

JUDICIAL UPDATE

2005 - 2006 CASE LAW ON AMERICAN INDIANS

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For purposes of this symposium, the presenter has revised the synopses.

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UNITED STATES SUPREME COURT

1. ***Wagnon v. Prairie Band Potawatomi Nation***, No. 04-631, 126 S. Ct. 676 (U.S. Dec. 6, 2005). Indian tribe brought suit for declaratory and injunctive relief, challenging imposition of Kansas motor fuel excise tax on non-Indian distributor for fuel supplied to gas station operated by tribe on reservation property. The district court, 241 F.Supp.2d 1295, granted summary judgment dismissing action. Tribe appealed. The appellate court, 379 F.3d 979, reversed. State petitioned for certiorari which was granted. The Supreme Court, Justice Thomas, held that: (1) Chickasaw categorical bar on imposition of legal incidence of state excise tax on a tribe or on tribal members for sales made inside Indian country without congressional authorization was not applicable; (2) Bracker interest-balancing test for preemption of state taxation of activity on an Indian reservation, which applies when a state asserts taxing authority over the conduct of non-Indians engaging in activity on a reservation, was not applicable; (3) tax was not invalid on theory that it was impermissibly discriminatory because the state exempted from taxation fuel sold or delivered to all other sovereigns; and (4) tax was valid and posed no affront to tribe's sovereignty. Reversed.

2. ***Gonzales v. Centro Espirita Beneficiente Uniao do Vegetal***, Docket No. 04-1084. Petition for certiorari was filed on February 10, 2005, granted on April 18, 2005, argued on November 1, 2005, and decided February 21, 2006. The Court held that the courts below did not err in determining that the Government failed to demonstrate at the preliminary injunction stage, a compelling interest in barring the Uniao do Vegetal's ("UDV") sacramental use of *hoasca*. **Holding below:** *Centro Espirita Beneficiente Uniao do Vegetal v. Ashcroft*, 389 F.3d 973, 10th Cir. (en banc). In light of Congress's implicit determination in Religious Freedom Restoration Act that harm prevented and public interest served by protecting citizen's free exercise of religion must be given controlling weight, barring government's proof, by specific evidence, that its interests are more compelling, district court did not abuse its discretion in preliminarily enjoining enforcement of Controlled Substances Act against church's use of *hoasca* (hallucinogenic tea) in religious ceremonies, based on its finding that scale tipped in church's favor given closeness of parties' evidence regarding safety of *hoasca* use and its potential for diversion.

OTHER COURTS

A. ADMINISTRATIVE LAW

3. *Filesteel v. McConnel*, No. 04-36111, 2005 WL 1843296 (9th Cir. Aug. 4, 2005). Not selected for publication in the Federal Reporter. Levi Enemy Boy appealed pro se the district court's order dismissing the action filed by Enemy Boy and Edward Filesteel, members of the Assiniboine and Gros Ventre Tribes of the Fort Belknap Indian Reservation, challenging the validity of a secretarial election, which amended the constitution and charter of the Fort Belknap Indian Community. The action was brought before the district court under the Administrative Procedures Act ("APA"), 5 U.S.C. § 706 and the Indian Reorganization Act, 25 U.S.C. § 476. The appellate court review was governed by the APA, which provides that the appellate court may not set aside the decision of the agency unless "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law." 5 U.S.C. § 706(2)(A). The appellate court found that Enemy Boy's showing was insufficient to establish that the challenged secretarial election was not conducted in accordance with the tribal constitution and applicable statutes and regulations. Affirmed.

4. *State of South Dakota v. U.S. Dept. of Interior*, No. 04-2309, ___ F.3d ___, 2005 WL 2124110 (8th Cir. Sept. 6, 2005). State, city, and county brought action for declaratory and injunctive relief against the Department of Interior ("DOI") and others, seeking to prevent the placement of a certain parcel of land into trust on behalf of Indian tribe. The district court upheld DOI's decision to take the land into trust. State appealed. The appellate court held that: (1) Indian Reorganization Act section granting DOI authority to place land in trust for benefit of Indians was not an unconstitutional delegation of legislative power; (2) DOI reasonably and appropriately evaluated the relevant factors when determining to place certain lands in trust for tribe; and (3) there was thus no need to supplement the record. Affirmed.

5. *Carcieri v. Norton*, No. 03-2647, ___ F.3d ___, 2005 WL 2216322 (1st Cir. Sept. 13, 2005). State and town challenged Secretary of the Interior's decision to accept 31-acre parcel of land into trust for benefit of Indian tribe. The district court, 290 F.Supp.2d 167, granted Secretary's motion for summary judgment, and appeal was taken. The appellate court held that: (1) federally recognized tribe was entitled to benefits of Indian Reorganization Act, even if it was not recognized and under federal jurisdiction on date of Act's enactment; (2) Rhode Island Indian Claims Settlement Act did not impair tribe's ability to seek trust acquisition of lands that it acquired by purchase with non-settlement funds; (3) Settlement Act did not prohibit Secretary from removing lands taken into trust from State's civil and criminal jurisdiction; and (4) Bureau of Indian Affairs finding that parcel of land acquired by tribe qualified for trust acquisition was not arbitrary or capricious. Affirmed.

6. *Thompson v. U.S. Dept. of Interior*, No. 4:05cv00044-BLW, 2005 WL 2367537 (D. Idaho Sept. 27, 2005). Plaintiffs filed an action seeking judicial review of the Bureau of Indian Affairs' ("BIA") decision to cancel two leases of Indian trust land. The BIA cancelled the leases on the ground that Thompson illegally subleased portions of the leased land. The Indian Board of Indian Appeals affirmed the BIA decision concluding that the leases required the Secretary's written approval and that oral approval was insufficient. Plaintiffs challenged the

7. ***State of South Dakota v. U.S. Dept. of Interior***, No. CIV 04-4073-KES, ___ F. Supp. 2d ___, 2005 WL 3115839 (D.S.D. Nov. 18, 2005). State of South Dakota and county brought action for declaratory and injunctive relief against decision of the Department of the Interior (“DOI”) to take purchased land into trust for Indian tribe. State and county moved for summary judgment. The district court held that: (1) section of Indian Reorganization Act which authorized DOI to take land into trust for Indian tribe was not an unconstitutional delegation of Congressional power; (2) DOI had rational basis for decision to take parcel of land into trust for Indian tribe; (3) Bureau of Indian Affairs’ (“BIA”) Regional Director was not biased due to structural bias of BIA in favor of Indians. Motion denied, and judgment for defendants.

8. ***Clement v. Four Winds Tribe-Louisiana***, 921 So.2d 193, Docket No. 05-652 (La. Ct. App. Dec. 30, 2005). Members of Indian tribe brought quo warranto action against persons purporting to be tribe’s governing body. After a bench trial, the district court removed such persons from office, appointed an interim board of directors, and ordered a new election. After election was held, same tribe members filed declaratory judgment action seeking to have the election results declared null and void due to irregularities in the process. After a bench trial, the district court upheld the election. Tribe members appealed both trial court judgments. The appellate court held that: (1) tribe members acquiesced in trial court’s original judgment, and (2) tribe members failed to establish that new election was rendered invalid by fraud or irregularities. Affirmed.

9. ***Fort Hall Landowners Alliance, Inc. v. Bureau of Indian Affairs***, No. CV-99-052-E-BLW, ___ F. Supp. 2d ___, 2006 WL 27688 (D. Idaho Jan. 5, 2006). Plaintiffs, members of the Shoshone-Bannock Tribes residing on the Fort Hall Reservation, own undivided interests in allotment lands on the Reservation. Plaintiffs initially brought suit to compel the Government to turn over information, claiming entitlement to the information under the Freedom of Information Act, and claiming that the Government breached its trust relationship with the Tribe by withholding the information. The focus of the case shifted when the initial claims were dismissed and an amended complaint claimed that the Agency’s practice of disclosing plaintiffs’ names and addresses to lessees and those seeking right-of-ways was a violation of the Privacy Act, constituting a breach of the trust relationship with the tribe. Plaintiffs also moved for class certification. The court certified a class of “all owners of trust land on the Reservation who had their names, addresses, and ownership information disclosed by the defendants in violation of federal regulations and the Privacy Act.” Plaintiffs narrowed claims to the period from 1993

10. *Sac & Fox Tribe of the Mississippi In Iowa, Election Board v. Bureau of Indian Affairs*, No. 05-2106, 2006 WL 508358 (8th Cir. Mar. 3, 2006). 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 district court dismissed. Old board appealed. The appellate court held that district court lacked subject matter jurisdiction.

11. *Winifred B. French Corp. v. Pleasant Point Passamquoddy Reservation*, Docket No. Was-06-62, 896 A.2d 950 (Me. Mar. 8, 2006). Newspapers brought action against tribal reservation under the state Freedom of Access Act seeking reservation documents concerning proposed liquefied natural gas (“LNG”) facility, and seeking declaratory judgment that meetings of reservation’s governor and council must be open to the public. The superior court entered judgment in favor of reservation. Newspapers appealed. The Supreme Judicial Court held that: (1) reservation was acting in its business capacity, rather than its municipal capacity, when it entered into lease of tribal land with developer of LNG facility, and (2) public policy concerns did not require that reservation’s actions in entering into lease result in reservation being subject to requirements of Freedom of Access Act. Affirmed.

12. *California Valley Miwok Tribe v. United States*, No. CIV.A. 05-0739(JR), 424 F. Supp.2d 197 (D.D.C. March 31, 2006). 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. The district court held that complaint alleging that BIA, in refusing to accept tribal constitution, violated provision of Indian Reorganization Act which allowed tribes to adopt governing documents using their own procedures, failed to state a claim. Motion granted.

13. *Harrison v. Norton*, No. Civ. A. 05-2060(CKK), ___ F. Supp. 2d ___, 2006 WL 949905 (D.D.C. April 11, 2006). Plaintiff Harrison brought an action pro se against Defendants Gale Ann Norton, Secretary of the Interior, and Neal McCaleb, Assistant Secretary of the Interior (collectively, “Defendants”), alleging, *inter alia*, that the Department of Interior's (“DOI”) alleged issuances and denials of Certificates of Degree of Indian Blood (“CDIB”) are contrary to law, arbitrary and capricious, and in violation of the Administrative Procedure Act, 5 U.S.C. §§ 701 *et seq.* Before the court were (1) Defendants' Motion to Dismiss for Lack of Jurisdiction, Plaintiff's Opposition, Defendants' Reply, and Plaintiff's Surreply; and (2) Plaintiff's Motion for Leave to File a Second Amended Complaint and Defendant's Opposition. The appellate court found that Plaintiff's claims are all barred by the doctrine of res judicata granted Defendant's Motion to Dismiss.

14. *Governor of Kansas v. Norton*, May 9, 2006, ___ F. Supp. 2d ___, 2006 WL 1266412 (D. Kan. May 9, 2006). Governor of Kansas and several Indian tribes brought action

15. *In re Estate of Covington*, No. 04-35449, ___ F.3d ___, 2006 WL 1421316 (9th Cir. May 25, 2006). The appellate court was presented with a will contest involving a member of an Indian tribe in a Department of the Interior probate proceeding to decide whether state or federal law of evidence applies. Shortly before her death, Matilda Covington, a Colville Indian, executed a will leaving all her Indian trust allotments to her great-grandson, Brandon Austin Francis, a minor. Covington's children predeceased her and she left no property to her three living grandchildren. The will listed one of Covington's grandchildren as her personal representative for purposes of administering the estate and as a contingent beneficiary for the trust property. Staff attorneys from the Colville Tribal Legal Services ("CTLS") assisted Covington in drafting her will. Two of Covington's grandchildren contested her will alleging that she lacked testamentary capacity and was subjected to undue influence. At a Department of the Interior's ("Interior") Office of Hearings and Appeals ("OHA") hearing, testimony by the will scrivener and witnesses cast doubt on Covington's state of mind and two of Covington's relatives testified that she was unable to recognize or to speak with them in the days before she executed the will. Testimony revealed that Covington had prepared a handwritten worksheet to aid her attorney in drafting the new will and the two grandchildren sought a subpoena for all materials related to the preparation of the will. The OHA Administrative Law Judge ("ALJ") oversaw the probate of the will and issued a subpoena duces tecum to CTLS compelling production of copies of all documents relating to the preparation of the will. CTLS refused to turn over the documents, claiming that they were privileged attorney-client communications, confidential, and protected work product and the personal representative of Covington's estate refused to waive any privilege. The ALJ rejected Edmonds's claim of privilege and directed production of the relevant materials. CTLS filed a motion to quash the subpoena in the district court which granted the motion to quash on the grounds that attorney-client privilege protected the materials. Interior appealed. The appellate court found that the parties did not provide any Washington case or statute recognizing the testamentary exception and concluded that the testamentary exception is not "generally accepted" in Washington, while in contrast, under Washington law, the attorney-client privilege is "generally accepted." The court ruled that because no "generally accepted" testamentary exception applies, Covington's notes were inadmissible. Affirmed.

16. *Yankton Sioux Tribe v. Kempthorne*, No. CIV. 06-4091, 2006 WL 2021695 (D.S.D. July 14, 2006). Plaintiffs, Indian tribes and tribal grant schools, moved for a preliminary injunction to prevent the closure of several Education Line Offices operated by the Office of Indian Education Programs (“OIEP”). Defendants opposed the motion. The court granted plaintiffs' motion for a preliminary injunction.

17. *Fort Peck Housing Authority v. U.S. Dept. of Housing and Urban Dev.*, No. 05-00018-RPM-CBS, 2006 WL 2192043 (D. Colo. Aug. 1, 2006). The court issued a Memorandum Opinion and Order declaring 24 C.F.R. § 1000.318 invalid, and directing that all Mutual Help and Turnkey units owned or operated by Fort Peck Housing Authority (“FPHA”) pursuant to an Annual Contributions Contract, must be included in the formula for determining its allocation of the annual Congressional appropriation for Indian Housing Block Grants, and ordering the defendants to take such administrative action as necessary to implement the court's ruling. FPHA moved to alter or amend that judgment, or alternatively to clarify it pursuant to Rule 59(e), to grant its claim for a refund of \$513,354.00 that FPHA paid to the Department of Housing and Urban Development (“HUD”) in 2002 in partial satisfaction of claims of overpayment of the plaintiff's entitlements to block grant funds, arguing that the district court has authority pursuant to 5 U.S.C. §§ 702 and 706 and 28 U.S.C. § 2202 to order the requested monetary relief. Defendants responded contending that the district court has no authority to grant monetary relief under the Administrative Procedure Act, 5 U.S.C. §§ 701-706 (“APA”) and that the request raises a moot issue because the funds received from FPHA were distributed to other tribes as part of the distribution of funds appropriated for block grants for FY 2003. The defendants further contended that granting the request for payment would violate the Appropriations Clause in Art. I, § 9, cl. 7 of the United States Constitution. Finally, HUD argued that plaintiff has an adequate remedy with the meaning of 5 U.S.C. § 704 in the Court of Federal Claims. The court found that the mootness argument was dispositive of the motion, that the relief requested is not an available remedy under the APA because it constitutes money damages contrary to the restriction in 5 U.S.C. § 702 and denied plaintiff's Rule 59(e) motion.

B. CHILD WELFARE (“ICWA”)

18. *In re the Children of J.L.W. and P.M.H.*, No. A05-20, 2005 WL 1804833 (Minn. Ct. App. Aug. 2, 2005). On appeal, appellant–father argued that the district court lacked sufficient evidence to terminate his parental rights. Specifically, he argued that the district court erred by (1) erroneously considering his incarceration status in determining that he had abandoned his children; (2) determining he had refused to comply with his parental duties; (3) determining that he was palpably unfit to parent; (4) finding that he exposed a child to egregious harm; and (5) determining that the children were neglected and in foster care. Appellant further argued that the district court erred in concluding that the county had provided active efforts, as required by the Indian Child Welfare Act, to reunify the family. Because the district court had sufficient evidence to terminate appellant's parental rights and because the county's efforts to unify the family were futile, the appellate court affirmed.

19. *In re Joshua S.*, No. B170343, 2005 WL 1941324 (Cal. Ct. App. Aug. 15, 2005). Children appealed from order of the superior court terminating dependency jurisdiction after their indigent maternal grandmother with whom they lived on a Canadian Indian reservation was appointed their legal guardian. The appellate court, 131 Cal. Rptr. 2d 656, reversed and remanded, finding that juvenile court abused its discretion by terminating jurisdiction without considering whether termination was in children's best interests. Following remand, the superior court, No. CK23643, again terminated jurisdiction. Children again appealed. The appellate court held that: (1) state funding for children was available, should placement be modified from guardianship to long-term foster care, and (2) termination of dependency jurisdiction was abuse of discretion. Reversed with directions.

20. *In re Alexis H.*, No. B177126, 33 Cal. Rptr. 3d 242, (Cal. Ct. App. Aug. 22, 2005). County department of children and family services filed dependency petition based on mother's failure to protect children and father's failure to care for children due to his being in prison. The superior court declared children to be dependents, placed them with mother, and ordered provision of family reunification services. Father appealed. The appellate court held that: (1) any deficiency in compliance with notice provisions of Indian Child Welfare Act was harmless error, and (2) substantial evidence supported assumption of dependency jurisdiction. Affirmed.

21. *Sitton v. Native Village of Northway*, 2005 WL 2704992 (D. Alaska Oct. 13, 2005). Plaintiff Sitton is the mother of Heather Nichole Felix and Felix is the father. Felix and Sitton have never been married. Felix is a member of the defendant Native Village of Northway tribe and enrolled the child in the tribe. Sitton is not a member. The Tribal Court became involved in a custody dispute between the child's parents and entered a custody order under circumstances which suggested that the Tribal Court had no basis for personal jurisdiction over Sitton, from whose custody Heather Nichole was taken. The Tribal Court later effected an emergency, temporary change of custody for Heather Nichole in favor of her paternal grandmother, but in further proceedings custody of the child was returned to her father. Sitton then filed actions in federal and state superior court for custody of the child. Defendants moved to dismiss the second amended complaint. The court granted defendants' motion to dismiss.

22. *In re Adoption of Sara J.*, Nos. S-11301, S-11312, 2005 WL 3008780 (Alaska Nov. 10, 2005). Non-Native woman petitioned to adopt three Native children who were siblings. The superior court, finding that good cause existed to deviate from the preferred placements mandated by Indian Child Welfare Act ("ICWA"), granted the petition. The Indian tribe with the most significant contacts to the children and the children's Native maternal uncle and aunt appealed. The Supreme Court held that: (1) prevailing social and cultural standards of Indian community do not govern good cause determination under ICWA, except insofar such determination raises questions about suitability of proposed preferred placement, and (2) evidence supported trial court's findings the good cause existed in this case. Affirmed.

23. *In re Cole*, No. 262918, 2005 WL 3078191 (Mich. Ct. App. Nov. 17, 2005). Respondent Cody BigJohn appeals as of right from the trial court order terminating his parental rights to the minor child, Angela Cole (d/o/b 2/6/04), under Mich. Comp. Laws 712A.19b(3)(g) (failure to provide proper care or custody). Because eligibility for Tribe membership is for the Tribe to determine, and because the trial court applied the incorrect standard in its termination of

24. *In re M.A.*, No. C049810, 2006 WL 561255 (Ct. App. N.M. Mar. 9, 2006). After Indian tribe was permitted to intervene in a child dependency proceeding, tribe petitioned to transfer proceeding from juvenile court to tribal court pursuant to Indian Child Welfare Act (“ICWA”). The superior court issued an order granting the transfer. County agency appealed. The appellate court held that Indian tribe was entitled to transfer of proceeding to tribal court under ICWA, even though tribal court had not followed statutory procedure for “reassumption” of exclusive jurisdiction. Affirmed.

25. *In re J.N.*, No. F048751, 2006 WL 894953 (Cal. Ct. App. April 7, 2006). County agency filed dependency petition for 10-year old minor based on father's failure to protect minor against emotional damage and cruelty he was suffering while he was living with his maternal grandparents. Mother had been incarcerated and had not seen minor in nine years, based on her no contest plea to willful cruelty and voluntary manslaughter in connection with the death of minor's sister, but mother had spoken to minor in weekly telephone calls while he was living with her parents. The superior court ordered reunification services and supervised visits for father, but denied services for mother and ordered that minor have no contact with her. Mother appealed. The appellate court held that: (1) once juvenile court denied reunification services with mother based on finding of detriment, decision whether to permit visitation was discretionary and could be based on best interests analysis; (2) no contact order was not an abuse of discretion; but (3) juvenile court failed to inquire as to whether mother had Indian heritage, as required by Indian Child Welfare Act. Affirmed in part, reversed in part, and remanded.

26. *B.H. v. People ex rel. X.H.*, No. 05SC686, 2006 WL 1737836, (Colo. June 26, 2006). The district court terminated mother’s parental rights to child who was found to be dependent and neglected and mother appealed. The appellate court affirmed. Review was granted. The Supreme Court held that the requirement under the Indian Child Welfare Act that potentially affected tribes be noticed was triggered during dependency proceeding. Reversed and remanded.

27. *In re A.U.*, No. D047847, 2006 WL 1900850 (Cal. Ct. App. July 12, 2006). In a child dependency proceeding, the superior court terminated mother's parental rights after appointing a guardian ad litem (“GAL”), and mother appealed. The appellate court held that: (1) appointment violated mother's due process rights; but (2) appointment was trial error that was harmless beyond a reasonable doubt; and (3) notice to Indian tribes under Indian Child Welfare Act (ICWA) was deficient. Reversed and remanded.

C. CONTRACTING

28. *Larson v. Martin*, No. A4-05-047, ___ F. Supp. 2d ___, 2005 WL 2175931 (D.N.D. Sept. 9, 2005). Subcontractor and equipment lessor brought suit against contractor, an enrolled member of Indian tribe, and surety on payment bond, alleging nonpayment in connection with highway project on Indian reservation. Contractor moved to dismiss. The

district court held that: (1) enrolled member of Indian tribe was citizen of state of North Dakota for purposes of establishing diversity jurisdiction, and (2) subcontractor was not required to exhaust tribal remedies in light of forum selection clauses in payment bond and equipment lease. Motion denied.

29. *Alaska Dept. of Health and Social Services v. Centers for Medicare and Medicaid*, No. 04-74204, ___ F.3d ___, 2005 WL 2183379 (9th Cir. Sep 12, 2005). State of Alaska petitioned for judicial review of final determination by administrator of the Centers for Medicare and Medicaid Services (“CMS”) disapproving proposed amendment to Medicaid state plan that would alter rate at which federal government reimbursed state expenditures on behalf of patients at Indian tribal health facilities. The appellate court held that: (1) Chevron framework for determining level of deference to be accorded to agency’s interpretation of statute governed review of CMS’s interpretation of statute under which plan amendment was disapproved; (2) administrator could rely on statute requiring state plan to provide methods and procedures necessary to ensure that Medicaid payments were consistent with efficiency, economy, and quality of care as independent basis for disapproving amendment; (3) administrator’s determination that amendment did not comply with statutory requirement that state plan provide methods and procedures necessary to ensure that Medicaid payments were consistent with efficiency and economy was based on permissible construction of statute, warranting Chevron deference; (4) disapproval of amendment was not arbitrary, capricious, abuse of discretion, or otherwise not in accordance with law; (5) state’s methodology for calculating prevailing charges for tribal facilities in rural locality was inconsistent with governing regulation; and (6) regulation supported administrator’s construction of regulation’s “comparable circumstances” language. Petition for review denied.

30. *Shoshone-Bannock Tribes of Fort Hall Reservation v. Leavitt*, No. CV-96-459, ___ F. Supp. 2d ___, 2005 WL 3610351 (D. Or. Dec. 13, 2005). Pursuant to Fed. R. Civ. P. 60(b)(6), plaintiffs, the Shoshone-Bannock Tribes of the Fort Hall Reservation sought relief from the judgment rendered in this case in 2002, *Shoshone-Bannock Tribes of the Fort Hall Reservation v. Thompson*, Second Amended Final Order and Judgment, Civ. No. 94-459-ST (Aug. 6, 2002). The Tribes argued that granting their motion would bring the judgment in the case into conformity with the United States Supreme Court’s recent decision in *Cherokee Nation v. Leavitt*, 542 U.S. 631, 125 S. Ct. 1172 (2005), as well as with the court’s original 1997 and 1998 opinions, all of which found the federal government’s policy of not paying tribal contractors in 1996 and 1997 to be illegal and contrary to their rights to full payment of contract support costs under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. §§ 450-450n. The Tribes also argued that granting the relief would prevent them from being the only tribal contractor, out of over 300 tribal contractors within the United States, to be barred from receiving damages for the defendants’ failure to pay full contract support costs due in those years. The court granted the Motion for Relief.

31. *R & R Deli, Inc v. Santa Ana Star Casino*, Docket No. 25,582, 128 P.3d 513 (N.M. Ct. App. Feb. 1, 2006). Commercial lessee operating restaurant located in tribal casino brought action against lessor, which was a federally chartered corporation owned by the tribe, the tribe itself, and the casino, alleging a variety of contract and tort claims arising from tribe’s decision not to renew lessee’s liquor license. Lessor, tribe, and casino filed joint motion to dismiss. The county district court dismissed the action finding that lessee’s claims were barred

32. *In re Emerald Outdoor Advertising, LLC*, No. 04-35647, 2006 WL 947759 (9th Cir. April 13, 2006). 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 Bankruptcy Court, 300 B.R. 775 (2003), entered order denying motion to assume, and appeal was taken. The district court reversed. On further appeal, the appellate court 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.

D. EMPLOYMENT

33. *Squirrel v. Bordertown Bingo*, Nos. 100,818, 101, 819, 125 P.3d 680, 2005 Okla. Civ App 95 (Okla. Civ. App. Aug. 19, 2005). Workers’ compensation claimant, who was employee of Indian tribe’s bingo hall, appealed from a decision of the Workers’ Compensation Court finding that the Workers’ Compensation Court lacked subject matter jurisdiction over claimant’s benefit claims. The appellate court held that tribe’s insurer was estopped from asserting tribe’s sovereign immunity in defense of workers’ compensation claims brought by claimant. Vacated.

34. *Johnson v. Choctaw Management/Services Enterprise*, No. 04-7123, 2005 WL 2284307 (10th Cir. Sept. 20, 2005). Not selected for publication in the Federal Reporter. Plaintiff appealed from the district court’s dismissal of her Title VII suit against Choctaw Management/Services Enterprise (“CM/SE”) for lack of subject matter jurisdiction. CM/SE is a business enterprise wholly owned by the Choctaw Nation of Oklahoma, a federally recognized Indian tribe. Johnson, who is African American, worked for CM/SE in Germany as a social worker before being terminated in August 2003. She claimed that she was terminated because of her race and sex and in retaliation for complaining of discrimination, all in violation of Title VII of the Civil Rights Act of 1964. The Equal Employment Opportunity Commission rejected Johnson’s claim on the ground that CM/SE is an “Indian Tribe owned enterprise exempt under Title VII.” Johnson then filed an action in district court asserting a single cause of action against CM/SE under Title VII. CM/SE moved to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and (6) claiming that as a wholly owned business enterprise of the Choctaw Nation, it is exempt from suit under Title VII. The district court agreed and dismissed the complaint for lack of

35. *Bradley v. Crow Tribe of Indians*, No. 04-229, 2005 WL 3338954 (Mont. Dec. 9, 2005). Tribe member, as employee, sued Indian tribe in state court for breach of employment contract. Employee moved for summary judgment. The district court initially granted summary judgment, but later dismissed case for lack of subject matter jurisdiction on tribe's motion for relief from judgment. Employee appealed. The Supreme Court reversed and remanded. On remand, the district court reentered summary judgment for the employee, and tribe's motion to alter or amend judgment was denied by operation of law. Tribe appealed. The Supreme Court held that: (1) district court was required to conduct further proceedings on the merits of the case; (2) district court erred in not granting relief from default summary judgment; (3) genuine issue of fact existed as to whether employee was properly terminated; and (4) assuming employee prevailed on issue of breach, genuine issue of fact existed as to amount of damages. Reversed and remanded.

36. *Brownell v. Salt River Pima-Maricopa Indian Community/Phoenix Cement Co. Div.*, D.C. No. CV-01-01281-MHM, 2005 WL 3429303 (9th Cir. Dec. 14, 2005). Not selected for publication in the Federal Reporter. Brownell appealed the district court's grant of summary judgment in favor of Salt River Pima-Maricopa Indian Community/Phoenix Cement Division ("Phoenix Cement") in Brownell's suit for failure to promote and constructive discharge under the Age Discrimination in Employment Act and the Arizona Civil Rights Act. The appellate court found that Brownell failed to raise a genuine issue of material fact suggesting that Phoenix Cement's proffered reasons for not promoting him – problems with his job performance and lack of people skills-were unworthy of credence and the undisputed facts established that Brownell's decision to resign was not motivated by any action by his employer, but rather by his own belief of what could possibly happen in the future; that Brownell's working conditions "were not so intolerable and discriminatory that a reasonable person would feel forced to resign." The judgment of the district court was affirmed.

37. *Escamea v. Toslek*, No. 05-C-949, 2006 WL 897812 (E.D. Wis. April 6, 2006). Plaintiff filed a pro se complaint against defendants for employment discrimination, presumably under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 *et seq.*, although the complaint does not explicitly say. The Native American plaintiff claims he was discriminated against and retaliated against when he filed various complaints and that he was also called "chief" and asked if he performed rain dances by members or employees of the Ironworkers Local 8. He also stated that he was involved in a fist fight with defendant Toslek and that he was improperly discharged from an apprenticeship program run by the Milwaukee Area Ironworking Joint Apprenticeship Committee, a group in which Toslek was involved. Defendants moved to dismiss, asserting that (1) the complaint was untimely filed; (2) Title VII applies only to employers, and that Toslek was not Escamea's employer; (3) any claims stemming from the termination of the plaintiff's apprenticeship program are not properly within the scope of this case; and (4) Plaintiff's claims were not the subject of the plaintiff's EEOC filing and were not actionable under Title VII. The court found that the bulk of the complaint was based on the termination of the plaintiff's apprenticeship, but that action cannot be attributed to either of the defendants and to the extent the complaint set forth other violations, those claims were either

38. *Picket Pin v. Burlington Northern and Santa Fe Ry. Co.*, 2006 WL 1134912 (D. Neb. April 27, 2006). Plaintiff Jordan Picket Pin, an American Indian, filed an action against his employer, the Burlington Northern and Santa Fe Railway Company (“BNSF”), alleging racial discrimination under Title VII, 42 U.S.C. § 2000e-3, and 42 U.S.C. § 1981. Specifically, Picket Pin claims he was discriminated against, suffered harassment and a hostile work environment, and was retaliated against due to his race when BNSF denied him training, increased his work assignments on two occasions, abolished one of his positions, disciplined him for sleeping on the job, and allowed “Indian chanting sounds” to occur over the BNSF work radio. Defendant BNSF filed a motion for summary judgment and a motion for leave to submit a supplemental reply brief. The appellate court granted the BNSF motion for summary judgment.

E. ENVIRONMENTAL REGULATIONS

39. *San Carlos Apache Tribe v. U.S.*, No. 03-16874, ___ F.3d ___, 2005 WL 1869138, (9th Cir. Aug. 9, 2005). San Carlos Apache Tribe sued United States, seeking to enjoin release of water from San Carlos Reservoir, and asserting claims under, *inter alia*, National Historic Preservation Act (“NHPA”). The district court, 272 F. Supp. 2d 860, granted government’s summary judgment motion, and Tribe appealed. As a matter of first impression, the appellate court held that no private right of action exists under NHPA’s provision requiring federal agency to “take into account the effect of [any] undertaking on” historic sites. Affirmed.

40. *Paper, Allied-Industrial, Chemical And Energy Workers Int’l Union v. Continental Carbon Company*, No. 036243, 428 F.3d 1285 (10th Cir. Nov. 8, 2005). Union and Indian tribe brought action against manufacturer under citizen enforcement provision of Clean Water Act (“CWA”) alleging unauthorized discharges of wastewater, misrepresentation of facts in permit application, and failure to report unauthorized discharge. The district court dismissed action in part and certified order for interlocutory appeal. Appellate court granted manufacturer’s request for interlocutory appeal. The appellate court held that: (1) issue of whether Oklahoma law was comparable to CWA, and thus whether state’s enforcement action barred CWA citizen suit which sought equitable relief, was appropriate for interlocutory review; (2) issue of whether district court properly considered evidence outside of record during motion to dismiss for failure to state claim was appropriate for interlocutory review; (3) issue of whether state was “diligently prosecuting” manufacturer for its alleged environmental abuses was not appropriate for interlocutory review; (4) district court could consider extra-pleading evidence in its resolution of motion to dismiss for lack of subject matter jurisdiction without first converting motion into one for summary judgment; (5) Oklahoma’s penalty-assessment provisions were roughly “comparable” to federal law; (6) Oklahoma’s judicial-review provisions were “comparable” to federal law; (7) Oklahoma’s public-participation provisions were “comparable” to federal law; and (8) citizen suit that sought injunctive relief could be maintained. Affirmed.

41. *Madison v. Tulalip Tribes of Wash.*, No. 03-35464, 2006 WL 92851 (9th Cir. Jan. 13, 2006). Not selected for publication in the Federal Reporter. Appellant Madison challenged the district court's grant of summary judgment disposing of his challenges to a general permit for storm water discharges the government issued to the Tulalip Tribes. Madison claimed that the government failed to conduct an environmental impact statement or environmental assessment as required by the National Environmental Protection Act in May of 2000 when the Tulalip Tribes obtained coverage under a 1998 regional National Pollution Discharge Elimination System storm water construction general permit to discharge storm water in connection with a construction project. The Tribes completed the construction project and filed a "Notice of Termination" ending coverage under the permit. Both parties argued that the case is not moot because the life span of the Tribes' construction projects is short, so the controversy is capable of repeating itself. The appellate court found that there is no longer a live controversy in the case, and there will be adequate time to challenge any future permit coverage, and dismissed the case as moot. It also vacated the decision below under the doctrine of *United States v. Munsingwear, Inc.*

42. *Adams v. Teck Cominco Alaska, Inc.*, No. A0449 CV (JWS), __ F. Supp. 2d __, 2006 WL 297303 (D. Alaska Feb. 3, 2006). Residents of village located near mouth of river on land owned by the Northwest Arctic Native Association ("NANA"), who obtain their drinking water and food from river, brought action under Clean Water Act alleging that defendant Teck which operates the Red Dog Mine violated its National Pollutant Discharge Elimination System ("NPDES") permit's daily wastewater discharge limit. Parties filed cross motions for partial summary judgment. The district court held that: (1) fact issues remained as to whether testing method employed by operator to measure turbidity was equivalent to that required by NPDES permit; (2) operator's violations of provision of NPDES permit requiring it to monitor discharge from its tailings pond were not ongoing; and (3) operator's violations of provision of NPDES permit requiring it to timely report required data were not ongoing. Motions granted in part, and denied in part.

43. *United States v. Hubenka*, No. 058006, F.3d __, 2006 WL 392119 (10th Cir. Feb. 21, 2006). Following jury trial, defendant was convicted in district court of three counts of discharging pollutants in violation of the Clean Water Act ("CWA"). Defendant appealed. The appellate court held that: (1) Army Corps of Engineers' interpretation of "waters of the United States," as used in CWA, to include tributaries of navigable waters was a permissible construction; (2) connection between tributaries and downstream navigable waters established sufficiently the "significant nexus" required for jurisdiction under CWA; (3) defendant's use of river bottom materials to construct dikes involved discharge of pollutant within CWA; (4) government was not required to prove deleterious effect on waters downstream; and (5) evidence of defendant's prior encounters with Corps was admissible to prove knowing violation of CWA. Affirmed.

F. FISHERIES, WATER, FERC, BOR

44. *United States v. Michigan*, No. 04-1864, __ F.3d __, 2005 Fed. App. 0398P, 2005 WL 2033321 (6th Cir. Aug. 24, 2005). United States brought action against state of

45. *Pacific Coast Federation of Fishermen's Associations v. U.S. Bureau of Reclamation*, No. 03 16718, 426 F.3d 1082 (9th Cir. Oct. 18, 2005). Organizations representing environmental and fisheries interests brought action against United States Bureau of Reclamation and National Marine Fisheries Service for injunctive and declaratory relief alleging violations of federal Endangered Species Act. Water users association intervened. The district court granted judgment in part for defendants. Organizations appealed. The appellate court held that reasonable and prudent alternative of providing only 57 percent of total water needs of threatened species was arbitrary and capricious. Reversed and remanded.

46. *U.S. v. Truckee-Carson Irrigation Dist.*, Nos. 04-16032, 04-16033, 429 F.3d 902 (9th Cir. Nov. 21, 2005). Indian tribe and irrigation district cross-appealed from state engineer's partial grant of tribe's application to temporarily change place and manner of use of federally reserved water rights. The district court, 309 F. Supp. 2d 1245, generally affirmed engineer's ruling, and tribe appealed. The appellate court held that tribe's right to temporarily change place and manner of use was limited to maximum amount of water allocated for prior use. Affirmed.

47. *Miccosukee Tribe of Indians of Florida v. United States*, No. 02-22778-CIV-MOORE, 420 F. Supp. 2d 1324 (S.D. Fla. March 14, 2006). Indian tribe, conservation groups, and Cape Sable seaside sparrow, an endangered species, brought action alleging, *inter alia*, that water management decisions of Army Corps of Engineers, designed to avoid jeopardy to the sparrows while carrying out Congressionally-authorized water control projects in South Florida, violated the National Environmental Policy Act ("NEPA") and the Endangered Species Act ("ESA"). Parties and intervenors cross-moved for summary judgment. The district court held that: (1) Army Corps of Engineers violated NEPA by failing to prepare a supplemental environmental impact statement for changes to water control plan; (2) Corps did not act arbitrarily or capriciously by relying on limited modeling information when making changes to water control plan; (3) Corps did not improperly delegate authority to the Institute for Environmental Conflict Resolution ("IECR") when preparing changes to water control plan; (4) IECR was not an advisory committee subject to provisions of the Federal Advisory Committee Act; and (5) intervenors' motion for declaratory judgment was moot. Motions granted in part and denied in part.

48. *In re General Adjudication of All Rights to Use Water in the Gila River System and Source*, No. WC-02-0003-IR, 134 P.3d 375 (Ariz. May 3, 2006). General stream adjudication order was entered by the Maricopa County Superior Court determining that 1935 federal court consent decree had preclusive effect on water claims by Indian tribe to additional water from the mainstem of river, but not to water from its tributaries. Tribe appealed. The Supreme Court, 212 Ariz. 64, 127 P.3d 882, affirmed and remanded. Tribe filed motion for

49. *Oregon Trollers Ass'n v. Gutierrez*, No. 05-35970, ___ F.3d ___, 2006 WL 1843408 (9th Cir. July 06, 2006). Fishermen, fishing-related businesses, and fishing organizations brought action under Magnuson-Stevens Fishery Conservation and Management Act to challenge fishery management measures adopted by National Marine Fisheries Service (“NMFS”) that substantially limited commercial and, to lesser extent, recreational fishing in Klamath Management Zone. Parties consented to final disposition by magistrate judge. The district court granted summary judgment for NMFS. Plaintiffs appealed. The appellate court held that: (1) publication of management measures in Federal Register was “action” which triggered 30 day limitations period; (2) NMFS could regard naturally spawning Klamath chinook as particular “stock” of salmon; (3) regulation implementing Pacific Plan’s 35,000 natural spawner escapement floor was based upon the best scientific information available; (4) naturally spawned Klamath chinook were managed as unit; (5) importance of fishery resources to fishing communities had been taken into account; (6) safety of human life at sea had been taken into account; (7) NMFS could regularly invoke good cause exception; and (8) NMFS adequately explained grounds for good cause exception. Affirmed on other grounds.

50. *Cowlitz Indian Tribe v. F.E.R.C.*, No. 03-73225, 05-70391, FERC Project No. 2016-044, 2016-071, 2006 WL 2088200 (9th Cir. July 27, 2006). Not selected for publication in the Federal Reporter. The Cowlitz Indian Tribe, Friends of the Cowlitz, and CPR-Fish (collectively “Petitioners”) petitioned for review of two orders of the Federal Energy Regulatory Commission (the “Commission”) in a consolidated appeal. The first petition for review challenged the Commission's order that issued a license for the continued operation of a hydroelectric project on the Cowlitz River in Washington, which is operated by the City of Tacoma (“Tacoma”). The second petition for review challenged the Commission's order that amended the license in light of a Biological Opinion submitted by the National Marine Fisheries Service. Petitioners contended that the Commission: (1) failed to perform its statutory obligation to consider Tacoma's record of compliance with the existing license in the relicensing process; (2) reached conclusions regarding downstream and upstream fish passage, hatchery management, and flood control that were arbitrary, capricious, and unsupported by substantial evidence; and (3) approved of an advisory committee as part of the new license in violation of the Federal Advisory Committee Act. The appellate court found that all of Petitioners' contentions were without merit, and denied the petitions for review.

51. *City of Tacoma v. FERC and Skokomish Indian Tribe*, No. 05-1054 (D.C. Cir. Aug. 22, 2006). The City of Tacoma and the Skokomish Indian Tribe petitioned for review of a license issued by the Federal Energy Regulatory Commission. The Court held: (1) FERC must impose conditions to protect the Indian reservation and fisheries prepared pursuant to Section 4(e) of the Federal Power Act. The fact that some of the project is on the reservation gives the Secretary of Interior power to impose conditions to protect all of the reservation; (2) FERC must determine whether a State has followed proper procedures with respect to the certification required by Clean Water Act § 401; (3) grant of a license does not exempt a dam operator from compliance with water rights requirements of state law; (4) that stringent environmental conditions imposed on a license may make a license “uneconomic” does not amount to unlawful

G. GAMING

52. *New York v. Shinnecock Indian Nation*, Nos. 03-CV-3243(TCP), 03-CV-3466 (TCP), 400 F. Supp.2d 486 (E.D.N.Y. Nov. 7, 2005). State and municipality sued Shinnecock Nation, seeking to bar construction and operation of gaming casino on land allegedly owned by tribe. Following grant of preliminary injunction barring construction, parties moved and cross moved for summary judgment. The district court held that: (1) Shinnecock Nation was tribe, for purpose of determining whether they could build and run casino, and (2) fact issues precluded summary judgment regarding right of tribe to proceed with project. Motions denied.

53. *Northern Arapaho Tribe v. State of Wyoming*, Nos. 02-8026, 02-8031, 2005 WL 3054066 (10th Cir. Nov. 23, 2005). The Northern Arapaho Tribe brought an action seeking a declaration that the state of Wyoming failed to negotiate in good faith with the Tribe in violation of the Indian Gaming Regulatory Act (“IGRA”), 25 U.S.C. §§ 2701 *et seq.* Partially granting the Tribe’s motion for judgment on the pleadings, the district court held that Wyoming failed to negotiate in good faith with regard to calcutta and parimutuel wagering and ordered the parties to complete a compact within sixty days. The court further held that casino-style gaming and slot machine wagering were against Wyoming public policy and thus not subject to negotiation. Both parties appealed. A panel of the 10th Circuit held that the State was required to negotiate a compact with the Tribe concerning calcutta and parimutuel wagering as well as the full gamut of casino-style Class III gambling because Wyoming permits and regulates “such gaming” for social and non-profit purposes pursuant to WYO. STAT. § 6-7-101(a)(iii)(E).

54. *Wisconsin v. Ho-Chunk Nation*, No. 05-C-632-S, __ F. Supp. 2d __, 2005 WL 3336001 (W.D. Wis. Dec. 8, 2005). State of Wisconsin brought action, pursuant to provisions of its gaming compact with Indian tribe and Federal Arbitration Act, for appointment of an arbitrator in dispute arising under Indian Gaming Regulatory Act. State moved for immediate appointment of an arbitrator, and tribe moved to dismiss. The district court held that (1) district court had original jurisdiction in dispute, and (2) lapse of nearly six months in process of appointing an arbitrator triggered district court’s authority to appoint an arbitrator. Ordered accordingly.

55. *Dewberry v. Kulongoski*, No. Civ. 04-6175-AA, __ F. Supp. 2d __, 2005 WL 3507995 (D. Or. Dec. 21, 2005). Gambling opponents challenged validity of state’s gaming compact with Indian tribe. Parties cross-moved for summary judgment. The district court held that: (1) plaintiffs lacked standing to sue; (2) tribe was indispensable party; (3) Oregon constitution’s ban on operation of casinos did not bar state from negotiating compact with Indian tribe; and (4) governor had constitutional and statutory authority to negotiate compact. Plaintiff’s motion denied; defendant’s motion granted.

56. *TOMAC, Taxpayers of Michigan Against Casinos v. Norton*, ___ F.3d ___, 2005 WL 3610310 (D.D.C. Jan. 6, 2006). Taxpayer group challenged decision by Bureau of Indian Affairs (“BIA”) to take land into trust so that Pokagon Band of Potawatomi Indians could build casino. In a series of decisions, the district court, 193 F. Supp. 2d 182, 240 F. Supp. 2d 45, and 2005 WL 2375171, granted summary judgment for government, and group appealed. The appellate court held that: (1) BIA’s finding of no significant environmental impact, and thus that no environmental impact statement was needed, was not arbitrary or capricious; (2) tribe was “restored to Federal recognition,” within meaning of exception to Indian Gaming Regulatory Act prohibition of regulated Indian gaming on off-reservation lands; and (3) statute restoring tribe did not violate nondelegation doctrine. Affirmed.

57. *Wyandotte Nation v. Sebelius*, Nos. 04-3431, 04-3432, 2006 WL 895235 (10th Cir. April 7, 2006). 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 district court, 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. The appellate court 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.

58. *United States v. President R.C. St. Regis Management Company*, No. 05-3823, 2006 WL 1606447 (2d Cir. June 1, 2006). 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 district court, 2005 WL 1397133, entered summary judgment in favor of company, and tribe appealed. The appellate court 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.

59. *Wyandotte Nation v. National Indian Gaming Com’n.*, No. 05-2210-JAR, ___ F. Supp.2d ___, 2006 WL 1877006 (D. Kan. July 6, 2006). This matter was before the Court upon the Wyandotte Nation’s challenge to the final agency decision of the National Indian Gaming Commission (“NIGC”) concluding that plaintiffs may not lawfully conduct gaming on the Shriner Tract, a parcel of land that the United States holds in trust for the benefit of plaintiffs. The appellate court reversed the NIGC’s finding that the Shriner Tract does not meet the “settlement of a land claim” exception to the Indian Gaming Regulatory Act prohibition on gaming on lands acquired after October 17, 1988.

60. *State of Michigan v. Little River Band of Ottawa Indians*, No. 5:05-CV-95, 2006 WL 2092415 (W.D. Mich. July 26, 2006). Plaintiffs, state of Michigan and Michigan Economic Development Corporation, claim that the defendants, Little River Band of Ottawa Indians and Little Traverse Bay Bands of Odawa Indians, breached tribal-state gaming compacts that each defendant had entered into with the plaintiffs. Before the court was plaintiffs’ 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. The court denied the plaintiffs' motion.

H. LAND CLAIMS

61. *Cayuga Indian Nation of New York v. Village of Union Springs*, No. 5:03-CV-1270, 390 F. Supp. 2d 203 (N.D.N.Y. Oct. 5, 2005). Indian tribe filed suit against local governments seeking declaratory and injunctive relief regarding the nature of use of property that it owned within defendants' municipal boundaries. Defendants filed a counterclaim seeking declaratory and injunctive relief against tribe. The district court enjoined defendants from applying or enforcing zoning and land use laws as to tribe's activities on property. The district court denied defendants' motion for stay of injunction pending appeal. The appellate court issued mandate directing reconsideration of injunction order in light of Supreme Court's decision in *City of Sherrill, New York v. Oneida Indian Nation of New York*. Defendants moved to vacate injunction and for summary judgment. The district court held that tribe was not entitled to immunity from state and local zoning and land use laws. Injunction vacated, summary judgment granted for defendants, and action dismissed.

62. *Green v. Cushman & Wakefield of Connecticut*, No. 3:03CV00601 (AWT), 2006 WL 436605 (D. Conn. Feb. 21, 2006). Plaintiff, Running Deer Van Thomas Green, a Wangunk band Indian tribe member, brought an action alleging that from 1799 to 2003 tribal lands were unlawfully transferred in violation of 25 U.S.C. § 177 and that agreements regarding 300 acres of land set aside for the native heirs of the Wangunk band of Indians were not honored. The court found that the action failed to state a claim against the remaining defendants for which relief could be granted and dismissed the case pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

63. *Delaware Nation v. Pennsylvania*, No. 04-4593, ___ F.3d ___, 2006 WL 1171859 (3d Cir. May 4, 2006). Indian tribe brought action pursuant to Indian Nonintercourse Act, claiming aboriginal and fee title to land. The district court, 2004 WL 2755545, dismissed. Tribe appealed. The appellate court 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.

64. *Oneida Indian Nation v. Oneida County*, No. 6:05-CV-945, ___ F. Supp. 2d ___, 2006 WL 1517522 (N.D.N.Y. June 2, 2006). Plaintiff Oneida Indian Nation ("the Nation") commenced an action seeking declaratory and injunctive relief preventing defendant Oneida County from foreclosing, for non-payment of taxes, property owned by the Nation. A temporary restraining order was issued restraining and enjoining Oneida County from undertaking any further efforts to effectuate, maintain, or complete administrative or other foreclosures or to withdraw the right of redemption as to lands possessed by the Nation in Oneida County. The Stockbridge-Munsee Band of Mohican Indians ("Stockbridge") filed a motion to intervene and only the Nation opposed. The court found that the remedy of foreclosure is not available to Oneida County pursuant to the Nonintercourse Act, 25 U.S.C. § 177, N.Y. Real Prop. Law § 454, and N.Y. Indian Law § 6. Notification by mail to the Nation of the end of the redemption period less than two months before its expiration failed to provide the Nation the process it was due; therefore, Oneida County cannot proceed with the foreclosures. Tribal sovereign immunity also insulates the Nation from any foreclosure action. Equity precludes the imposition of penalties and interest for taxes unpaid during a time when the properties were tax-exempt under

65. *Oneida Indian Nation v. Madison County*, No. 5:00-CV-506, ___ F. Supp. 2d ___, 2006 WL 1517525 (N.D.N.Y. June 2, 2006). Defendant Madison County moved pursuant to Fed. R. Civ. R. 52(b), 59(e) and 60(b) to amend or make additional findings, alter or amend the judgment, or for relief from the judgment filed on October 27, 2005. *See Oneida Indian Nation of N.Y. v. Madison County*, 401 F. Supp. 2d 219, 232-33 (N.D.N.Y.2005) (permanently enjoining Madison County from foreclosing on Oneida Indian Nation property and declaring that the Oneida Indian Nation’s reservation was not disestablished, among other things). The County contended that the following are issues regarding what land remains part of the Oneida Indian Reservation which arise out the October 27, 2005, decision finding that the Reservation was not disestablished: (1) that the location of a part of the western boundary set forth in the 1788 Treaty of Ft. Schuyler is disputed; (2) that it is disputed whether the six-mile-square Stockbridge reservation described in the 1788 Treaty was ever thereafter part of the Reservation; (3) that treaties were entered into in 1798 and 1802 in which the Nation ceded land to the State; (4) that the 1838 Treaty of Buffalo Creek authorized the sale of lands by the Nation to the State, which were consummated in 1840 through 1842, and those lands should not be considered a part of the Reservation. The court found that the County’s new theory and new facts could not justify altering or amending the judgment pursuant to Rules 52(b) and 59(e); that relief from the judgment is not justified pursuant to Rule 60(b), as the County failed to demonstrate entitlement under that rule; and Stockbridge is not entitled to intervene as of right because it has no interest in this action, and even if it did such motion is untimely. The appellate court denied Madison County’s motion to amend or make additional findings, alter or amend the judgment, or for relief from the judgment filed on October 27, 2005; and denied the Stockbridge-Munsee Band of Mohican Indians motion to intervene.

I. RELIGIOUS FREEDOM

66. *Farrow v. Stanley*, No. Civ.02-567-PB, 2005 WL 2671541 (D.N.H. Oct. 20, 2005). Farrow, a practicing member of the Lakota Sioux Nation and the Native American Sacred Circle (“Sacred Circle”), is incarcerated at NCF, the Department of Corrections (“DOC”) facility located in Berlin, New Hampshire. He claimed that defendants deprived him of his statutory and constitutional rights to practice his religion by: (1) preventing him from possessing tobacco for prayer and ceremonial use; (2) denying him access to medicines and herbs for ceremonial use; (3) prohibiting him from engaging in daily group prayer with other members of the Sacred Circle; (4) failing to supply him with Native American foods on religious holidays; (5) refusing to allow him to wear feathers at all times; (6) barring the various Native American

67. *Na Lei Alii Kawanānakoā v. Hui Malama I Na Kupuna O Hawai'i Nei*, No. CV-05-00540, 2005 WL 3370043 (9th Cir. Dec. 12, 2005). Not selected for publication in the Federal Reporter. Defendant-Appellant Hui Malama I Na Kupuna O Hawai'i Nei ("Hui Malama") appealed an order of the district court granting Plaintiffs Na Lei Alii Kawanānakoā and Royal Hawaiian Academy of Traditional Arts's (collectively "Plaintiffs") motion for a preliminary injunction. The injunction required Hui Malama to return certain funerary objects to Defendant-Appellee Bishop Museum, or to cause them to be returned to the museum. The appellate court stayed the injunction pending the outcome of the interlocutory appeal. The appellate court found that the district court neither applied an incorrect legal standard, misapprehended the law, nor relied on clearly erroneous findings of fact, and did not abuse its discretion in granting the preliminary injunction. The appellate court affirmed the district court's order granting a preliminary injunction and vacated the stay order.

68. *Navajo Nation v. U.S. Forest Service*, No. Civ. 05-5050, ___ F. Supp. 2d ___, 2006 WL 62565 (D. Ariz. Jan. 11, 2006). Various Native American tribes, their members, and environmental organization brought action challenging the Forest Service's decision to authorize upgrades to facilities at an existing ski area in the Coconino National Forest. Parties filed cross motions for summary judgment on non-Religious Freedom Restoration Act ("RFRA"), and proceeded to trial on RFRA claims. The district court held that: (1) Forest Service fully discharged its National Environmental Policy Act responsibilities by preparing an environmental impact statement with public involvement; (2) Forest Service complied with its obligations under the National Historic Preservation Act; (3) by following all applicable statutes in authorizing upgrades to facilities at an existing ski area in national forest, the Forest Service satisfied its fiduciary duty to the local tribes; and (4) Forest Service's decision did not violate RFRA. Defendant's motion granted; RFRA claims dismissed.

69. *Northern Cheyenne Tribe v. Jackson*, No. 04-4145, ___ F.3d ___, 2006 WL 119911 (8th Cir. Jan 18, 2006). Native American tribes commenced action against multiple defendants, including the United States, under the Religious Land Use and Institutionalized Persons Act ("RLUIPA") and the Religious Freedom Restoration Act ("RFRA"), seeking to enjoin construction of a shooting range near a mountain formation of great spiritual significance. When Department of Housing and Urban Development determined that the shooting range would not generate necessary public benefits the project was abandoned. The tribes then dismissed their claims as moot. The district court denied tribes' motion for an award of attorney fees, and tribes appealed. The appellate court held that preliminary injunction granting temporary relief that merely maintained the status quo did not confer prevailing party status on the tribes. Affirmed.

70. *Hastings v. Marciulionis*, No. 06-C-073-S, ___ F. Supp.2d ___, 2006 WL 1582470 (W.D. Wis. June 6, 2006). 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. The district court 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.

71. *Odneal v. Dretke*, No. C-04-454, ___ F. Supp. 2d ___, 2006 WL 1709495 (S.D. Tex. June 21, 2006). Plaintiff, a member of the Choctaw Nation, brought an action pursuant to 42 U.S.C. § 1983 claiming that defendants interfered with the practice of his religion, that such interference was not justified by any prison security issue, and interference was in violation of his constitutional rights. The court found that uncontested facts established that the restrictions imposed on plaintiff's ability to exercise his religion were reasonably related to legitimate penological concerns such as security and safety, costs, and management of prison resources. In addition, the uncontested facts also established that plaintiff can exercise his religion through personal study and devotion in his cell, attendance at Native American classes, visits to the Native American library, and worship in the Circle and pipe ceremonies when available. The court also found that although these ceremonies are not conducted as often as other faith preferences ceremonies, the discrepancy is not due to discrimination or any other constitutional violation. Defendants' motion for summary judgment, was granted. Plaintiff's claims were dismissed with prejudice.

72. *Martinez v. Ortiz*, No. 05-cv-00138-WYD-BNB, 2006 WL 2165022 (D. Colo. July 31, 2006). Plaintiff, a Native American Indian, is incarcerated by the Colorado Department of Corrections ("DOC"). Plaintiff's Prisoner Complaint alleged that Defendants violated his constitutional rights based on the application of DOC Administrative Regulations to his religious practices. Defendants' actions (1) required that Sweatlodge and Pipe Ceremonies must have a minimum of five participants; (2) placed limitations on plaintiff's contact with spiritual advisors; (3) permitted inexperienced staff to monitor Sweatlodge and Pipe Ceremonies; (4) did not allow an area for smudging and prayer during weekdays; (5) did not allow food offerings; (6) permitted inspection of medicine bags; (7) prohibited the purchase of herbs; and (8) required strip searches after every Sweatlodge Ceremony. Plaintiff sued defendants in their individual and official capacities, and sought declaratory and injunctive relief as well as compensatory and punitive damages. Defendants filed a Motion for Summary Judgment which the court granted to the extent it sought summary judgment in favor of defendants in their individual capacities and in their official capacities for money damages; and denied to the extent it sought summary judgment in favor of the defendants in their official capacities for prospective injunctive relief.

J. SOVEREIGN IMMUNITY and FEDERAL JURISDICTION

73. *Kitras v. Town of Aquinnah*, No. 04-P-472, 2005 WL 1968275 (Mass. Ct. App. Aug. 18, 2005). Owners of landlocked lots brought action for easement by necessity against

74. *Thomason v. Nez Perce Tribe*, No. CV04-471-C-EJL, 2005 WL 2077780 (D. Idaho Aug 29, 2005.) Plaintiffs, filed this wrongful death action against the Nez Perce Tribe (“the Tribe”) seeking (1) damages for the wrongful death of their son, (2) an order prohibiting the Tribe from authorizing the use of firearms for hunting, and (3) for costs and attorney fees. The complaint argued the Tribe’s authorization of the use of firearms for hunting runs contrary to the rights given to the Tribe by the Treaty with the Nez Perce, June 11, 1855, Art. III, Treaty with the Nez Perce, 12 Stat. 957 (June 11, 1855) (“Treaty”), noting the hunting methods employed by Tribal ancestors did not include the use of firearms. The Tribe maintained sovereign immunity barred the case. Plaintiffs argued that the Tribe acted outside the scope of its immunity and, thus, is subject to liability. The court found that because this action was brought only against the Tribe, to whom the immunity applies, the question was whether the immunity had been waived or whether the suit is one that is otherwise allowed as a matter of law. The court ruled that because the Nez Perce Tribe is afforded sovereign immunity which it had not expressly waived in this case the motion to dismiss was granted.

75. *Home Bingo Network v. Multimedia Games, Inc.*, No. 1:05-CV-0608, 2005 WL 2098056 (N.D.N.Y. Aug. 30, 2005). Plaintiff commenced an action against defendants Multimedia Games, Inc. and Miami Tribe of Oklahoma Business Development Authority (“MBDA”) asserting a claim of patent infringement. Before the court was defendant’s motion to dismiss pursuant to Rule 12(b)(1) on the ground of lack of subject matter jurisdiction. The MBDA claims that it is an arm of the Miami Tribe of Oklahoma, a federally recognized tribe and, therefore, is entitled to sovereign immunity. The court found that upon review of the tribal law creating the authority it is clear that the MBDA is an arm of the tribe and, absent waiver, the MBDA is entitled to immunity. Plaintiff pointed to no authority that Congress had expressly waived tribal immunity with respect to the enforcement of patents. Plaintiff does not seek to hold the MBDA liable on a contract or obligation arising out of its activities in New York. In fact, Plaintiff failed to identify any contract or obligation the terms of which expressly waive immunity. Thus, there is no basis for finding an express waiver. The court granted Defendant Miami Tribe of Oklahoma Business Development Authority’s motion to dismiss.

76. *Lewis v. Norton*, No. 03-17207, ___ F.3d ___, 2005 WL 220992 (9th Cir. Sept. 13, 2005). Rejected applicants for membership in Indian tribe sued federal agencies, seeking declarative and injunctive relief. The district court dismissed for lack of subject matter jurisdiction, and appeal was taken. The appellate court held that: (1) tribe was immune from suit, and (2) applicants could not avoid immunity issue by suing federal government. Affirmed.

77. *United Keetoowah Band of Cherokee Indians of Oklahoma v. United States.*, No. 03-1433L, ___ Fed. Cl. ___, 2005 WL 2333294 (Fed. Cl. Sept. 16, 2005). Keetoowah Band of Cherokee Indians brought suit against the United States seeking compensation for the extinguishment of all right, title, and interest to Arkansas Riverbed Lands, and damages for breaches of government’s fiduciary duties with respect to Arkansas Riverbed Lands and minerals therein. The Cherokee Nation intervened to file motion to dismiss for failure to join indispensable party and for lack of jurisdiction. The court held that: (1) Cherokee Nation was a necessary party; (2) Cherokee Nation could not be joined because it enjoyed sovereign immunity and did not give its consent to be sued; and (3) Cherokee Nation was an indispensable party whose inability to be joined required dismissal of suit. Motion granted.

78. *Mulder v. Lundberg*, No. 05-4044, 2005 WL 2844834 (10th Cir. Oct. 31, 2005). Not selected for publication in the Federal Reporter. Borrowers, who defaulted on loans secured by two parcels of real property and transferred their interest in parcels by quitclaim deed to Indian tribe after lenders initiated nonjudicial foreclosure proceedings, filed action claiming Utah’s nonjudicial foreclosure statute violated their rights as sovereign citizens of tribe. The district court dismissed the action with prejudice. Borrowers appealed and filed motion to vacate judgments. Lenders filed motions for an award of damages, costs, and fees. The appellate court held that: (1) borrowers lacked standing to enjoin lenders from taking action against Indian tribe regarding parcels of land they no longer owned; (2) borrowers could not assert tribal sovereign immunity as a basis for injunctive relief against lenders; (3) there was device for “removing” a case to tribal court after dismissal with prejudice; and (4) borrowers’ conduct did not amount to a serious abuse of appellate process warranting award of attorney fees. Judgment affirmed; motions denied.

79. *Shivwits Band of Paiute Indians v. Utah*, No. 03-4274, 428 F.3d 966 (10th Cir. Nov. 9, 2005). After Indian tribe purchased land and placed it in trust with federal government, it leased the land to advertiser for construction of outdoor billboards. State of Utah threatened to bring a lawsuit, and the city issued a stop work order. Tribe and advertiser sought declarative and injunctive relief, and state and city counterclaimed and brought third-party claim against United States. Parties cross-moved for summary judgment. The district court granted judgment for tribe and advertiser, and state and city appealed. The appellate court held that: (1) district court lacked subject matter jurisdiction to consider counterclaim and third-party claim, to extent those claims challenged Bureau of Indian Affairs’ (“BIA”) decision to take the property at issue into trust; (2) city and state waived argument that BIA was required to enforce Highway Beautification Act when approving tribe’s lease of land to advertiser; and (3) state was not entitled to exercise its police power to regulate use of tribe’s land. Affirmed.

80. *Sockey v. Gray*, No. 05-6125, 2005 WL 3105720 (10th Cir. Nov. 21, 2005). Not selected for publication in the Federal Reporter. Inmate filed petition for writ of mandamus against various state and local officials involved with his arrest, prosecution, conviction and confinement on drunk driving offenses, claiming they lacked jurisdiction because he was Native American and offenses occurred in Indian Country. The district court dismissed petition as to some officials and denied inmate relief as to others. Inmate appealed. The appellate court held that federal court was without jurisdiction to grant a writ of mandamus against state and local officials. Affirmed.

81. *Latham v. County Country Casino*, No. 03-16524, 2005 WL 3134153 (9th Cir. Nov. 23, 2005). Not selected for publication in the Federal Reporter. Plaintiffs brought tort action against casino and Indian tribe. The district court dismissed for failure to state claim and Plaintiffs appealed. The appellate court held that district court lacked subject matter jurisdiction over action. Affirmed.

82. *Murphy v. State of Oklahoma*, No. PCD-2004-321, 2005 WL 3310497 (Okla. Crim. App., Dec. 7, 2005). Defendant was convicted in the district court of first-degree murder with two aggravating circumstances and was sentenced to death. Defendant appealed. The appellate court affirmed. Defendant filed a second application for post-conviction relief, and the matter was remanded for evidentiary hearing. The appellate court held that: (1) state's interest in road where murder occurred on land allotted to Indian was an easement or right-of-way, not fee simple, for purposes of determining whether the murder occurred in Indian country and state had criminal jurisdiction; (2) as a matter of first impression, one-twelfth interest that Indian citizen owned in mineral estate did not qualify the property as an Indian allotment; (3) the road was not shown to be part of a Creek Nation reservation or a dependent Indian community; and (4) defendant provided sufficient evidence to raise a fact question on mental retardation claim. Application granted in part and denied in part; case remanded.

83. *United States v. Seminole Tribe of Florida, Inc.*, No. 05-0439, 2005 WL 3310291 (2nd Cir. Dec. 7, 2005). Not selected for publication in the Federal Reporter. Over a period of years, Plaintiff Braun filed three qui tam actions on behalf of the United States pursuant to the False Claims Act ("FCA"), 31 U.S.C. § 3729, *et seq.* alleging that the Seminole Tribe of Florida and the Seminole Tribe of Florida, Inc. (the "tribal defendants"), had used false records to obtain government funding by failing to provide the Bureau of Indian Affairs with accurate accounting information. He also asserted claims against the judges and law firms who were involved in the adjudication of the first two suits alleging that the judicial defendants had committed "treasonable act[s]" in dismissing his prior suits. The District Court warned Braun that filing future complaints arising from the same matter could subject him to an order pursuant to 28 U.S.C. § 1651 that would require him to obtain leave of the court before filing a new action. On appeal, Braun advanced various allegations that the district judge acted improperly and treasonously. The appellate court found the accusations of misconduct wholly unfounded and concluded that Braun's contentions on appeal were without merit and affirmed the judgment of the district court. The appellate court also denied all pending motions as moot and served notice on Braun that additional appellate litigation relating to the matter may subject him to a requirement that he obtain leave before filing appeals, to monetary penalties, or to other sanctions.

84. *Seneca Cayuga Tribe of Oklahoma v. Town of Aurelius, New York*, No. 5:03CV00690, ___ F.R.D. ___, 2006 WL 346424 (N.D.N.Y. Feb. 14, 2006). Oklahoma Indian tribe filed suit against two towns and county seeking declaratory and injunctive relief from application of local zoning and taxation to property tribe owns within defendants' municipal boundaries. Defendants included the governor and attorney general of the state of New York, and New York Indian tribe. State and municipal defendants moved for judgment on the pleadings. The district court held that: (1) notice pleading standard did not require that tribe's complaint be interpreted to state a claim for relief under the Indian Gaming Regulatory Act, and (2) doctrine of impossibility barred Indian tribe from asserting that its property was

85. *Berrey v. Asarco Inc.*, No. 045131, ___ F.3d ___, 2006 WL 401822 (10th Cir. Feb. 22, 2006). Quapaw Indian Tribe brought action alleging that mining company and its predecessors in interest caused environmental contamination on Quapaw lands as result of their mining activities in 1900s. Defendants counterclaimed for common law contribution and indemnity, and contribution under Comprehensive Environmental Response, Compensation, and Liability Act. The district court denied Tribe's motion to dismiss defendants' counterclaims. Tribe took interlocutory appeal. The appellate court held that: (1) Tribe's timely motion to certify was functional equivalent of notice of appeal; (2) Tribe waived its tribal sovereign immunity as to any counterclaims of mining company and its predecessors that sounded in recoupment; (3) counterclaims arose from same transaction or occurrence as claims asserted by Tribe; (4) counterclaims sought same kind of relief as claims asserted by Tribe; (5) counterclaims did not seek amount in excess of that sought in claims asserted by Tribe; (6) collateral order doctrine did not apply to additional claim asserted by Tribe; and (7) assertion of pendent appellate jurisdiction over other issues was not warranted. Affirmed.

86. *Filer v. Tohono O'odham Nation Gaming Enterprise*, Docket No. 2 CA-CV 2005-0129, 2006 WL 465841 (Ariz. Ct. App. Feb. 28, 2006) Plaintiff/appellant Filer filed a personal injury and wrongful death action in superior court against the Tohono O'odham Gaming Enterprise ("Gaming Enterprise"), doing business as Desert Diamond Casino, and several of its employees. On the Gaming Enterprise's motion, the trial court dismissed the action, ruling it "lack[ed] jurisdiction to hear the matter" because the Gaming Enterprise "ha[d] not waived its sovereign immunity." On appeal, Filer argued the court erred because no tribal sovereign immunity exists against a dram shop action filed pursuant to A.R.S. § 4-311.1 The appellate court affirmed.

87. *Walton v. Pueblo*, Nos. 04-2305, 04-2310, 2006 WL 906118 (10th Cir. April 10, 2006). 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 district court denied the motion in part and granted it in part, and parties cross-appealed. The appellate court held that: (1) district court lacked jurisdiction to hear non-habeas claims; (2) habeas provision of Indian Civil Rights Act did not confer jurisdiction on district court; and (3) tribe's waiver, pursuant to Indian Self-Determination and Education Assistance Act, 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.

88. *Hawk v. Oneida Tribe of Indians Central Accounting Dept.*, No. 05-C-1335, 2006 WL 1308074 (E.D. Wis. May 5, 2006). Plaintiff filed a complaint against the Oneida Tribe's Central Accounting Department, alleging that it unlawfully garnished his per capita payments. The Tribe filed a motion to dismiss, claiming that Hawk's complaint fails to state a claim and that the Tribe enjoys sovereign immunity from suit. The court found that plaintiff had identified no provision in any statute which would confer jurisdiction on the court to resolve his claim and dismissed the complaint.

89. *Navarro v. Eagle Mountain Casino*, No. 05-15048, 2006 WL 1586377 (9th Cir. June 6, 2006). Not selected for publication in the Federal Reporter. Appellant Navarro appealed from the district court's order dismissing his complaint on the ground that the defendants, entities of the Tule River Indian Tribe, were immune from suit by virtue of tribal sovereign immunity. The appellate court concluded that the case was improperly removed to federal court and, as a result, the district court lacked jurisdiction over the case at the time it entered its order. The appellate court vacated the district court's order and remanded the case to the district court with instructions to remand Navarro's complaint to California state court for further proceedings.

90. *Bear v. Patton*, No. 05-3183, ___ F.3d ___, 2006 WL 1681347 (10th Cir. June 20, 2006). 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 district court, 364 F.Supp.2d 1242, dismissed on basis of Rooker-Feldman doctrine. State court defendant appealed. The appellate court 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.

91. *Alaska Dental Soc. v. Alaska Native Tribal Health Consortium*, No. 3:06-00039, 2006 WL 1794742 (D. Alaska June 28, 2006). Plaintiffs filed a complaint for declaratory and injunctive relief in Alaska Superior Court naming the Alaska Native Tribal Health Consortium ("ANTHC") and Does 1-8, who are all dental health aide therapists ("DHATs") as defendants seeking: (1) a declaration that ANTHC and DHATs are violating Alaska law by engaging in the unlicensed practice of dentistry and (2) an injunction prohibiting defendants from engaging in the unlicensed practice of dentistry. ANTHC removed the action to federal court pursuant to 28 U.S.C. § 1441(b), alleging that plaintiffs' action was founded on a claim or right arising under the laws and constitution of the United States and also asserting that the complaint was removable under 28 U.S.C. § 1442(a), because "it is in the nature of a civil action brought against an officer of the United States or a person acting under the direction of a federal official or agency." Plaintiffs moved for an order of remand and/or abstention to return the case to the Alaska Superior Court. The court granted the motion for remand to the Alaska Superior Court and further ordered all other pending motions remanded for the State court's determination.

92. *Wopsock v. Natchess*, No. 05-1494, ___ F.3d ___, 2006 WL 1889917 (Fed. Cir. July 11, 2006). 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 district court, 2005 WL 1503425, granted tribal officials' motion to dismiss and DOI officials' motion for summary judgment. Members appealed. The appellate court held that the Federal Circuit lacked jurisdiction and ordered transfer.

93. *Marceau v. Blackfeet Housing Authority*, No. 04-35210, ___ F.3d ___, 2006 WL 2035345 (9th Cir. July 21, 2006). 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 district court dismissed and plaintiffs appealed. The appellate court held that: (1) "sue and be sued"

K. SOVEREIGNTY, TRIBAL INHERENT

94. *Morris v. Tanner*, No. 03-35922, 141 Fed. Appx. 696, 2005 WL 3525607 (9th Cir. Aug. 25, 2005). Not selected for publication in the Federal Reporter. Morris appealed the district court's grant of summary judgment in favor of defendant, Judge Winona Tanner, and defendant-intervenor, United States. Morris has had criminal speeding charges pending against him in the tribal court of the Confederated Salish and Kootenai Tribes ("CSKT") in Montana for six years. Morris is an enrolled member of the Minnesota Chippewa Tribe, Leech Lake Reservation, but is not a member of the CSKT. He challenged the jurisdiction of the tribal court. The district court granted summary judgment against Morris. *Morris v. Tanner*, 288 F. Supp. 2d 1133, 1144 (D. Mont.2003). Morris appealed. Morris challenged the jurisdiction of the CSKT tribal court, which was confirmed by the 1990 amendments to the Indian Civil Rights Act to extend to "all Indians" in criminal cases, contending that the 1990 amendments violate principles of equal protection and due process. In the appellate court's opinion in *Means v. Navajo Nation*, No. 01 17489, slip op. 11191, 2005 WL 2008433 (9th Cir. Aug. 23, 2005), the court addressed and rejected both of these challenges to the 1990 amendments to the ICRA and found that it was bound by *Means* to reject Morris' challenges as well. The judgment of the district court was affirmed.

95. *Astroga v. Wing*, No. 1 CA-SA 05-0153, 118 P.3d 1103 (Ariz. Ct. App. Aug. 30, 2005). After Indian plaintiffs initially filed complaint against mortuary in tribal court for wrongful burial and other claims, they filed this parallel action in state court. Plaintiffs then requested the superior court to stay proceedings pending a determination by the tribal court as to whether it had jurisdiction to hear the case. The superior court denied the motion to stay, and plaintiffs petitioned for special action. The appellate court held that: (1) court would accept special action jurisdiction, and (2) plaintiffs were not entitled to stay. Jurisdiction accepted; relief denied.

96. *In re Snell*, Bankruptcy No. 04-14329-M, Adversary No. 04-01212-M, 329 B.R. 753 (N.D. Okla. Sept. 2, 2005). Chapter 7 trustee brought adversary proceeding against bank, asserting that bank's lien on pickup truck belonging to debtor, a member of the Cherokee Nation, a federally recognized Indian tribe, was not properly perfected because it was not noted on a vehicle title created by the state of Oklahoma. The bankruptcy court held that bank, which complied with the law of the Cherokee Nation in noting its lien upon the certificate of title issued by the Cherokee Nation, held a properly perfected lien upon the truck, which trustee could not avoid. Proceeding dismissed.

97. *Attorney's Process and Investigation Services, Inc. v. Sac and Fox Tribe of the Mississippi in Iowa*, No. C-05-0168-LRR, __ F. Supp. 2d __, 2005 WL 3074727 (N.D. Iowa Nov. 15, 2005). Non-Indian contractor brought breach of contract action against Indian tribe. Contractor moved for injunction barring tribe from proceeding with suit against it in tribal court. The district court held that: (1) provision in tribal code, that tribal court lacked jurisdiction over counterclaims, did not excuse requirement that contractor exhaust tribal remedies before commencing federal court suit; (2) presence of arbitration provision in contract did not excuse requirement that tribal remedies be exhausted; and (3) prospect that tribe might have sovereign immunity precluded assertion of jurisdiction. Case dismissed for lack of jurisdiction.

98. *John v. Baker*, No. S-11176, 2005 WL 3444633 (Alaska Dec. 16, 2005). After tribal court entered order granting both parents shared custody of children, the trial court granted primary physical custody of children to father and ordered mother to pay child support. Mother appealed. The Supreme Court reversed and remanded, holding that tribal and state superior courts share concurrent jurisdiction over child custody disputes concerning children eligible for tribe membership. On remand, the trial court denied comity to tribal court's custody order, and mother again appealed. The Supreme Court, 30 P.3d 68, reversed and remanded. On remand, the superior court referred custody matter to tribal court, but concluded that its child support order remained valid. Mother appealed. The Supreme Court held that trial court retained jurisdiction over issue of child support, as remands following appeals had all been confined to issue of child custody, and there was no tribal child support order to which comity could be extended. Affirmed.

99. *Marriage of Wyatt*, No. 05-010, 2005 MT 320N (Mont. Dec. 19, 2005). Jayson T. Wyatt appealed from an order of the district court dismissing his Petition for Dissolution of his marriage to Shannon J. Hopkins Wyatt, an enrolled member of the Fort Peck Tribes. After Jayson filed the action for dissolution of marriage in district court, Shannon filed a petition for divorce in the Fort Peck Tribal Court. The district court concluded that it did not have jurisdiction and it also concluded that the Fort Peck Tribal Court had at least concurrent jurisdiction with the state of Montana over the marriage. The district court declined to exercise its jurisdiction and dismissed Jayson's petition as a matter of comity. Jayson appealed. The Supreme Court affirmed.

100. *Smith v. Hall*, No. 20050270, 2005 ND 215 (N.D. Dec. 20, 2005). Adjudicated father of child born out of wedlock filed motion to vacate the registration of a tribal court order requiring him to pay \$250 per month in child support for enforcement in the district court. The district court denied motion. Adjudicated father appealed. The Supreme Court held that adjudicated father's failure to object in district court to registration in district court of tribal court order precluded him from contesting registration of tribal court order on appeal. Affirmed.

101. *Smith v. Salish Kootenai College*, No. 03-35306, __ F.3d __, 2006 WL 44317 (9th Cir. Jan. 10, 2006). The question presented in this case was whether a non-Indian plaintiff consents to the civil jurisdiction of a tribal court by filing claims against an Indian defendant arising out of activities within the reservation where the defendant is located. Appellant Smith, who is not a member of the Confederated Salish and Kootenai Tribes ("the Tribes") of the Flathead Reservation, filed a claim in tribal court against Salish and Kootenai College ("SKC") arising out of an automobile accident. After a jury returned a verdict in favor of SKC, Smith

sought an injunction in federal court, alleging that the tribal court lacked subject matter jurisdiction. The tribal courts had previously held that they had jurisdiction to adjudicate the case, and the district court agreed and denied the injunction. Concluding that Smith's suit was within the first exception of *Montana v. United States*, 450 U.S. 544 (1981), and the rule in *Williams v. Lee*, 358 U.S. 217 (1959), the appellate court affirmed.

102. *Thortenson v. Norton*, No. 04-4029, 440 F.3d 1059 (8th Cir. February 28, 2006). 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 district court granted government's motion to dismiss, and purchaser appealed. The appellate court 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.

103. *State of Washington v. Esquivel*, No. 23938-1-III, 2006 WL 864371 (Wash. Ct. App. March 30, 2006). Defendant, who was charged with violating tribal court restraining order, moved to dismiss charges on ground that order did not contain warning that violation could be punishable as crime. The superior court granted motion. State appealed. The appellate court held that: (1) statute requiring restraining orders to contain warning of criminal penalty did not apply to order issued by tribal court; (2) tribal court order was entitled to full faith and credit; and (3) enforcement of order did not violate due process. Reversed.

104. *U.S. v. Juvenile Male 1*, No. CR-05-498-PCT-FJM, __ F. Supp. 2d __, 2006 WL 1427281 (D. Ariz. May 24, 2006). 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. The district court 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.

105. *Colebut v. Mashantucket Pequot Tribal Nation Tribal Elders Council*, No. 3:05CV247 (DJS), 2006 WL 1646155 (D. Conn. June 9, 2006). Petitioner Neorck Colebut seeks a writ of habeas corpus directing reinstatement of his former status as a member of the Mashantucket Pequot Tribal Nation, claiming that the Order of Temporary Banishment issued by respondent the Mashantucket Pequot Tribal Nation Tribal Elders Council, which "temporarily banished [Colebut] from the Mashantucket Pequot Tribal Reservation and/or other lands of the Mashantucket Pequot Tribe under the suspicion of possession of illegal drugs on the reservation" and declared Colebut's forfeit of "all rights and privileges of tribal membership" save health care, violated his rights under Title I of the Indian Civil Rights Act of 1968. Respondent filed a motion to dismiss the petition which the court granted without prejudice because petitioner had not exhausted his available remedies.

106. *Aernam v. Nenno*, No. 06-CV-0053C(F), 2006 WL 1644691 (W.D.N.Y. June 9, 2006). Plaintiff Van Aernam, a member of the Seneca Nation of Indians, filed a complaint pursuant to 42 U.S.C. § 1983 for declaratory and injunctive relief against defendant Justice Nenno, an Acting New York State Supreme Court Justice, and also filed a motion for a temporary restraining order and preliminary injunctive relief to prevent Justice Nenno from exercising jurisdiction over a divorce action brought in New York State Supreme Court by plaintiff's spouse who is not a member of the Seneca Nation, claiming that Justice Nenno's rulings in the state court action were in conflict with a default divorce decree entered in an action previously filed by plaintiff in the Seneca Nation's Peacemakers Court. The appellate court found that plaintiff had demonstrated irreparable injury, inadequacy of remedies available at law, a balance of hardships favoring a remedy in equity, and no disservice of the public interest. The appellate court stated that "in order to foster an increased understanding of tribal sovereignty, encourage deference to and support for tribal courts, and advance cooperation, communication, respect, and understanding in the interaction of tribal, state, and federal courts," it would grant plaintiff's motion for injunctive relief. It ordered that Justice Nenno and New York State courts (1) are permanently enjoined and restrained from proceeding in, and/or exercising any jurisdiction over the parties of the divorce case pending in New York Supreme Court; (2) are permanently enjoined and restrained from proceeding in or conducting any contempt proceeding regarding Kenneth Van Aernam; (3) are permanently enjoined and restrained from enforcing or causing to be enforced any and all orders previously issued in the case of *Jean Van Aernam v. Kenneth Van Aernam*; and (4) that judgment be entered in favor of plaintiff.

107. *Koopman v. Forest County Potawatomi Member Ben. Plan*, No. 06-C-163, 2006 WL 1785769 (E.D. Wis. June 26, 2006). Plaintiff Koopman, formerly an attorney employed by the Forest County Potawatomi ("the Tribe"), filed this action to enforce rights he asserts under the Tribe's COBRA and ERISA plans. The defendants moved to dismiss or stay the case in lieu of an action they filed in tribal court involving the same issues, citing the principle of tribal exhaustion. In addition, the plaintiff moved to file a second amended complaint and disqualify the Tribe's attorneys, and several Tribe members sought to intervene in this action. Plaintiffs contested defendants' motion, protesting that jurisdiction "clearly lies with this court" because the action involves the federal ERISA statute. They also stated that any disputes governing the ERISA plan in the case will not involve any tribal governmental functions, and thus federal law can be applied regardless of the fact that an Indian tribe is involved. The court found that to resolve the dispute in federal court when a tribal court is available is contrary to the tribal court exhaustion doctrine and dismissed the case without prejudice.

108. *BNSF Ry. Co. v. Ray*, No. CV-05-0386-PHX-DGC, 2006 WL 1789070 (D. Ariz. June 27, 2006). The Sullivan Defendants filed suit against Plaintiff BNSF Railway Company ("BNSF") in Hualapai Tribal Court, 2004-CV-150 (the "Sullivan Lawsuit"), asserting claims stemming from an accident involving BNSF. BNSF subsequently filed a complaint in district court seeking to permanently enjoin the Sullivans and the Tribal Court from pursuing the Sullivan Lawsuit, arguing that the Tribal Court does not have jurisdiction over the claims. BNSF requested a temporary restraining order, which was granted, and a preliminary injunction which was also granted. The preliminary injunction directed the Tribal Court and Sullivan Defendants to halt all prosecution of the Sullivan Lawsuit. Defendants The Honorable Delbert W. Ray, Sr. and Jolene Cooney ("Tribal Defendants") asked the Court to modify the existing preliminary

109. *Barber v. Simpson*, No. 2:05-cv-2326-GEB-DAD, 2006 WL 1867643 (E.D. Cal. July 6, 2006). Plaintiff and Defendants, enrolled members of the Washoe Tribe of Nevada and California, dispute ownership of “425 Barber Road, Marleeville, California.” Plaintiff asserted ownership and a continuing right to possess the property pursuant to the doctrine of “individual aboriginal title.” Defendants asserted a superior right to possess the property on the ground that the property is [part of an allotment] owned by the United States in trust for the benefit of Defendants and other individuals not including the Plaintiff. Defendants originally brought a case in the Washoe Tribal Court, seeking to establish and enforce their allegedly superior right of possession. Plaintiff argued the tribal court lacked jurisdiction, but the Washoe Tribal Court determined it had subject matter jurisdiction and an interlocutory appeal to the Inter-Tribal Court of Appeals in Reno, Nevada supported that ruling. After a bench trial, the Washoe Tribal Court concluded that the United States owns the property in trust for the benefit of Defendants, that Plaintiff has no individual aboriginal rights in the property, and granted Defendants “the right and authority to evict Plaintiff” from the property. Plaintiff brought the federal action, seeking a judgment declaring that the Washoe Tribal Court exceeded the proper limits of its jurisdiction, declaring that the tribal court judgment void. The court denied Defendants’ motion to dismiss the federal action for lack of subject matter jurisdiction and failure to exhaust tribal remedies and denied plaintiff’s motion for summary judgment and declaratory and injunctive relief since it found that the tribal court did not exceed its jurisdiction.

110. *Burrell v. Armijo*, No. 03-2223, ___ F.3d ___, 2006 WL 2045821 (10th Cir. July 24, 2006). Farm lessees sued federally recognized Indian tribe and tribal officials, alleging violations of their federal civil rights and breach of farm lease. The district court dismissed, giving preclusive effect to tribal court ruling. Lessees appealed. The appellate court 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.

L. TAX

111. *Parker v. C.I.R.*, No. 2712-00L, T.C. Memo. 2005-294, 2005 WL 3501575 (U.S. Tax Ct. Dec. 22, 2005). Parker, a member of a federally recognized Indian tribe known as the Coeur d’Alene Indian Tribe, petitioned for review of IRS’s determination to proceed with collection by levy of taxpayer’s unpaid income tax liabilities. He resided in Idaho at the time that he filed his petition and operates a business on property that is held in trust by the United

112. *Dark-Eyes v. Commissioner of Revenue Services*, No. 17140. 887 A.2d 848, (Conn. Jan. 3, 2006). Taxpayer, an enrolled member of a federally recognized Indian tribe, filed tax appeal challenging assessment of state income tax on income she earned from tribal council while living on property located in area that was designated as private settlement lands pursuant to Mashantucket Pequot Indian Claims Settlement Act and that tribe purchased with non-settlement moneys. The superior court dismissed tax appeal. Taxpayer appealed. The Supreme Court held that: (1) the generally applicable definition of Indian country under federal law applied in determining whether property qualified as Indian country prior to federal government taking it into trust as part of tribe's reservation, and (2) property did not satisfy federal set-aside requirement for qualifying as a dependent Indian community under federal statute defining Indian country and, thus, taxpayer was not exempt from state income taxes. Affirmed.

113. *Squaxin Island Tribe v. Stephens*, No. C033951Z, 2006 WL 278559 (W.D. Wash. Feb. 3, 2006). Defendant Fred Stephens, represented by the state of Washington ("State"), moved for reconsideration of the court's November 22, 2005, entry of judgment and permanent injunction barring the state from collecting the Washington State motor vehicle excise tax from tribal retailers. The court entered an order granting the Tribes' motion for summary judgment as to the legal incidence of the Washington State motor vehicle fuel tax, ruling that the legal incidence of the tax impermissibly fell on the Tribes' retail fuel stations, relying on the multifactor analysis described in *Oklahoma Tax Commission v. Chickasaw Nation*, 515 U.S. 450 (1995), and *Coeur d'Alene Tribe of Idaho v. Hammond*, 384 F.3d 674 (9th Cir. 2004). Because the court ruled in favor of the Tribes as to their legal incidence claim, the Tribes' preemption and tribal sovereignty claims were rendered moot. On December 6, 2005, the United States Supreme Court issued its decision in *Wagnon v. Prairie Band Potawatomi Nation*, ___ U.S. ___, 126 S. Ct. 676 (2005). The Tribes filed their proposed judgment and permanent injunction and the state filed its response and objections to the proposed judgment requesting that the court direct the parties to file additional briefing on the impact of the *Potawatomi* decision on the case. The state moved for reconsideration of the judgment and injunction and requested a stay of the judgment and injunction pending the resolution of the motion for reconsideration. The court found that the state provided no basis for altering the judgment or reconsidering the November 22 Order granting summary judgment in favor of the Tribes, that the state continued in its failure to identify which entity in the supply chain bears the legal incidence of the tax, and that the state had apparently abandoned any argument that the consumer bears the legal incidence of the Washington State motor vehicle tax and would now place it on suppliers, distributors, or both. The court found that none of the state's arguments, including those based on the *Prairie Band* decision, supported that conclusion under the factors articulated and applied in *Chickasaw Nation* and *Hammond*. The state's Motion for Reconsideration and Stay of the Judgment was denied as untimely and meritless.

114. *Jicarilla Apache Nation v. Rio Arriba County*, No. 04-2320, ___ F.3d ___, 2006 WL 477104 (10th Cir. Mar. 1, 2006). 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 district court granted summary judgment for defendants, 376 F.

115. *Narragansett Indian Tribe v. Rhode Island*, No. 04-1155, ___ F.3d ___, 2006 WL 1413012 (1st Cir. May 24, 2006). 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 district court, 296 F.Supp.2d 153, granted state's motion for summary judgment and denied Tribe's motion, and appeal was taken. A Court of Appeals panel, 407 F.3d 450, disagreed in part, holding that the Tribe's sovereign immunity insulated it from the State's criminal process. On rehearing en banc, the appellate court 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.

116. *Gunton v. C.I.R.*, No. 2911-04, T.C. Memo. 2006-122, 2006 WL 1627978 (U.S. Tax Ct. June 13, 2006). Respondent determined a deficiency in petitioner's federal income tax and an addition to tax under section 6651(a)(1). After concessions by respondent, the issues to be decided were: (1) whether compensation that petitioner received is taxable and (2) whether petitioner is liable for the addition to tax. Petitioner argued that the amounts paid to him were exempt from tax because he is a member of the Seneca nation, which is part of the unconquered Iroquois Confederacy, and he is living on unconquered original land. He contended that he is not a U.S. citizen and that the U.S. Constitution states "Indians not Taxed." The court found that Native Americans are subject to the same federal income tax laws as are other U.S. citizens unless there is an exemption explicitly created by treaty or statute and Petitioner did not show that any treaty or statute specifically exempts any of his compensation.

117. *Keweenaw Bay Indian Community v. Naftaly*, No. 05-1952, ___ F.3d ___, 2006 WL 1726471 (6th Cir. June 26, 2006). Indian 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 for dismissal and for summary judgment, and tribe cross-moved. The district court, 370 F. Supp.2d 620, denied defendants' motions, granted judgment for tribe, and enjoined enforcement of the tax act. Commission appealed. The appellate court 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.

118. *Tunica Biloxi Tribe of Indians v. Bridges*, No. CIV.A. 03-881-A, ___ F. Supp. 2d ___, 2006 WL 1880487 (D. La. June 28, 2006). 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. The district court 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.

M. TRUST BREACH AND CLAIMS

119. *Samish Indian Nation v. U.S.*, No. 04-5042, 419 F.3d 1355 (9th Cir. Aug. 19, 2005). Samish Indian Nation brought suit against United States under Tucker Act and Indian Tucker Act alleging that it should have been treated as federally recognized tribe during period from 1969 to 1996, government violated treaty promises, and it violated various laws after tribe was federally recognized in 1996. The Court of Federal Claims dismissed action, 58 Fed. Cl. 114. Tribe appealed. The appellate court held that: (1) Indian Self-Determination and Education Assistance Act ("ISDA") was not money-mandating, and thus Tucker Act and Indian Tucker Act jurisdiction did not exist; (2) Nation did not have right to ISDA monies under fiduciary duty theory; (3) Snyder Act did not provide private damage remedy; (4) recognition of Nation was non-justiciable political act that tolled limitations period; (5) limitations period was tolled until Nation, through its administrative challenges, obtained final ruling by district court under Administrative Procedures Act; (6) executive branch of government had to make recognition determination regarding Nation for purposes of statutory benefits; and (7) claims for past benefits did not accrue when government accorded Nation federal recognition. Affirmed in part, reversed in part, and remanded.

120. *Shoshone-Bannock Tribes of Fort Hall Reservation v. Norton*, No. CV-02-009, 2005 WL 2387595 (D. Idaho Sept. 28, 2005). Plaintiffs were members of the Shoshone-Bannock Tribes of the Fort Hall Reservation ("Tribes"). The United States, through the Bureau of Indian Affairs ("BIA") holds certain lands on the Fort Hall Reservation in trust for the benefit of plaintiffs and other individual tribal members. The lands are leased out and annually, by December 1, the lessees pay the BIA lease rental income payments which are then paid to tribal members, including plaintiffs, as lease income checks, typically no later than December of each year. In 2001, the court in *Cobell v. Norton*, Case No. 1:96 VC 01285 RCL ordered the United States Department of Interior to disconnect its computer system resulting in delayed lease payments to plaintiffs and other tribal members. In January 2002, plaintiffs sought a mandamus order to compel immediate distribution of the lease income, plus interest and damages and also moved for injunctive relief. By July 2002, plaintiffs and the other members of the Tribes had received substantially all of the lease income, plus interest, withdrew their motion for injunctive relief, and filed an Amended Complaint asserting a single claim for breach of trust. Thereafter, plaintiffs moved to have a class certified on behalf of all persons owning an interest in land on the Fort Hall Reservation who received late lease income checks for the year 2001. The court granted the Motion for Class Certification. All persons who own or owned an interest in land on

121. *Deeks v. United States*, No. 05-5073, 151 Fed. Appx. 936 (Fed. Cir. Oct. 4, 2005). Not selected for publication in the Federal Reporter. Suit was brought against United States for failure to honor Army colonel's 1781 agreement with Indian tribe to provide blankets in exchange for tribe's assistance during the Revolutionary War. The Court of Federal Claims dismissed the case for lack of jurisdiction, and plaintiff appealed. The appellate court held that suit was time-barred. Affirmed.

122. *Staggs v. United States ex rel. Dept. of Health and Human Services*, No. 04-7138, 425 F.3d 881 (10th Cir. Oct. 4, 2005). Patient who gave birth at Indian hospital brought action against government, alleging medical malpractice, under the Federal Tort Claims Act ("FTCA"). The district court dismissed action. Patient appealed. The appellate court held that administrative claim filed against Department of Health and Human Services was insufficient to implicate a lack of informed consent under the FTCA. Affirmed.

123. *Gallant v. United States*, No. A02-0263CV(RRB), 392 F. Supp. 2d 1077 (D. Alaska Oct. 5, 2005). Patient of Alaska Native-owned and managed hospital organized under United States law brought medical malpractice action against United States under Federal Tort Claims Act ("FTCA"), alleging that while she was a cancer patient with compromised immune system, hospital assigned her to hospital room with another patient who was HIV-positive, exposing her to HIV/AIDS. On defendant's motion for summary judgment, the district court held that: (1) under Alaska law, expert testimony on standard of care was required, and (2) assignment of a hospital patient to a room with another patient does not constitute a "treatment or procedure," within meaning of Alaska's informed consent statute. Motion granted.

124. *Osage Tribe of Indians of Oklahoma v. United States*, Nos. 99-550 L, 00-169 L, 68 Fed. Cl. 322 (Fed. Cl. Oct. 17, 2005). Indian tribe brought suit against the United States seeking to recover damages for government's alleged failure to collect and invest revenues generated from the tribe's mineral estate. Defendant filed motion to dismiss in part. The Court of Federal Claims held that: (1) plain language of 1906 Act "for the division of the lands and funds of the Osage Indians in Oklahoma Territory" imposed on the government as trustee fiduciary duties which included specific duty to verify that "all moneys due" under terms of mineral leases were in fact paid to the government and deposited to the account of the Osage tribe as trust beneficiary; (2) statutes and regulations imposing on the government fiduciary duty to ensure that mineral lessees met their contractual obligations to tribe as lessor by verifying the accuracy of royalty payments could fairly be interpreted as mandating compensation by the government for damages sustained from violation of its duty, for purposes of jurisdiction; and (3) tribe's claims that government breached its fiduciary duty by failing to collect mineral royalty payments due tribe fell within ambit of act providing that statute of limitations on claims concerning losses or mismanagement of tribal trust funds does not commence to run until tribe has been furnished with an accounting. Motion denied.

125. *Cobell v. Norton*, No. CIV.A. 96-1285(RCL), 394 F.Supp.2d 164(D.D.C. Oct. 20, 2005). In class action in which Indian trust beneficiaries alleged that Department of Interior had insufficient computer security to adequately safeguard the electronically stored Individual Indian Trust Data of which it was a custodian, plaintiffs filed motion for preliminary injunction. The district court held that trust beneficiaries were entitled to preliminary injunctive relief requiring the Department of the Interior to disconnect all information technology systems that housed or provided access to the Indian trust data from the internet and from all intranet connections. Motion granted.

126. *LaVallie v. United States*, No. A1-04-075, 396 F.Supp.2d 1082 (D.N.D. Nov. 2, 2005). Arrestee filed action under Federal Tort Claims Act (“FTCA”) alleging that tribal law enforcement officer used excessive force when arresting him. Defendants moved for summary judgment. The district court held that officer was not “federal law enforcement officer” within meaning of FTCA. Motion granted.

127. *Cobell v. Norton*, No. 05-5068, 428 F.3d 1070 (D.C. Cir. Nov. 15, 2005). Present and past beneficiaries of individual Indian money accounts filed class action, alleging gross mismanagement by Interior and Treasury Departments. The district court, 357 F. Supp. 2d 298, ordered historical accounting of trust fund assets, and defendants appealed. The appellate court held that injunction was abuse of discretion. Vacated and remanded. *See also* 240 F.3d 1081.

128. *Good Low v. United States*, No. 05-1114, 428 F.3d 1126 (8th Cir. Nov. 15, 2005). Criminal suspect accidentally injured by vehicle driven by pursuing tribal police officer sued for damages under Federal Tort Claims Act. The district court entered judgment for government, and suspect appealed. The appellate court held that: (1) finding that liability was barred by South Dakota’s comparative negligence statute was not clearly erroneous, and (2) claim was not saved by South Dakota’s “last clear chance” doctrine. Affirmed.

129. *Wolfchild v. United States*, No. 03-2684L, 2005 WL 3446266 (Fed. Cl. Dec. 16, 2005). 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 fiduciary duty and contract in the management of property originally provided for the benefit of loyal Mdewakanton. The Court of Federal Claims granted in part government’s motion to dismiss, and plaintiffs’ motion for partial summary judgment. Government filed motion for reconsideration. The Court of Federal Claims, held that: (1) United States created a trust for Mdewakanton Sioux who were loyal to the United States during the Sioux Outbreak in Minnesota during 1862, as reflected in Appropriations Acts of 1888, 1889, 1890 and 1901, and subsequent acts affecting trust property in 1906, 1923, and 1944 were consistent with existence of the trust, and (2) Court had authority under the “Call Statute” to require the Department of Interior to provide a list of lineal descendants of loyal Mdewakanton Sioux. Motion denied.

130. *Cobell v. Norton*, No. Civ.A. 96-1285(RCL), ___ F. Supp. 2d ___, 2005 WL 3466712 (D.D.C. Dec. 19, 2005). In action by beneficiaries of Individual Indian Money trust accounts, alleging breach of fiduciary duties through mismanagement of accounts by Secretaries of the Interior and Treasury, plaintiffs moved for interim award of attorney fees and costs. The district court held that: (1) plaintiffs gave class adequate notice of fee petition; (2) government’s position was not substantially justified; (3) some claimed hours were not

131. *The Cherokee Nation of Oklahoma v. United States*, No. 89-218L, 89-630L, ___ Fed. Cl. ___, 2005 WL 3485959 (Fed. Cl. Dec. 19, 2005). 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 and motion for attorney fees. The Court of Federal Claims held that: (1) law firm had the necessary interest relating to the subject of the action for intervention; (2) firm demonstrated that it was so situated that its ability to protect its interest in attorney fees might be impaired by disposition of action; (3) firm demonstrated that the parties did not adequately represent its interests; and (4) jurisdiction over firm's claim against the government for attorney fees under attorney fee provision of the Claims Settlement Act, as provision was money-mandating. Motion to intervene granted; motion for attorney fees denied.

132. *Navajo Nation v. U.S.*, No. 93-763L, ___ Fed. Cl. ___, 2005 WL 3485960 (Fed. Cl. Dec. 20, 2005). Navajo Nation brought suit alleging that Secretary of Interior breached fiduciary duties owed to Nation by approving coal lease amendments negotiated by Nation and lessee. The Court of Federal Claims, 46 Fed. Cl. 217, dismissed complaint. Nation appealed. The appellate court reversed. Certiorari was granted. The Supreme Court reversed and remanded. On remand, the appellate court remanded. The Court of Federal Claims held that jurisdiction was lacking over claims of Navajo Nation that the Secretary breached fiduciary duties owed to the Nation when Secretary approved coal lease amendments establishing a royalty rate of 12.5 percent and not 20 percent of the lessee's gross revenues, as statutory and regulatory framework cited by the Nation did not establish a money-mandating trust in the area of royalty rates. Dismissed.

133. *Chippewa Cree Tribe of the Rocky Boy's Reservation v. United States*, No. 92-675 L, 2006 WL 181365 (Fed. Cl. Jan. 26, 2006). Indian tribes brought suit against the United States seeking damages for mismanagement of judgment funds awarded by the Indian Claims Commission. Plaintiffs filed motion for summary judgment. Defendant filed cross motion for partial summary judgment and motion to dismiss. The Court of Federal Claims held that: (1) funds appropriated to satisfy awards of compensation by the Indian Claims Commission to Indian tribes for land ceded to the United States constituted "trust funds" under the Permanent Appropriation Appeal Act of 1934; (2) under investment statutes applicable to Indian trust funds, government had fiduciary duty invest the funds productively; (3) statute of limitations on claims had not begun to run absent a government accounting of the funds from which a beneficiary could determine whether there had been a loss; and (4) superiority requirement for class certification was not satisfied. Plaintiff's motion granted and denied in part; defendant's cross motion and motion denied.

134. *Hebert v. United States*, No. 0530223, ___ F.3d ___, 2006 WL 181356 (5th Cir. Jan. 26, 2006). Following settlement of civil rights suit against them, tribal police officer and his police chief filed third party complaint under Federal Tort Claims Act seeking reimbursement against United States. The district court dismissed the suit. Defendants appealed. The appellate court held that defendants were not enforcing federal law. Affirmed.

135. *Felter v. Norton*, No. CIV. A. 022156(RWR), ___ F. Supp. 2d ___, 2006 WL 197437 (D.D.C. Jan 27, 2006). Plaintiffs, claiming to be “mixedblood” members of the Ute Band of Indians, 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. DOI moved to dismiss. The district court held that (1) claims arising out of termination of plaintiffs’ status as federally recognized Indians would be dismissed for lack of subject matter jurisdiction, and (2) claims for damages and an accounting accrued when plaintiffs’ status as recognized Indians was terminated and the reservation’s assets were distributed, and thus were time barred. Motion granted.

136. *Marek v. Avista Corp.*, No. CV04493 N E JL, 2006 WL 449259 (D. Idaho Feb. 23, 2006). Plaintiffs, enrolled members of the Nez Perce Tribe, filed a complaint seeking damages for trespass by Defendants. Defendants filed a Motion to Dismiss for failure to state a claim upon which relief can be granted, lack of subject matter jurisdiction, and failure to join an indispensable party. Plaintiffs allege they are part owners of Allotment No. 1731 upon which Defendants, Avista Corporation (“Avista”) and Clearwater Power Company (“Clearwater”), each own and operate transmission and distribution lines. Avista is the owner of the larger transmission line for which a right-of-way was issued that expired on December 31, 1987. The complaint alleges Avista has not renewed or extended the right-of-way. Clearwater owns the smaller distribution line for which a right-of-way was never obtained. Plaintiffs allege both lines are trespassing on their land. The complaint states “[t]hese are trespass claims for declaratory and injunctive relief” and damages including costs and attorney fees. The court granted Defendants’ Motion to Dismiss. The complaint was dismissed in its entirety as to all parties.

137. *Drapeau v. United States*, No. Civ. 04-4091, 2006 WL 517646 (D.S.D. Mar. 1, 2006). Plaintiff brought action pursuant to the Federal Tort Claims Act (“FTCA”) for invasion of privacy, and to recover damages under the Privacy Act for disclosure of information concerning her termination from the basic 16-week Bureau of Indian Affairs (“BIA”) law enforcement course for rules violations. Defendants sought summary judgment on all Plaintiff’s claims. Plaintiff sought summary judgment on the issue of liability in the action. Plaintiff contended that as a result of the shared information about her dismissal, rumors began to spread on the reservation and caused her boyfriend to throw her out of their home. In addition, she alleged she received telephone calls regarding what happened and threats to have her terminated from the BIA police force. Plaintiff was not terminated from the BIA police force, but was placed on clerical duty rather than patrol duty, an action that resulted in a dramatic decrease in Plaintiff’s income. Plaintiff decided to leave the police force and accepted another position. The appellate court granted defendants’ motion for summary judgment and denied plaintiff’s motion for partial summary judgment.

138. *Lafromboise v. Leavitt*, 439 F.3d 792, No. 04-3245 (8th Cir. Mar. 2, 2006). Mother brought action under Federal Tort Claims Act, alleging medical malpractice occurring during her son's treatment at government-operated medical facility on Indian reservation. The district court, 329 F. Supp. 2d 1054, dismissed, and mother appealed. The appellate court held that state law applied. Affirmed.

139. *Wilkinson v. United States*, No. 04-2185, 2006 WL 590367 (8th Cir. Mar. 13, 2006) Heirs of enrolled members of Indian tribe sued Bureau of Indian Affairs officials, alleging deprivation of rental income derived from trust land mortgaged by their parents. The district court, 314 F. Supp. 2d 902, granted summary judgment for officials, and heirs appealed. The appellate court held that heirs had standing to sue. Reversed and remanded.

140. *Elk v. United States*, No. 05-186 L, 70 Fed. Cl. 405 (Fed. Cl. April 20, 2006). 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. The Court of Federal Claims 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.

141. *Simmons v. U.S.*, ___ Fed. Cl. ___, 2006 WL 1084000 (Fed. Cl. April 25, 2006). After an unfavorable judgment in the district court, Simmons, a tribal elder of the Quinault Indian Nation, brought a pro se complaint alleging negligence on the part of the Bureau of Indian Affairs ("BIA") in managing his trust property, violations of 42 U.S.C. § 1983, and various tort claims. The claims arose as a result of timber harvesting on Simmons' trust land due to incorrectly placed corner markers of the property. The government filed a motion to dismiss under Rule of the Court of Federal Claims ("RCFC") 12(b)(1) or, in the alternative, for summary judgment under RCFC 56. The court granted the government's motion to dismiss pursuant to RCFC 12(b)(1) and denied plaintiff's cross-motion for judgment. Because the court dismissed the case for lack of subject-matter jurisdiction, it did not address the government's alternative motion for summary judgment, affirmative defenses, nor the merits of the plaintiff's claims.

142. *DuMarce v. Scarlett*, No. 05-1104, ___ F.3d ___, 2006 WL 1170121 (Fed. Cir. May 4, 2006). 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 district court, 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. The appellate court 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.

143. *Four v. U.S. ex rel. Bureau of Indian Affairs*, No. 1:05-CV-001, ___ F. Supp. 2d ___, 2006 WL 1275024 (D.N.D. May 10, 2006). Patricia Four (“Four”) brought a wrongful death action as the surviving spouse of Eugene Four, a 74-year-old man killed in a two-vehicle accident caused by a drunk driver, Lawrence Cheauma, Jr. The accident occurred within the exterior boundaries of the Standing Rock Sioux Reservation. Four timely filed an administrative claim with the Bureau of Indian Affairs (“BIA”) alleging that unnamed employees of the BIA’s Office of Law Enforcement Services negligently failed to respond to several 911 calls reporting the drunk driver. Four sought \$1 million in wrongful death damages. In its motion for summary judgment the U.S. asserted immunity from suit under the discretionary function exception to the Federal Tort Claims Act (“FTCA”) and asserted it should be granted summary judgment for three reasons: (1) the discretionary function exception to liability under the Federal Tort Claims Act barred Four’s claims; (2) the United States did not have a duty to control the actions of Cheauma; and (3) Cheauma’s actions were a superceding intervening cause. Four’s response contended that (1) there are genuine issues of material fact that demonstrate that the local BIA Personnel Manual mandated intervention and that such lack of discretion removed the decision from the discretionary function exception to the FTCA; (2) the United States had a duty to control the actions of Lawrence Cheauma, Jr, and prevent the death of Eugene Four, Sr; and (3) the law of intervening superceding causes is no longer strong enough to dismiss Four’s claim. The court found that the case fell within the statutory exception to the FTCA and that the court lacked subject matter jurisdiction. The court granted defendants’ motion for summary judgment and dismissed Four’s complaint for lack of subject matter jurisdiction.

144. *In re Kempthorne*, No. 03-5288, 2006 WL 1563612 (D.D.C. June 9, 2006). 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. The appellate court 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.

145. *Tsosie v. United States*, No. 04-2342, ___ F.3d ___, 2006 WL 1739123 (10th Cir. June 27, 2006). Nettie Ann Tsosie, an enrolled member of the Navajo Nation, died after an emergency room physician at a hospital operated by the Indian Health Service (“IHS”) failed to diagnose that she was suffering from hantavirus. Her husband filed suit against the United States under the Federal Tort Claims Act (“FTCA”) claiming that the treating physician was an “employee of the United States” under the FTCA who negligently failed to diagnose the decedent's condition. The district court dismissed the suit, finding that the treating physician was an independent contractor, not a federal employee, and thus the United States did not waive sovereign immunity under the FTCA. Plaintiffs appealed. The appellate court found that the treating physician was an independent contractor at the time of service, and that there was no basis to estop the United States from asserting that defense and affirmed.

146. *Pelt v. State of Utah*, No. 2:92-CV-639, 2006 WL 1881019 (D. Utah July 6, 2006). 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. The parties’ cross-motions for partial summary judgment were before the court. The issue concerned the Utah Navajo Development Council and its predecessors (“UNDC”) which received and spent

147. *Cobell v. Kempthorne*, No. 05-5269, __ F.3d __, 2006 WL 1889150 (D.D.C. July 11, 2006). The government challenged a district court order requiring that every mailing to trust beneficiaries include a notice stating that “any” information provided about trust matters “may be unreliable.” The government also asked for assignment of the case to a different district judge. The appellate court found that the order exceeded the district court’s authority and vacated and remanded for further proceedings and instructed the chief judge of the district court to reassign the case.

148. *Cobell v. Kempthorne*, No. 05-5388, __ F.3d __, 2006 WL 1889148 (D.D.C. July 11, 2006). Beneficiaries of Individual Indian Money trust accounts brought class action against United States government, alleging that Secretaries of Interior and Treasury breached their fiduciary duties by mismanaging accounts. The district court, 394 F. Supp.2d 164, granted beneficiaries’ motion for injunction requiring government to disconnect computer systems containing beneficiary data from Internet access. Government appealed. The appellate court held that injunction constituted abuse of discretion. Vacated.

N. MISCELLANEOUS

149. *Doe v. Kamehameha Schools/Bernice Pauahi Bishop Estate*, No. 04-15044, __ F.3d __, 2005 WL 1804076 (9th Cir. Aug. 2, 2005). Non-Native Hawai’ian student brought suit against private school, charitable trust, and trustees under § 1981, challenging race-conscious admissions policy of accepting only students of native Hawai’ian ancestry. The district court, 295 F. Supp. 2d 1141, entered summary judgment for school defendants, and student applicant appealed. The appellate court held that: (1) on issue of first impression in Ninth Circuit, suit under § 1981 was subject to substantive standards applicable to race-based challenges under Title VII; (2) race-based admissions policy did not constitute valid affirmative action plan that might supply legitimate nondiscriminatory reason for school’s actions; and (3) policy was unlawful under § 1981. Affirmed in part, reversed in part.

150. *Arakaki v. Lingle*, No. 04-15306, __ F.3d __, 2005 WL 2092565 (9th Cir. Aug. 31, 2005). Citizens of Hawaii sued United States, state officers, Department of Hawaiian Home Lands, Hawaiian Homes Commission, and Office of Hawaiian Affairs (“OHA”), alleging that various state programs gave preferential treatment to persons of Hawaiian ancestry in

151. *Blackmoon v. Charles Mix County*, No. Civ. 05-4017 __ F. Supp. 2d __, 2005 WL 2217413 (D.S.D. Sept. 8, 2005). Native American qualified voters and residents of county brought action against county, county commission members, and county auditor, alleging that county commission districts: (1) were malapportioned in violation of one-person-one-vote standard of the Equal Protection Clause, (2) diluted Native American voting strength in violation of Voting Rights Act (“VRA”), and (3) denied or abridged right of Native Americans to vote on account of race or color in violation of VRA and Fourteenth and Fifteenth Amendments. Voters moved for partial summary judgment, and defendants moved to amend answer and for summary judgment. The district court held that: (1) commission districts’ total deviation of 19.02 percent did not establish violation of equal protection’s one-person-one-vote standard; (2) defendants could conduct discovery to oppose voters’ motion for summary judgment; (3) doctrine of laches did not bar voters’ claims; and (4) statute of limitations did not bar voters’ claims. Ordered accordingly.

152. *Arizona Minority Coalition for Fair Redistricting v. The Arizona Independent Redistricting Commission*, No. 1 CA-CV 04-0061, 121 P.3d 843 (Ariz. Ct. App. Oct. 21, 2005). After voters amended the Arizona Constitution and transferred the power to redraw lines for both legislative and congressional districts from the state legislature to an independent commission, actions were filed in the superior court against the commission by various parties challenging the redistricting plan. The trial court upheld certain challenges and rejected others. Commission and other parties appealed. The appellate court held that: (1) plan was not subject to strict scrutiny review; (2) commission was not required to define terms in self-executing constitutional provision; (3) competitiveness of districts was not an overriding goal; (4) commission did not improperly consider residences of incumbents, and (5) plan respected differing communities of interest of Indian Nation and Indian Tribe. Affirmed in part, reversed in part, and remanded.

153. *Oneida Tribe of Indians of Wisconsin v. Harms*, No. 05-C-0177, 2005 WL 2758038 (E.D. Wis. Oct. 24, 2005). The Oneida Tribe of Wisconsin sued Harms for trademark, unfair competition, and cybersquatting offenses. Defendant filed a counterclaim claiming that Plaintiff’s complaint was a retaliatory action and a malicious prosecution. He sought \$25,000,000 in damages as well as a declaratory ruling. The district court granted the motion.

154. *Mashantucket Pequot Tribe v. Redican*, No. CIV. A. 3:02-CV-1828J, __ F. Supp. 2d __, 2005 WL 3310266 (D. Conn. Nov. 21, 2005). Indian tribe sued owner of website domain name that was similar to name of tribe's casino for trademark infringement, dilution, and cybersquatting. The district court held that: (1) trademark was not infringed; (2) trademark was not diluted; (3) defendant was liable for cybersquatting; (4) defendant violated Connecticut Unfair Trade Practices Act; (5) claims were not barred by laches or unclean hands; and (6) Tribe had standing to sue. Ordered accordingly.

155. *United States v. Fiander*, No. CR-05-2099-RHW-8, __ F. Supp. 2d __, 2005 WL 3115849 (E.D. Wash. Nov. 21, 2005). Defendant moved to dismiss 28-count indictment that included alleged violations of the Contraband Cigarette Trafficking Act (CCTA). The district court held that: (1) defendant committed predicate violation of Washington State cigarette tax laws to support the derivative charge of violating the CCTA, and (2) defendant's right to travel, as established by Yakama Treaty of 1855, included the right to transport unstamped cigarettes within Washington without pre-notification, but did not include the right to deliver possession of unstamped cigarettes without pre-notification as required under Washington law. Motion denied.

156. *United States v. Brave Thunder*, Nos. 05-3446, 05-3447, 445 F.3d 1062 (8th Cir. April 24, 2006). 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 following jury trial in the district court and appealed. The appellate court 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.

157. *Cottier v. City of Martin*, No. 05-1895, __ F.3d __, 2006 WL 1193028 (8th Cir. May 5, 2006). 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 district court denied relief, and voters appealed. The appellate court 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.

158. *Oneida Tribe of Indians of Wisconsin v. Harms*, No. 05-C-0177, 2006 WL 1308064 (E.D. Wis. May 8, 2006). The Oneida Tribe of Wisconsin sued Lester Harms for trademark, unfair competition, and cybersquatting offenses. The Tribe filed a motion for summary judgment. In response to the motion, Harms only stated that he did not believe there was a need for judgment because his domain name had expired and he does not intend to use it again. The court found that Harms infringed the Tribe's trademarks and the Tribe is entitled to relief, namely, a permanent injunction preventing Harms from infringing in the future. The court granted the Tribe's motion for summary judgment and ordered that defendant is permanently enjoined from directly or indirectly using the Tribe's trademarks.

159. *United States v. White Plume*, No. 05-1654, 05-1656, __ F.3d __, 2006 WL 1329752 (8th Cir. May 17, 2006). Alex and Percy White Plume, members of the Oglala Sioux Tribe and Tierra Madre, LLC and Madison Hemp and Flax Company 1806, Inc. (collectively, “Appellants”) appealed the district court’s grant of summary judgment in favor of the United States. In 1998, the Tribal Council passed an ordinance amending its Penal Code. The amendments provided for a sentence of labor not to exceed six months, or a fine not to exceed \$360, or both, for any Indian who farmed, gathered, or dealt in marijuana and defined “marijuana” for purposes of the penal code, to exclude all parts of the Cannabis plant containing less than 1% of tetrahydrocannabinol (“THC”) by weight. The amended ordinance specifically excluded “industrial hemp.” Before passage of the amendments, the United States Attorney for South Dakota notified the Tribe of the Drug Enforcement Agency’s (“DEA”) position that the manufacture of hemp required a DEA Certificate of Registration permitting the manufacture of marijuana. He also warned that anyone cultivating marijuana or hemp without one was subject to criminal prosecution. White Plume, pursuant to the tribal ordinance, and without a DEA registration, raised a cannabis crop on federal trust land in 2000, 2001, and 2002 and contracted to sell the crop to various hemp processing companies. The government learned of the crops, obtained samples under search warrants, and, pursuant to court order, destroyed them. The government asked the district court to declare White Plume in violation of the Controlled Substances Act (“CSA”) and to permanently enjoin them from manufacturing or distributing cannabis. The district court found that the White Plumes had violated the CSA by cultivating hemp without a DEA registration; that the Treaty of Fort Laramie of 1868 did not preserve any right of the Tribe to grow cannabis; and determined that the classification of hemp as marijuana was not irrational and unconstitutional. The court ordered the White Plumes permanently enjoined from cultivating Cannabis sativa L. without a valid DEA registration. The appellate court upheld the decision.