owners seeking declaratory judgment that tribal court had lacked subject matter jurisdiction and deprived bank of due process in tribal court's previous adjudication of dispute between bank and company over agreements concerning loans and company's lease of and option to purchase bank's land. Both parties moved for summary judgment.

Holding: The District Court, Kornmann, J., held that:
(1) bank had consensual relationship with company;
(2) alleged tortious conduct of bank had direct nexus with its relationship with company;
(3) bank's choice to seek relief in tribal court supported tribal court's jurisdiction; and
(4) bank was not deprived of due process.
Bank's motion denied, company's motion granted.

Yankton Sioux Tribe v. Kempthorne, 442 F.Supp. 2d 774 (D.S.D. 2006).

Background: Indian tribes and tribal schools sought preliminary injunction, pending resolution of their petition for a writ of mandamus and request for declaratory relief, to prevent closure, by the Department of the Interior, of several Education Line Offices operated by the Office of Indian Education Programs.

Holding: The District Court, Schreier, Chief Judge, held that:
(1) plan to restructure Education Line Offices threatened Indian tribes' rights to meaningful consultation before taking action affecting Indian schools;
(2) any harm to DOI arising out of proposed injunction was minimal when compared to tribes' irreparable loss of procedural rights;
(3) tribes were likely to succeed on merits of claim that failure to inform them that proposed restructuring could result in loss of funding to Indian schools violated Bureau of Indian Affairs' (BIA) government-to- government consultation policy and federal statute requiring consultation with tribes before making changes in Indian school programs;
(4) tribes had a fair chance of succeeding on merits of claim that proposed restructuring violated DOI's rural preference policy for location of offices; and
(5) public interest favored meaningful consultation between government and Indian tribes regarding policy actions that affected Indian education.
Motion granted.

Tennessee

U.S. v. Winddancer, 435 F.Supp.2d 687 (M.D. Tenn. 2006).

Background: Defendant, indicted on six counts relating to possessing and bartering eagle feathers and feathers plucked from other migratory birds, moved to dismiss.

Holding: The District Court, Trauger, J., held that:
(1) defendant lacked standing to challenge the constitutionality of regulations implementing the Migratory Bird Treaty Act (MBTA);
(2) defendant's rights under the Religious Freedom Restoration Act (RFRA) were not violated by his indictment for violating the MBTA;
(3) defendant's rights under RFRA were not violated by his indictment for, inter alia, possessing feathers of eagles in violation of the Bald and Golden Eagle Protection Act (BGEPA);
(4) defendant who engaged in feather-for-feather exchanges was properly indicted for bartering migratory bird feathers in violation of MBTA.
Motion denied.

Texas

Odneal v. Dretke, 435 F.Supp.2d 608 (S.D.Tex. 2006).

Background: Inmate, a Native American, sued the Director of the Chaplaincy Department of the Texas Department of Criminal Justice (TDCJ) and a unit chaplain under § 1983, claiming that defendants had interfered with the practice of his religion.

Holding: On a defense motion for summary judgment, the District Court, Owsley, United States Magistrate Judge, held that:
(1) defendants did not act with discriminatory purpose in failing to provide the inmate with more religious ceremonies;
(2) inmate's First Amendment right to exercise his religious beliefs was not violated;
(3) inmate's rights under the Religious Land Use and Institutionalized Persons Act (RLUIPA) were not violated.
Motion granted.

Utah

Stevens v. McClellen, 2006 WL 2709687 (D.Utah 2006).
ORDER ADOPTING REPORT AND RECOMMENDATION

Background: Plaintiff Dale Stevens filed this action on March 14, 2006. Defendant Clark A. McCellen promptly filed a counterclaim and moved to dismiss Mr. Stevens's claims. On March 24, 2006, the court referred this case to United States Magistrate Judge Paul M. Warner under 28 U.S.C. § 636(b)(1)(B). Judge Warner concluded that Mr. Stevens and the Wampanoag Nation are not entitled to sovereign immunity.

Holding: J. Campbell, held that the neither the tribe nor the plaintiff were entitled to sovereign immunity. Mr. Stevens has not provided any information that indicates that the Wampanoag Nation is federally recognized Indian tribe and, therefore, neither Mr. Stevens nor the Wampanoag Nation can rely on the doctrine of sovereign immunity to avoid this suit.

Pelt v. State of Utah, 2006 WL 1881019 (D.Utah 2006).
Not Reported in F.Supp.2d
ORDER AND MEMORANDUM DECISION

Background: Beneficiaries of the Navajo Trust Fund filed this class action suit against the Fund trustee, Defendant State of Utah, seeking relief for alleged mismanagement of Fund monies. Currently, the court is faced with a single discrete issue raised by the parties' most recent cross-motions for partial summary judgment.
The issue concerns the Utah Navajo Development Council and its predecessors (UNDC), which received and spent millions in Fund monies granted by Utah over a period of more than twenty years. There is no dispute that Utah, as trustee, has some duty to account to the beneficiaries regarding the money given to UNDC. But the parties dispute whether

Utah's duty to account to the beneficiaries includes not only the duty to account for Fund money *granted* to UNDC but also Fund money *spent* by UNDC. As part of its defense, Utah asserts that UNDC was a representative of the beneficiaries and so Utah's trustee obligations (including provision of an accounting) ended at the point money was distributed to UNDC for "approved purposes."

Holding: Tena Campbell, District Judge, held 1. Plaintiffs' Partial Summary Judgment Motion re: Utah's Duty to Account for Funds Disbursed To, and Spent By, UNDC, is GRANTED to the extent that the court holds that Utah has a duty to account for money disbursed to and spent by the UNDC. The court does not decide the issue of whether Utah has already fulfilled its duty to account through its production of documents during this litigation. That issue will be addressed in a future order. If further briefs or hearings are required, the parties will be notified.
2. Defendant's Motion to Renew Pleadings for Partial Summary Judgment is DENIED.

Pelt v. Utah, 2006 WL 1148818 (D.Utah 2006).
Not Reported in F.Supp.2d
AMENDED ORDER AND MEMORANDUM DECISION

Background: In this class action brought by beneficiaries of the Navajo Trust Fund, the court is currently faced with the issue of the scope of an equitable accounting that the Plaintiffs seek from the Fund trustee, Defendant State of Utah. The parties agree that an accounting is due, but they disagree on the years and extent of the accounting. In particular, the State of Utah raises the affirmative defense of res judicata (*i.e.,* claim preclusion), contending that a significant portion of the Plaintiffs' accounting claim is barred by the preclusive effect of three earlier cases addressing Utah's management of the Fund: *Sakezzie v. Utah State Indian Affairs Commission* (*"Sakezzie"*) (filed in 1961), *Jim v. State of Utah* (*"Jim"*) (filed in 1970), and *Bigman v. Utah Navajo Development Council, Inc.* (*"Bigman"*) (filed in 1977).

Holding: J. Campbell, for the foregoing reasons, the court ORDERS as follows:
1. Plaintiffs' Summary Judgment Motion re: Adequacy of Representation and Sufficiency of Prior Accountings is GRANTED IN PART AND DENIED IN PART as follows:
a. Plaintiffs' Summary Judgment Motion re: Adequacy of Representation is GRANTED. Plaintiffs are not precluded by the judgments in *Sakezzie, Jim,* or *Bigman.*
b. Plaintiffs' Summary Judgment Motion re: Sufficiency of Prior Accountings is DENIED AS MOOT.
2. Defendant's Objection and Motion to Exclude or Limit Plaintiffs' Purported Expert Testimony (Docket No. 982) is DENIED AS MOOT.
3. Plaintiffs' Motion to Strike Declarations (Blake & Larson) (Docket No. 991) is DENIED AS MOOT.
4. Plaintiffs' Objection and Motion to Limit Testimony of Harold Christensen (Docket No. 995) is DENIED AS MOOT.
5. The court finds that (a) this order involves a controlling question of law, (b) that a substantial ground for difference of opinion concerning the question of law exists, and (c) an immediate appeal would materially advance the disposition of the litigation. (*See* Mar.

14, 2006 Order & Mem. Decision (Docket No. 1035); Jan. 11, 2006 Order & Mem. Decision (Docket No. 1017).) Accordingly, under 28 U.S.C. § 1292(b), the court certifies this order for interlocutory appeal to the United States Court of Appeals for the Tenth Circuit.

Richmond v. Wampanoag Tribal Court Cases, 431 F.Supp.2d 1159 (D.Utah 2006).

Following dismissal of his petition for a writ of mandamus, plaintiff, proceeding pro se, moved for leave to amend.

The District Court, Jenkins, Senior District Judge, held that proposed amendment would be futile.
Motion denied.

Burbank v. U.S. District Court, 2006 WL 1049101 (D.Utah 2006).
Not Reported in F.Supp.2d

Background: This matter comes before the Court on *Uintah County Parties' Motion for Partial Summary Judgment RE: Indian Status,* filed December 15, 2005 (*Doc.90*) ("Motion"). The question before the Court is whether the Wampanoag Nation, Tribe of Grayhead, Wolf Band ("Group") and its members are a federally recognized Indian tribe and, as such, are exempt from the laws of the State of Utah.

Holding: The Court, Conway, Senior J., having considered the Motion, the parties' submissions, the relevant authority, and being otherwise fully advised, finds the Group and its members have shown no entitlement to such recognition. Accordingly, the Motion is granted.

Bullcreek v. U.S. Dept. of Interior, 426 F.Supp.2d 1221 (D.Utah 2006).

Background: Members of Indian tribe brought action challenging Bureau of Indian Affairs' (BIA) conditional approval of proposed lease of tribal land for storage of spent nuclear fuel. Government moved to dismiss.

Holding: The District Court, Kimball, J., held that:
(1) action was not ripe for adjudication;
(2) members of tribe lacked standing to challenge BIA's conditional approval of proposed lease; and
(3) members of tribe lacked standing to challenge BIA's recognition of tribal leadership.
Motion granted.

Vermont

Virginia

Washington

U.S. v. State of Washington, 2007 WL 30869 (W.D. Wash. 2007).
ORDER ON MOTIONS FOR SUMMARY JUDGMENT

Background: This sub-proceeding was initiated as a Request for Determination ("Request") filed by the Upper Skagit Indian Tribe ("Upper Skagit"), asking the Court to determine that certain areas known as Saratoga Passage and Skagit Bay, on the eastern side of Whidbey Island, are not within the usual and accustomed fishing area ("U & A") of the Suquamish Indian Tribe ("Suquamish") as it was defined in *U.S. v. Washington*, 459 F.Supp. 1020 (1978). A Cross-Request for Determination was filed, with leave of Court, by the Swinomish Indian Tribal Community ("Swinomish"), essentially joining in the Request of the Upper Skagit. [FN1] The Suquamish filed an Answer opposing both Requests. The matter is now before the Court for consideration of summary judgment motions filed by the three parties. Oral argument was heard on December 12, 2006, and the arguments and memoranda of the parties, and other Tribes who appeared as interested parties, have been fully considered. As the three motions argue the same points and issues, they shall be discussed together.

Holding: The Court, Aricardos S. Martinez, United States District Judge, thus finds that there are no factual issues in dispute, and that the requesting parties are entitled to judgment as a matter of law on their claim that the Suquamish U & A does not include Saratoga Passage or Skagit Bay. Accordingly, the motions for summary judgment by the Upper Skagit and Swinomish are GRANTED, and the Suquamish motion for summary judgment is DENIED. As no issues remain to be determined, the trial date of February 26 is now STRICKEN.
The Clerk shall enter judgment in favor of the Upper Skagit and Swinomish, and close the file.

U.S. v. Washington, 2006 WL 2375600 (W.D.Wash. 2006).
ORDER ON MOTION TO COMPEL

Background: This matter is before the Court for consideration of a motion to compel by the Samish Indian Nation ("Samish"). The Samish seek to compel the Swinomish Indian Tribal Community ("Swinomish") and Lummi Nation ("Lummi") to produce certain documents generated during settlement proceedings. The Swinomish and Lummi have opposed the motion. The relevant facts are known to the parties and need not be reviewed here.

Holding: Ricardo S. Martinez, District Judge, granted motion.

Washington D.C.

Vann v. Kempthorne, 2006 WL 3720376 (D.D.C. 2006).

Background: Descendants of so-called Freedmen, former slaves of Cherokees or free blacks who intermarried with Cherokees, brought suit against Department of Interior and its secretary, seeking declaratory judgment that Cherokee Nation elections were invalid due to their exclusion and injunction barring secretary from recognizing election results. Cherokee Nation was granted limited intervention for purpose of challenging jurisdiction. Cherokee Nation moved to dismiss, and Freedmen moved for leave to file amended complaint adding Nation and certain officials.

Holdings: The District Court, Kennedy, J., held that:
(1) Cherokee Nation was necessary party to be joined if feasible;
(2) Cherokee Nation's sovereign immunity from suit in federal court had been abrogated by Congress with respect to rights of Freedmen;
(3) Secretary of Interior's recognition of the Cherokee leaders elected in tribal elections was a final agency action, for purposes of judicial review pursuant to Administrative Procedure Act (APA);
(4) Secretary's failure to act on obligation to review election procedures amounted to final agency action reviewable under APA;
(5) exhaustion of tribal remedies was not required;
(6) tribal officials were not protected by sovereign immunity from suit for violation of Thirteenth Amendment; and
(7) immunity was not abrogated as to claims under Indian Civil Rights Act and Cherokee Constitution.
Motions granted in part and denied in part.

Gasplus, L.L.C. v. U.S. Dept. of Interior, 2006 WL 3531421 (D.D.C. 2006).

Background: Gasoline distribution company brought *Bivens* action against Department of the Interior (DOI) and two Bureau of Indian Affairs (BIA) officials, alleging that its due process rights were violated when officials invalidated company's agreement to manage a gasoline distribution business for Indian tribe. DOI moved to dismiss as to the individual officials.

Holding: The District Court, Rosemary M. Collyer, J., held that
(1) Court lacked personal jurisdiction over BIA Regional Director, and
(2) allegation that Acting Assistant Secretary for Indian Affairs deprived company of due process when she upheld, on appeal, decision invalidating company's agreement to manage a gasoline distribution business for Indian tribe, failed to state a claim.
Motion granted.

Muwekma Ohlone Tribe v. Kempthorne, 452 F.Supp. 2d 105 (D.D.C. 2006).

Background: Indian tribe, alleging it had previously been recognized by the United States Government before its status as a recognized tribe was dropped without any formal withdrawal process, brought action alleging that it was deprived of its rights under the Equal Protection Clause and the Administrative Procedure Act (APA), in its subsequent

application for reaffirmation of its federal recognition status, when the Department of the Interior (DOI) required it to go through the full recognition procedure even though two similarly situated tribes had not been subjected to that requirement. Parties cross-moved for summary judgment.

Holding: The District Court, Walton, J., held that remand for supplementation of the administrative record was required.

Pro-Football, Inc. v. Harjo, 2006 WL 2092637 (D.D.C. 2006).
MEMORANDUM OPINION

Background: This case arises from the petitions of seven Native Americans to cancel the registrations of six trademarks used by the Washington Redskins, a longtime professional football franchise, and owned by Plaintiff Pro-Football, Inc. Following a limited remand of this Court's September 30, 2006 Memorandum Opinion and Order, this Court is to evaluate whether the doctrine of laches bars the claim of Mr. Mateo Romero, the youngest of the seven Native American Defendants in this case. Allegedly, pursuant to the D.C. Circuit's limited remand in this case, the Native American Defendants have filed a Motion to Conduct Limited Discovery Related to Laches and Memorandum in Support Thereof, to which Pro-Football has filed an Opposition.
Pro-Football, Plaintiff in the current action and Respondent in the trademark action below before the Trial Trademark and Appeal Board, holds six trademarks containing the word, or a derivative of the word, "redskin(s)" that are registered with the Patent and Trademark Office ("PTO"). In September 1992, seven Native Americans--Suzan Shown Harjo, Raymond D. Apodaca, Vine Deloria, Jr., Norbert S. Hill, Jr., Mateo Romero, William A. Means, and Manley A. Begay, Jr.--collectively petitioned the TTAB to cancel the six trademarks, arguing that the use of the word "redskin(s)" is "scandalous," "may ... disparage" Native Americans, and may cast Native Americans into "contempt, or disrepute" in violation of Section 2(a) of the Lanham Trademark Act of 1946 ("Lanham Act" or "Act").

Holding: Colleen Kollar-Kotelly, District Judge, held upon a searching examination of the parties' filings, the D.C. Circuit's explicit instructions, the relevant case law, and the entire record herein, the Court-- pursuant to its considered discretion--shall deny the Native American Defendants' Motion to Conduct Limited Discovery.

Crow Tribe of Indians v. Norton, 2006 WL 908048 (D.D.C. 2006).
Not Reported in F.Supp.2d
MEMORANDUM OPINION

Background: On February 13, 2002, plaintiff Crow Tribe of Indians filed a complaint requesting: (1) a declaratory judgment that defendants breached their fiduciary duties to plaintiff by failing to provide plaintiff with an accounting of plaintiff's trust funds; (2) an injunction compelling an accounting "of all the Tribe's trust funds"; (3) an award of attorney's fees and costs; and (4) "such other relief as may be just and equitable."

This matter comes before the Court on the motion [63] to intervene filed by Beverly Greybull Huber, Nelson J. Wallace, Nora Greybull, and Mary E. Wallace, and on Frances Harris' motion [62] to intervene as of right under Fed.R.Civ.P. 24.

Holding: The Court, Lamberth, J., held based upon consideration of the parties' filings, the applicable law, and the facts of this case, that both motions to intervene will be DENIED.

California Valley Miwok Tribe v. U.S., 424 F.Supp.2d 197 (D.D.C. 2006).

Background: Indian tribe brought action alleging interference in its internal affairs based on the refusal of the Bureau of Indian Affairs (BIA) to recognize it as an organized tribe. Government moved to dismiss.

Holding: The District Court, Robertson, J., held that complaint alleging that BIA, in refusing to accept tribal constitution, violated provision of Indian Reorganization Act (IRA) which allowed tribes to adopt governing documents using their own procedures, failed to state a claim.
Motion granted.

Keepseagle v. Johanns, 236 F.R.D. 1 (D.D.C. 2006).

Background: Native American farmers and ranchers brought class action against Department of Agriculture (USDA), alleging, inter alia, race discrimination in processing of their applications for USDA loans and benefits, in violation of Equal Credit Opportunity Act (ECOA). Following the District Court's class certification as to plaintiffs' declaratory and injunctive claims, 2001 WL 34676944, Sullivan, J., involuntary class members sought leave to opt out on grounds of their being entitled to seek administrative relief unavailable to remainder of class.

Holding: The District Court held that grant of leave to opt out was warranted, since dissident members had demonstrated claims sufficiently distinct from those of class as a whole.
Motion granted.

West Virginia

Wisconsin

Ramirez v. Potawatomi Bingo Casino, 2006 WL 3327142 (E.D.Wis. 2006).
DECISION AND ORDER

Background: Plaintiff Justine Ramirez, the daughter of Kathleen Ramirez, a deceased former employee of defendant Forest County Potawatomi Community, doing business as

Potawatomi Bingo Casino ("Potawatomi"), alleges that her mother participated in several employee benefit plans established by Potawatomi and designated her as the beneficiary. Plaintiff further alleges that defendant UNUM Life Insurance Company of America ("UNUM") underwrote two of the plans, and defendant Standard Insurance Company ("Standard") underwrote one.

Holding: Lynn Adelman, District Judge, ORDERED the Potawatomi's motion to dismiss be DENIED IN PART AND GRANTED IN PART as stated above.

Hastings v. Marciulionis, 434 F.Supp.2d 585 (W.D.Wis. 2006).

Background: State inmate brought action alleging that his First Amendment right to practice his Native American religion was violated while he was on supervised probation in an alcohol treatment program. Parties cross-moved for summary judgment.

Holding: The District Court, Shabaz, J., held that
(1) probationer's First Amendment right to practice his Native American religion was not violated when he was not allowed to go to church and a Native American Pow Wow during initial 14-day restriction and evaluation period, and
(2) probationer's First Amendment right was not violated when he was not allowed to keep his eagle feather at program.
Judgment for defendants.

Oneida Tribe of Indians of Wisconsin v. Harms, 2006 WL 1308064 (E.D.Wis. 2006).
Not Reported in F.Supp.2d

ORDER
WILLIAM C. GRIESBACH, District Judge.
The Oneida Tribe of Wisconsin sued Lester Harms for trademark, unfair competition, and cybersquatting offenses. Harms' counterclaims were previously dismissed under Fed.R.Civ.P. 12(b)(6). The Tribe now brings a motion for summary judgment. For the reasons set forth below, the motion will be granted.

Hawk v. Oneida Tribe of Indians Central Accounting Dept., 2006 WL 1308074 (E.D.Wis. 2006).
Not Reported in F.Supp.2d

Background: Plaintiff has filed a complaint against the Oneida Tribe's Central Accounting Department, alleging that it has unlawfully garnished his per capita payments. I allowed the plaintiff to proceed without payment of the filing fee. The Tribe has now filed a motion to dismiss, claiming that Hawk's complaint fails to state a claim and further that the Tribe enjoys sovereign immunity from suit.

Holding: William C. Griesbach, District Judge, found that Indian tribes possess powers of self-government limited only by Congress. As the Supreme Court has summarized the law. The complaint is dismissed. The plaintiff's renewed request for appointment of counsel is denied as moot.

Wyoming

U.S. v. Friday, 2006 WL 3592952 (D.Wyo. 2006).
ORDER ON MOTION TO DISMISS INFORMATION

Background: On November 15, 2005, Winslow W. Friday, Defendant, was charged by Information with the unlawful taking of one bald eagle without having previously procured permission to do so from the Secretary of the Interior, a misdemeanor in violation of the Bald and Golden Eagle Protection Act (BGEPA), 16 U.S.C. § 668. In support of his motion to dismiss, Defendant contends that the charge violates the free exercise of religion protected under the First Amendment, as well as the Religious Freedom Restoration Act, 42 U.S.C. §§ 2000bb et seq. This matter comes before the Court on the Defendant's Motion to Dismiss Information.

Holding: Downes, J., It is not using the least restrictive means which may further the conservation of eagles. Accordingly, the charge against Mr. Friday must be dismissed.

Marathon Oil Co. v. Johnston, 2004 WL 4960751 (D.Wyo. 2004).
ORDER GRANTING MOTION TO DISMISS

JOHNSON, J.
Background: Mr. Johnston is a resident of Hot Springs County, Wyoming. Plaintiff Marathon Oil Company is an Ohio corporation authorized to do business in the State of Wyoming and on the Wind River Indian Reservation. Marathon Oil is engaged in the exploration and development of oil and gas properties on the Wind River Indian Reservation and was the owner of the working interest and designated operator of the Tribal C-23 well pursuant to the terms of Bureau of Indian Affairs Lease # 14-20-0258-2192. On April 22, 2000, while an employee of R & S Well Service, Marathon Oil's agent and representative, Mr. Johnston was injured on the C-23 location, a Marathon Oil lease site, on the Wind River Reservation when a pin worked out of the bales on the traveling block and subsequently fell on him.

IV. Federal Court of Claims

Rosebud Sioux Tribe v. U.S., 2007 WL 60844 (Fed. Cl. 2007).

Background: Indian tribe brought suit against the United States alleging that the Secretary of Interior breached fiduciary duties owed to the tribe in the handling of various lawsuits which arose out of government-approved lease of tribal lands for the construction and operation of pork production facilities. Defendant moved for judgment on the pleadings.

Holding: The Court of Federal Claims, Merow, Senior Judge, held that:

(1) factual issues regarding accrual precluded summary dismissal on statute of limitation grounds;
(2) suit was not an impermissible collateral attack on consent judgment which settled lessee's breach of lease claims; and
(3) tribe stated a viable cause of action for breach of fiduciary duty.
Motion granted in part and denied in part.

Hayes v. U.S., 73 Fed. Cl. 724 (2006).

Background: Son of deceased Indian allottee brought suit against the United States alleging that the Bureau of Indian Affairs (BIA) improperly stopped oil and gas royalty payments to allottee in order to pay overdue state and federal taxes on the property of allottee Defendant moved to dismiss.

Holding: The Court of Federal Claims, Hewitt, J., held that:
(1) for purposes of statute of limitations, claim accrued on date BIA official issued authorization of payment letters that revoked direct payment of royalties to allottee and ordered oil and gas lessees to submit the payments to the BIA Royalty Management Program;
(2) current suit did not relate back to prior case which was dismissed without prejudice, for purpose of tolling statute of limitations; and
(3) continuing claim doctrine was not applicable to running of statute of limitations.
So ordered.

Chippewa Cree Tribe of Rocky Boy's Reservation v. U.S., 73 Fed. Cl. 154 (2006).

Background: Indian tribes brought suit against the United States seeking damages for mismanagement of judgment funds awarded by the Indian Claims Commission. The Court of Federal Claims, 69 Fed.Cl. 639, granted plaintiffs' motion for summary judgment in part. Defendant moved for reconsideration.

Holding: The Court of Federal Claims, Hewitt, J., held that per capita distribution of judgment fund awarded by the Indian Claims Commission to the Pembina Band of Chippewa Indians did not transform communal interest descendants of the Pembina Band held in tribal land ceded to the United States by treaty into individual, vested property rights, so as to preclude recognizing the per capita beneficiaries as an "identifiable group" under the Indian Tucker Act for purposes of litigating claims that the United States mismanaged the fund monies, and designating tribal plaintiffs as representatives of that group.
Motion denied.

Osage Tribe of Indians of Oklahoma v. U.S., 72 Fed. Cl. 629 (2006).

Background: Indian tribe brought suit against the United States alleging that the government violated its duty as trustee of the tribe's mineral estate by failing to collect all moneys due from tribal oil leases and to deposit and invest those moneys as required by

statute and according to the fiduciary duty owed to the tribe.

Holding: The Court of Federal Claims, Hewitt, J., held that:
(1) government breached its fiduciary duty to tribe by not collecting oil royalties based on highest "offered prices";
(2) government breach its fiduciary duty by failing to apply the highest posted price or offered price paid to producers of unregulated stripper oil to the calculation of royalty payments during months when federal price controls on the sale of crude oil were in effect;
(3) government breached its fiduciary duty by its failure to promptly deposit royalty funds depositing funds;
(4) government breached its fiduciary duty failing to prudently invest cash balances of income in excess of $25,000; and
(5) government breached its fiduciary duty by failing to obtain highest available investment yields on funds derived from royalties during the months of January 1976, May 1979, November 1980, February 1986, and July 1989.
Judgment for plaintiff.

Western Shoshone National Council v. United States, 73 Fed.Cl. 59 (2006).

Background: Governing body of the Western Shoshone Nation and Western Shoshone bands brought suit against the United States seeking declaratory judgment that judgment of the Indian Claims Commission (ICC) was not enforceable against them, or that the ICC judgment was void because of alleged due process violations. Defendant moved to dismiss.

Holding: The Court of Federal Claims, Smith, Senior Judge, held that:
(1) finality provision of the Indian Claims Commission Act (ICCA) did not bar action challenging process of the Indian Claims Commission (ICC) under the relief from judgment rule;
(2) motion for relief from ICC judgment on ground that judgment was void was untimely; and
(3) independent action instituted in Court of Federal Claims seeking relief from ICC judgment on ground of newly discovered evidence was barred by limitations and by laches.
Motion granted.

Cherokee Nation of Oklahoma v. U.S., 73 Fed. Cl. 467 (2006).

Background: Indian tribes filed suit against the United States seeking damages for the government's use and mismanagement of tribal trust resources along the Arkansas River. Settlement negotiations resulted in the Cherokee, Choctaw, and Chickasaw Nations Claims Settlement Act of 2002. Law firm which represented one of nations filed motion to intervene as plaintiff and motion for attorney fees. After intervention was granted, defendant filed motion for summary judgment. Nation filed to dismiss complaint-in-

intervention, and law firm filed cross-motion for summary judgment.

Holding: The Court of Federal Claims, Damich, Chief Judge, held that:
(1) law of the case doctrine precluded Court from revisiting ruling that it had jurisdiction over law firm's claim against the government for attorney fees under attorney fee provision of the Settlement Act, and
(2) Secretary of Interior correctly construed attorney fee provision paying only those attorney fees approved by the respective Indian Nations.
Defendant's motion granted; plaintiff's motion granted; intervenor-plaintiff's cross-motion denied.

Wolfchild v. U.S., 72 Fed. Cl. 511 (2006).

Background: Lineal descendants of Mdewakanton Sioux who were loyal to the United States during the Sioux Outbreak in Minnesota during 1862 brought suit against the United States for breach of trust originally provided for the benefit of loyal Mdewakanton. Plaintiffs filed motion for leave to amend to add additional plaintiffs.

Holding: The Court of Federal Claims, Lettow, J., held that:
(1) permissive joinder of additional lineal descendants of loyal Mdewakanton Sioux was proper under the Indian Tucker Act;
(2) As current custodian of trust property, Lower Sioux Community of Minnesota was entitled to intervene as of right; and
(3) Under statute authorizing Court of Federal Claims to summon third party to appear in suit to defend its interests, Court would issue summons to the Prairie Island, and Shakopee Indian Communities of Minnesota to appear in suit and defend their interests.
Motion granted.

Simmons v. U.S., 71 Fed.Cl. 188 (2006).

Background: Member of the Quinault Indian Nation brought suit against the United States asserting negligence on the part of the Bureau of Indian Affairs (BIA) in managing his trust property, violations of § 1983, and various tort claims. Defendant moved to dismiss, and plaintiff filed cross-motion for judgment.

Holding: The Court of Federal Claims, Smith, Sr., J., held that:
(1) plaintiff's claims based on government's failure to prevent logging operation which trespassed on his reservation allotment accrued in 1977 for purposes of six-year statute of limitations on suits against the United States in the Court of Federal Claims;
(2) Indian Trust Accounting Statute was not applicable to claim arising from alleged mismanagement of timber assets on reservation allotment; and
(3) jurisdiction was lacking over tort claims.
Defendant's motion granted; plaintiff's cross-motion denied.

Elk v. U.S., 70 Fed. Cl. 405 (2006).

Background: Member of Oglala Sioux Tribe filed suit against the United States seeking relief under the Article I clause of the Sioux Treaty of April 29, 1868, which provides that if "bad men" among the whites commit "any wrong" upon the person or property of any Sioux, the United States will reimburse the injured person for the loss sustained. Defendant filed motion to dismiss for failure to exhaust administrative remedies.

Holding: The Court of Federal Claims, Allegra, J., held that "Bad Men" clause of the Sioux Treaty does not require exhaustion of administrative remedies in the form of awaiting decision of the Department of the Interior (DOI) before bringing suit in the Court of Federal Claims.
Motion denied.

Shoshone Indian Tribe of the Wind River Reservation, Wyoming v. U.S., 71 Fed.Cl. 172 (2006).

Background: Indian tribes brought action against the United States, alleging breach of trust in mismanaging the tribes' natural resources up to the point of collection and with respect to its handling of tribal funds post-collection. Tribes moved for leave to amend petitions.

Holding: The Court of Federal Claims, Hewitt, J., held that tribes would be allowed to amend their petitions to include damages suffered by tribes prior to August 14, 1946, as proposed amendments were not facially futile on statute of limitations grounds.
Motion allowed.